

**rules - Comment on Proposed Rules (Notary Public - Phase 1 Rulemaking)**

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**To:** "rules@sosnc.gov" <rules@sosnc.gov>  
**Date:** 9/25/2023 6:37 PM  
**Subject:** Comment on Proposed Rules (Notary Public - Phase 1 Rulemaking)  
**Cc:** Bill Anderson <banderson@nationalnotary.org>  
**Attachments:** Comments on Proposed NC Notary Public Rules - Phase 1.pdf

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Attached please find the National Notary Association's comments on the proposed Notary Public rules.

Thank you for your consideration.

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September 25, 2023

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N.C. Department of the Secretary of State  
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**RE: COMMENT ON PROPOSED NOTARY PUBLIC RULES (PHASE 1); SENT VIA EMAIL**

Dear Ms. Wall,

Thank you for the opportunity to provide feedback on the proposed Notary Public rules. Below, we present our comments and suggested amendments for your consideration.

### **Electronic Notary Seal Comments**

#### **1. Proposed 18 NCAC 07F .0807(1)(b) — Identifier of AVEN or Technology Provider in Electronic Seal.**

- a. **Background:** Today, not all electronic notarization systems or platform providers issue digital certificates to Electronic Notaries with which they may create an electronic signature using their solution or platform. Similarly, not all system or platform providers issue Electronic Notary seals. They require a Notary to obtain these tools from other vendors or manufacturers. The benefit of this is that it allows a Notary to obtain one digital certificate or electronic seal image and use it in several electronic notarization systems or platforms without incurring the costs of multiple digital certificates and electronic seals.

G.S. 10B-127 as amended by Session Law 2023-57 addresses a Notary who contracts with an “approved” provider of an electronic seal in the context of remote electronic notarizations.

The Department’s website ([https://www.sosnc.gov/divisions/notary/e\\_notary\\_solution\\_providers](https://www.sosnc.gov/divisions/notary/e_notary_solution_providers)) contains the following copy: “All electronic notarization solutions *including electronic signatures and seals* may only be obtained from the Electronic Notary Solution Providers authorized by the N.C. Department of Secretary of State. The list of authorized electronic notary solution providers can be found below” (emphasis added).

These statutory and website references create the impression that providers or vendors of Electronic Notary Public seals and electronic signatures must be approved and placed on the Department’s approved list, and that Electronic Notaries must only use an approved vendor on the list to obtain these items.

Since the National Notary Association provides Electronic Notary digital certificates and electronic seals to our North Carolina members and customers, we contacted the Department recently to clarify whether the NNA must be approved by the Department and placed on the Department’s approved list. We were told at this time we were not.

Evidently, in upcoming Phase 3 of the Department’s rulemaking, there will be standards and requirements for electronic notarization systems and providers (see the Department’s web page at [https://sosnc.gov/divisions/general\\_counsel/open\\_rulemaking\\_phase\\_one\\_rulemaking](https://sosnc.gov/divisions/general_counsel/open_rulemaking_phase_one_rulemaking).)

However, for the purpose of submitting comments for Phase 1 rules, we do not know whether the Phase 3 proposed rules may require vendors and manufacturers of Electronic Notary signatures and seals to be approved by the Department.

- b. Specific Concerns: Proposed rule 07F .0807 requires the border of an Electronic Notary's electronic seal to include an identifier assigned by the Department to the "AVEN or technology provider." To us, this requirement could be reasonably construed to imply that the AVEN or technology provider made the electronic seal when a North Carolina Electronic Notary obtained their electronic seal from the NNA or other reputable seal manufacturer or vendor. The proposed rule also could be reasonably construed to require these seal manufacturers or vendors to make multiple electronic seals, each containing the different AVEN or technology provider identifier assigned by the Department, for an Electronic Notary if the Electronic Notary uses multiple systems to perform electronic or remote electronic notarial acts. But an Electronic Notary may not know they will be using multiple systems to perform electronic and remote electronic notarial acts at the time of placing an order for an electronic seal. Finally, and of most concern to us, the proposed rule could be reasonably construed to limit an Electronic Notary to using only an electronic seal provided by the system or platform used to perform in-person electronic or remote electronic notarial acts. This is problematic for a couple of reasons. First, as discussed above, not all electronic notarization systems or platforms provide electronic seals, so there are circumstances where an Electronic Notary must procure an electronic seal elsewhere. Second, it could preclude the NNA and other reputable electronic seal vendors from providing electronic seals in North Carolina.
- c. Proposed Solutions: We offer two possible solutions here. The first is to strike 07F .0807(1)(b) entirely and add another rule to require the AVEN or technology provider to add its identifier issued by the Department to the electronic notarial certificate. This solution would address the specific concerns raised above while achieving the same objective of the AVEN or technology provider's identifier being added to the notarized electronic document. To support this proposed solution, we also strongly suggest the Department remove the phrase "including electronic signatures and seals" from the Department's website noted above if it is not the Department's intention to require vendors and manufacturers of electronic signatures and seals to be approved by the Department. This brings us to the second proposed solution.

