

## SIGNING ON THE DOTTED LINE: LEGISLATION TO REVISE NEW JERSEY'S NOTARIES PUBLIC ACT

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*This bill revises the statutes concerning the qualifications and duties of notaries public and other notarial officers. – S333/A1184*

The New Jersey Law Revision Commission (“NJLRC” or “the Commission”) released a Final Report recommending a comprehensive revision of the New Jersey Notaries Public Act, based on the Revised Uniform Law on Notarial Acts. The Report proposes a modified version of the uniform law to incorporate language from previously introduced legislation, as well as provisions from the existing Notaries Public Act to maintain long-standing New Jersey standards of practice. In January 2016, a bill that mirrors the NJLRC Report, S333/A1184, was introduced in the New Jersey Legislature to modernize and clarify the statutes governing the qualifications and duties of notaries public and other notarial officers.<sup>1</sup>

#### I. BACKGROUND

The New Jersey Law Revision Commission is an independent legislative commission serving the State of New Jersey and its citizens by identifying areas of New Jersey law that can be improved with statutory changes, and preparing reports recommending the revisions to the Legislature. The Commission is required by statutory mandate to “promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to social needs, secure the better administration of justice and carry on scholarly legal research and work.”<sup>2</sup> The NJLRC is charged with submitting to the legislature recommendations from the Uniform Law Commission (“ULC”) and other learned bodies. It is also responsible for conducting a continuous review of the general and

<sup>1</sup> S. 333, 217th Leg., 2016 Sess. (N.J. 2016).

<sup>2</sup> N.J. STAT. ANN. § 1:12A-8 (West 2015); *see also* NJ LAW REVISION COMM’N ANN. REP. at 28 (2015), *available at* <http://www.lawrev.state.nj.us/annual.html> (last visited Feb. 8, 2015). Text styles within the draft act indicate the source for the particular language used therein. Underlined language is taken from RULONA; bolded and italicized language is taken from A1423 (P.L. 2014, c.48 once it takes effect); italicized language was proposed in A463/S2008 (sponsored in 2010 by Assemblywoman Dr. Joan Voss, District 38, and Senators Nicholas Scutari, District 22, and Robert Gordon, District 38); bolded language was proposed by the New Jersey Law Review Commission.

permanent statutes of the state and the judicial decisions construing those statutes to remedy defects, reconcile the conflicting provisions found in the law, clarify confusing provisions, and excise redundancies.

In accordance with its statutory mandate, the NJLRC reviewed the New Jersey statutes governing notaries public after the release of the Revised Uniform Law on Notarial Acts (“RULONA”) by the ULC in 2010. The Commission’s Final Report recommended adding the following new provisions to the existing statute: (1) a definitions section; (2) a course of study requirement; (3) an examination requirement for applicants; (4) a continuing education course requirement for notaries public renewing their commission; and (5) a journaling provision. The proposed act seeks to enhance the integrity of the notarial practice and create safeguards to protect personal and business transactions that are essential to our state commerce.

The NJLRC proposes comprehensive revisions to the New Jersey Notaries Public Act by (1) including all of the RULONA provisions, with the exception of Section 3 – Applicability; Section 28 – Notary Public Commission In Effect; and Section 30 – Uniformity and Application and Construction; (2) incorporating language from previously introduced legislation; and (3) adding new subsections recommended by commenters. The NJLRC recommends retaining certain provisions from the existing state statute in order to maintain New Jersey standards of practice.<sup>3</sup>

## II. INTRODUCTION

The Division of Revenue’s Business Support Services Bureau (“the Division”) serves as the administrative agency regulating notaries public in New Jersey. The Division provides the following description in the notaries public manual:

Notaries are called upon to perform many valuable services for New Jersey’s business, legal, and financial communities. Effective notary services help to ensure that documents are properly executed, that facts are duly certified, and above all, that the general public is protected from fraud. Notarization is essential for many official documents including mortgages, deeds, contracts, and various corporate transactions.<sup>4</sup>

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<sup>3</sup> NEW JERSEY LAW REVISION COMM’N, FINAL REPORT RELATING TO THE RULONA/NEW JERSEY NOTARIES PUBLIC ACT, (Sept. 18, 2014), *available at* <http://www.lawrev.state.nj.us/finalrepandrec.html> (last visited April 22, 2016) [hereinafter “Final Report”].

<sup>4</sup> State of New Jersey, Dep’t of the Treasury Division of Revenue, *Notary Manual*, STATE OF NJ, <http://www.state.nj.us/treasury/revenue/dcr/programs/notary.shtml> (last updated March 21, 2016).

The New Jersey Notaries Public Act of 1979 (“the Act”) governs the qualifications and duties of notaries public in New Jersey.<sup>5</sup> The notarial process then remained static for several decades. Changes in the banking and finance industries now necessitate updating the statutes governing the duties and qualifications of notaries public.<sup>6</sup>

The New Jersey Notaries Association expressed support of comprehensive changes to the Act when it released the following statement:

We are no longer enjoying the innocence and naivety of 1979; yet that is the last time that New Jersey Notary Law was updated. Many industries today are regulated [sic]; demanding higher standards for identification of customers[,] but current notarial law in New Jersey does not require any specific standard to identify signers.

Notary Law in New Jersey needs a significant overhaul to protect New Jersey [c]ommerce, its [c]itizens, and its Notaries Public. Many Notaries Public have taken it upon themselves to adhere to commonly utilized practices; but still many of N.J. Notaries do not. . .To protect our New Jersey commerce transactions that rely on proper execution by New Jersey Notaries, New Jersey law must be amended to provide:

1. Education for all New Jersey Notaries Public in proper execution of their oath of office, substantiate understanding via written examination;
2. Requirements to maintain records of every notarial act performed;
3. Specific identification requirements of all signers in any notarial act;
4. Require a seal as evidence of the Notary Public’s official office;
5. Criminal background check via FBI fingerprint screening of any candidate for the Office of Notary Public.<sup>7</sup>

The need to safeguard the integrity of the notarial process is enhanced by the increasing demands of the business and banking industries.<sup>8</sup> The surge of electronic recording, globalization of business, and multi-faceted means to transfer and allocate goods and resources presents new challenges to recording and authenticating personal and business transactions.<sup>9</sup>

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<sup>5</sup> N.J. STAT. ANN. §§ 52:7-10 to 7-21 (West 2015).

<sup>6</sup> See Nat’l Conference of Comm’rs on Unif. State Laws, *Revised Uniform Laws on Notarial Acts*, UNIFORM LAWS (Nov. 16, 2010), [http://www.uniformlaws.org/shared/docs/notarial\\_acts/rulona\\_final\\_10.pdf](http://www.uniformlaws.org/shared/docs/notarial_acts/rulona_final_10.pdf); see also N.J. STAT. ANN. §§ 12A:12-1-101 to 1-308 (West 2015) [hereinafter “Nat’l Conference of Comm’rs on Unif. State Laws”]; N.J. STAT. ANN. §§ 52:7-10 to 7-21 (West 2015) (codifying the Uniform Electronic Transaction Act. The Act governs transactions involving electronic signatures or electronic records that are not subject to any article of the Uniform Commercial Code, outside of Articles 2 and 2A).

