

Burgos, Alexander N

Subject: FW: [External] All 18 NCAC 07I Revised Rules for 1/31 RRC Meeting
Attachments: 18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL FOR REMOTE ELECTRONIC.docx; 18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL.docx; 18 NCAC 07I .0104 JOURNAL OWNERSHIP.docx; 18 NCAC 07I .0107 ACCESS TO THE JOURNAL.docx; 18 NCAC 07I .0201 FORM OF TRADITIONAL NOTARY JOURNAL.docx; 18 NCAC 07I .0302 CONTENTS OF JOURNAL.docx; 18 NCAC 07I .0303 ADDITIONAL JOURNAL CONTENTS FOR REMOTE ELECTRONIC NOTARIZATIONS.docx

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Thursday, January 25, 2024 5:40 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: [External] All 18 NCAC 07I Revised Rules for 1/31 RRC Meeting

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Good evening, Brian.

Per your request, enclosed are all the rules that were amended in 18 NCAC 07I. These are the rules that were revised pursuant to technical correction and 26 NCAC 05 .0107(b)(2).

Also copied are Dana and Alex, along with Ann Wall, our rulemaking coordinator.

Please let me know if further in needed.

Truly,
AnnE

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>>> "Liebman, Brian R" <brian.liebman@oah.nc.gov> 1/25/2024 3:40 PM >>>
Hi Anne,

Thanks for sending these. Can you please send all of the rules that were amended in 071 to Dana—at oah.rules@oah.nc.gov--and to me and Alex?

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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1 18 NCAC 07I .0104 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3 **18 NCAC 07I .0104 JOURNAL OWNERSHIP**

4 The information in the notary journal is the private property of the ~~notary~~, notary public.

5

6 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*

7 *Eff. July 1, 2024.*

1 18 NCAC 07I .0107 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3 **18 NCAC 07I .0107 ACCESS TO THE JOURNAL**

4 A notary public shall not permit access to the journal by any person except to the extent permitted pursuant to Chapter
5 10B of the General Statutes and the ~~rules~~ Rules rules in this Chapter.

6

7 *History Note: Authority G.S. 10B-4; 10B-20(p); ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
8 *Eff. July 1, 2024.*

1 18 NCAC 07I .0201 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3

SECTION .0200 – JOURNAL BASICS

4

18 NCAC 07I .0201 FORM OF TRADITIONAL NOTARY JOURNAL

6 A traditional notary public keeping a journal may meet the journal requirements by maintaining either a tangible or
7 an electronic ~~journal.~~ journal pursuant to Chapter 10B of the General Statutes and the ~~Rules~~ rules in this Subchapter.

8

9 *History Note:* Authority G.S. 10B-4; 10B-38;

10 *Eff. July 1, 2024.*

1 18 NCAC 07I .0302 is adopted with changes as published in 38:04 NCR 207 as follows:

2
3 **18 NCAC 07I .0302 CONTENTS OF JOURNAL**

4 Notaries public shall enter the following information in the journal for each notarial ~~act~~ act; ~~completed~~:

- 5 (1) the date and time at the notary's location ~~of the notarial act~~; that the notarial act occurs;
- 6 (2) the ~~names~~ name of the ~~each principals~~; principal;
- 7 (3) the ~~types~~ type and ~~modes~~ mode of notarial ~~acts~~ act performed;
- 8 (4) the ~~title type of documents~~ the document notarized, if any;
- 9 (5) how the ~~identities~~ identity of the ~~each principals~~ principal ~~were~~ was determined;
- 10 (6) if satisfactory evidence of the principal's identity was presented:
- 11 (a) the type of satisfactory evidence;
- 12 (b) ~~if the satisfactory evidence was a document~~, the addresses of each principal as shown on
- 13 any documents used as satisfactory evidence; ~~the documents~~;
- 14 (c) if where the satisfactory evidence was based on the sworn statement of a credible witness:
- 15 (i) the name of the credible witness;
- 16 (ii) the contact information of the credible witness;
- 17 (iii) the signature of the credible witness in a traditional notary's journal; or
- 18 (iv) the signature of the credible witness has been added to the electronic journal by
- 19 the notary;
- 20 (7) the ~~signatures~~ signature of the ~~each principals~~ principal in a tangible journal or the notary's addition
- 21 of the ~~each principals'~~ principal's acknowledged ~~signatures~~ signature to the an electronic journal;
- 22 (8) information required by 18 NCAC 07K .0203 for any fees charged; and
- 23 (9) designation of each notarial act as employer-related or non-employer related if the journal includes
- 24 both categories of notarial acts.

25
26 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
27 *Eff. July 1, 2024.*

1 18 NCAC 07I .0303 is adopted with changes as published in 38:04 NCR 207-208 as follows:

2

3 **18 NCAC 07I .0303 ADDITIONAL JOURNAL CONTENTS FOR REMOTE ELECTRONIC**
4 **NOTARIZATIONS**

5 In addition to the requirements of Rule .0302 of this Section, for each remote electronic notarial act completed, an
6 electronic notary public shall enter in the journal:

- 7 (1) the locations of the principals and electronic notary public at the time of the act;
- 8 (2) the method of establishing the location of the remotely located principals;
- 9 (3) the names of any individuals who are physically present at the same place as with the remotely
10 located principals; principals in the same location; and
- 11 (4) the names of any individuals in addition to the principals and those listed in Item (3) of this Rule
12 who are present remotely using the communications communication technology during the notarial
13 transaction process.

14

15 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
16 *Eff. July 1, 2024.*

1 18 NCAC 07I .0304 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION**
4 **IN JOURNAL**

5 A notary public ~~shall~~ may include additional information in the journal regarding an employer-related electronic
6 notarial act if:

7 (1) the employer so requests;

8 (2) the request is made before the notary commits the journal entry; and

9 (3) in the judgment of the electronic notary, the information is directly related to the notarial act. Note:

10 A loan origination number or a client number is an example of information directly related to the
11 notarial act.

12

13 *History Note:* Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;

14 *Eff. July 1, 2024.*

1 18 NCAC 07I .0305 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN**
4 **JOURNAL FOR REMOTE ELECTRONIC NOTARIZATION**

5 **A An electronic** notary public shall include additional information in the journal if:

- 6 (1) the notarial act is a remote electronic notarial act;
- 7 (2) the requestor is a party involved in the transaction;
- 8 (3) the request is made before the notary commits the journal entry; and
- 9 (4) in the judgment of the electronic notary, the information is directly related to the notarial act. Note:
10 A loan origination number or a client number is an example of information directly related to the
11 notarial act.

12

13 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*

14 *Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] 18 NCAC 071 .0304 and .0305 as Revised
Attachments: 18 NCAC 071 .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL.docx; 18 NCAC 071 .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL FOR REMOTE ELECTRONIC.docx

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Wednesday, January 24, 2024 6:15 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: [External] 18 NCAC 071 .0304 and .0305 as Revised

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Good afternoon Brian.

Enclosed are the last two 18 NCAC 071 rules revised pursuant to your input and acceptable to you. They are Rules .0304 and .0305. I am submitting them pursuant to the request of Ann B. Wall, General Counsel and Rulemaking Coordinator for the NC Department of the Secretary of State. As you requested, Dana McGhee is copied on this email.

Thank you for your attention to detail and guidance.