The second proposed solution is to require Electronic Notary seal vendors or manufacturers to be formally approved by the Department. While we do not know whether the Department may require seal vendors and manufacturers to be approved under the forthcoming Phase 3 rules, we note G.S. 10B-127 speaks of "approved" providers of electronic seals and electronic signatures. We believe the Department would have the authority to adopt a rule requiring Electronic Notary seal vendors to be approved.

Similar to the first proposed solution, we suggest the AVEN's or technology provider's identifier be removed from the Electronic Notary seal in 07F .0807(1) and placed elsewhere on the electronically notarized document. In addition, we propose the following amendments to 07F .0807(1): "An electronic notary shall only use an electronic notary seal obtained from an approved electronic notary seal provider, and ensure that the ~~electronic notary's~~ electronic notary seal has:

- (1) a visible border:  
(a) ~~with in~~ the size and shape required by of an official seal pursuant to GS 10.B-37(c);  
and  
(b) that includes an identifier assigned by the Department to the ~~AVEN or Technology~~ provider-approved electronic seal provider;”

The Secretary may also wish to consider adding the following definition to 07F .0102:

“Approved electronic notary seal provider’ means a person approved by the Department to produce or issue an electronic notary seal pursuant to Article 2 of Chapter 10B of the General Statutes.”

Finally, we also suggest the following amendments to 07F .0405: “The selection of technology providers form includes:...

- (3) the name of the ~~technology approved electronic notary system~~ providers selected by the electronic notary ~~to provide:~~  
(a) ~~electronic signatures and seals;~~ and  
(b) ~~electronic journals;~~  
(4) the name of any approved providers the electronic notary has selected to provide the following:  
(a) electronic seal;  
(b) digital certificate, or other solution for affixing the electronic notary’s electronic signature and seal in a tamper-evident manner using an electronic notarization system;  
and  
(c) electronic journal.  
(4) ~~(5)~~ the name of the custodian selected by the electronic notary to provide custodial services for electronic journals;  
~~(5)~~ ~~(6)~~ for an electronic notary who plans to perform remote electronic notarial acts, the names of the technology providers selected by the notary to provide platform services;  
~~(6)~~ ~~(7)~~ the anticipated dates on which the notary will begin using the technology providers;  
~~(7)~~ ~~(8)~~ the signature of the electronic notary; and  
~~(8)~~ ~~(9)~~ the date on which the electronic notary signs the form.”

2. **Proposed 18 NCAC 07F .0807(2) – Contents of an Electronic Seal.** We suggest amending this rule to make it clearer. First, the requirement in proposed 07F .0807(2)(a) that the electronic seal include the information required by G.S. 10B-117(4) duplicates the requirement in proposed 07F .0807(2)(d) for the electronic seal contain the expiration date of the Electronic Notary’s commission and is therefore unnecessary to repeat it here. Second, G.S. 10B-117(3) requires the words “State of North Carolina” to be attached to or logically associated with the electronic document by the Electronic Notary. The easiest way for the Electronic Notary to do this is to include the phrase in the electronic seal. We therefore suggest the following amendments:

- “(2) inside its border:  
(a) ~~the~~ information required by G.S. 10B-117(1), (2), (3) and (4), and the name of the county followed by either the word “County” or the abbreviation “Co.”;  
(b) ~~the words:~~

- (i) ~~“State of North Carolina”;~~
- (ii) ~~“North Carolina”;~~ or
- (iii) ~~the abbreviation “N.C.”;~~
- (c) ~~the name of the county of commission with either:~~
  - (i) ~~the word “County”;~~ or
  - (ii) ~~the abbreviation “Co.”;~~ and
- (d) ~~the expiration date of the electronic notary’s commission.”~~

- 3. Proposed 18 NCAC 07F .0810 – Seal Limitation.** This rule could be confusing for Notaries since G.S. 10B-117 requires more information than what is required to be in an electronic notary seal pursuant to 07F .0807. We suggest amending this rule to make it consistent with the proposed changes to 07F .0807(2) we suggest above:

