

MEMORANDUM

To: John Sebert
From: Pat Fry and Art Gaudio
Date: December 3, 2009
Re: Summary –Meeting of ULONA Drafting Committee

The Drafting Committee to revise the Uniform Law on Notarial Acts met on the weekend of November 20 & 21, 2009. Patricia B. Fry, chair, presided over the meeting. Present were reporter Art Gaudio, Drafting Committee members David Biklen, Peter Hamasaki, Lawrence Klemin, Edward Lowry, Raymond Pepe, and Anita Ramasastry. Member Candace Zierdt was unable to attend due to problems with airline travel. Also present were Division Chair Brian Flowers. President Robert Stein, Executive Committee Chair Michael Houghton, and Executive Director John Sebert also were present for portions of the meeting. ABA Adviser James Wine and ABA Section Advisor David Ewan were also present. In addition, a number of observers were present and participated in the meeting.

Prior to the meeting, a draft revised in light of discussion at the 2009 Annual Meeting, and in light of various discussions and suggestions received during the interim, was distributed to all committee members, advisers and observers. In addition, suggestions and comments made by Commissioner Klemin, the American Bankers Association, Ms. Gail Hillebrand on behalf of Consumers Union, and others, were circulated. Finally, the transcript of debate at the 2009 Annual Meeting was circulated. At the meeting, comments on behalf of The Surety & Fidelity Association of America also were distributed.

In the course of the meeting, all provisions of the draft were discussed, some at great length. Below is a summary of the major revisions, additions, and deletions made in the draft:

- § 2(4) – remove the definition of “identification credential” and renumber subsections. No longer needed due to revisions in § 5(c).
- § 3(b) barring acts where notarial officer has an interest – add and bracket “[or civil partner]” and revise second sentence to provide more simply that “a notarial act performed in violation of this subsection is voidable.”
- § 5(a) dealing with personal appearance before notarial officer – move to a separate (stand alone) section. Clarify that the individual must personally appear before the officer and have the identity claimed.
- § 5 – revise title of section – “Identification and Capacity of Individual.”

- § 5(c) dealing with satisfactory evidence of identity of individual – several revisions:
 - Use a bracketed time period of “[three years]” after the expiration of passport or driver’s license throughout the subsection.
 - A notarial officer may rely on a passport or driver’s license for identification of the individual (safe harbor provision).
 - A notarial officer may also accept another form of credential to identify the individual if the credential provides identification satisfactory to the officer.
- § 5(e) & (f) dealing with power to refuse to perform notarial act – consider moving to a new section
- § 5(e) dealing with identity, competence, capacity and voluntariness of signature – clarify language; content same.
- § 5(f) dealing with other bases for refusal to act – revise and use second alternative in draft, as follows: “Except as otherwise provided by law, a notarial officer may refuse to perform a notarial act.” Use some of the content of the first alternative in the Comment.
- § 8 dealing with notarial acts in other jurisdictions of the United States – add new subsection (b) and renumber; new subsection to provide that notarial acts “performed in another state by a notarial officer of this state regarding transactions that are subject to the laws of this state are effective in this state.” Draft alternative subsection that provides that notarial act performed in other state by notarial officer of this state is valid only if the other state also adopts ULONA or similar provision.
- § 10 dealing with foreign notarial acts – use first alternative recognizing any notarial acts performed under the authority of a foreign jurisdiction.
- § 12(b) dealing with responsibility for security of stamping device – provide that notary is responsible for the security of the stamping device. Add “destroying it” to list of ways a stamping device may be disabled.
- § 12(c) – notary must “promptly” notify commissioning officer upon loss or theft of stamping device; remove notification of law enforcement authority.
- § 12(d) – consider a clearer statement that a notarial officer who is not a notary public does not need an official stamp.
- § 13 dealing with journal requirement – bracket entire section; add Legislative Note.
- § 13(a) – retain journal for 10 years after performance of notarial act; explain reasons for period and how it is computed in Comment.
- § 13(b) – remove both alternatives; renumber subsections; subsection (a) effectively adopts first alternative in subsection (b).
- § 13(d) – remove reference to “chronologically.”
- § 13(e) – remove reference to “law enforcement authority.”

- § 13(f) – revise language to provide that instead of retaining the journals, the notary or personal representative may transmit them to the commissioning officer or to an approved repository.
- § 13(g) – delete subsection.
- § 14 dealing with power to notarize electronic record – draft two versions – one as currently drafted and one as stated below.
- § 14(a) – change body and title references to “registration of notarial officer” to “notification of commissioning officer” that notary will perform electronic notarial acts.
- § 14(b) – change context to provide that the notary will inform the commissioning officer of the technology that the notary will use; remove requirement that commissioning officer will review and approve.
- § 15 – consider adding a new short form to deal with new provision in § 8(b).
- § 16(c) – the individual must execute the oath of office before issuance of the notarial commission.
- § 16(d) dealing with bonding requirements – several revisions:
 - Use both alternatives (i.e. “before” or “within 30 days after” issuance of commission); bracket both as alternatives to state legislature; add Legislative Note.
 - Consider changing “conforming bond” to “valid bond.”
 - Add requirement that the bonding entity must give notice to the commissioning officer if the bonding entity makes payments under the bond.
 - The method of assurance may be a “bond” or “other form of assurance that is the functional equivalent of a bond.” This would include letters of credit, errors and omissions insurance, and personal surety (i.e. credit); explain in Comment.
- § 17 dealing with education – the Section applies to individuals who do not hold current commissions as notaries public in this state.
- § 18 dealing with grounds for denial, refusal to renew, revocation or suspension of commission – add subsection to allow the commissioning officer to condition granting of commission on applicant obtaining education or testing.
- § 18(a) – revise to allow commissioning officer to refuse to “renew” notarial commission.
- § 18(a)(5) – “fully and faithfully” not needed; “tribal” not needed.
- § 18(a)(9) – add new bracketed subsection directing the legislature to insert any other state-specific provisions or include references to them, if any; add Legislative Note.
- § 19(c) dealing with legal advice and advertising – several changes:
 - Change references to “advertise” to “represent or advertise.”
 - The notification must be stated in each language used in the representation or notification.

- The notification must be contained within each representation or notification or must be prominently displayed before the notarial act is performed.
- § 19(d) – revise language; “except as otherwise allowed by law, the notary public may not withhold access to or possession of any original record provided by an individual who has sought the performance of a notarial act by the notary public.”
- § 20 – add to the powers of the commissioning officer the authority to accept surety bonds and approve other forms of assurance as provided in § 16(d).
- § 21 dealing with vendor submission of technology – several revisions:
 - The commissioning officer may not direct the form of technology that must be used by the notary.
 - The parties to the transaction may select the form of technology that will be used in the transaction.
 - The recorder or other state agency may specify the form of the technology that the recorder or agency will accept.
 - Consider renumbering Section to follow Section 14.

After consultation with ULC leadership, it was decided that sufficient progress had been made that no drafting meeting would be scheduled for Spring 2010. Instead, a series of targeted conference calls would be conducted, each slated to discuss specific items of redrafting. It is expected that these conference calls will be sufficient to ensure a draft of RULONA will be ready for final reading at the 2010 Annual Meeting.