

West Virginia Secretary of State
Responses to Public Comments on
153 CSR 45

Comments Received From:

1. Bill Anderson, Vice President, Government Affairs, National Notary Association
2. Dale Hardy, Legal Research Analyst, Notarize.com

Comments by Anderson (reformatted by subject) with associated responses:

1. The proposal is in error first because an electronic notarization is neither a remote online notarization nor a remote ink notarization. It is a notarial act when the individual is in the physical presence of the Notary Public and electronic documents are signed and notarized.

Rule 9.1.1 explicitly states that for an electronic notarization the individual seeking the acknowledgment must be "in the presence of the notary at the time of notarization." Conflating rule 9.1.2 with remote online notarization and remote ink notarization that depend upon the use of communication technology, as the two new statutory references inserted demonstrate, will confuse Notaries into thinking that they may use communication technology for an electronic notarization.

Response:

The Commenter's general conclusions regarding the distinction between "electronic notarizations" and "remote online" and "remote ink" notarizations are correct. However, citations to the applicable West Virginia Code provisions at Sections 27 and 28 of the proposed Rule for remote online notarial acts (RON) and remote ink notarial acts (RIN) are intended to reference the standards and procedures for those specific types of notarial acts, which are satisfactorily set forth in the laws amended during the 2021 Regular Legislative Session.

In response to the comment, (1) the Rule has been revised to remove the Code references to RON and RIN in Section 9 for clarity; (2) the Rule Title has been amended to include "Remote Online Notarization" and "Remote Ink Notarization" for clarity; and (3) necessary provisions of Sections 5, 6, 7, 17, 23, 24, 25, and 26 have been amended to clarify separation of authorization/registration forms and related matters for electronic notarizations, remote online notarization, and remote ink notarization.

2. Second, the rule is in error with respect to a remote ink notarization because an electronic notarization involves electronic documents (see 153-45-2, Rule 2.5 which defines electronic notarization). A remote ink notarization uses paper documents, as defined in proposed rule 2.15.

Response:

The commenter is correct. However, this Rule amendment simply incorporates the statutory changes by reference at Sections 27 and 28. With the Title amendment and clarifications listed in the Response to Comment 1, the amended Rule appropriately separates “electronic notarization” from RON and RIN.

3. You may want to also consider expanding the definition of "electronic notarization" by pointing to WVC 39-4-19 specifically and/or clarifying that it is a notarial act in which the individual must be in the physical presence of the Notary.

Response:

The Rule has been amended at Section 2.5 to clarify that an electronic notarization requires in-person appearance as provided by W. Va. Code § 39-4-6. Reference to W. Va. Code § 39-4-19 is not necessary because the in-person requirements are set forth by the former Code provision.

4. One final change we recommend you consider is to replace "acknowledgment" in 153-45-9, Rule 9.1 with "notarial act." The reason for this is because 153-45-8 specifies there are notarial acts other than an acknowledgment that may be performed as an electronic notarization.

Response:

The Rule is amended at Section 9.1 to replace the term “acknowledgment” with “notarial act.”

Comments by Hardy (reformatted by subject or paraphrased for conciseness) with associated responses:

1. The date of the sunset provisions [sic] is struck out, but not the rest of the language. We would request confirmation that this entire provision is meant to be deleted, and a sunset is no longer included in these rules.

Response:

The sunset date is stricken through as part of the rule-making process. The former sunset date will be amended following the legislative rule-making process, and once the rule is approved by the Legislature, a new sunset date will be added to this provision. Rules by law unless otherwise provided are effective for a statutory five-year period.

2. We would recommend amending the definitions to reflect and make clear the registration responsibilities and duties for a notary public who wishes to perform remote online or remote ink notarial acts in addition to electronic notarial acts.

Response:

Definitions for RON and RIN are sufficiently clear in CSR 153-45-2.14 and 2.15. The appropriate section to clarify registration requirements is 153-45-3.1, which clarification is made in the agency approved version.

3. Clarify whether an “electronic notary” is required to also re-register to offer RON or RIN notary services.

Response:

Yes. Under the amended CSR 153-45-3.1, as well as the registration form that will be available to notaries when renewing their commissions, a notary must register with the Secretary at the time of renewal if the notary wishes to be authorized for either electronic notarizations, RON, or RIN. To the extent that clarification is needed in the rule, such will be added.

4. Proper identification of parties for RON and RIN transactions is not mentioned in CSR 153-45-9.

Response:

CSR § 153-45-9 pertains to electronic notarizations, not RON or RIN transaction. For clarity, express reference to the proper identification of parties as set forth by W. Va. Code §§ 39-4-37 and 39-4-38 has been amended in CSR §§ 153-45-27 and 153-45-28.

5. Recommended removal of mention of RIN to CSR § 153-45-12 because it appears to pertain only to electronic notarial acts.

Response:

Both RON and RIN have been expressly distinguished from the requirements of this section.

6. Recommended clarification for journal-keeping requirements for RON and RIN at CSR § 153-45-17.

Response:

This section has been amended to clearly include requirements for notary journals kept by all notaries, regardless the method of notarization applied. Statutorily, journals are not required. However, if a notary so chooses, this section sets for the minimum standard.