“An electronic notary’s electronic seal shall include no information or images other than those required by:

- (1) G.S. 10B-117(1), (2), (3) and (4); and
- (2) ~~the Rules in this Section 18 NCAC 07F .0807.”~~

- 4. Proposed 18 NCAC 07F .0805 and .0806 – Appearance of an Electronic Seal:** The requirement in 07F .0806 related to the border of the electronic seal is redundant with the requirement for the border in 07F .0807(1) and confuses its intent, which is that the electronic seal must replicate the appearance of an inked Notary seal. We suggest eliminating 07F .0806, and amending the rule as follows:

“An electronic notary shall:

- (1) electronically affix the electronic notary seal;
- (2) view the appearance of the electronic notary seal ~~image of the seal~~ after affixing it; and
- (3) verify that the image appearance of the electronic notary seal is an accurate representation of the notary’s physical seal on paper.

Based on the above changes, we suggest amending the rule caption for 07F .0805 from “Image” to “Appearance of an Electronic Seal”.

- 5. Proposed 18 NCAC 07F .0809 and .0811 – Electronic Seal Compliance.** We suggest eliminating 07F .0811 and merging it into .0809 as follows:

“An electronic notary shall ensure that the electronic notary’s electronic seal complies with Chapter 10B of the General Statutes and the rules in this Subchapter before the seal is used for the first time, and each subsequent time it is affixed.”

### **Notary Journal Comments**

- 1. Proposed 18 NCAC 07I .0103 – Journal Requirement:** We propose two amendments to this rule. First, we suggest making 07I .0103(2) permissive to parallel the provision related to electronic journals in G.S. 10B-134.15(c), as amended by session law 2023-57, which permits, but does not require an Electronic Notary to surrender the electronic journal to the Electronic Notary’s employer upon termination. Second, it would be inappropriate for a Notary to provide a backup copy of an

original journal to an employer that contained other entries for notarial acts that are made outside the conduct of the employer's business, so we suggest amending the rule to narrow the scope of the requirement:

"In addition to the journal required by G.S. 10B-38:

(1) an electronic notary shall maintain an accurate backup copy of the notary's journal;  
and

(2) a traditional notary ~~shall~~ may create and maintain provide to the notary's employer an accurate backup copy of an original journal that ~~the notary provides to the notary's employer~~ contains only entries of notarial acts made in the conduct of the employer's business upon termination of employment.

- 2. Proposed 18 NCAC 071 .0204 and .0205 – Entries and Format of a Tangible Journal:** We suggest amending these two rules so that 071 .0204 addresses the way in which entries are written in a tangible journal and .0205 addresses the required format and features of a tangible journal:

**071 .0204:** "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."~~

**071 .0205:** "A tangible journal shall ~~have be:~~ a permanent, bound register having sequentially numbered pages, and must include the following information on the first page:

~~(1) on the first page:~~

~~(a) (1) the name of the notary as commissioned;~~

~~(b) (2) the commission date of the notary; and~~

~~(c) (3) the county of the commission; and~~

~~(2) a sequential page number on each page."~~

- 3. Proposed 18 NCAC 07K .0203(2) – Inclusion of Fees in Journal:** We are concerned with the amount of information this rule requires the Notary to include in the journal entry for a notarial act. It seems to us that only the amount of the travel fee charged should suffice. Therefore, we suggest making one clause by combining (2) and (2)(a) as follows: "if travel reimbursement was charged, the actual reimbursement charged" and eliminating paragraphs (a), (b), and (c). By signing the journal entry (a requirement), a principal will be acknowledging the correct notarial and travel fee was charged. If you want the Notary to retain the written advance consent to travel fees – which will include the amount charged per mile – we suggest making a new item (3) to require Notaries to keep it in their files so that they can produce it if the customer or your office wants it later.
- 4. Proposed 18 NCAC 071 .0406:** We do not think this rule is necessary. It really doesn't matter how the information is entered in the journal if it is accurate. The next rule (071 .0407) requires a Notary to review all information in the electronic journal for accuracy and make any needed corrections, so any concern with a Notary mindlessly accepting pre-populated information from drop-down lists in an electronic journal should be allayed.