Sincerely,
AnnE

Ann McNellis Elmore, Agency Legal Consultant

NC Department of the Secretary of State

PO Box 29622

Raleigh, NC 27626-0622

Telephone: [\(919\) 814-5521](tel:9198145521)

Fax: 919 814-5596

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1 18 NCAC 07I .0304 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION**
4 **IN JOURNAL**

5 A notary public ~~shall~~ may include additional information in the journal regarding an employer-related electronic
6 notarial act if:

7 (1) the employer so requests;

8 (2) the request is made before the notary commits the journal entry; and

9 (3) in the judgment of the electronic notary, the information is directly related to the notarial act. Note:

10 A loan origination number or a client number is an example of information directly related to the
11 notarial act.

12

13 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*

14 *Eff. July 1, 2024.*

1 18 NCAC 07I .0305 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN**
4 **JOURNAL FOR REMOTE ELECTRONIC NOTARIZATION**

5 **A** An electronic notary public shall include additional information in the journal if:

- 6 (1) the notarial act is a remote electronic notarial act;
- 7 (2) the requestor is a party involved in the transaction;
- 8 (3) the request is made before the notary commits the journal entry; and
- 9 (4) in the judgment of the electronic notary, the information is directly related to the notarial act. Note:
10 A loan origination number or a client number is an example of information directly related to the
11 notarial act.

12

13 *History Note:* Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;

14 *Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] Our final decision re response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 24, 2024 3:13 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Our final decision re response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

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Hi, Brian. After discussion, we have decided to stick with the language below. We will send you the formatted version in the morning. Please let us know if we need to send the formatted version to Dana as well.

Thanks again for how quickly you've responded today.

Ann

18 NCAC 07I .0304 EMPLOYER REQUEST FOR INFORMATION IN JOURNAL

A notary public ~~shall~~ may include additional information in the electronic notarial act if:

- (1) the employer so requests;
- (2) the request is made before the notary commits the
- (3) in the judgment of the electronic notary, the information necessary in establishing the validity of to the notary or a client number is an example of information directly related to the notarial act.

18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF INFORMATION IN JOURNAL FOR REMOTE ELECTRONIC NOTARIAL ACT

A An electronic notary public shall include additional information in the electronic notarial act if:

- (1) the notarial act is a remote electronic notarial act;
- (2) the requestor is a party involved in the transaction
- (3) the request is made before the notary commits the
- (4) in the judgment of the electronic notary, the information directly related to the notarial act. No number is an example of information directly related to the notarial act.

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

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Yup, that's fine. Take your time.

Brian Liebman
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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, January 24, 2024 2:52 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

Yes, please. Thanks!

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 24, 2024 2:51:03 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

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Thanks! We'll get the formatted revisions to you in the morning. Do you want us to send them to Dana too?

Yup, that's fine. Take your time.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, January 24, 2024 2:32:07 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 07I .0304 and .0305

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Thanks so very much for the quick responses today. Our meeting start is being delayed but we will definitely make the decision by the end of the day and let you know what it is.

If we send you the final language, and make no changes after that, would it be okay if we don't get the re-formatted version to you until the morning? That would allow us to make sure the formatting's correct.

Thanks, Ann

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

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Ann,

I think the new language is fine. I don't love "directly related" but the note at least gives some context. You may want to keep the "establishing the validity" language in there somehow, as I also thought that provided clarity. However, if you don't want to do that, the proposed language here is OK with me.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 24, 2024 11:47 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] No need to respond until you get back to the office: Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

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Thanks so much for taking the time to respond to us while at the doctor's office. We can definitely wait until you get back to the office for your response to this email. We will be taking a pause in our meeting from 12:30 - 2:30 because of some folks being unavailable.

After reviewing your comments, we re-thought our language and now propose the language below. Note that the track changes reflects changes to the version that we submitted earlier today, and not the adopted version on which you originally commented. Please let us know if this satisfies your concerns. If yes, we will put the rules in proper format and ship them to you.

Thanks again,

Ann

18 NCAC 07I .0304 EMPLOYER REQUEST FOR INFORMATION IN JOURNAL

A notary public ~~shall~~ may include additional information in the electronic notarial act if:

- (1) the employer so requests;
- (2) the request is made before the notary commits to
- (3) in the judgment of the electronic notary, the information ~~useful necessary in establishing the validity of~~ to number or a client number is an example of information in the act.

18 NCAC 07I .0305 PARTY REQUEST FOR INFORMATION IN JOURNAL NOTARIZATION

A An electronic notary public shall include additional information

- (1) the notarial act is a remote electronic notarial act
- (2) the requestor is a party involved in the transaction
- (3) the request is made before the notary commits to
- (4) in the judgment of the electronic notary, the information ~~the validity of~~ directly related to the notarial act client number is an example of information directly related to the notarial act.

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Fax 919-814-5391

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Burgos, Alexander N

Subject: FW: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, January 24, 2024 11:43 AM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

I realized I didn't answer all your questions, sorry. If you want to withdraw both rules, that's fine.

But if the language I suggested is acceptable to you, I would be able to recommend approval, without adding a "note" or anything further.

Hope that helps,
Brian

Brian Liebman
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Burgos, Alexander N

Subject: FW: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, January 24, 2024 11:08 AM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

Hi Ann,

Sorry for the delayed response, I am out of the office at a doctor's appointment.

I think we're running into the same issue here, unfortunately. What kind of information would be included under this language? That's why I suggested a note with examples.

That said, I think the "establishing the validity of the notarial act" is very helpful in providing clarity. Would it change your intended meaning if it said "in the judgment of the notary, the information is necessary to establish the validity of the notarial act?" That seems a bit more certain than "helpful" in establishing the validity of the act.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

Importance: High

From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 24, 2024 10:22 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Possible change in response to your additional request for technical changes to 18 NCAC 071 .0304 and .0305

Importance: High

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Hi, Brian. We have discussed your request: *"I don't think adding that what is "directly related" is at the discretion of the notary helps define the term. I understand that this could encompass a lot of things, but is there any way you could distill it down a bit and offer a definition? I think at the very least, something like a list of examples in a "note" would help here, to clarify the meaning."*

We are taking a break in our meeting so that I can pose two questions to you regarding the request above:

1. Would changing the language as shown in the snip below resolve the issue of what is "directly related"?

2. If not, would it work for .0305? Could we then withdraw .0304 if that's what we decided to do? We looked at the rules and think maybe the answer is "yes" because there's been no recommendation from you of an objection.

Please get back to us as soon as you can, as I'm not sure if everyone can be here for the whole meeting. We want to meet your extended response deadline of the end of the day today.

Thanks, Ann

**18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF AD
IN JOURNAL**

A notary public shall ~~shall~~ may include additional information in the journal regarding notarial act if:

- (1) the employer so requests;
- (2) the request is made before the notary commits the journal entry; and
- (3) in the judgment of the electronic notary, the information ~~is~~ may establishing the validity of the notarial act.

**18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDIT
JOURNAL FOR REMOTE ELECTRONIC NOTARI**

~~A~~ An electronic notary public shall include additional information in the journal if:

- (1) the notarial act is a remote electronic notarial act;
- (2) the requestor is a party involved in the transaction;
- (3) the request is made before the notary commits the journal entry; and
- (4) in the judgment of the electronic notary, the information ~~is directl~~ establishing the validity of the notarial act.

Ann B. Wall
General Counsel
Department of the Secretary of State
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Burgos, Alexander N

Subject: FW: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

From: Ann Wall <awall@sosnc.gov>

Sent: Monday, January 22, 2024 3:18 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

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Okay, thanks. I appreciate your patience.

Ann

Ann B. Wall

General Counsel

Department of the Secretary of State

awall@sosnc.gov

Phone (919) 814-5310

Fax 919-814-5391

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Burgos, Alexander N

Subject: FW: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Monday, January 22, 2024 12:30 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

Hi Ann,

Wednesday afternoon would be fine.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

From: Ann Wall <awall@sosnc.gov>

Sent: Monday, January 22, 2024 11:31 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)

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Brian, we have a meeting scheduled already for Wednesday. Would it be okay if we don't respond re .0304 and .0305 until Wednesday afternoon or Thursday morning?