<sup>7</sup> *Legislation*, NEW JERSEY NOTARIES ASSOCIATION <http://www.newjerseynotaryassociation.org/Legislation.html> (last visited May 13, 2016).

<sup>8</sup> See Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6.

<sup>9</sup> HENRI J.M. CLAESSEN & PETER SKALNIK, *EARLY STATE, MODELS AND REALITIES* 223 (De Gruyter Mouton; Reprint 2011 ed.1978).

## III. ORIGINS OF NOTARIES PUBLIC

Notaries public are a product of the emergence of our contractual society, and their roles and responsibilities evolved over the course of time in various social contexts.<sup>10</sup> The origins of the notary public service trace back to the earliest civilizations, where scribes or clerks chronicled the official communications of the emperor or head of state.<sup>11</sup> The Latin word “nota” was derived from a system of shorthand developed by M. Tullius Tiro, clerk to the Roman statesman, Cicero.<sup>12</sup> The name “notarius” was given to individuals who adopted this form of writing to receive instructions for drafting conveyances, agreements, and other written instruments.<sup>13</sup> The function and role of the “notarius” expanded under Roman civilization from record keeping to a highly regarded position of influence and rank. Eventually, the term “notary” emerged to describe an individual with prominent rank and status, providing the historical context for the present-day recognition of notaries public in many countries as legal officers of the court.<sup>14</sup>

In 803, Charlemagne was the first to officially recognize notaries and offer them governmental rank.<sup>15</sup> For several centuries, notaries enjoyed royal rank and status. They were responsible for civil duties including writing the notes of judges, along with responsibilities involving ecclesiastical affairs.<sup>16</sup> The modern notaries were birthed in France during Napoleon’s reign.<sup>17</sup> Their jurisdiction and authority was primarily self-executing and self-authenticating, but were distinguished from the judicial and legal authority held by notaries under other regimes.<sup>18</sup>

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<sup>10</sup> *Id.* at 223.

<sup>11</sup> See generally Michael L. Closen & G. Grant Dixon, III, *Notaries Public from the Time of the Roman Empire to the United States Today and Tomorrow*, 68 N.D. L. REV. 873, 875-876 (1992); Am. Soc’y of Notaries, *A Historical Overview of the Office of Notary Public*, NOTARY PUBLIC DAY, <http://www.notarypublicday.com/history.html> (last visited April 22, 2016).

<sup>12</sup> Am. Soc’y of Notaries, *supra* note 11 (asserting that Tiro lived from 103 to 3 B.C. and used nota to take down Cicero’s monologues which were infamously long and excessive).

<sup>13</sup> Am. Soc’y of Notaries, *supra* note 11.

<sup>14</sup> Am. Soc’y of Notaries, *supra* note 11.

<sup>15</sup> Pedro Malavet, *Counsel for the Situation: The Latin Notary, A Historical and Comparative Model*, 19 HASTINGS INT’L & COMP. L. REV. 389, 419 (1996).

<sup>16</sup> *Id.* at 422.

<sup>17</sup> *Id.* at 421-23.

<sup>18</sup> *Id.*

Following feudal rule in England, a common law system emerged from custom and tradition established during the Norman Conquest.<sup>19</sup> Unlike the Roman civil notaries, the Pope gave the Archbishop of Canterbury the authority to appoint notaries.<sup>20</sup> Henry VIII usurped the authority to appoint notaries in 1534, when he broke ties with the Vatican. English notaries were then regulated to authenticating documents for international commerce until the Court of Faculties was established and assigned power by the Archbishop to appoint notaries. The duties of notaries public to authenticate and witness document signing remained relatively fluid for several centuries.<sup>21</sup> Personal knowledge and familiarity with the individuals signing were hallmarks of the practice.<sup>22</sup>

In contrast, Spanish notaries were state-appointed private legal professionals, who, whenever asked, were required to (1) carry out nonadvocacy counseling; (2) give private transactions proper legal form and authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions, for which they had to provide certified copies, if requested.<sup>23</sup> Spanish notaries were generally “subject to professional, civil, and criminal liability for miscarriage of [their] office.”<sup>24</sup>

The notary system as established in these European nations spread to colonized parts of the world as the reach of Europe extended to the Americas, Asia, Africa, and Australia.<sup>25</sup> The American notary system, although modeled after the English notary system, was not esteemed in the same measure as its European counterpart.<sup>26</sup> The role of the American notary was recognized for its utility, not its privilege or status.<sup>27</sup> As is still the custom, the first American notaries primarily administered oaths and declarations, and authenticated and witnessed document signing, with personal knowledge and familiarity with the individuals signing as the

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<sup>19</sup> *Id.* at 425.

<sup>20</sup> *Id.*; see also *Notary Public*, G.R. BROWN -SOLICITOR & NOTARY, <http://www.grbrown.com.au/cms/services/notary-public> (last visited Feb. 12, 2016).

<sup>21</sup> See *id.*

<sup>22</sup> See Clozen & Dixon, *supra* note 11, at 883-84.

<sup>23</sup> Milagros Cisneros, *Notorious Notaries – How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287, 294-95 (2000).

<sup>24</sup> *Id.* at 295.

<sup>25</sup> See Malavet, *supra* note 15, at 425-26.

<sup>26</sup> See Cisneros, *supra* note 23, at 295.

<sup>27</sup> See Malavet, *supra* note 15, at 425-26.

hallmarks of the practice.<sup>28</sup>

By contrast, in other European colonies, particularly Latin America, notaries or “notario publicos,” were “vested . . . with royal title, in some cases equivalent to the power and privilege of a high-ranking government official”<sup>29</sup> Indeed, such officers were considered so prestigious that only a legislative body was entrusted with their appointment.<sup>30</sup>

In contemporary Latin America, a lawyer fortunate enough to become a notario publico is a private legal professional of immense prestige who holds his or her office for life, as long as he or she remains in good standing. Supervision of the profession is loosely carried out by legislatures or professional groups. Latin notaries, however, are also closely supervised, not by the judiciary, but by the State, which expressly delegates to notarios publicos the sovereign power of publica fides. The publica fides or fe publica (literally, ‘public trust’ or ‘public faith’) gives the State the power to certify or authenticate. When the Latin notary carries out that function he or she essentially ‘gives faith’ (in other words, certifies for the State) that the document is authentic and legally valid. Thus, the ‘Fe Publica Notarial’ is the legal acceptance that comes from the presumption of truth that accompanies the notarial document.<sup>31</sup>

This distinction poses grave challenges to the use of the term “notario publico” by American notaries public.

Considerable confusion has resulted when notaries in New Jersey have advertised themselves in the language of the potential consumer, with such words as “notario.” In Mexico and other civil law countries, “notario” has a very different meaning from a “notary public” in the United States. While “notario” or “notario publico” in civil law countries may be synonymous with “attorney,” in the United States notaries public hold strictly a “witness” position. There have been many victims of “notario fraud” because persons come to notaries thinking that they will receive legal advice as they may have received in their native land. The Committee on the Unauthorized Practice of Law authorized by the New Jersey Supreme Court determined that it is the “unauthorized practice of law for any notary public of the State of New Jersey to render assistance by giving advice or by preparing, reviewing, analyzing, or completing any forms, writings, pleadings, or other documents in person, in writing, electronically or otherwise,” and recommended legislation to prohibit this practice in New Jersey.<sup>32</sup>

The New Jersey Legislature addressed this issue in 2014 by requiring notaries public who are not attorneys to publish that fact and prohibiting such notaries from advertising using the title attorney or attorney at law.<sup>33</sup> S333/A1184 incorporates this

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<sup>28</sup> See Malavet, *supra* note 15, at 882.

