



OHIO SOCIETY OF NOTARIES

WWW.OHIONOTARIES.ORG

ROGER RILL
PRESIDENT

3959 CEDRIC LANE
DUBLIN, OH 43016

OFFICE (614) 366-7878
FAX (614) 799-9813

May 15, 2018

Dear Chairman Hottinger and Members of the Committee:

The Ohio Society of Notaries has been heavily involved in the creation of SB 263, and we respectfully request the following Amendments be added to the Bill. We strongly believe these three additions are essential for Ohio notaries to better serve our citizens, and defend the public trust.

1. Prohibition of notaries performing notarial acts for lineal family members

- Notaries are commissioned by the state to be impartial, disinterested witnesses, whose duties help ensure the integrity of important legal and commercial transactions. Lack of impartiality can cast doubt upon the integrity and lawfulness of any notarized transaction, and it can be difficult to maintain impartiality when dealing with complex and emotional family issues.
- Elderly family members with impaired judgement are particularly vulnerable, especially to abuse by family members they may recognize, and will do whatever told by them - including signing of important documents they don't comprehend.
- A recent *Columbus Dispatch* article showed that nearly sixty percent of Elder Abuse is perpetrated by RELATIVES!! We need to better protect seniors by NOT allowing family notaries to potentially assist in defrauding and abusing them!
- I have spoken with a number of Eldercare advocacy groups and individuals, who are more than willing to testify to the horrific examples they have seen in family notary situations. Banks, Credit Unions and the BMV are also on board.

- State law requires notaries to be Mandated Reporters of abuse; to do so, we have to be involved in the situation that an abusive family member notary may otherwise let pass for their own advantage.
- The *National Notary Association* strongly advises against notarizing for family members, cognizant of the impartiality issues that can be raised by such a document being called into question. A family member may even become a notary for the specific purpose of defrauding a relative.
- SB 263 permits an incapacitated person to utilize a "Designated Signer" in the notary's presence; this could provide significant opportunity for a family notary intent upon defrauding a senior.

2. Require currently commissioned notaries to undergo the required statewide training *when renewing their commission for the first time after Enactment.*

- It rather defeats some of the purpose of our mission to provide more competent, confident notaries, if we leave behind some 175,000 currently commissioned notaries who have received little or no training in notarial procedures, and face a trusting public. They will WANT this!!
- We are not requiring re-testing; only providing the training information that they will need to keep up with newly-trained notaries, and better serve Ohio citizens.
- It is a simple procedure for CURRENT notaries to take the online class, while also submitting their background check information at their first renewal. Should not to be difficult to ensure these online requirements are completed, with a 90-day renewal window.
- Over a five-year cycle of renewals, all notaries that were commissioned prior to Enactment will be trained - with the exception of attorneys.

3. Define use of Copy Certifications by Document Custodian

- Since we don't want Ohio notaries certifying copies as a notarial act, we just need to define the simple alternative for this very high-in-demand notarial service.

We greatly appreciate your consideration.

Sincerely,


Roger Rill
President

THE
NOTARY PUBLIC
CODE OF
PROFESSIONAL
RESPONSIBILITY

signature and seal. The Notary ponders whether the insurance company will mind or even notice if the affiant and the Notary are the same person.

The Ethical Imperative: The Notary finds another person to notarize the signature. There is no greater breach of the Notary's requisite role as impartial witness than "notarizing" one's own signature. Indeed, the very concept of "notarizing for oneself" is as much a contradiction in terms as "marrying oneself" or "pardoning oneself."

II-B-2: Notarization of Cosignature Improper

The Notary shall not notarize a signature on a document that the Notary has cosigned.

Illustration: The Notary and the Notary's business partner need to have their signatures notarized on a document. Aware that notarizing one's own signature is improper, the Notary ponders whether to notarize the partner's signature.

The Ethical Imperative: The Notary does not notarize the partner's signature because, as a cosigner, the Notary has an obvious personal interest in the document that is incompatible with a requisite impartial role. The two partners arrange to have another Notary notarize the two signatures.

