

Legal Assistance Practice Note

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Update to Army Regulation (AR) 27-55, Notarial Services¹

Introduction

Army soldiers and civilians administer oaths, notarize documents and take various kinds of statements under 10 U.S.C. §§ 936 and 1044a.² *Army Regulation (AR) 27-55, Notarial Services*, implements this federal authority and remains the Army's primary source for policy guidance concerning notarial services.³ The Army published a new *AR 27-55* which took effect 17 December 2003.⁴ Legal professionals will find several significant changes in the latest version of *AR 27-55*. For example, the new regulation: (1) requires military notaries to keep a notary log;⁵ (2) implements new federal authority for Department of the Army (DA) civilian notaries overseas;⁶ and (3) removes the requirement for witness's social security numbers (SSN).⁷

The majority of the regulation remains the same. The regulation continues to prescribe the rules for military and civilian notaries who perform notarial services as members of the Army.⁸ This note discusses the significant changes contained in *AR 27-55* and reviews the basic rules pertaining to notarial services. The note concludes with a short summary explaining who may receive notarial services.

Significant Changes to AR 27-55⁹

Notary Log

The most striking change for military notaries is the new command to keep a notary log. The regulation now says, "Military notaries will maintain a notarial log."¹⁰ The rule is direct and without exception. Moreover, commanders and staff judge advocates (SJAs) may revoke or suspend notary authority should a person fail to comply with the notary log requirement or any other provision of *AR 27-55*.¹¹ The regulation further warns, "Military members may be punished under the Uniform Code of Military Justice (UCMJ), Article 92, for dereliction of duty, or Article 107 for a false official statement. Military and civilian personnel are also subject to adverse administrative or adverse personnel actions."¹²

Some may notice that the criminal and administrative liability warning directly follows the new notary log requirement.¹³ This placement highlights how important it is to raise the standard of military notary practice. The purpose of a notary log is to memorialize a notary's activities should the notary need to recall a given act later in time.¹⁴ Therefore, the notary log must contain the name and signature of the client who sought the notarization, the general nature of the document, the date, and the location of the notarial service performed.¹⁵ While one

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1. U.S. DEP'T OF ARMY, REG. 27-55, NOTARIAL SERVICES (17 Nov. 2003) [hereinafter *AR 27-55*].
 2. 10 U.S.C. § 936 (2000) (providing oath taking authority); *id.* § 1044a (providing notarial authority); *see also* *AR 27-55, supra* note 1, para. 1-5 (noting that state and foreign law may also confer authority for Army personnel to perform notarial functions).
 3. *AR 27-55, supra* note 1.
 4. *Id.*
 5. *Id.* para. 3-5b.
 6. *Id.* paras. 1-7b, 2-2a(5).
 7. *Id.* fig. 4-1.
 8. *Id.* at i (explaining that the regulation applies to Active Army, The Army National Guard (ARNG), The Army National Guard of the United States (ARNGUS), The U.S. Army Reserve (USAR), and all Department of the Army civilians during periods of peace and war during partial and full mobilization).
 9. Other changes include: (1) changing the military occupational specialties 71D to 27D, and 55OA to 27OA; (2) changing the Legal Assistance Policy Division address; and (3) adding Appendix B summarizing notarial authority, duties and guiding principles for military notaries. *See id.* paras. 1-7a, 1-7c, 2-2a(1); *id.* app. B.
 10. *Id.* para. 3-5b.
 11. *Id.* para. 3-6a.
 12. *Id.* para. 3-6b.
 13. *Id.* para. 3-6.
 14. *See id.* para. 3-5a; *see also id.* para. 3-4 (discussing the various techniques to verify an identity).

could create a notary log with a pen and paper, *QuickScribe*, contains a sample log.¹⁶

Military notaries must create a personal notary log and use it for every notarial action they perform. Notaries are well advised to retain personal possession of their own logs and avoid filing the log within a government filing system; otherwise, the notary could inadvertently subject the log to Privacy Act protections. For example, when a record¹⁷ is maintained in a system of records,¹⁸ statutory rights and limitations inure.¹⁹ The notary must not become ensnared in a Privacy Act analysis over his or her notary log whether from a subject or a third party. In order to avoid the Privacy Act issues and potential criminal and civil liability,²⁰ the notary must keep the log as a private personal document.

