

The Importance of Following Proper Notary Procedures

by

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October has just passed, so we now welcome the many new lawyers who were admitted last month. These lawyers learned a lot in law school. There are important lessons, however, that are generally not taught in law schools that are important for both new and not-so-new lawyers.

One of those lessons is the importance of strictly complying with all proper notary procedures. (See “Notarization of signatures,” in the Oct. 7, 2002, issue of *Minnesota Lawyer*.) When having a document such as an affidavit notarized, even if the contents are accurate and the affiant truly signed the document, the failure to follow proper notary procedures can lead to professional discipline. See, e.g., *In re Dowdal*, 284 N.W.2d 394 (Minn. 1979). An example that resulted in discipline may help to illustrate the point.

A lawyer and her husband were approved for a higher credit limit on their existing line of credit with their bank. The higher line of credit was to be secured by a second mortgage on their home. The lawyer’s husband signed the documents necessary to obtain the second mortgage. However, as the lawyer prepared to submit the documents to the bank, she noticed some errors. The lawyer contacted the bank, which prepared and sent to the lawyer corrected mortgage documents for the lawyer and her husband to sign.

The lawyer signed her name and also signed her husband’s name on the documents. The lawyer then asked her secretary to notarize both signatures, which she did. The lawyer submitted the documents to the bank, and the couple obtained the increased credit limit.

The lawyer’s conduct in signing her husband’s name to a mortgage document and inducing her secretary to notarize a signature that was not genuine violated Rule 8.4(c) of the Minnesota Rules of Professional Conduct. The rule provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

The lawyer rationalized her behavior because the transaction needed to close expeditiously in order to avoid additional interest charges. In fact, the lawyer’s spouse signed the first set of loan documents and orally authorized the lawyer to sign his name to the corrected loan documents in order to save time.

The more troubling aspect of the lawyer’s behavior was her direction to a law office employee to improperly notarize a signature that was not genuine. The secretary who affixed her signature and notary seal affirmed: “On this date before me, the undersigned Notary Public, personally appeared [the lawyer and her husband], to me known to be the individuals described in and who executed the Mortgage, and

acknowledged that they signed the Mortgage as their free and voluntary act and deed, for the uses and purposes therein mentioned.”

The notarial process is designed to ensure the validity of signatures on legal documents. Courts and others are entitled to rely on notarized documents without having to question the authenticity of the signatures. The lawyer also undermined the integrity of this process by implicitly representing to a law office employee that notarial procedures are unimportant.

The clear absence of intent to deceive or mislead does not excuse lawyers from adhering to proper notary procedures. In this matter, it appears that the lawyer’s husband authorized the lawyer to sign his name to the mortgage document. Her husband also received the benefit of the transaction, a higher limit on a line of credit that the couple used to pay off credit card debt. Nevertheless, the lawyer’s failure to follow proper notary procedures resulted in discipline.

All lawyers, not only new ones, will do well to learn and remember lessons like this that are not always taught in law school.