



State of New Hampshire Judicial Branch

E-Filing Policy #8 (Notarial Acts)

Issue: (State the issue and whether it is specific to certain level of court or case type)

Some New Hampshire statutes and court rules require that notarial acts be performed on documents to be filed in courts. What must attorneys and litigants do to satisfy these requirements on electronically filed documents?

Discussion: (Provide the factual setting or context for the issue)

As part of the NH e-Court Project, a committee on Signatures, Notaries, Certifications and Redactions (SNCR) was established. The Committee concluded that there exists no national standard that permits a Notary Public or a Justice of the Peace to remotely and electronically perform notarial acts on electronic documents. Instead, the laws of New Hampshire and other states, for the most part, require that notarial acts be performed by individuals in the presence of the official.

The SNCR Committee recommended that attorneys and litigants personally appear before the required Notary Public or Justice of the Peace so the notarial act is performed in the presence of both parties, on paper. That paper document must then be scanned before being filed in court.

Authorities: (references to statutes, rules, codes or administrative orders pertinent to the issue)

See RSA 456-B:7; RSA 294-E:2, VIII; RSA 294-E:9; and RSA 294-E:11.

Alternative Solutions: (list all identified alternative solutions for the issue)

Members of the SNCR Committee searched for a national standard that would both honor New Hampshire State statutes which require that the person executing a document appear before the Notary Public or Justice of the Peace and also permit the notarial act to be performed electronically. In the absence of a national standard that would accomplish these two purposes, the SNCR Committee concluded that the notarial act must be performed in the presence of both parties and on paper before it is scanned and filed electronically.

Position/Recommendation: (list all identified alternative solutions for the issue)

The SNCR Committee recommended the following policy:

A notarial act associated with an electronically filed document must conform to the requirements of notarial acts and signatures provided in RSA 456-B and RSA 294-E.

The signatures of a person who executed an electronically filed document and a person who performed a notarial act related to such a document must be presented by:

1. The typed symbol /s/ followed by the typed name of the signer(s); or
2. The graphic representation of each signer's actual signature.

Any party to a case may challenge the authenticity of the signature of a person who performed a notarial act on a document filed electronically in that case by filing an objection within a reasonable time after discovery that the signature is not authentic.

Note: For requirements of notarial acts and signatures on electronic documents, see, especially, RSA 456-B:7 and RSA 294-E:2, VIII, RSA 294-E:9, and RSA 294-E:11.

Decision:

The NH e-Court Advisory Committee and the New Hampshire Judicial Branch Administrative Council both recommended that the New Hampshire Supreme Court adopt the SNCR recommendation. The Supreme Court adopted the recommendation.