Thanks, Ann

Ann B. Wall

General Counsel

Department of the Secretary of State

awall@sosnc.gov

Phone (919) 814-5310

Fax 919-814-5391

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Hi Ann and Anne,

Thanks for these. I am OK with everything except Rules .0304 and .0305. I don't think adding that what is "directly related" is at the discretion of the notary helps define the term. I understand that this could encompass a lot of things, but is there any way you could distill it down a bit and offer a definition? I think at the very least, something like a list of examples in a "note" would help here, to clarify the meaning.

By the way, thanks for complying with our Rule .0107. That's not something we see often. 😊

Thanks,

Brian

Brian Liebman

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brian.liebman@oah.nc.gov

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Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Friday, January 19, 2024 11:52 AM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Elmore, Ann M
Subject: [External] Response to Technical Change Requests re 18 NCAC 07I and additional changes pursuant to 26 NCAC 05 .0107(b)(2)
Attachments: 18 NCAC 07I .0104 JOURNAL OWNERSHIP.docx; 18 NCAC 07I .0303 ADDITIONAL JOURNAL CONTENTS FOR REMOTE ELECTRONIC NOTARIZATIONS.docx; 18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL.docx; 18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL FOR REMOTE ELECTRONIC.docx; 18 NCAC 07I .0107 ACCESS TO THE JOURNAL.docx; 18 NCAC 07I .0201 FORM OF TRADITIONAL NOTARY JOURNAL.docx; 18 NCAC 07I .0302 CONTENTS OF JOURNAL.docx

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Hi, Brian.

Thank you for your insights as we revised our adopted rules. This email addresses two things: (1) responses to your technical change requests, and (2) notice of changes pursuant to 26 NCAC 05 .0107(b)(2).

1. Your requests for technical changes: You have not previewed our responses to the change requests you made on 1/3; however, we believe we have addressed your concerns. Enclosed are the technical corrections to the 07I Rules as shown below:

18 NCAC 07I .0103: In (2), lines 6-7, does the retention requirement apply only to whatever portion of the journal has been provided to the third party? **Yes, a traditional notary public need only retain a copy of what is provided to a third party so that they retain a full record of their notarial transactions. Given differences in what is possible with digital records versus paper records, there are two different provisions to ensure a complete record regardless of the type of journal. No change has been made.**

18 NCAC 07I .0104: "How does this rule apply to electronic journals that may be part of an electronic platform?" **We have revised the rule to make it clear that the rule references only the information in the journal.**

18 NCAC 07I .0303: "In (3), line 10, can you define "location"? I would think the definition given in 07K .0101(20) would not apply here, since that refers to a jurisdiction, which seems a little broad in this context." Thank you for the opportunity to fine tune for greater clarity. **We have revised the text in lines 9-11 to make it clearer that the rule addresses individuals located in the same place as the remotely located principal and, in the opinion of the notary, could increase the possibility of risk or coercion. NOTE: We also made changes to this rule pursuant to 26 NCAC 05 .0107(b)(2), and those changes are reflected in part 2 of this email and in the attached revised rule.**

18 NCAC 071 .0304: "In (3), line 9, I understand from your pre-review response that "directly related" is a term known to your regulated public, but that does not mean it's clear in the Rule. Please define the term here or elsewhere." **Since what may be "directly related" can vary with context, we have revised the text so that it is clear that the notary makes the determination. NOTE:** We also made changes to this rule pursuant to 26 NCAC 05 .0107(b)(2), and those changes are reflected in part 2 of this email and in the attached revised rule.

18 NCAC 071 .0305: "In (4), line 9, I understand from your pre-review response that "directly related" is a term known to your regulated public, but that does not mean it's clear in the Rule. Please define the term here or elsewhere." **Since what may be "directly related" can vary with context, we have revised the text so that it is clear that the notary makes the determination.**

2. Notice of changes pursuant to 26 NCAC 05 .0107(b)(2):

A. In the following rules, we changed "Rules" to "rules" to conform to the formatting requirements in the Style Guide:

1. 18 NCAC 071 .0107 ACCESS TO THE JOURNAL, at line 5
2. 18 NCAC 071 .0201 FORM OF TRADITIONAL NOTARY JOURNAL, at line 7

B. 18 NCAC 071 .0302 CONTENTS OF JOURNAL – for clarity in line 8, we:

1. Replaced "type" with "title" and
2. Added "the" before "document"

C. 18 NCAC 071 .0303 ADDITIONAL JOURNAL CONTENTS FOR REMOTE ELECTRONIC NOTARIZATIONS - Besides making the technical correction requested above, we:

1. Added the word "electronic" before "notary" in line 7 for consistency with other usage
2. Made "communications" singular in line 13 for consistency with other usage

D. 18 NCAC 071 .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN JOURNAL FOR REMOTE ELECTRONIC NOTARIZATION – Besides making the technical correction requested above, we added the word "electronic" before "notary" for consistency with other usage.

Let us know if you have any questions.

Regards, Ann

Ann B. Wall
General Counsel
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awall@sosnc.gov

Phone (919) 814-5310
Fax 919-814-5391

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1 18 NCAC 07I .0104 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3 **18 NCAC 07I .0104 JOURNAL OWNERSHIP**

4 The information in the notary journal is the private property of the ~~notary~~, notary public.

5

6 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*

7 *Eff. July 1, 2024.*

1 18 NCAC 07I .0107 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3 **18 NCAC 07I .0107 ACCESS TO THE JOURNAL**

4 A notary public shall not permit access to the journal by any person except to the extent permitted pursuant to Chapter
5 10B of the General Statutes and the ~~rules~~ Rules rules in this Chapter.

6

7 *History Note: Authority G.S. 10B-4; 10B-20(p); ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
8 *Eff. July 1, 2024.*

1 18 NCAC 07I .0201 is adopted with changes as published in 38:04 NCR 206 as follows:

2

3

SECTION .0200 – JOURNAL BASICS

4

18 NCAC 07I .0201 FORM OF TRADITIONAL NOTARY JOURNAL

6 A traditional notary public keeping a journal may meet the journal requirements by maintaining either a tangible or
7 an electronic ~~journal.~~ journal pursuant to Chapter 10B of the General Statutes and the ~~Rules~~ rules in this Subchapter.

8

9 *History Note:* Authority G.S. 10B-4; 10B-38;

10 *Eff. July 1, 2024.*

1 18 NCAC 07I .0305 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0305 PARTY REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION IN**
4 **JOURNAL FOR REMOTE ELECTRONIC NOTARIZATION**

5 ~~A~~ An electronic notary public shall include additional information in the journal if:

- 6 (1) the notarial act is a remote electronic notarial act;
- 7 (2) the requestor is a party involved in the transaction;
- 8 (3) the request is made before the notary commits the journal entry; and
- 9 (4) in the judgment of the electronic notary, the information is directly related to the notarial act.