5. **Proposed 18 NCAC 071 .0406:** Since this rule comes under Section .4000 – Electronic Journal Requirements – we suggest for clarification adding “Electronic” before “Journal” in the caption of the rule and add “electronic” before each instance of “journal” in the text of the rule itself.
6. **Proposed 18 NCAC 071 0302 – Contents of Journal:** We suggest a simple rewording of item (1) as follows: “the date and time of the notarial act at the notary’s location ~~of the notarial act~~.”

Some of the items in the rule use singular nouns and others plural nouns, so we suggest making them all singular.

Item (2): “the name ~~names~~ of each principals principal.”

Item (3): Make “types,” “modes,” and “acts” singular.

Item (4): Make “documents” singular.

Item (5): Amend as follows: “how the ~~identities~~ identity of the each principals principal ~~were~~ was determined.”

Item (7): Amend as follows: “the ~~signatures~~ signature of the ~~principals~~ each principal or the notary’s addition of ~~the each principals’ principal’s~~ principal’s ~~acknowledged signatures~~ signature ~~to the journal;~~”.

### **Electronic Notary Signature Comments**

1. **Proposed 18 NCAC 07F .0102(5) and .0704 – Attributes of an Electronic Signature:** Since “electronic signatures” and “Notary’s electronic signature” are the terms defined in G.S. 10B-101, we suggest striking 07F .0102(5). Instead, we suggest changing the rule caption for 07F .0704 from “Electronic Attributes of Signature” to “Attributes of an Electronic Signature” and amending the rule as follows:

“The electronic ~~notary~~ notary’s electronic signature shall:

(1) include an electronic image of the electronic notary’s handwritten signature in the name of the notary as it appears on the notary’s commission; and

(2) be attached to, or logically associated with, ~~the notarized document;~~ ~~and~~

~~(2) link~~ linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination ~~of:~~

~~(a) the underlying document; or~~

~~(b) electronic notary certificate.”~~

2. **Proposed 18 NCAC 07F .0705(3):** Our comment here is simply to suggest amending this provision to make it clearer. We suggest: “verify that the image appearance of the electronic notary’s ~~handwritten~~ electronic signature on the electronic notarial certificate is an accurate representation of the notary’s handwritten signature.” You want the electronic signature of the Electronic Notary to look like the Notary’s handwritten signature even though the electronic signature may be “affixed” in different ways (by clicking a “sign here” button or using a digital certificate). We also suggest changing the rule caption from “Image” to “Appearance of Electronic Signature.”
3. **Proposed 18 NCAC 07F .0706 and .0707:** We suggest eliminating rule 07F .0707 and merging it into rule 07F .0706 as follows: “An electronic notary shall ensure that the electronic notary’s electronic

signature complies with Chapter 10B of the General Statutes and the Rules in this Subchapter before it is used for the first time and each time it is affixed thereafter.

### **Electronic Notary Course Comments**

- 1. Proposed 18 NCAC 07F .0302 - Courses to be taught by certified Notary instructors:** We suggest amending this rule to clarify that an individual must successfully complete, rather than just attend, an electronic notary course taught by a certified notary instructor.
- 2. Proposed 18 NCAC 07F .0303 - Electronic Notary Course:** This rule only addresses the requirement for Electronic Notaries registered prior to July 1, 2024, to complete training on remote electronic notarization. We suggest amending this rule to also address training requirements for Electronic Notaries registered on or after July 1, 2024.

Additionally, since G.S. 10B-106(d)(4) requires a Notary to provide the Secretary with proof of successful completion of the required course of instruction prior to performing notarial acts electronically or remotely, the Secretary may wish to require Electronic Notaries registered prior to July 1, 2024, to provide proof of completion of supplemental training on remote electronic notarization prior to performing their initial remote electronic notarial act.

We suggest the following amendments to this rule:

- ~~(1) Electronic notaries registered prior to July 1, 2024, shall either:~~
  - ~~(1)-successfully complete a remote electronic notarization course module before performing a remote electronic notarization; or~~
  - ~~(2)-successfully complete an electronic notary class including training on remote electronic notarization and provide proof of successful completion of the training to the Secretary before performing a remote electronic notarization.~~
- (2) Electronic notaries registered on or after July 1, 2024, shall complete a course of instruction pursuant to the requirements of G.S. 10B-107, pertaining to both electronic notarization and remote electronic notarization, and provide proof of successful completion of the course as required by G.S. 10B-106(d)(4).

