

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION,  
Rules I through IV, amendment of ) AMENDMENT, AND REPEAL  
ARM 44.15.101, and repeal of ARM )  
44.15.104, pertaining to notaries )  
public )

TO: All Concerned Persons

1. On September 10, 2015, the Secretary of State published MAR Notice No. 44-2-198 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1358 of the 2015 Montana Administrative Register, Issue Number 17.

2. The Secretary of State has amended and repealed the above-stated rules as proposed.

3. The Secretary of State has adopted the above-stated rules as proposed: New Rules II (44.15.107) and IV (44.15.109).

4. The Secretary of State has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (44.15.106) NOTIFICATION TO SECRETARY OF STATE OF CHANGE IN INFORMATION (1) through (2)(a) remain as proposed.

(b) an ~~written~~ example of the notary's new official signature using the form prescribed by the Secretary of State.

(3) remains as proposed.

AUTH: ~~Ch. 391, Sec. 25, L. 2015 1-5-628, MCA~~

IMP: ~~Ch. 391, Sec. 16, L. 2015 1-5-619, MCA~~

NEW RULE III (44.15.108) REAL-TIME, TWO-WAY AUDIO-VIDEO NOTARIZATIONS (REMOTE NOTARIZATIONS) (1) through (5)(a) remain as proposed.

(b) the notary public's commission expiration date;

(b) and (c) remain as proposed, but are renumbered (c) and (d).

~~(d)~~(e) the state and county in which the notary public is located when the notarial act is being performed;

(e) through (i) remain as proposed, but are renumbered (f) through (j).

(6) through (8) remain as proposed.

AUTH: ~~Ch. 391, Sec. 25, L. 2015 1-5-628, MCA~~

IMP: ~~Ch. 391, Sec. 12, L. 2015 1-5-615, MCA~~

5. The Secretary of State has thoroughly considered the comments received. A summary of the comments received and the Secretary of State's responses are as follows:

COMMENT #1: A commenter remarked that the language "a written example of the notary's new official signature" in (2)(b) of New Rule I "does not seem to contemplate change to the notary's e-signature."

RESPONSE #1: The proposed rule has been modified to take into account e-signatures.

COMMENT #2: In conjunction with proposed New Rule III, a commenter suggested that a rule be created requiring notaries who perform remote notarizations to use an electronic journal with the capability of allowing the individual requesting the notarization to sign the notary's journal in real time.

RESPONSE #2: The Secretary of State does not believe a rule requiring the use of electronic journals when performing remote notarizations is appropriate since proper journalizing of a remote notarial act could be accomplished using a paper journal. While it is true an individual requesting a notarization would not be in a position to physically sign a notary's paper journal when remote notarization is used, the law allows an individual who intends to execute a record to direct another person to sign on the individual's behalf. An individual requesting a notarization could therefore direct another individual to sign the notary's paper journal on his or her behalf, allowing a proper and complete paper journal entry to be made when a remote notarization is performed.

COMMENT #3: A commenter suggested the language in (1) of New Rule III be changed to read, "Real-time, two-way audio-video notarizations (remote notarizations) shall only be performed using technology that allows the individuals to communicate with each other simultaneously by sight and sound" to conform with draft, proposed Revised Uniform Law on Notarial Acts (RULONA) amendment language.

RESPONSE #3: The proposed language is based on existing language in Montana's statutes that reference audio-video communication. Those statutes require that the communication operate in a manner that allows the parties to "see each other simultaneously and converse with each other." See, e.g., 46-7-101(2), 46-12-201(4), and 53-21-140(2), MCA. The Secretary of State declines to modify language that is consistent with existing Montana statutes in favor of draft, proposed RULONA amendment language.

COMMENT #4: A commenter suggested adding a second sentence to (3) in New Rule III reading, "The entire communication shall be recorded" to conform with statutory wording.

RESPONSE #4: The suggested language is repetitious of the language found in 1-5-618(4), MCA. In light of the mandate in 2-4-305(2), MCA, to refrain from unnecessarily repeating statutory language, the Secretary of State declines to add the suggested language.