10

11 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*

12 *Eff. July 1, 2024.*

1 18 NCAC 07I .0302 is adopted with changes as published in 38:04 NCR 207 as follows:

2
3 **18 NCAC 07I .0302 CONTENTS OF JOURNAL**

4 Notaries public shall enter the following information in the journal for each notarial ~~act~~ act; ~~completed~~:

- 5 (1) the date and time at the notary's location ~~of the notarial act~~; that the notarial act occurs;
- 6 (2) the ~~names~~ name of the ~~each principals~~; principal;
- 7 (3) the ~~types~~ type and ~~modes~~ mode of notarial ~~acts~~ act performed;
- 8 (4) the ~~title type of documents~~ the document notarized, if any;
- 9 (5) how the ~~identities~~ identity of the ~~each principals~~ principal ~~were~~ was determined;
- 10 (6) if satisfactory evidence of the principal's identity was presented:
- 11 (a) the type of satisfactory evidence;
- 12 (b) ~~if the satisfactory evidence was a document~~, the addresses of each principal as shown on
- 13 ~~any documents used as satisfactory evidence~~; the documents;
- 14 (c) ~~if where~~ the satisfactory evidence was based on the sworn statement of a credible witness:
- 15 (i) the name of the credible witness;
- 16 (ii) the contact information of the credible witness;
- 17 (iii) the signature of the credible witness in a traditional notary's journal; or
- 18 (iv) the signature of the credible witness has been added to the electronic journal by
- 19 the notary;
- 20 (7) the ~~signatures~~ signature of the ~~each principals~~ principal in a tangible journal or the notary's addition
- 21 of the ~~each principals'~~ principal's acknowledged ~~signatures~~ signature to the an electronic journal;
- 22 (8) information required by 18 NCAC 07K .0203 for any fees charged; and
- 23 (9) designation of each notarial act as employer-related or non-employer related if the journal includes
- 24 both categories of notarial acts.

25
26 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
27 *Eff. July 1, 2024.*

1 18 NCAC 07I .0303 is adopted with changes as published in 38:04 NCR 207-208 as follows:

2
3 **18 NCAC 07I .0303 ADDITIONAL JOURNAL CONTENTS FOR REMOTE ELECTRONIC**
4 **NOTARIZATIONS**

5 In addition to the requirements of Rule .0302 of this Section, for each remote electronic notarial act completed, an
6 electronic notary public shall enter in the journal:

- 7 (1) the locations of the principals and electronic notary public at the time of the act;
8 (2) the method of establishing the location of the remotely located principals;
9 (3) the names of any individuals who are physically present at the same place as with the remotely
10 located principals; ~~principals in the same location~~; and
11 (4) the names of any individuals in addition to the principals and those listed in Item (3) of this Rule
12 who are present remotely using the ~~communications~~ communication technology during the notarial
13 transaction process.

14
15 *History Note: Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;*
16 *Eff. July 1, 2024.*

1 18 NCAC 07I .0304 is adopted with changes as published in 38:04 NCR 208 as follows:

2

3 **18 NCAC 07I .0304 EMPLOYER REQUEST FOR INCLUSION OF ADDITIONAL INFORMATION**
4 **IN JOURNAL**

5 A notary public ~~shall~~ may include additional information in the journal regarding an employer-related electronic
6 notarial act if:

- 7 (1) the employer so requests;
- 8 (2) the request is made before the notary commits the journal entry; and
- 9 (3) in the judgment of the electronic notary, the information is directly related to the notarial act.

10

11 *History Note:* Authority G.S. 10B-4; ~~10B-21~~; 10B-38; 10B-126; 10B-134.15; 10B-134.21;
12 *Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] Re: Request for Changes - 07I Rules

From: Ann Wall <awall@sosnc.gov>

Sent: Friday, January 5, 2024 9:55 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Re: Request for Changes - 07I Rules

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Thanks, Brian. I think we should be able to meet that deadline.

Regards, Ann

Ann B. Wall

General Counsel

Department of the Secretary of State

awall@sosnc.gov

Phone (919) 814-5310

Fax 919-814-5391

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Thursday, January 4, 2024 10:58 PM
To: Wall, Ann B
Cc: Burgos, Alexander N; Elmore, Ann M
Subject: RE: [External] Re: Request for Changes - 07I Rules
Attachments: 01.2024 - Secretary of State 07I Request for Changes.docx

Ann and Anne,

As promised, here are the 07I requests for changes. Again, not much here, and I've given you 10 business days—to January 19—to respond.

Let me know if you have any questions or concerns.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, January 3, 2024 5:11 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Re: Request for Changes - 07B Rules

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Happy New Year Brian.

This acknowledges receipt of the changes.

We should not have an issue with getting back to you by the 17th.

Thanks, Ann

Ann B. Wall
General Counsel
Department of the Secretary of State

awall@sosnc.gov

Phone (919) 814-5310

Fax 919-814-5391

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Hi Ann and Anne,

Attached, please find my requests for changes for the 07B rules. There isn't too much here. I've given you the usual 10 business days—January 17—for a deadline, and I'd be shocked if we don't get these done for the January meeting. I'm working on the 07I rules now, and should have something to you in the next few days.

Hope you both had a wonderful Christmas and New Years.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, December 6, 2023 3:21 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

Just word files are fine. Alex will combine them and convert them into PDFs for the website. He's got a process. 😊

Brian

Brian Liebman
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brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, December 6, 2023 3:18 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

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You answered our question before we sent it.

Do you need us to just send the final 07K rules in WORD or do you need us to send the PDF too?

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

Burgos, Alexander N

Subject: FW: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, December 6, 2023 3:07 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

Great, thanks to both of you for getting back quickly as well.

If you would, please send the final versions of all 07K rules over to Dana at oah.rules@oah.nc.gov, copying me and Alex, and I'll let Dana and Alex know these are the final rules for filing and posting on the agenda.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, December 6, 2023 3:00 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

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Hi, Brian.

The lure of recommendation for approval is huge. Done! Enclosed are K .0204 & K .0206 with 10B-31 added, as you suggested.

Thank you for your speedy turn around on this.

Sincerely,

Ann

Ann B. Wall
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Fax 919-814-5391

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1 18 NCAC 07K .0204 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0204 CONSENT TO TRAVEL FEES MAY BE ELECTRONIC**

4 A notary public who charges travel fees pursuant to G.S. 10B-31(5) may obtain the advance ~~written~~ consent of the
5 principal in writing and delivered in any manner agreed upon by the notary and the principal. ~~electronically.~~

6

7 *History Note: Authority G.S. 10B-4; 10B-31; ~~10B-126; 10B-134.15;~~*

8 *Eff. January 1, 2024.*

1 18 NCAC 07K .0206 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0206 NOTARIAL RECORD OF WRITTEN CONSENT TO TRAVEL FEES**

4 A notary public who charges travel fees shall preserve the advance written consent as a notarial record:

5 (1) in the notary's journal; or

6 (2) ~~separately, if the written consent cannot be~~ is not included in the a journal, then a record of the
7 written consent including the contents required by Rule .0205 of this Section shall be maintained by
8 the notary. ~~along with a supplemental journal entry describing the fact of written consent.~~

9

10 *History Note: Authority G.S. 10B-4; 10B-31; 10B-126; 10B-134.15;*

11 *Eff. January 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, December 6, 2023 1:36 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

Hi all,

See below for further comments. I think provided you add the cite to .0204 and .0206, I can recommend approval of these two rules. As for .0206, I apologize but didn't realize the text had been added post-publication. I believe you're correct, if language was added post-publication, you don't need to show the deletion in formatting.

Thanks,
Brian

RULE CITATION: 18 NCAC 07K .0204

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, what do you mean by "electronically"? I'm assuming this means a traditional notary may simply email or call the principal to get consent for the fees, but given the context of the electronic platform e-notaries will have to use, I think some clarity is warranted.

Response: We do not believe the rule was unclear, as it followed the statute by requiring that the advance consent be in writing. As your request indicates that you find the rule unclear, we have modified the rule to provide additional clarity.

I understand that the statute (10B-31) requires the consent to be in writing. The issue I am seeing, and I think it's something easily fixed, is that I can't tell if you're requiring all notaries to go through an electronic platform to get this consent (if that's even something contemplated for e-notaries), or if you're just saying the consent can be in an email or fax or text message. I think it's likely the second, but it's not clear to me. Do you think saying "...may obtain the advance consent of the principle in writing and delivered to the notary via email, fax, or text message" (or whatever electronic form you want—these are the three I could think of) would work?