### **Other Comments**

- 1. Multiple Provisions - Simplifying technology terms:** If “electronic notarization system” is to be the term in the rules to define technology used to perform electronic or remote electronic notarizations, we suggest it would be clearer to use the single term “approved electronic notarization system provider” universally throughout the rules to refer to approved providers rather than “AVEN”, “approved vendor for electronic notarizations”, and “approved electronic notary solution provider”.
- 2. Proposed 18 NCAC 07F .0503 Caption – Use of the term ENotary:** We suggest amending the caption to 07F .0503 to strike the term “ENotary” since the scope of Section .0500 is limited to the appointment of Electronic Notaries, and the term “enotary” is not used anywhere else in the rules or in the statute.
- 3. Proposed 18 NCAC 07F .0708(5) and .0812(5):** These rules essentially require advance payment of



fees for an electronic notarial act. We have no issue with this policy, but it would be better for the Notary and customer if this was directly stated in a rule in addition to being indirectly stated in these rules. We recommend adding a rule in the fees section that plainly states this and requires the Notary to advise a customer that fees are payable in advance of services rendered.

4. **Definition of Notice of Appointment:** We suggest defining the term “notice of appointment” in 07K .0101(b) to clarify the distinction between it and the “certificate of appointment”.
5. **Proposed 18 NCAC 07F .0503(2):** This rule is identical to 07F .0505, as amended in the proposed rules. We recommend striking 07F .0503(2) so that the scope of 07F .0503 is limited to the Department’s obligations:

“The Department shall notify the notary electronically or in writing within five days of the decision that the notary is qualified that:

(1) the Department has:

(a) appointed the notary as an electronic notary public; and

(b) provided the certificate of appointment to the Register of Deeds; and

~~(2) the appointee shall take the oath of office in the Register of Deeds office within 45 days of the issue date on the notice of appointment.”~~

6. **Proposed 18 NCAC 07F .0704(1)(b), 07F .0705(1), 07F .0804(1)(b), and 07F .0805(1):** Each of these rules uses the term “electronic notary certificate” (emphasis added), but 07F .0709 and 07F .0813 use “notarial certificate” (4 times in each – emphasis added). We suggest using “electronic notarial certificate” consistently throughout the rules. This would involve changing “notary” to “notarial” in the above cited rules and adding “electronic” to all the instances of “notarial certificate” in 07F .0709 and 07F .0813. Besides using terms consistently throughout the rules, a “notary certificate” could be confused with the Notary’s “certificate of appointment” and “commission certificate,” both which are defined terms.
7. **Proposed 18 NCAC 07K .0101(7), 07F .0709, 07F.0813, 07I .0102, 07I .0304(2), .0305(3), 07I .0407, 07I .0408(1):** We suggest that the definition of the verb “commit” and subsequent uses of the term will be unintelligible to most Notaries. We suggest two possible alternatives for dealing with this.
  - Redefining “commit” itself in 07K .0101(7) as follows: “‘Commit’, depending on the context, means:
    - (A) executing the notary’s electronic signature using an electronic notarization system;
    - (B) affixing the notary’s electronic seal using an electronic notarization system; or
    - (C) saving and making permanent an electronic journal entry using an electronic notarization system so that no changes can be made to the entry after it is saved.”
  - Deleting the definition entirely and amending the rules where “commit” is used:
    - **07F .0709:** Replace “committed” with “executed.”
    - **07F .0813:** Amend the phrase: “... before the electronic notary affixes the electronic seal...”
    - **07I .0102:** Strike both instances of “committed” because the “Note” reads fine without them. As an alternative, replace both instances with “saved.”
    - **07I .0304(2) and .0305(3):** Replace the occurrences of “commits” with “records.”
    - **07I .0407:** We suggest using “saving” in the caption of the rule and rewording the first line of the text the rule to read: “Before selecting the option to save and make

Ann B. Wall, General Counsel  
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- permanent an entry for a notarial act in the Notary’s electronic journal, a notary shall:”
  - **071 .0408(1)**. Strike “committed” here because subparagraph (1) reads fine without it. Or as an alternative, you could replace it with “saved.”
- 8. Proposed 18 NCAC 071 .0303(3) and (4):** If these items are referring to a credible witness or designee who signs the designee’s name who is present to identify the principal, we have no issue. However, the wording “any individual” is very broad would include not just credible witnesses and designees of principals. We wonder about the value of the Notary listing names of any individuals in attendance if they are not principals, designees of principals, or credible witnesses. We suggest striking “any individuals in both paragraphs and replacing them with “any credible witness or designee”. We also suggest striking “and those listed in Item (3) of this Rule”.

Thank you again, for providing the opportunity to comment.

Sincerely,



Bill Anderson  
Vice President, Government Affairs