

Notarization of Signatures

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Reprinted from *Minnesota Lawyer* (June 4, 2007)
Originally published in *Minnesota Lawyer* (October 7, 2002)

Notarization of signatures on documents is not merely a pesky formality standing in the way of the efficient administration of justice and the smooth running of the wheels of commerce. The notarization process performs a valuable function, establishing the bona fides of signatures and adding weight to statements by impressing them with an oath. All too often, however, the act of notarization is taken lightly. Beware, however.

Failure to comply with the requirements of notarization, even absent bad intent, can lead to professional discipline. In *In re Holmay*, 464 N.W.2d 723 (Minn. 1991), the Supreme Court discussed the dangers of sloppy notary practices. There, the attorney drafted a will for his client and his secretary witnessed the signing and acknowledgement of the document. The next day, the attorney directed his secretary to have the testator's signature notarized. Being a dutiful secretary, she did as instructed. The notary she obtained had not, however, witnessed the actual signing of the will.

The court said: "The false notarization of documents is a matter of concern to this court. (Citation omitted.) Often, as in this case, no fraudulent intent is involved, but the attorney simply finds it more convenient to have a notary notarize papers when the parties have not in fact appeared before the notary. Once an attorney starts on this slippery slope of taking shortcuts, the danger is that it frequently leads to increasingly sloppy work and perhaps problems with serious legal consequences. In short, the misuse of a notary undermines the integrity of the legal system. (Citation omitted.)"

False or improper notarizations can result in the public discipline of the responsible attorney. Public discipline has been imposed:

- where there have been multiple false notarizations,
- where the false notarization was of affidavits that were filed with the court,
- where the falsely notarized document contained false information and/or a forged signature, and
- where the false notarization was accompanied by other misconduct.

The fact that others do not regularly comply with the requirements of proper notarization is not a

defense. In *In re Finley*, 261 N.W.2d 841 (Minn. 1978) the court specifically rejected such an argument as a defense, declining to take judicial notice of the alleged pervasiveness of improper notary practices. In addition, the court reiterated that lawyers are, by virtue of their profession, held to a higher standard than the general public.

So what exactly is required when notarizing a document? It is not that hard. Minnesota Stat. Chap. 358 and Chap. 359 deal with notaries, seals, oaths, and acknowledgements. The standards of conduct for notarial acts are specifically set forth in Minn. Stat. sec. 358.42 and sec. 359.085.

If you say someone appeared before you and signed a document, that person should have, in fact, appeared before you and signed the document. If you are taking an acknowledgement or verification of a signature, you must determine from either personal knowledge or from satisfactory evidence that the person appearing before you is the person whose signature is being acknowledged or verified. If you are notarizing a sworn document that contains the language that the signatory "subscribed and sworn to before me," then the person doing the swearing should have appeared before you and sworn on oath that the statements in the document are true. Although not addressed in the statutes, it ought to be obvious that pre-signing and notarizing blank documents is wrong.

While strict compliance with proper notarial procedures is not an absolute guarantee to a happy and successful practice, it is essential to keep you out of trouble.