Response #2, Part 1: You accurately understand the intent of K .0204. Hence, we do not believe the rule is unclear. Nonetheless, as your request indicates that you seek additional clarification, we have modified the rule further.

OK, I think this works. Thank you.

Also, I didn't note this before, you should cite to 10B-31 in your History Note, as that's the appropriate statute here.

Response #2, Part 2: Please help us understand the RRC's interpretation of authorities to be included in the history note. We omitted 10B-31 from the History Note based upon our understanding that the RRC interpretation of 26 NCAC 02C .0406(a)(1) is that only statutes conferring rulemaking authority are to be listed. Section 10B-31 relates to fees for notarial acts including travel reimbursement. It does not provide rulemaking authority. Our authority for rulemaking related to fees is found in G.S. 10B-4.

In deference to your July pre-review guidance (cited below), G.S. 10B-31 was excluded from the history note, but is included in the body of the rule. See below from Seth's July 17th email conveying your pre-review comments and our July 18th pre-review email exchange:

Pre-review general guidance: *In 07B and 07K particularly, I think you're citing to far too many statutes in your history notes that are irrelevant. Please confine the cites in the history note to statutes that give you rulemaking authority.*

Our response: *I was taught that in history notes we were to give the authority for both a fee and the rule that related to the fee, because of GS 12-3.1. Are you saying you only want the authority for the rule, not the authority for the fees in the history note?*

Pre-review further general guidance: *Correct, you do need to cite to the statute authorizing the fee when the rule is actually charging the fee. However, in many of the rules I reviewed, the rule speaks to general procedure for paying all fees and payments to the department. Thus, in my view, you're not relying on the authority for charging the fee, you're relying on the authority to be able to set procedures.*

Additional pre-review guidance, specific to 07K .0200: *07K .0200: Overall Notes. In every rule, it appears you cite to all statutes that reference specific fees. I think this is unnecessary, and would generally restrict these to rules that reference rulemaking authority.*

So, please clarify as your follow up question above re citing G.S. 10B-31 in the History Note. Thanks. 10B-31 explicitly sets the maximum fee for travel reimbursement as the federal mileage rate. 10B-4 simply says the Secretary may adopt rules necessary to administer and enforce this Chapter and achieve the purposes of the act. 10B-31 is what you're implementing. I think in the other rules where I gave general guidance, those were rules governing procedures for all fees, as opposed to a specific fee. If I recall correctly, none of the rules referred specifically to any one particular fee, and so I thought it was unnecessary to cite to the authority for each fee. Here, you've got a rule referring to a particular fee, and a statute which is explicitly governing what is in the rule. Hope that clears up any confusion.

RULE CITATION: 18 NCAC 07K .0206

In reviewing this Rule, the staff recommends the following changes be made:

I am confused by (3). (1) and (2) seem to cover all the ground here—the notary can put the consent in his or her journal, or shall maintain a separate record, if the notary elects not to record in the journal. What gap is (3) intended to fill?

Also, in (3), line 8, what is “a supplemental information entry”? If the notary can enter this “supplemental” entry, why can't they just enter the advance written consent itself as a “supplemental” entry?

Response: We deleted Item (3) and modified Item (2) in response to your request.

I think the changes are mainly good, but first, there's a formatting problem. The text that has been deleted needs to be retained, but struck through. See the formatting example here:

<https://www.oah.nc.gov/documents/rules/permanent-adoption-changes-publication/download?attachment>

Response #2, Part 1: *Please help us understand your formatting concern. As we read 26 NCAC 02C .0405(b), the reference point for changes is "the proposed rule published in the Register." If the August 15th version is the starting point for showing changes, then what we submitted is correct. The text to which you refer was added *after* publication. We then deleted that text pursuant to your technical change request.*

As to the rule itself, where did the 10 year retention period come from? I am concerned that's a substantial change, as it creates an effect not contemplated under the published language, unless that's been published in another one of these Rules.

Response #2, Part 2: The 10-year retention period aligns with the statutorily-mandated interval for keeping the electronic journal. G.S. 10B-134.15(b)(2); 18 NCAC 07F .1003; 18 NCAC 07I .0212. In addition, it is consonant with the stated purpose of the Notary Act found in G.S. 10B-2(6): "To integrate procedures for all of the following notarial acts: a. Traditional paper. b. Electronic notarization. c. Remote electronic notarization." We do not think it is a substantial change. However, in deference to your concern that including it might represent a substantial change, we have stricken the reference to the retention period of the travel fee record from this rule at this time and will address it further in the Phase 3 rules..

OK, that's fine.

Also, I didn't note this before, you should cite to 10B-31 in your History Note, as that's an appropriate statute here.

Response #2, Part 3: Please help us understand the RRC's interpretation of authorities to be included in the history note. See Response Part 2 under 18 NCAC 07K .0204 above.

See above.

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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting
Attachments: 18 NCAC 07K .0204 - TCR_2.docx; 18 NCAC 07K .0206 - TCR_2.docx

From: Ann Wall <awall@sosnc.gov>
Sent: Tuesday, December 5, 2023 3:11 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Response to your email re additional change requests, your request for extension of review period, and intent to recommend approval of 07K at 12/14/23 RRC meeting

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Hi, Brian.

Thank you for so quickly responding to our technical corrections. We are pleased that you that you will recommend approval of 18 NCAC 07K upon our response to your additional change requests re 07K .0204 and .0206.

Attached are Rules .0204 and .0206 as further revised. Our responses to your additional requests for technical changes are points are shown below in blue and labeled "**Response #2**".

Please let me know if you have any questions about the changes that we have made in response to your requests.

Regards, Ann

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

Please be aware that communications with the Secretary of State's office may be public records.

Hi all,

Thanks for the quick responses. I think Rule .0101 and .0201 are good, and I'll recommend approval. I had a follow up on Rule .0204 and .0206, which are below in red.

Another note—due to the shortened time frame for the December meeting, the volume of rules, and the fact that we're down one staff attorney, I am going to have to ask for an extension on the 07B and 07I rules. I will get the

requests for changes out to you as soon as I can, but I just can't see that we're going to get them completed by 12/14. Unless something unforeseen happens, I'm fairly confident we can get these done for the January meeting. Apologies for any inconvenience this may cause, and thanks for your understanding.

Have a great weekend,
Brian

RULE CITATION: 18 NCAC 07K .0204

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, what do you mean by "electronically"? I'm assuming this means a traditional notary may simply email or call the principal to get consent for the fees, but given the context of the electronic platform e-notaries will have to use, I think some clarity is warranted.

Response: We do not believe the rule was unclear, as it followed the statute by requiring that the advance consent be in writing. As your request indicates that you find the rule unclear, we have modified the rule to provide additional clarity.

I understand that the statute (10B-31) requires the consent to be in writing. The issue I am seeing, and I think it's something easily fixed, is that I can't tell if you're requiring all notaries to go through an electronic platform to get this consent (if that's even something contemplated for e-notaries), or if you're just saying the consent can be in an email or fax or text message. I think it's likely the second, but it's not clear to me. Do you think saying "...may obtain the advance consent of the principle in writing and delivered to the notary via email, fax, or text message" (or whatever electronic form you want—these are the three I could think of) would work?

Response #2, Part 1: You accurately understand the intent of K .0204. Hence, we do not believe the rule is unclear. Nonetheless, as your request indicates that you seek additional clarification, we have modified the rule further.

Also, I didn't note this before, you should cite to 10B-31 in your History Note, as that's the appropriate statute here.