<sup>29</sup> Cisneros, *supra* note 23, at 295.

<sup>30</sup> Cisneros, *supra* note 23, at 295.

<sup>31</sup> Cisneros, *supra* note 23, at 295-296.

<sup>32</sup> Notaries Public and the Unauthorized Practice of Law, Op. 41, 13 N.J.L. 2273 (Nov. 1, 2004) and 178 N.J.L.J. 444 (Oct. 25, 2004).

<sup>33</sup> State Officers and Employees—Notaries Public—False Advertisements, 2014

provision into the comprehensive revisions that provide the grounds to deny the application of an applicant, refuse to renew, revoke, suspend, or the limit the commission of a notary public.

#### IV. UNIFORM LAW

##### A. ULONA

In 1982, the ULC proposed the Uniform Law on Notarial Acts (“ULONA”) to create uniform standards for notaries public as business practices expanded with the growth of technology.<sup>34</sup> The following twelve jurisdictions enacted the ULONA – Delaware, District of Columbia, Kansas, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Wisconsin, and Wyoming.

The ULONA was designed to:

define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions and [sic] [t]hus[,] replaces two Uniform Laws, the Uniform Acknowledgment Act (as amended), and the later Uniform Recognition of Acknowledgments Act. The original Acknowledgment Act served to define the content and form of acknowledgments. The Recognition Act later provided for more specific rules for recognition of acknowledgments and “other notarial acts” from outside of the state, although its title was more narrowly stated. This statute is thus a consolidation, extension, and modernization of the two previous acts. It consolidates the provisions of the two acts relating to acknowledgments of instruments. It extends the coverage of the earlier act to include other notarial acts, such as taking of verifications and attestation of documents. In addition, the act seeks to simplify and clarify proof of the authority of notarial officers.<sup>35</sup>

In the decades since, the ULC acknowledged the need for a comprehensive revision of ULONA, as a result of business globalization, the emergence of electronic recording, and the significant changes in commercial and lending practices.

##### B. RULONA

In July 2010, the ULC approved and recommended the RULONA for enactment in all states.<sup>36</sup> The RULONA provides a uniform framework to ensure the integrity of the notarial process,

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N.J. Sess. Law Serv., ch. 48 (Assembly 1423) (West) (to be codified at N.J. STAT. ANN. §§ 2C:21-22, 31; §§ 52:7-11, 13, 14, 17, 18, 19, 21).

<sup>34</sup> S. 333, 217th Leg., 2016 Sess. (N.J. 2016); *see also* Final Report, *supra* note 3.

<sup>35</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *Uniform Law on Notarial Acts*, (Feb. 9, 1983), [http://www.uniformlaws.org/shared/docs/notarial\\_acts/ulna82.pdf](http://www.uniformlaws.org/shared/docs/notarial_acts/ulna82.pdf).

<sup>36</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6.



which is increasingly challenged by the use of electronic recording, and the changes in the business practices of the banking and finance industries.<sup>37</sup> The RULONA, as described in the Prefatory Note, seeks to enhance the integrity of the notarial practice to safeguard personal and business transactions.<sup>38</sup> Like the 1982 Act, the RULONA provides minimum standards for notaries public and governs the recognition of interstate and foreign notarizations. Unlike its predecessor, the RULONA also adds a provision for the notarization of tangible and electronic records, enhances personal appearance and identification requirements, and introduces journaling obligations.<sup>39</sup> The RULONA was drafted to harmonize with the Electronic Signatures in Global and National Commerce Act (“ESIGN”) and other uniform laws, including the Uniform Electronic Transactions Act (“UETA”) and the Uniform Real Property Electronic Recording Act (“URPERA”).<sup>40</sup> The RULONA has received strong support from the National Association of Notaries Public, the American Society of Notaries, and dozens of state notary associations.

One of the primary objectives of the RULONA is to preserve the integrity of both tangible and electronic records.<sup>41</sup> The RULONA expands the definition of a “notarial act” to include electronic records, provides a definition for electronic signature, and describes electronic images when defining the official stamp and stamping device.<sup>42</sup> The uniform law allows personal knowledge or satisfactory evidence to verify the identity of the individual appearing before the notary and requires the personal appearance of an individual who signs a record before the notary for both tangible and electronic records, as well as providing the bases for notaries public to refuse performance.<sup>43</sup> The RULONA governs notarial acts performed (1) in other states; (2) by federally-recognized Native American tribes; (3) under federal authority; and (4) in foreign jurisdictions.<sup>44</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> N.J. STAT. ANN. § 52:7, et seq. (West 1980); N.J. STAT. ANN. §. 46:26A, et seq. (West 2012) (codifying ESign which requires that records, contracts, or transactions conducted or preserved electronically are given the same legal force as their paper equivalents and must meet similar standards of “legal effect, validity, or enforceability” 15 U.S.C. 101.a).

<sup>41</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 1.

<sup>42</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 1.

<sup>43</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at §§ 5-8.

<sup>44</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 14.

The RULONA acknowledges the Apostille Hague Conference (“Hague Conference”) of October 5, 1961, which established an international treaty recognizing the foreign public documents from each of the participating countries, without first obtaining diplomatic or consular authentication.<sup>45</sup> The Hague Conference currently has 80 participating members, including the United States. Seventy-nine members are States, one is a Regional Economic Integration Organization.

In keeping with the international efforts to find uniform standards for notarial practice, the ULC sought to establish national standards of practice and process for notarial acts in the United States. Specifically, with regard to commissioned notaries public, the RULONA delineates the qualifications for obtaining and renewing a notary public commission - including age, residency, course of study, and examination requirements.<sup>46</sup> The certificate of notarial acts and short form certificates are provided, in addition to the form and content of the official stamp, as well as the means to secure the stamping device. The uniform law outlines the grounds to deny, refuse to renew, revoke, suspend, or condition a notary’s commission.<sup>47</sup> The uniform law creates a journal provision requiring notaries to chronicle each act and retain the journal for ten years after performance, in a tangible or electronic form.<sup>48</sup> The uniform law allows a notary public to select one or more tamper-evident technologies when using electronic records, in order to prevent notaries public from being obligated to use an electronic record demanded by the individual appearing.<sup>49</sup> The RULONA prohibits a notary public or notarial officer who is not an attorney licensed to practice law from (1) giving legal advice; (2) acting as an immigration consultant or an expert on immigration matters; or (3) otherwise performing the duties of an attorney licensed to practice law.<sup>50</sup> To date, only six states have enacted RULONA: Iowa, Montana, North Dakota, Oregon, Pennsylvania, and West Virginia.

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<sup>45</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 14.

<sup>46</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at §§ 21- 22.

<sup>47</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 23.

<sup>48</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 19 (explaining that the ULC emphasizes that the journal provision is optional and that the provision has generated some controversy); *see* N.J. STAT. ANN. §§ 52:7-34 (West 2015) (including the journal provision in this Report, recommending this provision for adoption in the proposed act).

