

rules - Comment on Proposed Notary Rules

From: Sabra Faires <sabrafares@gmail.com>
To: <rules@sosnc.gov>
Date: 10/16/2023 2:05 PM
Subject: Comment on Proposed Notary Rules
Attachments: Notary Rule Comments.docx

Good afternoon,

Attached are comments of the North Carolina Association of Motor Vehicle Registration Contractors on proposed Subchapter 07I of Title 18 of the North Carolina Administrative Code. I am the attorney for the Association and prepared the comments.

I am happy to answer any questions you may have about the comments. I can be reached at [919-210-0215](tel:919-210-0215) or by this email address.

Thank you for your consideration of these comments.

Sincerely,

Sabra J. Faires

**Comments on Proposed Notary Rules of the North Carolina Secretary of State
Submitted by the N.C. Association of Motor Vehicle Registration Contractors**

October 16, 2023

These comments respond to the Phase I Proposed Notary Rules of the Secretary of State's Office for which a public hearing was held on September 19, 2023. These comments are in addition to the oral comments made at the public hearing by Ms. Marla Cooper, the president of the N.C. Association of Motor Vehicle Registration Contractors. These contractors are commission contractors of the N.C. Division of Motor Vehicles (DMV) under G.S. 20-63(h) and are commonly referred to as license plate agents (LPAs) or tag agents. They perform vehicle titling and registration services on behalf of DMV throughout the state.

At the public hearing, Ms. Cooper asked that the Secretary of State exclude notarizations of vehicle title and registration documents made by LPA employees from the proposed journal requirements for traditional notaries. She maintained that the goals of the rules applicable to traditional notaries – the prevention of fraud and forgeries – are met by the current titling and registration processes and that imposing the requirement would place a significant burden on LPAs with no increased benefit to the public.

In support of her request, she explained that:

- All titles and other documents notarized at LPA offices are sent daily to DMV where they are scanned and kept available for many years.
- Once a document is sent to DMV, the notary is unable to modify it; nothing can be added or removed.
- The following information is included on each notarized title or registration document:
 - Type of notarial act
 - Principal names and signatures
 - Date of notarization
 - Location of notarization (county, state)
 - Notary's name, signature, and commission expiration date.
- Many LPA offices include copies of drivers' licenses or IDs when transmitting title and registration documents and this identification is stored with the notarized documents.

The Association estimates that license plate agencies process about two million titles a year and that of this number, 60% (1.2 million) are notarized at their offices. Often, titles require more than one notarized signature. LPAs have a contractual obligation to keep wait times at their offices to no more than 20 minutes. The entry of notary information in a journal would slow down the process, negatively impacting customer service.

Since the public hearing, the General Assembly eliminated the requirement that a traditional notary keep a journal. S.L. 2023-124, ss. 4.1 through 4.3. G.S. 10B-38 now allows, but does not

require, a traditional notary to maintain a journal. Specific changes to the proposed notary rules to accomplish an exclusion for motor vehicle titling and registration transactions are therefore unnecessary. Instead, changes are needed to make it clear that a traditional notary is not required to maintain a journal.

The following proposed rule changes revise the rules to eliminate the journal requirement for a traditional notary. The proposed changes are shown by underlines for new material and strikethroughs for deletions. In these proposed changes, the Secretary of State's proposed rules are considered the current rules for purposes of the deletions and strikethroughs and are presented without the underlining present in the published proposed rules. The authority and history note lines are omitted.

Given that journals are now limited to electronic notaries, the proposed Sections in Subchapter 07I may benefit from combination and revision. The proposals below make no attempt at comprehensive change; instead, they focus on the wording of each proposed rule.

18 NCAC 07I .0101 SCOPE

The rules in this Subchapter set forth the requirements applicable to a notary maintaining ~~a~~an electronic journal.

18 NCAC 07I .0103 ELECTRONIC NOTARY JOURNAL REQUIREMENT AND BACKUP

In addition to the journal required by G.S. ~~10B-38~~10B-38, an electronic notary shall maintain an accurate backup copy of the notary's journal.

- ~~(1) An electronic notary shall maintain an accurate backup copy of the notary's journal;~~
- ~~and~~
- ~~(2) A traditional notary shall create and maintain an accurate backup copy of an original journal that the notary provides to the notary's employer upon termination of employment.~~

18 NCAC 07I .0105 ENTRY OF DATA INTO JOURNAL

A notary public shall be the only person to make entries into the notary's journal, unless otherwise permitted ~~for traditional notaries by Chapter 10B of the General Statutes or~~ Rule .0106 of this Section.

~~18 NCAC 071.0201 FORM OF TRADITIONAL NOTARY JOURNAL~~

~~A traditional notary may meet the journal requirements by maintaining either a tangible or an electronic journal.~~

18 NCAC 071.0203 COMBINED JOURNAL

~~A notary public may maintain an~~ An electronic journal ~~that includes~~ may include entries for any of these acts that the notary public is qualified to perform:

- (1) traditional notarial acts;
- (2) electronic notarial acts; and
- (3) remote electronic notarial acts.

~~18 NCAC 071.0204 ENTRIES IN A TANGIBLE JOURNAL~~

~~Entries in a tangible journal shall be:~~

- ~~(1) entered in permanent ink;~~
- ~~(2) in a bound journal;~~
 - ~~(a) into which pages cannot be inserted;~~
 - ~~(b) from which pages cannot be removed without the removal being visible; and~~
- ~~(3) in chronological order.~~

~~18 NCAC 071.0205 REQUIREMENTS FOR A TANGIBLE JOURNAL~~

~~A tangible journal shall have;~~

- ~~(1) on the first page;~~
 - ~~(a) the name of the notary as commissioned;~~
 - ~~(b) the commission date of the notary; and~~
 - ~~(c) the county of the commission; and~~
- ~~(2) a sequential page number on each page.~~

18 NCAC 071 .0208 DESIGNATION OF NOTARIAL ACT

Except as set out in Rule .0209 of this Section, ~~a notary public shall state in a~~ an electronic journal shall state whether each notarial act recorded in the journal is:

- (1) traditional;
- (2) electronic; or
- (3) remote electronic.

18 NCAC 071 .0209 EXCEPTION TO RULE .0208

A notary public who includes only a single mode of notarial act in ~~a~~ an electronic journal may:

- (1) make a single notation of the mode of notarial acts at the beginning of the journal; and
- (2) omit the notations required by Rule .0208 of this Section.

NOTE: An example would be a journal first-page statement that the journal documents only ~~traditional~~ remote electronic notarial acts.

Prepared by Sabra Faires,
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