II-B-3: Notarization of Document Naming Notary Improper

The Notary shall not notarize a document that bears the name of the Notary or of a close relative, as defined below in Standard II-B-5.

Illustration: The Notary is asked by a friend to be the named agent on a document giving the Notary authority to make health care decisions for the friend in case of severe illness. The friend then asks the Notary to notarize this same document.

The Ethical Imperative: The Notary declines to notarize because, being named in the document as the individual

who is thereby given certain life-and-death decision-making powers, the Notary has an obvious personal interest in it that is incompatible with a requisite impartial role.

II-B-4: Notarization of Personal Document Improper

The Notary shall not notarize a document that will affect or involve the Notary's personal affairs.

Illustration: The Notary is informed by the Notary's roommate that the roommate will receive the gift of a condominium from a grandmother. Promising that the Notary may live in one of the bedrooms rent-free, the roommate asks the Notary to visit the grandmother to notarize her signature on the gift-deed.

The Ethical Imperative: The Notary declines to notarize because the Notary will personally benefit from the transaction. Such a beneficial financial impact on one's personal affairs is incompatible with the Notary's requisite impartial role. The roommates arrange to have an uninvolved Notary visit the grandmother.

II-B-5: Notarization for Close Relative Improper

The Notary shall decline to notarize the signature of a close relative or family member, particularly a spouse, parent, grandparent, sibling, son, daughter or grandchild of the Notary, or a stepchild, stepsibling, stepparent, stepgrandparent or stepgrandchild of the Notary.

Illustration: The Notary is asked by the Notary's father to notarize a document that specifies desired medical treatment in the event the father becomes unable to make such decisions. The Notary is not mentioned in the document.

The Ethical Imperative: The Notary declines to notarize and asks the father to have a Notary who is unrelated and truly disinterested notarize the document. It will thereby be rendered less open to challenge and the charge that undue influence was exerted on the signer by a family member.

remuneration to be had in the Notary's other capacity. The conflict perhaps most visibly arises with attorney-Notaries, but real estate brokers and other Notaries who serve clients also can become involved as dual-capacity actors in transactions.

The basis for the position taken in the *Code* is the recognition that it is difficult to retain impartiality when one has an interest in the transaction. The *Code* does not suggest that being a dual-capacity actor *ipso facto* breaches a duty. The *Code* is concerned with the risk that it will happen. The fear is that the Notary's other interest in the transaction may move the Notary to be less rigorous in following required notarial procedures, such as applying the requisite proof of identity standard. This, in turn, can lead to an increased number of legal challenges to notarized transactions — a particularly unfortunate consequence given that one of the benefits of a proper notarization is to validate a transaction in a way designed to minimize future disputes.

The "conflict" issue is perhaps most controversial in the case of attorney-Notaries. Many attorney-Notaries will notarize a client's documents for transactions in which the attorney represents the client. The conflict is readily apparent. Since, most probably, the attorney's fee will exceed the statutory Notary fee, there is a greater financial incentive for the attorney to see the transaction completed, than there is to comply strictly with proper notarial procedures. This is not to say that the mere presence of a conflict will result in "bad" notarizations. Actually, to the contrary, it is quite likely that the attorney will know the client better than would another Notary. Thus, one of the principal duties of a Notary, proving identity, is probably better accomplished by the attorney-Notary for a client, than by a Notary to whom the client is unknown. But the *Code* is not overly concerned with the Notary's personal knowledge of the client's identity. Presumably every Notary would take the necessary steps to verify the signer's identity. The greater issue is whether the attorney-Notary's financial incentive will result in a transaction that does not best serve the client and those who rely upon the notarization itself. The *Code* only views the situation in the context of the Notary-client relationship. Questions concerning the attorney-client relationship are governed by the appropriate rules of attorney ethics.