COMMENT #5: A commenter suggested that if the recording is meant to satisfy the notary's journal entry requirement, language be added to (3) in New Rule III indicating the recording satisfies the requirements of 1-5-618(3), MCA.

RESPONSE #5: The recording criteria as proposed is not meant to satisfy the notary's journal entry. Rather, it is designed to help verify that the remote notarial act performed was authorized by, and completed in accordance with, Montana statutory law. It will remain the responsibility of the notary to ensure that a proper and complete journal entry is made contemporaneously with the performance of each notarial act performed using remote notarization.

COMMENT #6: A commenter suggested adding a requirement in New Rule III that the notary public state his or her commission expiration date.

RESPONSE #6: Because the rule is designed to help verify that the notarial act performed was authorized by Montana statutory law, requiring the notary public state his or her commission expiration date is an appropriate addition to the proposed rule. The addition has been made to New Rule III.

COMMENT #7: A commenter suggested adding language to (5)(d) of New Rule III to clarify that the location of the notarial act is the notary public's physical location.

RESPONSE #7: To alleviate any ambiguity in the proposed rule, the rule has been modified as suggested.

COMMENT #8: A commenter suggested adding a requirement to (5) in New Rule III that the notary state the fee, if any, charged by the notary public.

RESPONSE #8: Pursuant to 1-5-618(3)(g), MCA, the journal entry must include the fee, if any, charged by the notary public. Adding the requirement to the recitation by the notary public would be unnecessarily repetitive. The Secretary of State therefore declines to add the suggested requirement.

COMMENT #9: A commenter suggested relocating (7) and (8) under (5)(h) in New Rule III to consolidate required information regarding method of identification.

RESPONSE #9: Sections (7) and (8) are placed as shown in the proposed rule for readability purposes. The Secretary of State therefore declines to relocate (7) and (8) as suggested.

COMMENT #10: A commenter suggested the phrase "competency or capacity" as used in (5)(i) of New Rule III be defined, perhaps as meaning "the person

reasonably appears able to execute the record and understands he or she is signing a record."

RESPONSE #10: The terms "competent" and "capacity" are used in 1-5-622(1)(a), MCA, but have been left undefined in 1-5-602, MCA. At this time, the Secretary of State therefore declines to define either term or the phrase "competency or capacity."

COMMENT #11: A commenter suggested that (6)(b) in New Rule III be modified to require the inclusion of the individual's address.

RESPONSE #11: Pursuant to 1-5-618(3)(c), MCA, the journal entry must contain the address of each individual for whom the notarial act is performed. Adding the requirement to the recitation by the individual for whom the notarial act is performed would be unnecessarily repetitive. The Secretary of State therefore declines to add the suggested requirement.

COMMENT #12: A commenter suggested that the following be added to New Rule III:

Certificate of Notarial Act, Remote Notarization

The following certificates of notarial acts shall be utilized for notarial acts performed using audio-video communications technology.

For a verification on oath or affirmation by use of audio-video communication technology:

State of \_\_\_\_\_  
County of \_\_\_\_\_

This record was signed and sworn to (or affirmed) before me by use of real-time, two-way audio and video communication technology on (date) by (name(s) of individual(s)).

Signature of Notarial Officer  
Official Stamp

For an acknowledgment in an individual capacity by use of audio-video communication technology:

State of \_\_\_\_\_  
County of \_\_\_\_\_

This record was acknowledged before me by use of real-time, two-way audio and video communication technology on (date) by (name(s) of individual(s)).

Signature of Notarial Officer

Official Stamp

RESPONSE #12: The requirements for notarial certificates are described in 1-5-609, MCA, and acceptable short-forms certificates for various notarial acts, including verification on oath or affirmation and acknowledgments, are set forth in 1-5-610, MCA. Neither 1-5-609, MCA, nor 1-5-610, MCA, require language specifically referring to the use of real-time, two-way audio and video communication technology be included in the notarial certificate. The Secretary of State therefore declines to adopt a rule requiring such language.

/s/ JORGE QUINTANA  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH  
Linda McCulloch  
Secretary of State

Dated this 19th day of October, 2015.