<sup>49</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at § 20.

<sup>50</sup> Nat’l Conference of Comm’rs on Unif. State Laws, *supra* note 6, at §§ 15, 17, 18.

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In 2016, RULONA has been introduced in the Georgia and Vermont legislatures.

## V. NJLRC LEGISLATIVE PROPOSALS

A. *Introduced Legislation – New Jersey Law on Notarial Acts*

The NJLRC reviewed the New Jersey statutes governing notaries public following the release of the RULONA, and later issued a Final Report in September 2014 recommending comprehensive changes to the New Jersey Act. The Final Report included all of the RULONA provisions, with the exception of Section 3 – Applicability; Section 28 – Notary Public Commission In Effect; and Section 30 – Uniformity and Application and Construction. The Final Report modified the Act to incorporate language from previous legislation, and provisions from the existing Act, to maintain New Jersey standards of practice. The discussion that follows identifies the modifications proposed by the Commission.

## i. Short Title and Definitions

The NJLRC proposes revising the short title of the Act as follows, “the New Jersey Law on Notarial Acts,” in accord with the expanded reach of the uniform act, which covers both commissioned notaries public and notarial officers, such as judges and attorneys, who are authorized by statute to function as notaries public. The Commission recommended reordering the definitions section and incorporating the definitions from N.J.S.A. 1:1-2. To define both the ‘person’ in subsection i. and ‘state’ in subsection n.

## ii. Appointment and Qualifications

The following language from subsection N.J. STAT. ANN 52:7-11b was retained, in order to maintain a long-standing New Jersey practice that connects New Jersey legislators with their constituents:

b. An applicant for commission as a notary public shall make application to the State Treasurer on a form prescribed by the State Treasurer and endorsed by a member of the Legislature or State Treasurer. Renewals shall be made in the same manner as the original application.

The NJLRC proposes the following revisions to the provision governing the qualifications of applicants:

## 52:7-12. Qualifications

a. [No] A person [shall be appointed] commissioned as a notary public in this State shall:

- (1) be at least [unless he is] 18 years of age [or older];
- (2) be at the time of appointment a legal resident of this State or have a place of employment or practice in this State; and
- (3) not be disqualified to receive a commission under, N.J.S.A. 52:7-

## 14.1.

b. An applicant for commission as a notary public shall provide satisfactory proof that the applicant has:

(1) completed a three-hour course of study approved by the State Treasurer pursuant to N.J.S.A. 52:7-13.1a.; and

(2) passed an examination prescribed by the State Treasurer, N.J.S.A. 52:7-13.2, based on the course of study described in N.J.S.A. 52:7-13.1a.

c. A notary public applying to renew his or her commission who has previously completed the three-hour course of study required pursuant to subsection a of N.J.S.A. 52:7-13.1a. at least one time or was commissioned for the first time before the effective date of N.J.S.A. 52:7-13.1, shall complete the two-hour continuing education course, pursuant to N.J.S.A. 52:7-13.1b. and provide satisfactory proof of such completion.<sup>51</sup>

Source: N.J.S. 52:7-12; RULONA. section 21; proposed new language from interested stakeholders.

## iii. Appointment of nonresidents

The NJLRC proposes changes to the provision providing requirements for the appointment of nonresidents based on the recommendation of several commenters who suggested that the provision may raise grounds for constitutional challenges and unduly limit individuals who are eligible for commission as a New Jersey notary public. The concern was included in the comments to the section and the following language was proposed:

## 52:7-13. Appointment of nonresidents; requirements

a. No person shall be denied commission as a notary public on account of residence outside of this State, provided such person resides [in a state adjoining this State and] in another State and maintains, or is regularly employed in, an office in this State.

b. [Before] [A]ny such nonresident shall [be appointed and commissioned as a notary public] file with the State Treasurer an affidavit setting forth [his] the residence and the address of [his] the applicant and the office or place of employment of the applicant in this State.

c. Any such nonresident notary public shall file with the State Treasurer a certificate showing any change of residence or change of the office or place of employment of the notary public addressed in this State.

## iv. Course of Study

The proposed statutory language reflects the approach of the NJLRC to balance (1) the recommendation from several commenters who requested a six-hour course of study for new applicants and a three-hour continuing education course for notaries public renewing their commission, similar to the

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<sup>51</sup> The NJLRC Report excludes subsection b.(3) – (5). Subsections c. and d. of section 21 apply to the optional assurance which is not included in this Report.

requirements enacted in California, with (2) the recommendations from a group of commenters who requested a provision similar to the Pennsylvania statute which requires a three-hour course of study for applicants and a one-hour continuing education course.

The NJLRC sought to further balance the burdens of the new course of study and examination provision by “phasing in” the requirement, and exempting persons presently holding a notary commission from the testing provisions. Upon the first renewal of the notary’s commission following the effective date of this act, the notary must complete the specified three-hour course of study specified in N.J. STAT. ANN. 52:7-13.2a. Thereafter, subsequent renewals require first completing the two-hour course.

In subsection e.2, the NJLRC removed the online instruction component of the course of study in response to a formal request to require that the course of study is only provided through classroom instruction. This would ensure that the ethics requirements, and the new provisions required by A1423 and this act, are presented in a setting optimal for active learning and retention.

The RULONA recommends that state legislatures add criminal background checks where consumer protection demands increased scrutiny of prospective notaries public. The commenters who provided input for this draft act did not find such a demand at this time in New Jersey. The commenters were satisfied that the provisions in the proposed N.J. STAT. ANN. 52:7-14.1 provided sufficient safeguards to address the issue raised, especially when weighed against the additional cost and burden this provision may place on prospective applicants.

The added language in the section concerning the course of study requirement is adapted from the more limited language of the RULONA, section 22, and incorporates NJLRC recommendations based on previously introduced legislation and comments from interested stakeholders who encouraged a course of study provision.

**52:7-13.1. Course of Study; Continuing Education**

- a. An applicant for commission as a notary public under N.J.S. 52:7-11 shall, within the six-month period immediately preceding the application for a commission, complete a three-hour course of study prescribed and approved by the State Treasurer.
- b. An applicant for renewal of a commission shall, within the six-month period immediately preceding the application for commission, complete a continuing education course of at least two hours prescribed and approved by the State Treasurer.
- c. The State Treasurer shall, by rules and or regulation, prescribe an application form and adopt a certificate of approval for the notary public education course of study and continuing education course

proposed by a provider.

d. The State Treasurer shall compile a list of all persons offering an approved course of study pursuant to subsection a. and b. of this section and shall provide the list with every public manual of the laws of this State relating to notaries public issued by the State Treasurer.

e. For approval, the following must apply:

(1) The course of study shall:

(A) cover the statutes, regulations, procedures, and ethics for notaries public as described in the public manual issued by the State Treasurer, and

(B) include the duties and responsibilities of a commissioned notary public.

(2) The course of study shall be provided by classroom instruction.

f. For approval, the following shall apply:

(1) The continuing education course shall cover topics which ensure maintenance and enhancement of skill, knowledge, and competency necessary to perform notarial acts;

(2) The continuing education course shall be provided by either online or classroom instruction.

g. The State Treasurer may also provide a notary public education course of study and continuing education course.