Overseas Military Notary Authority for Civilians

Another dramatic change affects DA civilians overseas. Congress recently amended 10 U.S.C. § 1044a.²¹ The statute now allows military secretaries to designate certain civilians

overseas to act as military notaries.²² Consequently, SJAs may now “appoint, in writing, non-attorney U.S. citizen employees located outside the United States to perform as military notaries.”²³ The SJA, however, must ensure those appointees have the proper judgment, supervision, and training.²⁴

No SSN for Witnesses

The third significant change recognizes the proliferation of identity theft.²⁵ Under the new regulation, a witness need only provide his or her name, signature, rank, and branch.²⁶ Prior versions of the regulation required all witnesses to provide their SSNs.

The revisions are few but significant. All military notaries must now keep a log.²⁷ The SJA can now appoint civilian non-attorneys to act as military notaries overseas. Witnesses no longer must provide SSNs on other people’s documents.²⁸ These changes are easy to understand and are needed to elevate the level of military notary practice to its civilian counterpart. The basic underlying rules about who can notarize and under

15. *Id.* para. 3-5b.

16. *Id.* (recommending “*QuickScribe*, the Army Judge Advocate General’s Corps’ approved legal assistance document assembly software”).

17. The Privacy Act defines a record as “any item, collection, or grouping of information about an individual that is maintained by an agency” 5 U.S.C § 552s(a)(4) (2000).

18. The Privacy Act defines a system of records as “a group of any records under the control of any agency from which information is retrieved by the name of the individual” *Id.* § 552a(5).

19. A subject of a Privacy Act protected record has the right to request access and amendment of the record unless the agency determines the record at issue is exempt from disclosure to the subject. *Id.* § 552a (d)(1), (2). The agency itself is bound by a rule that prevents it from disclosing the Privacy Act protected record to all third parties unless the subject consents or the agency determines the disclosure fits an exception. *Id.* § 552a (b).

20. *Id.* §§ 522a (g) (explaining the four different civil causes of action), (i) (explaining the criminal penalties for willful violations).

21. 10 U.S.C. § 1044a. The statute now reads:

The persons named in subsection (b) have the general powers of a notary . . . (b) (5)[f]or the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulation of the Secretary concerned or by statute to have those powers for exercise outside the United States.

Id. § 1044a(b).

22. AR 27-55, *supra* note 1, paras. 1-7b, 2-2a(5). It is important to remember that the new authority allows the SJA to confer “military” notary status to civilians serving overseas. *Id.* The SJA authority to authorize a civilian stateside or overseas to become a civil notary under the laws of the jurisdiction is different. This authority always existed and the policy is contained in AR 27-55, *supra* note 1, para. 2-3.

23. *Id.* para. 1-7b.

24. *Id.* Once a SJA determines a person possesses the proper judgment, the SJA must train the individual in accordance with AR 27-55, *supra* note 1, para. 1-8. Once trained, AR 27-55 requires that the overseas civilian employee serve under the immediate supervision of a judge advocate or DA civilian attorney. *Id.* para. 2-2a(5).

25. See Federal Trade Commission, *Identity Theft Survey* (2003), available at <http://www.consumer.gov/idtheft> (documenting 9.9 million identity theft victims in calendar year 2003).

26. AR 27-55, *supra* note 1, fig. 4-1.

27. *Id.* para. 3-5b.

28. *Id.* fig. 4-1.

what circumstances can be a vexing maze to navigate even for the veteran judge advocate (JA). With that in mind, this note next reviews these rules.

Who Can Notarize? Who Can Administer an Oath?