Response #2, Part 2: Please help us understand the RRC's interpretation of authorities to be included in the history note. We omitted 10B-31 from the History Note based upon our understanding that the RRC interpretation of 26 NCAC 02C .0406(a)(1) is that only statutes conferring rulemaking authority are to be listed. Section 10B-31 relates to fees for notarial acts including travel reimbursement. It does not provide rulemaking authority. Our authority for rulemaking related to fees is found in G.S. 10B-4.

In deference to your July pre-review guidance (cited below), G.S. 10B-31 was excluded from the history note, but is included in the body of the rule. See below from Seth's July 17th email conveying your pre-review comments and our July 18th pre-review email exchange:

Pre-review general guidance: *In 07B and 07K particularly, I think you're citing to far too many statutes in your history notes that are irrelevant. Please confine the cites in the history note to statutes that give you rulemaking authority.*

Our response: *I was taught that in history notes we were to give the authority for both a fee and the rule that related to the fee, because of GS 12-3.1. Are you saying you only want the authority for the rule, not the authority for the fees in the*

history note?

Pre-review further general guidance: Correct, you do need to cite to the statute authorizing the fee when the rule is actually charging the fee. However, in many of the rules I reviewed, the rule speaks to general procedure for paying all fees and payments to the department. Thus, in my view, you're not relying on the authority for charging the fee, you're relying on the authority to be able to set procedures.

Additional pre-review guidance, specific to 07K

.0200: 07K .0200: Overall Notes. In every rule, it appears you cite to all statutes that reference specific fees. I think this is unnecessary, and would generally restrict these to rules that reference rulemaking authority.

So, please clarify as your follow up question above re citing G.S. 10B-31 in the History Note. Thanks.

RULE CITATION: 18 NCAC 07K .0206

In reviewing this Rule, the staff recommends the following changes be made:

I am confused by (3). (1) and (2) seem to cover all the ground here—the notary can put the consent in his or her journal, or shall maintain a separate record, if the notary elects not to record in the journal. What gap is (3) intended to fill?

Also, in (3), line 8, what is “a supplemental information entry”? If the notary can enter this “supplemental” entry, why can't they just enter the advance written consent itself as a “supplemental” entry?

Response: We deleted Item (3) and modified Item (2) in response to your request.

I think the changes are mainly good, but first, there's a formatting problem. The text that has been deleted needs to be retained, but struck through. See the formatting example here:

<https://www.oah.nc.gov/documents/rules/permanent-adoption-changes-publication/download?attachment>

Response #2, Part 1: Please help us understand your formatting concern. As we read 26 NCAC 02C .0405(b), the reference point for changes is "the proposed rule published in the Register." If the August 15th version is the starting point for showing changes, then what we submitted is correct. The text to which you refer was added *after* publication. We then deleted that text pursuant to your technical change request.

As to the rule itself, where did the 10 year retention period come from? I am concerned that's a substantial change, as it creates an effect not contemplated under the published language, unless that's been published in another one of these Rules.

Response #2, Part 2: The 10-year retention period aligns with the statutorily-mandated interval for keeping the electronic journal. G.S. 10B-134.15(b)(2); 18 NCAC 07F .1003; 18 NCAC 07I .0212. In addition, it is consonant with the stated purpose of the Notary Act found in G.S. 10B-2(6): "To integrate procedures for all of the following notarial acts: a. Traditional paper. b. Electronic

notarization. c. Remote electronic notarization." We do not think it is a substantial change. However, in deference to your concern that including it might represent a substantial change, we have stricken the reference to the retention period of the travel fee record from this rule at this time and will address it further in the Phase 3 rules..

Also, I didn't note this before, you should cite to 10B-31 in your History Note, as that's an appropriate statute here.

Response #2, Part 3: Please help us understand the RRC's interpretation of authorities to be included in the history note. See Response Part 2 under 18 NCAC 07K .0204 above.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

1 18 NCAC 07K .0204 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0204 CONSENT TO TRAVEL FEES MAY BE ELECTRONIC**

4 A notary public who charges travel fees pursuant to G.S. 10B-31(5) may obtain the advance ~~written~~ consent of the
5 principal in writing and delivered in any manner agreed upon by the notary and the principal. ~~electronically.~~

6

7 *History Note: Authority G.S. 10B-4; ~~10B-126; 10B-134.15;~~*

8 *Eff. January 1, 2024.*

1 18 NCAC 07K .0206 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0206 NOTARIAL RECORD OF WRITTEN CONSENT TO TRAVEL FEES**

4 A notary public who charges travel fees shall preserve the advance written consent as a notarial record:

5 (1) in the notary's journal; or

6 (2) ~~separately, if the written consent cannot be~~ is not included in the a journal, then a record of the
7 written consent including the contents required by Rule .0205 of this Section shall be maintained by
8 the notary, along with a supplemental journal entry describing the fact of written consent.

9

10 *History Note: Authority G.S. 10B-4; 10B-126; 10B-134.15;*

11 *Eff. January 1, 2024.*

Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Friday, December 1, 2023 4:18 PM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Elmore, Ann M
Subject: RE: [External] Re: 18 NCAC 07K Requests for Changes - December 2023 RRC

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Thanks, Brian. We understand and will not object to your request to the RRC that the time for review of the 07B and 07I rules be extended to the January 2024 meeting.

We will review the follow-up questions as quickly as we can and get back to you early next week.

Thanks for going ahead and letting us know that you will recommend approval.

Regards, Ann

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

Please be aware that communications with the Secretary of State's office may be public records.

Hi all,

Thanks for the quick responses. I think Rule .0101 and .0201 are good, and I'll recommend approval. I had a follow up on Rule .0204 and .0206, which are below in red.

Another note—due to the shortened time frame for the December meeting, the volume of rules, and the fact that we're down one staff attorney, I am going to have to ask for an extension on the 07B and 07I rules. I will get the requests for changes out to you as soon as I can, but I just can't see that we're going to get them completed by 12/14. Unless something unforeseen happens, I'm fairly confident we can get these done for the January meeting. Apologies for any inconvenience this may cause, and thanks for your understanding.

Have a great weekend,
Brian

RULE CITATION: 18 NCAC 07K .0204

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, what do you mean by “electronically”? I’m assuming this means a traditional notary may simply email or call the principal to get consent for the fees, but given the context of the electronic platform e-notaries will have to use, I think some clarity is warranted.

Response: We do not believe the rule was unclear, as it followed the statute by requiring that the advance consent be in writing. As your request indicates that you find the rule unclear, we have modified the rule to provide additional clarity.

I understand that the statute (10B-31) requires the consent to be in writing. The issue I am seeing, and I think it’s something easily fixed, is that I can’t tell if you’re requiring all notaries to go through an electronic platform to get this consent (if that’s even something contemplated for e-notaries), or if you’re just saying the consent can be in an email or fax or text message. I think it’s likely the second, but it’s not clear to me. Do you think saying “...may obtain the advance consent of the principle in writing and delivered to the notary via email, fax, or text message” (or whatever electronic form you want—these are the three I could think of) would work?

Also, I didn’t note this before, you should cite to 10B-31 in your History Note, as that’s the appropriate statute here.

RULE CITATION: 18 NCAC 07K .0206

In reviewing this Rule, the staff recommends the following changes be made:

I am confused by (3). (1) and (2) seem to cover all the ground here—the notary can put the consent in his or her journal, or shall maintain a separate record, if the notary elects not to record in the journal. What gap is (3) intended to fill?

Also, in (3), line 8, what is “a supplemental information entry”? If the notary can enter this “supplemental” entry, why can’t they just enter the advance written consent itself as a “supplemental” entry?

Response: We deleted Item (3) and modified Item (2) in response to your request.