Source: RULONA, section 22.

#### v. Examination

Similar to the course of study provision, the NJLRC sought to balance the range of comments that suggested a stringent examination requirement to encourage compliance and high regard for the course of study requirement, with those recommending a more lenient requirement. Both approaches sought to effectively evaluate whether the information received was retained and applied. The burden and costs associated with the examination requirement were also considered.

##### 52:7-13.2. Examination

a. The examination prescribed by the State Treasurer to determine the fitness of an applicant to exercise the functions of a notary public as provided in N.J.S.A. 52:7-11, and administered by the State Treasurer shall:

(1) be based on the statutes, rules, regulations, procedures, and ethics for notaries public as described in the manual issued by the State Treasurer pursuant to N.J.S.A. 42:7-17, and

(2) include the duties and responsibilities of a commissioned notary public.

b. The State Treasurer shall charge a nonrefundable fee, to be established by regulation, which shall be:

(1) payable at the examination site;

(2) established or changed by the State Treasurer to defray any proper expenses incurred by the Department of the Treasury employed to administer this examination. The fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

Source: RULONA, section 22.

vi. Grounds to Deny the Application or Refuse to Renew, Revoke, Suspend, or Limit the Commission of Notary Public.

The language in this provision is taken from the RULONA, Section 23 - Grounds to Deny the Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of Notary Public. In subsection a.6, language is taken from the RULONA Section 25 – Prohibited Acts. The language in subsection a.8 is taken from N.J. STAT. ANN. 52:7-14, and the language added to subsections a.3, 4, and 7 reflects the language enacted in 2015 to amend N.J. STAT. ANN. 52:7-14.

The ULC Report explains in the comment to section 23 that:

Subsection a. lists the grounds upon which the [sic] [State Treasurer] may deny, refuse to renew, revoke, suspend, or impose a condition on a commission. The general grounds listed include a lack of honesty, integrity, competency, or reliability on the part of the applicant or current notary public.

Subsection b. states that an applicant or notary public whose commission has been denied, revoked, or suspended, or upon whose commission a condition has been imposed, or who has been refused a renewal of a commission is entitled to a timely notice and a hearing. Such a notice and hearing are likely required by the state's administrative procedure act but are restated here for clarity.

Subsection c. provides [sic] [that although the] State Treasurer has the authority to deny, refuse to renew, suspend, revoke, or impose a condition on a commission, [this recourse] does not prevent additional relief provided by law. Either the State Treasurer or a person aggrieved by the action of a notary public may seek appropriate relief, whether the relief is civil or criminal.

**52:7-14.1 Grounds To Deny The Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of Notary Public**

a. The [commissioning officer or agency] State Treasurer may deny an application for commission as notary public, or refuse to renew, revoke, suspend, or otherwise limit the commission of a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability necessary to act as a notary public, including:

(1) failure to comply with [this act] N.J.S.A. 52:7-10, et seq.

(2) a fraudulent, dishonest, or deceitful misstatement or omission in the application for commission as a notary public submitted to the State Treasurer;

(3) [a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;]

[(4)] a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit, including but not limited to a violation of section 1 of P.L. 1997, c.1 (C.2C:21-31) or section 1 of P.L. 1994, c.47 (C.2C:21-22);

(4) a conviction of a crime of the second degree or above;

(5) failure, by the notary public, to discharge any duty required of a notary public, [whether by this (act), rules of the (commissioning officer

or agency)] by any law, including N.J.S.A. 52:7-10, et seq., any rules or regulations promulgated pursuant to N.J.S.A. 52:7-10, et seq. and any other state or federal law:

(6) use of false or misleading advertising or representation by the notary public representing that the notary is commissioned, licensed, or authorized to practice or engage in work that the notary is not authorized to engage in;

(7) [violation of the notary public of a rule of the (commissioning officer or agency) regarding a notary public; or] in the case of a notary public who is not an attorney licensed to practice law, any of the following:

(A) *giving legal advice;*

(B) *acting as an immigration consultant or an expert on immigration matters; or*

(C) *otherwise performing the duties of an attorney licensed to practice law in this State; or*

(D) *creating or reinforcing, by any means, a false impression that the person is licensed to engage in the practice of law in this State or any other State, including but not limited to a violation of P.L.1994, c.47 (2C:21-22) or P.L.1997, c.1 (2C:21-31).*

(8) *failure to take and subscribe to the oath pursuant to N.J.S.A. 7:5-14 within three months of the receipt of a notary public commission.*

(9) withholding access to or possession of an original record or photocopy provided by a person that seeks performance of a notarial act by the notary public, except where allowed by law;

(10) the denial of an application for notary public, or refusal to renew, revocation, suspension, or otherwise limiting the commission of the notary public in another State.

b. If the State Treasurer denies an application for notary public, or refuses to renew, revokes, suspends, or otherwise limits the commission of a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq.

c. The authority of the State Treasurer to deny an application for notary public, or refuse to renew, suspend, revoke, or otherwise limit the commission of a notary public does not prevent a person aggrieved by the actions of a notary public from seeking other criminal or civil remedies as provided by law.

Source: RULONA, section 23; in subsection a.6 language is taken from section 25; the added language in subsection a.3, 4, and 7 appears in previously introduced legislation; language in subsection a.8 is taken from N.J. STAT. ANN. 52:7-14.

#### vii. State-wide Authority; Filing Certificates of Commission and Qualification with County Clerks

The NJLRC recommended eliminating the following provision based on the recommendation of several commenters who found “as a matter of practicality” that subsection b. is obsolete:

52:7-15. State-wide authority; filing certificates of commission and qualification with county clerks

[b. Any notary public, after having been duly commissioned and qualified, must, upon request, receive from the clerk of the county where he has qualified, as many certificates of his commission and qualification as he the notary public must require for filing with other county clerks of this State, and upon receipt of such certificates the notary public may



present the same, together with the signature of the notary public, to such county clerks as he the notary public may desire, for filing.]

#### viii. Manual

In light of the course of study and examination provisions proposed by this Act, NJLRC recommends including requirements for maintaining and updating the public manual which provides the basis of the course of study and the written examination, including the statutes, regulations, and procedures governing notaries public, as well as the requirements, functions, duties, and ethics requirements of notaries public.

A group of commenters proposed that if the suggested educational requirements are to keep notaries public abreast of developments in the rules and regulations governing New Jersey notaries public, the manual provision may become obsolete, particularly if it is not regularly updated. The commenters proposed eliminating the manual provision, but if the provision remains, the commenters recommended the language proposed in subsection b.

Several commenters, including commissioned notaries public, raised the concern that the fee schedule for services provided by notaries public has remained stagnant for decades. The commenters requested an increase of the fees in keeping with the increased cost of living and rise in inflation. Moreover, the commenters stated that the costs to obtain or renew a commission - with a course of study, continuing education, and examination requirements - should be balanced by an increased fee schedule.

While addressing these fiscal matters is beyond the scope of the Commission's Report, the NJLRC does recommend a review of the current fee schedule, in light of the concerns raised by commissioned notaries public.