Every person who may notarize can also administer an oath.²⁹ Therefore, this section first explains notary authority by category. The three main groups of people authorized to perform notarial services are: (1) attorneys and officers; (2) Active duty enlisted soldiers; and (3) Reserve enlisted soldiers.³⁰

Category One

General Notary Authority: Attorneys and Officers

Attorneys and certain military officers are military notaries regardless of duty status.³¹ This category covers all attorneys and those military officers in the personnel field. For example, any DA civilian or legal assistance attorney can notarize. All officers holding the Military Occupational Specialty (MOS) 27A (commissioned or warrant, active or reserve) can notarize. Finally, all adjutants, assistant adjutants, and personnel adjutants can notarize. Status alone confers authority under this category. The SJA need not grant further permission, provide further training, or create further supervision outside the normal legal supervisory scheme.³² The next category discusses the additional requirements for active duty enlisted soldiers.

Category Two

General Notary Authority: Active Duty Enlisted Soldiers

As a general rule, all active duty enlisted soldiers must hold a 27D MOS, receive written appointment by their supervising SJA, and serve under immediate supervision of a JA or DA civilian attorney. This basic rule relaxes for NCOs who are E6 and above. In those cases, if the E6 or above is serving as a legal NCO for a brigade level unit or higher; then that NCO need not serve under the direct supervision of a JA or civilian attorney. The basic rule tightens for E3s and E4s. In those

29. *Id.* para. 3-1b(1).

30. *Id.* paras. 2-1, 2-2.

31. *Id.* para. 2-2a.

32. *See id.*

33. *Id.* para. 1-8.

34. *Id.* para. 2-2.

35. *Id.*

36. *Id.* para. 3-1b(1).

cases, the SJA must also determine that the soldier possesses the proper judgment and maturity. If the SJA determines the soldier meets the judgment and maturity criteria, the SJA must then provide notary training in accordance with AR 27-55, para. 1-8, before the soldier may notarize.³³

Category Three

General Notary Authority: Reserve Enlisted Personnel

The same rules that apply to active duty enlisted personnel apply to reserve enlisted personnel; additionally, all reserve enlisted personnel must be in a duty status in order to lawfully perform a notarial act. For instance, the reserve enlisted soldier must be performing Inactive Duty for Training (IDT) or any other recognized reserve duty. A Reserve Component (RC) SJA can grant an exception to the duty status requirement.³⁴

Categories one through three summarize the authority, supervision, and training requirements concerning the kinds of people who may notarize under AR 27-55. Generally, officers and attorneys can notarize based on their status; active duty enlisted soldiers may notarize with additional training, supervision, and authorization. Reserve enlisted soldiers are treated similarly to active duty enlisted soldiers but they must be in a recognized duty status unless their RC SJA grants an exception.³⁵

Oath giving authority builds on notary authority. As mentioned, all those persons granted authority as military notaries (categories one through three), may also administer oaths.³⁶ The next three categories explain the kinds of oath giving authority under AR 27-55.

Category Four

Oath Giving Authority by Position

An overarching purpose of oath giving authority is to further military administration. The summary court-martial is a low-level court that adjudicates minor criminal offenses as well as disposition of property.³⁷ Therefore, all officers appointed as

summary courts-martial may administer oaths.³⁸ Likewise, any person who can authorize a search under Military Rule of Evidence 315(d)³⁹ may also administer an oath.⁴⁰

Category Five

Oath Giving Based on Duties

Commanders often assign additional duties to their soldiers. Frequently, a soldier must administer an oath related to the additional duty. For example, investigating officers, officers appointed to take depositions, and certain parties to a court of inquiry may also administer oaths in conjunction with and related to these duties.⁴¹ Courts-martial duties also give rise to oath giving authority. For example, the president, military judge, trial counsel and assistant trial counsel may administer oaths relating to a court-martial.⁴² Finally, all recruiting officers may administer an oath; and all civilian personnel officers (and their designated representatives) may administer an oath.⁴³

Category Six

Oath Giving Not Based on the Kind of Oath

The final category of oath giving authority derives its authority from the oath itself. The army regularly enlists and appoints civilians. Soldiers already serving often reenlist or gain an appointment. To further military administration, any commissioned officer (active or reserve) can administer oaths relating to enlistments or appointments.⁴⁴

Categories four through six summarize the authority to administer oaths. Starting from the presumption that all notaries may administer oaths, the regulation builds on this presumption by granting oath giving authority to those who hold

certain positions, to those who perform certain duties, and for certain types of oaths relating to enlistments.

