Understanding NC's Rollout of Remote Electronic Notarization

From the NC Department of the Secretary of State[1]

Interest in Remote Electronic Notarization (REN) remains high, yet there are strong cross currents to be factored into North Carolina's rollout.

The global pandemic increased the appetite—indeed, the necessity--for "remote" conduct of economic activity.   Concurrent rapid technological changes have reinforced the importance of ensuring that crucial business, legal, healthcare, and other transactions can be conducted safely, securely and efficiently in a remote environment.

The North Carolina General Assembly addressed the competing needs by passing the Remote Electronic Notarization Act (RENA) last July. Some provisions took immediate effect, such as the extension of Emergency Video Notarization (EVN), which now expires at 12:01AM on June 30th.

Remote electronic notarization (REN)-focused provisions have a longer launch period, however. Although July 1, 2023 is often mentioned as the "Go-Live" date, that is NOT what the statute actually says. July 1st is the date by which the Secretary of State "shall begin rulemaking to implement" RENA, and "no temporary or permanent rule shall become effective prior to July 1, 2023." So, one might wonder, when will North Carolina notaries be able to conduct remote electronic notarizations?

When dealing with a new law involving high economic stakes and rapidly evolving technology, preparing the necessary rules is not simple.   Understanding the factors influencing the timeframe for rollout is key for business planning and to stay the course…so that North Carolina gets what we truly want and need.

As soon as RENA was adopted, the North Carolina Secretary of State initiated internal research and requested external input. On October 21, 2022, the Secretary published Advance Notice of Proposed Rulemaking #1. In ANPR #1, the Secretary sought input on the role of the remote electronic notary public (RENP) and the general procedures and standards needed to implement RENA to ensure the effectiveness, efficiency and integrity of the notarial acts and processes contemplated under RENA. The comment period closed November 30th, and the comments are publicly available at this weblink.

On March 30, 2023, Advance Notice of Proposed Rulemaking #2 was published. In ANPR #2 the Secretary seeks public input on the technical features, components, specifications and standards required by RENA and applicable to the communication, credential analysis, and identity proofing described in the statute.   Input is being accepted through May 15th. The Secretary is formulating rules based in part upon stakeholder comments received in response to the ANPRs and has already invested over 2,000 hours in the process.

THE TECHNOLOGY

We need not look far for examples of difficulties and real harm that occur when technology doesn't perform as expected or gets ahead of regulation and guardrails (*e.g.*, cryptocurrency and generative artificial intelligence). North Carolina has proceeded thoughtfully given the stakes with REN. The General Assembly imposed requirements for security and privacy and background investigations of

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those providing the technology and storage that the Department is required to flesh out and implement. We must make sure that the technology used is secure for both the notary and the principal—and all those relying on the process.   Enhancing security and reliability at this stage facilitates economic growth while reducing costly and avoidable litigation.

For example,

A. We are required to adopt rules regarding geolocation of the principal who is not located in North Carolina.

B. We have to provide rules to prevent the communications technology and the Notary from being deceived, by, for example:

> * Hackers and other bad actors and

> * Deep fakes who look like the real person but are not. *See, e.g.*, the July 31, 2022, [60 Minutes](#) story on this.

C. We must determine whether the identity proofing technologies must be 100% accurate or, if not, how much inaccuracy can be tolerated in a process that is designed to reduce the likelihood a document has been signed fraudulently or under duress.

Rules drafted on these and other topics must be done with care and only after intense research so that the REN process can be conducted securely, with reasonably available technology, and in accordance with the expectations of the General Assembly.

THE RULEMAKING

Drafting and then promulgating rules is labor intensive and time consuming. Besides creating new rules focused on REN, some existing Notary and E-Notary rules must also be revised so they are consistent with the upcoming REN rules. All rules must be adopted in accordance with the very deliberative notice and comment provisions of the Administrative Procedure Act, and must meet the standards established by an independent body, the North Carolina Rules Review Commission. A [flow chart](#) of the Office of Administrative Hearings rulemaking process gives an idea of the time, stages and steps required once rules are drafted, yet it does not include all that must be done in connection with initiating and taking the steps on the flow chart.

LAUNCHING REN

Once rules are finally adopted, the work to launch REN begins. Platforms and third party vendors must apply, be screened and then licensed, and then contract with North Carolina notaries. The Notary Manual must be revised to incorporate all the changes to the law and rules. Forms must be prepared to make it easier for applicants to provide essential information. All notary training must be updated and community colleges engaged so North Carolina notaries may learn how the changes apply to them, and be trained, tested and authorized to conduct remote electronic notarizations. We will also have to coordinate with the Registers of Deeds so that notaries receive the proper commission. All these tasks must be completed before the first REN can be conducted.

So, when will North Carolina notaries be able to use REN? The short answer is we don't yet know. But, just given the mandatory timelines that have to be met before we can adopt rules to even start the program, we expect it will be a year or more before the RENA is up and running.

WHAT CAN YOU DO NOW?

You, as a stakeholder, are invited to give your input—*early*—so it can inform and improve rulemaking and expedite the process. You can do that by going to ANPR #2. Submit comments by May 15, 2023 to: Ann B. Wall, General Counsel and Rulemaking Coordinator, ANPR@sosnc.gov. For updates on our rulemaking, add yourself to our interested parties list.

For those planning to incorporate REN into their business operations, in-person electronic notarization (IPEN) is already available today. IPEN provides a secure platform to electronically notarize electronic signatures on electronic documents with the same level of document integrity required by RENA. In fact, when paired with EVN, remote electronic notarizations can be performed today. Click here for information on how to perform a remote electronic notarization using EVN. Find an E-Notary through our "Find a Notary" feature here.

There is little need for those planning to implement REN to wait for RENA to be fully effective when the tools of IPEN and EVN can be utilized today. It is highly likely that those who implement REN will also incorporate IPEN and that both will be employed to service remote as well as in person customers. Click here for information on becoming an electronic notary.