I think the changes are mainly good, but first, there’s a formatting problem. The text that has been deleted needs to be retained, but struck through. See the formatting example here: <https://www.oah.nc.gov/documents/rules/permanent-adoption-changes-publication/download?attachment>

As to the rule itself, where did the 10 year retention period come from? I am concerned that’s a substantial change, as it creates an effect not contemplated under the published language, unless that’s been published in another one of these Rules.

Also, I didn’t note this before, you should cite to 10B-31 in your History Note, as that’s an appropriate statute here.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>
Sent: Friday, December 1, 2023 8:44 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Re: 18 NCAC 07K Requests for Changes - December 2023 RRC

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Hi, Brian.

Thank you for prioritizing the K rules given the need of our regulated community to have the fee and travel fee rules effective on January 1st.

Attached are revised rules. I have provided our responses below in blue.

Please let me know if you have any questions about the changes that we have made in response to your requests.

Regards, Ann

Ann B. Wall
General Counsel and Rulemaking Coordinator
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

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Our Responses to Your Requests for Technical Changes

RULE CITATION: 18 NCAC 07K .0101

In reviewing this Rule, the staff recommends the following changes be made:

In (25)(a), p.3, line 23, define “satisfactory evidence”. We have added a reference to the definition in G.S. 10B-3.

In (25)(c), line 25, a cross reference to the statute defining “passing grade” would likely aid clarity for your regulated public. We have added a reference to the statutory passing grade requirement in G.S. 10B-8.

In (27), line 34, spell out AVEN since this acronym isn't spelled out elsewhere in this subchapter. We have added a reference to the definition in 18 NCAC 07F .0102(1) and converted the terms previously separated by commas into a list.

RULE CITATION: 18 NCAC 07K .0201

In reviewing this Rule, the staff recommends the following changes be made:

Please consider including the URL for the IRS website where the milage rate can be found.

Response: IRS does not set the business mileage rate in regulations but rather posts it on its website and may well post it in more than one location. URLs change frequently and without notice. It is the responsibility of a notary public who wishes to charge travel fees to find the information on the IRS website. We do not believe the omission of the URL makes the rule unclear or ambiguous.

RULE CITATION: 18 NCAC 07K .0204

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, what do you mean by "electronically"? I'm assuming this means a traditional notary may simply email or call the principal to get consent for the fees, but given the context of the electronic platform e-notaries will have to use, I think some clarity is warranted.

Response: We do not believe the rule was unclear, as it followed the statute by requiring that the advance consent be in writing. As your request indicates that you find the rule unclear, we have modified the rule to provide additional clarity.

RULE CITATION: 18 NCAC 07K .0206

In reviewing this Rule, the staff recommends the following changes be made:

I am confused by (3). (1) and (2) seem to cover all the ground here—the notary can put the consent in his or her journal, or shall maintain a separate record, if the notary elects not to record in the journal. What gap is (3) intended to fill?

Also, in (3), line 8, what is "a supplemental information entry"? If the notary can enter this "supplemental" entry, why can't they just enter the advance written consent itself as a "supplemental" entry?

Response: We deleted Item (3) and modified Item (2) in response to your request.

>>>Good morning,

I'm the attorney who reviewed the Rules submitted by the Department for the December 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 14, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

These are just the requests for 07K. As you asked, I prioritized these for the December meeting, so if RRC approves they can be effective 1/1/24. Since there was only the one rule in Section .0100, I reviewed that one as well. I will be getting further requests to you for 07B and 07I as soon as I can. Please be aware that the meeting has been moved up one week from its usual 3rd Thursday, so my time to review is limited. As a result, it will likely be necessary for us to take an extension on the 07B and 07I rules. Given that their proposed effective date is 6/1/24, it seems to me that this shouldn't be problematic, but please let me know if that's not correct.

Please submit the revised Rules to me via email, no later than 5 p.m. on Friday, December 8, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
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brian.liebman@oah.nc.gov

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1 18 NCAC 07K .0101 is adopted with changes as published in 38:04 NCR 209-211 as follows:

2
3 **SUBCHAPTER 07K – MISCELLANEOUS RULES**

4
5 **SECTION .0100 – GENERAL**

6
7 **18 NCAC 07K .0101 DEFINITIONS**

8 ~~(a) The definitions in this Rule apply to this Chapter.~~

9 ~~(b)~~ For purposes of Chapter 10B of the General Statutes and the ~~rules~~ Rules in this Chapter:

10 ~~(1)~~ "Accepted" means the Department has reviewed a filing and determined that:

11 ~~(A)~~ the filing satisfies the applicable information requirements in Chapter 10B of the General
12 Statutes and this Chapter; and

13 ~~(B)~~ all required fees associated with the filing have been tendered without dishonor.

14 "Accepted" shall not mean that the Department has determined that the filer is qualified and will be
15 appointed, approved, or licensed.

16 ~~(2)~~(1) "Approved" means that an applicant has been authorized by the Department to provide services as
17 a technology provider in compliance with Chapter 10B of the General Statutes and the ~~rules~~ Rules
18 in this Chapter. Technology providers licensed by the Department are deemed approved.

19 ~~(3)~~(2) "Armed Forces of the United States" means the persons described in 10 U.S.C. ~~401(4)~~ 101(a)(4)
20 and G.S. 143B-1224(2), including their reserve components.

21 ~~(4)~~(3) "Bank or financial institution" means a "depository institution" as defined in ~~G.S. 53-208.42~~ G.S.
22 53-208.42(7).

23 ~~(5)~~(4) "Certificate of appointment" means a document issued by the Department notifying a Register of
24 Deeds that:

25 ~~(A)~~(a) the named appointee is authorized to take the oath of office; ~~or the office specified in the~~
26 ~~document~~; and

27 ~~(B)~~(b) the Register of Deeds or designee shall provide the commission certificate to the notary
28 public after:

29 (i) administering the oath of office to the appointee; and

30 (ii) signing of the certificate by both the Register of Deeds or designee, and the notary.

31 ~~(6)~~(5) "Commission certificate" means the document confirming that an individual:

32 ~~(A)~~(a) has complied with all requirements of Chapter 10B of the General Statutes and the ~~rules~~
33 Rules in this Chapter; and

34 ~~(B)~~(b) is authorized to act as ~~the type of a~~ notary public, ~~named in the document~~.

35 ~~(7)~~(6) "Commit" means the final step in the notarial act after which:

36 ~~(A)~~(a) the notarial act is complete;