There is statutory authority for both attorneys and others to notarize documents for their clients. (See, e.g., CAL. GOV'T CODE 8224; and KAN. STAT. ANN. § 53-109(c).) Nonetheless, the *Code* seeks to impose an ethical mandate that will eliminate the risks inherent in conflict situations. The ultimate goal is not to penalize the dual-capacity actor, but to better serve the public by guaranteeing more reliable transactions that are less susceptible to legal challenge.

ARTICLE B Improper Personal Interest

Standards II-B-1 through -5, and the Illustrations thereto, are designed to reinforce the view that impartiality is compromised when the Notary has a personal interest in the transaction to be notarized. The Standards cover a wide range of potential conflicts, running the gamut from the obvious (Standards II-B-1 and -2: notarizing one's own name as either sole or cosigner) to the less evident (Standard II-B-4: notarizing a document that may touch upon the Notary's personal affairs even though the Notary is neither a signer of nor a party named in the document). Each Standard has statutory support. (See, generally, CONN. GEN. STAT. § 3-94g; ILL. CODE § 51-108(2) through (4); and VA. CODE ANN. § 47-130.)

- relating to the equipment, security, and technological aspects of the standards.
10. Allows a registered Electronic Notary to use updated technology during the term of the commission, provided the Electronic Notary notifies the Secretary of State electronically within 90 days of installation or use of the updated technology and provides a brief description of that technology.
 11. Makes technical, non-substantive changes.

Mandatory Reporting of Elder Abuse

HB 49 EFFECTIVE 9/29/2017

1. Requires a Notary Public who has reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation, to immediately report such belief to the county department of job and family services.
2. Requires county departments of job and family services to make available educational materials for individuals who are required to make reports.
3. Requires each entity responsible for licensing or regulating the individuals required to make reports to ensure that the individuals have access to the educational materials developed by the departments of job and family services.
4. Provides that if it determined there is risk of harm to a person who makes a report, the county department of job and family services may redact the name and identifying information related to the individual who made the report.
5. Prohibits an employer of an individual required to make a report from discharging, demoting, transferring or preparing a negative work performance evaluation, reducing benefits, pay or work privileges, taking any other action detrimental to an employee or in any way retaliating against the employee.
6. Provides that any individual required to make a report shall be fined not more than \$500 for failing to make a report.

Analysis:

Ohio becomes the fifth state overall and the third in 2017 to enact provisions allowing Notaries to use communication technology in performing notarial acts. HB 49 creates a new Electronic Notary Public commission and provides rules for submitting applications for this commission. This commission allows an Electronic Notary to take acknowledgments using an electronic communications device that allows the parties to visually appear before the Notary and sign these acknowledgments using an electronic signature. The new law does not allow Electronic Notaries to take depositions using an electronic communications device. The new law does not appear to allow electronic communications devices to be used in performing a jurat or administering an oath or affirmation. The new law requires the Secretary of State to establish standards for the use of electronic communications devices.

HB 49 also includes revisions to Ohio law related to mandated reporting of adult abuse, neglect and exploitation. The new law specifically requires no less than 32 professionals, including Ohio Notaries Public, to report any belief that an adult is being abused, neglected or exploited, or is in a condition that is the result of abuse, neglect or exploitation, to the county department of job and family services. Ohio becomes the first state to enact such a provision. In 2013, the California Legislature passed a bill that would have required California Notaries to be mandated reporters of elder financial abuse, but the Governor vetoed the bill. The new Ohio law requires county departments of job and family services to produce educational materials for mandated reporters, and also requires licensing entities such as the Secretary of State to ensure that individuals required to make reports have access to these materials.

These provisions were included in a massive budget bill of nearly 3,400 pages. It is not the first time that Notary provisions were part of a spending bill. In 2001, provisions transferring the commissioning of Notaries from the Governor to the Secretary of State were part of a budget bill.

A note regarding the effective date: The provisions for the electronic Notary commission and communications devices take effect September 29, 2017, while the mandated reporter provisions have a delayed effective date of September 29, 2018.

Due to the length of HB 49, the entire bill is linked immediately below and a separate document containing only the electronic communications device and mandated reporter provisions may be downloaded by clicking the Download PDF link.

SHARES