

False Notarizations Earn Attorney Private Admonishment

No Defense That Third Parties Told Lawyer That They Had Witnessed Signing

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One of the most significant and frequent criticisms of the practice of law voiced by attorneys is that there are not enough hours in the day to properly complete all of the work. To become more efficient and devote more time to other legal matters, some lawyers begin to take "shortcuts" in representing their clients. Unfortunately, while some of these so-called "shortcuts" may save valuable attorney time, they also may violate the Minnesota Rules of Professional Conduct (MRPC).

Case Study

Decedent was a resident of the "state of East Dakota." All of decedent's assets were located in the state of East Dakota except for some real property which was located in the state of Minnesota. The personal representative of decedent's estate, also a resident of the state of East Dakota, retained counsel in East Dakota to probate decedent's estate.

East Dakota probate counsel retained Minnesota probate counsel to commence an ancillary probate administration in the state of Minnesota to probate decedent's Minnesota assets. Minnesota probate counsel prepared the necessary documents for the Minnesota probate matter, which included two affidavits that needed to be signed by the personal representative of the East Dakota probate. Minnesota probate counsel sent the affidavits to East Dakota counsel and requested the personal representative to sign the affidavits. Furthermore, Minnesota probate counsel requested that the executed affidavits be returned to him for notarization and filing with the Minnesota district court.

After the affidavits were executed, East Dakota counsel returned them to Minnesota probate counsel for notarization and filing. In his capacity as a Minnesota notary public, Minnesota probate counsel acknowledged the signature of the East Dakota personal representative who signed the affidavits in the state of East Dakota. Minnesota probate counsel notarized the affidavits and falsely represented to the court that the affidavits had been subscribed and sworn before him as a notary public in the state of Minnesota. In fact, Minnesota probate counsel did not physically see his client sign the affidavits and the personal representative who signed the affidavits was never present in the state of Minnesota.

Minnesota probate counsel's "shortcut" saved time because the personal representative did not have to travel to Minnesota and meet with Minnesota probate counsel, and Minnesota probate counsel did not have to prepare or ask another to prepare a valid notary public form for East Dakota.

This "shortcut" violated Rules 8.4(c) and (d), MRPC. Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(d) prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice. Minnesota probate counsel lied to the district court. Although it was highly probable that the personal representative signed the affidavits, Minnesota probate counsel had no eyewitness knowledge of this fact.

Discipline

The next issue is the level of discipline warranted for this misconduct. The Minnesota Supreme Court has publicly disciplined attorneys for falsely notarizing affidavits even when the attorneys had no reason to believe that the substance of the affidavits were untrue or otherwise inaccurate. See *In Re Finley*, 261 N.W.2d 841 (Minn. 1978) (public reprimand for notarization of four affidavits) and *In re Dowdal*, 284 N.W.2d 394 (Minn. 1979) (public reprimand for false notarization).

Minnesota probate counsel alleged that third persons represented to him over the telephone that the affiant had in fact signed the documents in their presence. Minnesota probate counsel's reliance upon third parties' statements over the telephone is still improper because it contradicts his representation in the notary acknowledgment.

On the other hand, there was no allegation that the professional misconduct by Minnesota probate counsel caused harm to any specific person in this matter. Moreover, the misrepresentation appeared to be isolated to these two isolated affidavits, and Minnesota probate counsel quickly admitted his misconduct.

In light of all the evidence, the Director determined that a private admonition was the appropriate level of discipline in this matter.