37 ~~(B)~~(b) all entries are permanent; and

- 1 ~~(C)~~(c) no changes can be made to the entries made permanent pursuant in to Part (b)(7)(B) Sub-
2 Item (b) of this Item. Rule.
- 3 ~~(8)~~(7) "Dishonored payment" or "payment that has been dishonored" means money tendered to the
4 Department by any means that is refused, rejected, or failed to be paid to the ~~Department~~
5 Department by the bank or financial institution upon which it is drawn.
- 6 ~~(9)~~(8) "Enter information" means to:
7 ~~(A)~~(a) handwrite, type, or input data;
8 ~~(B)~~(b) confirm that pre-populated words or numbers are correct. NOTE: ~~Note: an~~ An example
9 would be clicking a checkbox to select the correct date;
10 ~~(C)~~(c) select applicable options from among offered options. NOTE: ~~Note: an~~ An example would
11 be selecting "oath or affirmation" from a drop-down list of the types of notarial acts; or
12 ~~(D)~~(d) include in the electronic journal acknowledged signatures of:
13 (i) principals;
14 (ii) a designee of a principal; or
15 (iii) a credible witness.
- 16 ~~(10)~~(9) "Federal business mileage rate" ~~shall mean~~ means the business mileage rate set by the U.S. Internal
17 Revenue Service (IRS).
- 18 ~~(11)~~(10) "Federally recognized Indian tribe" means a tribe on the list published in the Federal Register by the
19 U.S. Secretary of the Interior pursuant to 25 U.S.C. 5131.
- 20 ~~(12)~~(11) "File" means the date upon which a filing submitted to the Department is deemed complete by the
21 Department. Note: "File" shall not mean that the Department has determined that the filer is qualified
22 and will be appointed, registered, approved, or licensed.
- 23 ~~(13)~~(12) "Filer" means a person that submits a filing to the Department.
- 24 ~~(14)~~(13) "Filing" means a form or other document required or permitted to be filed with the Department
25 pursuant to Chapter 10B of the General Statutes or the ~~rules~~ Rules in this Chapter.
- 26 ~~(15)~~(14) "Form" means a departmental data collection instrument that requires or requests information,
27 without regard to the format.
- 28 ~~(16)~~(15) "Form preparer" means ~~a person~~ an individual who enters information on a ~~form~~ form: as defined
29 in Subparagraph (b)(14) of this Rule:
30 ~~(A)~~(a) at the direction of another; and
31 ~~(B)~~(b) without exercising independent judgment or discretion as to the content entered.
- 32 ~~(17)~~(16) "Information technology" or "IT" means that term as defined in G.S. 143B-1320(a)(11).
- 33 ~~(18)~~(17) "Information technology security" or "IT security" means the tools, techniques, and strategies used
34 to protect the confidentiality, integrity, and availability of data, information systems, and digital
35 assets from:
36 ~~(A)~~(a) internal and external threats; and
37 ~~(B)~~(b) unauthorized access, use, disclosure, disruption, modification, or destruction.

1 ~~(19)~~(18) "Initial appointment" means the first issuance by the Department of a commission certificate to a
2 notary public.

3 ~~(20)~~(19) "Instructor," "certified notary public instructor," "certified instructor," "notary instructor," and
4 "certified notary instructor" mean a notary public who has complied with:

5 ~~(A)~~(a) the requirements of G.S. 10B-14; and

6 ~~(B)~~(b) the ~~rules~~ Rules in Subchapter 07E of this Chapter.

7 ~~(21)~~(20) "Location" means a description establishing that a principal is present in a jurisdiction where the
8 notarial act may take place. ~~NOTE:~~ Note: a A statement that the principal is then located inside the
9 U.S. embassy in Paris, France, would suffice to establish that the principal is present in a jurisdiction
10 where the notarial act may take place.

11 ~~(22)~~(21) "Long-term" means a period of at least one year.

12 ~~(23)~~(22) "Notarial transaction process" includes:

13 ~~(A)~~(a) steps before the notarial act takes place. ~~NOTE:~~ Note: ~~the~~ The interactions establishing the
14 date and location of a notarial act, obtaining advance consent to travel fees, and the steps
15 required by G.S. 10B-134.9(a) are examples of steps before the notarial act;

16 ~~(B)~~(b) the notarial act; and

17 ~~(C)~~(c) steps following the notarial act. Note: Affixing the notary's seal and signature are examples
18 of steps following the notarial act.

19 ~~(24)~~(23) "Person" means the term as defined in G.S. 12-3(6).

20 ~~(25)~~(24) "State recognized tribe" means a group listed in G.S. 143B-407(a).

21 ~~(26)~~(25) "Successfully complete" and "successful completion" mean that a notarial applicant has complied
22 with Chapter 10B and the ~~rules~~ Rules in this Chapter and has:

23 ~~(A)~~(a) presented satisfactory evidence of ~~identity;~~ identity as defined in G.S. 10B-3(22) or be
24 personally known as defined in G.S. 10B-3(17);

25 ~~(B)~~(b) attended a notarial course taught by a certified notary instructor; and

26 ~~(C)~~(c) achieved a passing grade on the course ~~examination.~~ examination as described in G.S. 10B-
27 8(a).

28 ~~(27)~~(26) "Technological failure" means a deficiency in:

29 ~~(A)~~(a) any component of the electronic notarization system;

30 ~~(B)~~(b) any component of the computer systems of the notary or principals; or

31 ~~(C)~~(c) the connections linking the components described in Parts (b)(27)(A) and (b)(27)(B) Sub-
32 Items (a) and (b) of this Rule Item.

33 For purposes of this Rule, "component of the electronic notarization system" means any
34 combination of hardware, software, a ~~notary's~~ notary public's electronic journal, and
35 communications technology recordings.

36 ~~(28)~~(27) "Technology provider" ~~means an AVEN, platform, depository, or custodial service.~~ means:

37 (a) a platform;

1 **(b)** a depository;

2 **(c)** a custodial service; or

3 **(d)** an AVEN as defined in 18 NCAC 07F .0102(1).

4 ~~(29)~~**(28)** "Termination of employment" means the cessation of permanent or temporary ~~work,~~ work for
5 another, whether compensated or not, ~~for an employer or contractor~~ for any reason, including
6 voluntary and involuntary cessation of work.

7 ~~(30)~~**(29)** "Traditional notarization" means a notarial act in which:

8 ~~(A)~~**(a)** there is personal appearance as defined in G.S. 10B-3(16); and

9 ~~(B)~~**(b)** ~~either;~~ one of the following occurs:

10 (i) a document is executed and notarized with ink signatures signed by hand or
11 facsimile stamp and affixed with the physical notary seal as defined in G.S. 10B-
12 3(23); ~~or~~

13 (ii) an oath or affirmation is administered without the execution of a ~~document.~~
14 document; or

15 **(iii)** creating an inventory as described in G.S. 53C-6-13(a).

16 ~~(31)~~**(30)** "Traditional notary public" means an individual commissioned to perform traditional notarizations.

17 ~~(32)~~**(31)** "Type of notarial act" means an acknowledgement, an oath or affirmation, verification or proof,
18 inventory of an abandoned safe deposit box, or notarization of an absentee ballot.

19 ~~(33)~~**(32)** "Under the exclusive control of the notary" means accessible by and attributable solely to the notary
20 public to the exclusion of all other persons through being:

21 ~~(A)~~**(a)** in the case of a physical seal:

22 (i) in the direct physical custody of the notary; or

23 (ii) physically secured; or

24 ~~(B)~~**(b)** in the case of an electronic ~~seal,~~ seal or electronic signature, secured with one or more
25 methods of authentication in an approved electronic notarization system.

26 ~~(34)~~**(33)** "United States" or "U.S." means the term as defined in G.S. 12-3(11).

27
28 *History Note:* Authority G.S. 10B-4; 10B-14; 10B-36; 10B-38; 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-
29 134.19; 10B-134.21;
30 *Eff. July 1, 2024.*

1 18 NCAC 07K .0204 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0204 CONSENT TO TRAVEL FEES MAY BE ELECTRONIC**

4 A notary public who charges travel fees pursuant to G.S. 10B-31(5) may obtain the advance ~~written~~ consent of the
5 principal in writing and delivered electronically.

6

7 *History Note: Authority G.S. 10B-4; ~~10B-126; 10B-134.15;~~*

8 *Eff. January 1, 2024.*

1 18 NCAC 07K .0206 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0206 NOTARIAL RECORD OF WRITTEN CONSENT TO TRAVEL FEES**

4 A notary public who charges travel fees shall preserve the advance written consent as a notarial record:

5 (1) in the notary's journal; or

6 (2) ~~separately, if the written consent cannot be~~ is not included in the a journal, then a record of the
7 written consent including the contents required by Rule .0205 of this Section shall be maintained by
8 the notary for ten years from the date the consent was given. along with a supplemental journal entry
9 ~~describing the fact of written consent.~~

10

11 *History Note: Authority G.S. 10B-4; 10B-126; 10B-134.15;*

12 *Eff. January 1, 2024.*