#### 52:7-17. Manual

##### a. The State Treasurer shall:

(1) maintain a manual pursuant to N.J.S.A. 52:7-10, et seq. to include, but not limited to, the following: the statutes, rules, regulations, and procedures governing notaries public; the requirements, functions, duties, and ethics responsibilities of a notary public, which is accessible to the public;

(A) The manual shall specify that *a notary public who is not licensed as an attorney-at-law shall not use or advertise the title of lawyer or attorney-at-law, or equivalent terms, in the English language or any other language, which mean or imply that the notary public is licensed as an attorney or counselor-at-law in the State of New Jersey or in any other jurisdiction of the United States;*

(B) The manual shall also state that *a notary public who advertises his services in the English language or any other language is required to provide with such advertisement a notice which contains the following statement: "I am not an attorney licensed to practice law and may not give*

*legal advice about immigration or any other legal matter or accept fees for legal advice."*

(C) The manual shall also state that no person shall be [appointed or reappointed] **commissioned or recommissioned a notary public** if he has been convicted under laws of this State of an offense involving dishonesty, including but not limited to a violation of section 1 of P.L.1997, c.1 (C.2C:21-31) or section 1 of P.L.1994, c.47 (C.2C:21-22), or a substantially similar crime under the laws of another state or the United States or of a crime of the second degree or above;

(2) The State Treasurer shall update the information contained in the manual and the Department of Treasury's Internet website as appropriate.

b. The State Treasurer shall, by regulation, fix a fee to be charged to each notary for the cost of printing and distributing to each applicant a manual prescribing the powers, duties, and responsibilities of a notary, however no fee may be charged if the manual is downloaded or printed from the Department of Treasury's website.

#### ix. Stamp

The NJLRC made the following recommendations in response to a group of commenters that requested revising the RULONA provision to conform to existing New Jersey practice.

This section merges subsection 15b. of the RULONA, which identifies those circumstances in which the certificate of notarial act must contain the official stamp of the notarial officer. Section 17 of the RULONA concerns the Official Stamp.

The comment to section 15 states that:

If the notarial act is performed with respect to a tangible medium and is performed by a notarial officer other than a notary public, subsection b. states that an official stamp may be attached to or embossed on the certificate of notarial act. However, although permitted, it is not required by this act. . . Whether a notarial officer other than a notary public is required to use an official stamp and what the contents of that stamp may be will depend on other law of this state. That law may not require the use of a stamp or it may require the use of a stamp but may specify other contents. Regardless of whether an official stamp is attached to or embossed on the certificate, the certificate nevertheless must, at a minimum, contain the information specified in [sic] [N.J. STAT. ANN. 52:7-19 - Certificates of a Notarial Act].

The comment to Section 17 explains that:

This section sets forth two requirements for a notary public's official stamp, whether the stamp is a physical image attached to, or embossed on, a tangible certificate of notarial act or an electronic image attached to, or logically associated with, an electronic certificate of notarial act. The official stamp must state the notary public's name. Since the Act requires that a notary public sign the notary's name as it appears on file with the [sic] [State Treasurer], the name of the notary on the official stamp should also conform with the name on file with the [sic] [State Treasurer]. The official stamp must state the jurisdiction in which the notary public is commissioned. An optional provision [, which is included in substance in this Act,] states that the official stamp must set forth the date on which the notary public's commission expires. Finally,

the official stamp must include any other information that is required by the [sic] [State Treasurer].

The official stamp must be capable of being copied together with the record to or with which it is attached or logically associated. Thus, for example, an official stamp that is affixed with a rubber stamping device and ink must provide a clear image in an ink that is capable of being copied. An official stamp that is affixed by embossing must do so in such a way that the information in the embossment is capable of being copied. An official stamp that is attached to, or logically associated with, an electronic record must be capable of being copied by the same technology by which the electronic record is copied.

**52:7-22 Official Stamp**

a. The official stamp of a notary public shall:

(1) include the name of the notary public, the title "Notary Public, State of New Jersey," and the notary public's commission expiration date; and (2) be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

b. If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate near the signature of the notary public so as to be clear and readable.

If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsection a.(1), (2), an official stamp may be attached to or logically associated with the certificate.

c. If a notarial act regarding a tangible record is performed by a notarial officer other than a notary public and the certificate contains the information specified in subsection a.(1), (2), an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer other than a notary public and the certificate contains the information specified in subsection a.(1), (2), an official stamp may be attached to or logically associated with the certificate.

Source: RULONA, section 15b and section 17.

x. Stamping Device

The language recommended in subsection (a) was added in response to a group of commenters who recognized that this provision from the Uniform Act does not provide for a notary public with a physical disability.

The NJLRC recommended adding subsection (b) based on the observation of a group of commenters who wanted to prevent controversy when an employer requires an employee to become a notary public and pays for the notary public's stamping device and the notary public subsequently leaves the position with the employer who provided the stamping device.

The language in this provision is taken from Section 18 of the RULONA. The ULC recommends that "on resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public must disable the stamping device by destroying,

defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device must render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable."<sup>52</sup>

The comment to section 18 explains that:

In order to protect and maintain the integrity of notarial acts, it is important that a notary public's stamping device be kept secure and out of the hands of other individuals who might use it fraudulently or erroneously. Accordingly, subsection a. provides that a notary public is responsible for maintaining the security of the notary's stamping device. Similarly, it provides that a notary public may not allow another individual to use the device.

Subsection b. recognizes that if the official stamp is lost or stolen, the possibility of fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the State Treasurer as soon as the notary discovers that the stamp is lost or stolen. The State Treasurer may be able to take other steps to provide notification that will further protect the public

**52:7-23. Stamping Device**

a. A notary public is responsible for the security of the stamping device used by the notary public and may not allow another individual to use the device to perform a notarial act, except at the specific instruction of a notary public who cannot physically use the stamping device.

b. The notary public's stamping device is the property of the notary public and not the notary public's employer, even if the employer paid for the notary public's stamping device.

c. If the stamping device used by the notary public is lost or stolen, the notary public or the personal representative of the notary public shall promptly notify the State Treasurer upon discovering that the device is lost or stolen.

Source: RULONA, section 18.

**xi. Requirements for Certain Notarial Acts**

This provision is taken from section 5, subsection f., and section 7 of the RULONA. The added language in this provision reflects the Commission's recommendations.

**52:7-25. Requirements For Certain Notarial Acts**

a. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

b. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed

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<sup>52</sup> REVISED UNIF. L. ON NOTARIAL ACTS, cmt. to §18.

and that the signature on the statement verified is the signature of the individual.

c. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

d. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

e. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in N.J.S.A. 12A:3-505b.

f. For the purposes of this section:

(1) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notarial officer has satisfactory evidence of the identity of an individual appearing before the notarial officer if the notarial officer can identify the individual as set forth in any of the following paragraphs:

A. By means of any of the following subparagraphs:

i. A passport, driver's license, or government-issued, non-driver identification card, which is current or expired not more than three years before the performance of the notarial act, or

ii. Another form of government-issued identification issued, which is current or expired not more than three years before the performance of the notarial act; which

(1) contains the signature or a photograph of the individual's face, and

(2) is satisfactory to the notarial officer.

B. By a verification of oath or affirmation of a credible witness personally appearing before the notarial officer and personally known to the notarial officer or whom the officer can identify on the basis of a passport, driver's license, or government-issued, non-driver identification card, which is current or expired not more than three years before performance of the notarial act.

C. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual.