This note discussed significant changes to AR 27-55 and reviewed the authorities and conditions under which army soldiers and civilians may administer notary services and oaths. The note concludes with a summary of who may receive notarial services.

Who May Receive Notarial Services?

Notarization is primarily a legal assistance service.⁴⁵ As such, a military law practitioner should always consult AR 27-3, *Legal Assistance*, when determining client eligibility.⁴⁶ In addition to those persons authorized to receive legal assistance under AR 27-3,⁴⁷ the notary regulation expands notarial services eligibility to include the following:

- All members of the United States Armed Forces.⁴⁸
- All individuals serving with, employed by, or accompanying the Armed Forces outside the United States.⁴⁹
- All other individuals subject to the Uniform Code of Military Justice (UCMJ) outside the United States.⁵⁰
- DOD civilian employees on matters relating to their official duties.⁵¹

37. U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE para. 3-9 (6 Sept. 2002); U.S. DEP'T OF ARMY, REG. 638-2, CARE AND DISPOSITION OF REMAINS AND DISPOSITION OF PERSONAL EFFECTS paras. 18-1 – 18-10 (22 Dec. 2000).

38. *Id.* para. 3-1b(2).

39. MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 315(d) (2002).

40. AR 27-55, *supra* note 1, para. 3-1b(3).

41. *Id.* para. 3-1c(2)-(4).

42. *Id.* para. 3-1c(1).

43. *Id.* paras. 3-1c(5), (6).

44. *Id.* para. 3-1d.

45. U.S. DEP'T OF ARMY, REG. 27-3, LEGAL ASSISTANCE para. 3-7a (21 Feb. 1996).

46. *Id.*

Conclusion

Army soldiers and civilians performed almost 418,000 notarizations in 2003.⁵² The new AR 27-55 introduces some significant changes to upgrade military notary practice—requiring a notary log, expanding notary authority to include overseas civilians, and eliminating SSNs.⁵³ The basic policy, however, remains the same. Civilian attorneys, JAs, and enlisted 27D

soldiers all have notary and oath giving authority under certain prescribed circumstances explained above. The practitioner must always keep in mind the various authorities and limitations involved with federal notary practice. Often overlooked but just as important, the practitioner must ensure that each client is screened for eligibility. In the end, all of these rules and procedures exist to deliver quality notarial services to eligible beneficiaries.

47. The following persons are eligible to receive legal assistance:

- Active Component members and their families. *Id.* para. 2-5a(1)
- Reserve Component members. *Id.* para. 2-5a(2) (noting that reserve legal assistance attorneys must provide the service unless the reservists is activated for more than twenty-nine days).
- AC/RC members who are receiving retired or disability pay and their families. *Id.* para. 2-5a(4).
- Surviving family members of AC/RC and retired members who would be eligible for legal assistance if the service or retired member were alive. *Id.* para. 2-5a(5).
- DOD civilian employees. *Id.* para. 2-5a(6) (noting that the service must relate to certain individual liability matters).
- Civilian contractors accompanying the Armed Forces outside the U.S. and their families. *Id.* para. 2-5a(7).
- Primary Next of Kin (PNOK). *Id.* para. 2-5a(8).
- Fiduciaries. *Id.* para. 2-5a(9).
- Members of other military forces while serving in the United States and their accompanying family members. *Id.* para. 2-5a(10).
- Prisoners confined within a U.S. military confinement facility. *Id.* para. 2-5a(11).

48. *Id.* para. 2-2b(1).

49. *Id.* para. 2-2b(3).

50. *Id.* para. 2-2b(4).

51. *Id.* para. 2-2b(5).

52. Statistical Report for Calendar Year 2003, Office of The Judge Advocate General Legal Assistance Policy Division (on file with author).

53. AR 27-55, *supra* note 1, at summary of change.