

Lawyers Who Are Notaries

A January 2011 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers

I think there should be an association of lawyers who are also notaries, because the notary laws actually get kind of complicated. Each state has its own set of laws governing notaries and notarial acts. I often need to notarize documents for my clients. Virginia has a "conflict of interest" rule that prohibits notarizing a document for which the attorney (or the attorney's spouse) is a party to the document or has a direct beneficial interest.

My thought is if I am the attorney of record, and my client has a form or statement that must be notarized and which will be submitted to the court, I am not technically a "party" to the document. But I'm not as convinced that it still isn't a conflict of interest. There is the obvious answer that in these situations we should simply find another notary, but with detained clients it is just not so simple. I see my detained clients on the weekend, where there is no notary available. Moreover, the notary on staff at the detention center has been giving me a hard time and even evoking her right to refuse to notarize! If this weren't the case, I would leave the document with the client along with a stamped envelope and just have him sign in her presence and have her do the notarization and mail back to me.

Any thoughts or feedback on this?

My non-lawyer's instinctive reaction is that, even if there is technically no conflict of interest, having to defend the validity of every document you notarize would impose a burden that might not be worth it. Frankly, I'm surprised that a notary who's on staff at a facility can refuse to notarize valid documents - might there be a way, through her chain of supervision, to address that issue?

As a side note, I'm curious: What kinds of documents are you filing that need to be notarized? In California, even when I've done statements which have been filed in court for the attorneys I work with, we've never had anything that needed notarization. The one time we thought the authenticity of a statement might be questioned, my attorney just had me draw up and execute a declaration attesting to the fact that I'd helped her client prepare the document in question, and she had me come to court to offer testimony (if needed, which it wasn't) to that extent.

Warmly, Tammy Cravit, who is neither a lawyer nor a notary

I used to have a notary and for many years it was very handy. Usually real estate docs that had closings that ran into the evening when there were no other notaries around.

Then the legislature went and abruptly changed the notary law with a ton of officious requirements (Keeping a log of time date and place, increased bonding and a bunch of other garbage that all seemed like an Answer in search of a Problem to fix. Fraud I suppose, but really, does a prosecutor need this?). That year I sent in my check for the notary bond and the company cashed it and promptly went out of business without sending me a (worthless) bond. I said then the heck with it. There are any number of times I wish I still had it, but it is such a nuisance now I am still not sure its worth it. I have also not yet seen any notary pull out a log and record the event like the law now requires. Oh, but in the meantime, the legislature has eliminated the need for more than one witness now on real estate documents.

I guess sometimes I just don't get it with legislation.

Andrew Paterson, Michigan

As someone who finally just got around to sending in his notary application a week ago, this worried me. Luckily, SC seems not to care:

"Any attorney at law who is a notary public may exercise all his powers as a notary notwithstanding the fact that he may be interested as counsel or attorney at law in any matter with respect to which he may so exercise any such power and may probate in any court in this State in which he may be counsel."

Does this mean if I am representing myself in court I can notarize my own statements? Just kidding...

Ryan Phillips, South Carolina

In most states a notary public is considered a public official and must act upon request. A notary public can be forced to act through a writ of mandamus like any public official. Though admittedly that is a cumbersome process to follow to get an item notarized.

A notary generally only has a right to refuse when they are unable to properly ascertain that the person signing is actually who they purport to be. Even then, someone who can be identified can vouch that she/he is the person who they are claiming to be, and then the notary must act, with the notation that they are going on the word of the identified person.

I have run into the issue where notaries have refused to act except for clients of their employers, usually banks or insurance companies. Usually a short conversation will get them to act. In other cases, I've made a written complaint to the Secretary of State (or Commonwealth) who sends out a fairly stern letter delineating the duties and requirements of the notarial office.

Roger Traversa, Pennsylvania

See, I would use this argument if the jail notary is refusing to sign. Just say "Oh this is not prisoner so and so. Guess the wrong guy is locked up, let me contact someone to get him released immediately." That should straighten out the attitude right quick.

Elizabeth Pugliese

New York speaks specifically to the point. NY Executive Law Section 135 says:

A notary public who is an attorney at law regularly admitted to practice in this state may, in his discretion, administer an oath or affirmation to or take the affidavit or acknowledgment of his client in respect of any matter, claim, action or proceeding.

Dennis McConnell, New York

Thanks for the replies. A notary in Virginia can refuse to notarize a document for "due cause" such as a suspicious ID or inexperience with a particular type of notarial act. I like your idea Roger about a letter to the Secretary of the Commonwealth. I may pursue this.

I am a notary, as are most of the solos I know. It just makes it a lot easier to file a verified pleading, for instance. We also have a paralegal in the office who is a notary, since for estate documents, we need two witnesses and a notary.

Since the attorney is not party and, aside from expecting her fee for services, is not a beneficiary, there's no conflict. You do, however, have to exercise the due diligence to ascertain identities and so forth, but you should be doing that anyway!

Bon weekend,

-Rick Rutledge, North Carolina

I believe there is a national association for notaries, not specific to attorney/notaries though. As I recall they had helpful information and did have some products like notary log books for states that required that type of record keeping. Since Vt. is pretty loose in notary requirements, I never really looked into it.

Sincerely yours, Michael D. Caccavo, Vermont

Not being licensed in Virginia or a notary of Virginia:

It would seem to me that the Virginia law would not allow an attorney notary to notarize documents in which he/she has a direct beneficial interest - a will naming him as the executor or a beneficiary; a real estate deed in which he would assume any ownership interest of the property; any pleading or affidavit in which she is a plaintiff or defendant (or representing one's spouse, who is the plaintiff or defendant), etc.

What's the conflict of interest that you have notarizing an financial affidavit in a divorce case, for example? You aren't certifying the information contained in the affidavit is true, you are certifying the person signing it is the person, well, signing it.

Barry Kaufman, Florida

In Puerto Rico, the only people who can be notaries are licensed lawyers.

Radi M. Rashid, Puerto Rico

I notarize clients' court documents all the time and we have the same rule. I am not a party to their case. I think the rule means you shouldn't notarize wills for which you are a beneficiary or contracts, where you are one of the parties. Kind of like the rule against notarizing your own signature - you can't notarize the other guy's either.

Veronica M. Schnidrig, Oregon

Same in Mexico: there, it's All Notaries are Lawyers. And in most states, they can also give legal advice AND act as notaries.

Ignacio Pinto-Leon, Texas