Source: RULONA, sections 5 and 7.

## xii. Signature if Individual Unable to Sign

The ULC drafted this provision to address the circumstance where the individual executing the record is a person with a disability. This provision allows the person to "direct an individual other than the notarial officer to sign the executing individual's name to the record."<sup>53</sup> This provision also requires "the notarial officer to insert the quoted language in the record or to insert words of similar import. In effect, the executing individual is appointing another individual to act as the executing individual's agent for the

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<sup>53</sup> REVISED UNIF. L. ON NOTARIAL ACTS, §9.

purpose of signing the record."<sup>54</sup>

Several commenters questioned whether this section should be strengthened in light of the increase of web-based notarizations, suggesting a provision prohibiting use of a video image or other form of non-physical representation to satisfy the personal appearance requirements.

The language in this provision is taken from section 9 of the RULONA. The ULC Report explains, in the comment to section 9 that:

This section recognizes that some individuals may not be personally able to sign a record because of a physical disability. If an individual is physically unable to sign the record, this section allows an alternate process.

**52:7-27. Signature If Individual Unable To Sign**

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name or an alternative symbol, only if the individual uses the symbol as the individual's signature. The notarial officer must insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

Source: RULONA, Section 9.

xiii. Certificate Form

The Commission's recommendations contain the short certificate forms included in the RULONA. The following revisions were suggested to that section:

**52:7-28. Certificate Form**

The following short form certificates of notarial acts are sufficient for the purposes indicated, if the requirements of N.J.S.A. 52:7-23 are satisfied. Certificates of notarial acts are deemed sufficient for the purposes indicated if substantially all of the requirements of N.J.S.A.

52:7-23 and this section are satisfied:

xiv. Notarial Acts that are not Performed Under the Authority of This State

The language in this provision is taken from Section 11 of the RULONA concerning Notarial Acts in Another State, Section 12 - concerning Notarial Acts Under the Authority of Federally Recognized Indian Tribe, Section 13 - concerning Notarial Acts Performed Under Federal Authority, and Section 14 - concerning Notarial Acts Performed In a Foreign Jurisdiction. Subsection e. recognizes an "apostille," established under the Hague Convention of October 5, 1961 to which several countries, including the United States, are party.

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<sup>54</sup> REVISED UNIF. L. ON NOTARIAL ACTS, §9.

52:7-30. Notarial Acts That Are Not Performed Under the Authority of this State

a. This subsection applies to a notarial act performed under the authority:

(1) and in the jurisdiction of a foreign state or constituent unit of the foreign state; or

(2) of a multinational or international governmental organization.

b. A notarial act under paragraph a. has the same effect under the law of this State as if performed by a notarial officer of this State.

c. If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

d. The signature and official stamp of an individual holding an office described in subsection c. are prima facie evidence that:

(1) the signature is genuine; and

(2) the individual holds the designated title.

e. This subsection applies to an apostille which is:

(1) in the form prescribed by the Hague Convention of October 5, 1961; and

(2) issued by a foreign state party to the Hague Convention.

(3) An apostille under paragraph a. conclusively establishes that:

(A) the signature of the notarial officer is genuine; and

(B) the notarial officer holds the indicated office.

f. This subsection applies to a consular authentication:

(1) issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas; and

(2) attached to the record with respect to which the notarial act is performed.

g. A consular authentication under paragraph a. conclusively establishes that:

(1) the signature of the notarial officer is genuine; and

(2) the notarial officer holds the indicated office.

h. As used in this section, the term "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

Source: RULONA, sections 11 - 14.

#### xv. Authority to Refuse to Perform Notarial Act

The language in subsection a.(3) and (4) was recommended by a group of commenters to clarify the bases on which a notarial officer is permitted to refuse to perform a notarial act. The ULC provides the following insight:

This subsection does not impose a duty upon the notarial officer to make a determination as to the competency or capacity of the individual nor as to whether the signature of the individual is knowingly and voluntarily made. It does not require the officer to perform a formal evaluation of the individual on those matters. It merely permits the notarial officer to refuse to perform the notarial act if the officer should not be satisfied as to those matters.

Subsection b. gives the notarial officer the general authority to refuse to perform a notarial act for any other reason as long as the reason for the refusal is itself not a violation of other law of this State or the United States . . . In another context, a notary public may refuse to perform a

notarial act with respect to an electronic record[,]) if the client demands that the notary use a technology for performing the notarial act that the notary has not selected.

The subsection does prohibit, however, the officer from refusing to perform the notarial act if the refusal is a violation of other law. For example, the notarial officer may not refuse to perform the notarial act due to discrimination that is prohibited by state or federal law. Indeed, such a refusal to perform the notarial act may also be punishable under the state or federal law.

**52:7-33. Authority To Refuse To Perform Notarial Act**

a. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute the record; [or]

(2) the individual's signature is knowingly and voluntarily made;

(3) the individual's signature on the record or statement substantially conforms to the signature on a form of identification used to determine the identity of the individual; or

(4) the physical appearance of the individual signing the record or statement substantially conforms to the photograph on a form of identification used to determine the identity of the individual.

b. A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than [this act] N.J.S.A. 52:7-10, et seq.

Source: RULONA, section 8, new subsection proposed by a group of commenters.

#### xvi. Journal Requirement

The NJLRC Final Report proposed a journal requirement based on previously introduced New Jersey legislation and comments from several entities who suggested added language and reordering the language of the uniform law for clarity.

The language in subsection a.4 was recommended by a group of commenters to distinguish the mandatory journaling requirements for commissioned notary publics from the permissive requirements for all other notarial officers. This recommendation conforms to the current state practice and seeks to prevent an undue burden on individuals who maintain a business or practice in New Jersey and also qualify as notarial officers.

The language in subsection b. is very similar to that found in the RULONA. Several commenters proposed removing the "thumbprint requirement" in subsection b.3 because it has not been effective in other contexts. Several commenters have also recommended removing the term "serial numbers" from subsection b.4 because of privacy law concerns and related conflicts involving the Open Public Records Act (OPRA).

The commenters proposed the language in subsection g. to clarify the language allowing notaries public to maintain a chronicle of notarial acts in the form of files regularly maintained in the



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practice or business where the individual is employed, in lieu of maintaining a journal.

52:7-34. **Journal**

a. A notary public shall maintain a sequential journal of all notarial acts performed. The notary public must retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(1) A journal may be created on a tangible medium or in an electronic format.

(2) A notary public must maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records.

(3) If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages.

(4) If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules and regulations promulgated by the State Treasurer.

b. For each notarial act, the notary public must record in the journal:

(1) the date and time of the notarial act;

(2) the type of notarial act, including but not limited to the taking of an acknowledgment, the taking of a proof of a deed, the administering of an oath, or the taking of an affidavit;

(3) the [full] name and address, of each person for whom the notarial act is performed;

(4) if identity of the individual is based on personal knowledge, a statement to that effect;

(5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including, if applicable, the type, date of issuance, and date of expiration of an identification document, or the name and signature of any identifying witness and, if applicable, the type, [serial number], date of issuance and date of expiration of a document identifying the witness; and

(6) the fee [ , if any. ] charged for the notarial act.

c. The notary public must promptly notify the State Treasurer on discovering that the journal is lost or stolen.

d. On resignation from, or the revocation or suspension of a notary public's commission, the notary public must retain the notary public's journal in accordance with subsection a. and inform the State Treasurer where the journal is located.

e. Instead of retaining a journal as provided in subsections a. and d., a current or former notary public may transmit the journal to the State Treasurer, State of New Jersey, Division of Revenue and Enterprise Services – Records Management Services, or a repository approved by the State Treasurer.

f. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal must transmit it to the State Treasurer, State of New Jersey, Division of Revenue and Enterprise Services – Records Management Services, or a repository approved by the State Treasurer.

g. A notary public who is an attorney-at-law admitted to practice in this State, or who is employed by an attorney-at-law, or who is employed by or acting as an agent for a title insurance company licensed to do business in this State pursuant to P.L.2001, c.210, or other notarial officer may maintain a record of notarial acts in the

form of files regularly maintained for the attorney's law practice or the title insurance company's business activities, as the case may be, in lieu of maintaining a journal.

Source: RULONA, section 19, the text of A463/S2008, and language proposed by a group of commenters.

xvii. Recommended for Repeal

The Commission recommended repeal of the following provisions to avoid redundancies with proposed N.J. STAT. ANN. 52:7-14.1:

**52:7-20. Conviction of offense involving dishonesty or crime of second degree; prohibition of appointment**

No person shall be appointed or reappointed a notary public if he has been convicted under the laws of this State of an offense involving dishonesty, including but not limited to a violation of section 1 of P.L.1997, c. 1 (C.2C:21-31) or section 1 of P.L.1994, c. 47 (C.2C:21-22), or of a crime of the second degree or above, but nothing in this section shall be deemed to supersede P.L.1968, c. 282 (C.2A:168A-1 et seq.)

**52:7-21. Conviction under laws of another state or United States; prohibition of appointment**

No person shall be appointed a notary public if he has been convicted under the laws of another state, or of the United States, of an offense or crime involving dishonesty or which, if committed in this State, would be a crime of the second degree or above, but nothing in this section shall be deemed to supersede P.L.1968, c. 282 (C. 2A:168A-1 et seq.).

## VI. CONCLUSION

In January 2016, State Senator Nicholas Scutari introduced S333 and State Assemblyman Kennedy introduced an identical bill, A1184. These bills mirror the NJLRC Final Report, regarding the RULONA/New Jersey Law on Notarial Acts, which seeks to enhance the integrity of the notarial practice, create safeguards to protect personal and business transactions that are essential to our state commerce, modernize and clarify the existing state statute, and provide a stable infrastructure for the performance of notarial acts with respect to tangible and electronic records. At the time of publication, the bill was pending in the New Jersey Legislature.

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## VII. TABLE OF DISPOSITIONS

PROPOSED N.J.S.	TITLE	CURRENT N.J.S.	TITLE	COMMENT
		52:7-10.	Short Title.	
52:7-10.2	New Section	New Section	Definitions	RULONA, Section 2.
		52:7-11	Appointment; term, application; renewals	Removals addressed in N.J.S. 52:7-14.1 Language added from newly signed legislation A1423.
		52:7-12	Qualifications	RULONA, Section 21.
		52:7-13	Appointment of nonresidents; requirements	Recommended for repeal.
52:7-13.1	New Section	New Section	Course of Study; Continuing Education	RULONA Section 22.
52:7-13.2	New Section	New Section	Examination	RULONA, Section 22.
		52:7-14	Oath; filing; certificate of commission and qualification	Language added from newly signed legislation A1423.
52:7-14.1	New Section	New Section	Grounds to Deny The Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of a	RULONA, Section 23; RULONA, Section 25 (including only subsections a.1, 2).

			Notary Public	
		52:7-15 52:7-19	State-wide authority; filing certificates of commission and qualification with county clerks. Affixation of name	Subsection (c) is taken from 52:7-19.
		52:7-16	County clerk to attach certificate of authority to notaries' certificates of proof; acknowledgments or affidavits	
		52:7-17	Manual; Fee	Language added from newly signed legislation A1423; Language adapted from RULONA.
		52:7-18	Statement by notary public after change in name; filing; evidence of continuance of powers and privileges	
	Certificate of Notarial Act.	52:7-19	County clerk to attach certificate of	RULONA, Section 15.

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			authority to notaries' certificates of proof; acknowledgments or affidavits	Remove the language of N.J.S. 52:7-19. Add portions of the existing N.J.S. 7-11. Replaced the remaining language with RULONA, Section 15; omitting subsection b., which was included in N.J.S. 52:7-22.
		52:7-20	Conviction of offense involving dishonesty or crime of second degree; prohibition of appointment	Recommended for repeal to avoid redundancy with proposed N.J.S. 52:7-14.1.
		52:7-21	Conviction under laws of another state or United States; prohibition of appointment	Recommended for repeal to avoid redundancy with proposed N.J.S. 52:7-14.1.
52:7-22	New Section	New Section	Official Stamp	RULONA, Section 17 and includes subsection b. of RULONA, Section 15.
52:7-23	New Section	New Section	Stamping Device	RULONA, Section 18.
52:7-24	New Section	New Section	Authority to Perform Notarial Acts	RULONA, Section 4.

52:7-25	New Section	New Section	Requirements for Certain Notarial Acts	RULONA, Section 5; Language in subsection b. is adapted from Section 7 of RULONA.
52:7-26	New Section	New Section	Personal Appearance	RULONA, Section 6
52:7-27	New Section	New Section	Signature If Individual Unable to Sign	RULONA, Section 9.
52:7-28	New Section	New Section	Certificate Form	RULONA, Section 16 (Short Form Certificates).
52:7-29	New Section	New Section	Notarial Act In This State	RULONA, Section 10.
52:7-30	New Section	New Section	Notarial Acts That Are Not Performed Under The Authority of This State	Compiles portions of RULONA, Section 11 (Notarial Act in Another State); Section 12, Notarial Act Under the Authority of a Federally Recognized Indian Tribe; Section 13, Notarial Acts Under Federal Authority; and Section 14, Foreign Notarial Act.
52:7-31	New Section	New Section	Notification Regarding Performance of Notarial Act on Electronic	RULONA, Section 20.

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			Record; Selection of Technology	
52:7-32	New Section	New Section	Database of Notaries Public	RULONA, Section 24.
52:7-33	New Section	New Section	Authority to Refuse to Perform Notarial Acts	RULONA, Section 8.
52:7-34	New Section	New Section	Journal	RULONA, Section 19.
52:7-35	New Section	New Section	Validity of Notarial Acts	RULONA, Section 26.
52:7-36	New Section	New Section	Rules	RULONA, Section 27.
52:7-37	New Section	New Section	Relation to Electronic Signatures In Global and National Commerce Act	RULONA, Section 31 – Relation to Electronic Signatures In Global and Nat'l Com- merce Act.
52:7-38	New Section	New Section	Repeals	RULONA, Section 32.
52:7-39	New Section	New Section	Savings Clause	RULONA, Section 29 – Savings Clause.
52:7-40	New Section	New Section	Effective Date	RULONA, Section 33 (same title); Omitted RULONA Section 3 – Applicability; Section 28 – Notary Public Commission In Effect; Section 30 – Uniformity, Application, Construction.