

ADDRESS OF INDIVIDUAL	DETAILED IDENTIFICATION OF INDIVIDUAL	FINGERPRINT AND OTHER INFORMATION	NOTARY FEE
360 2 nd Ave Helmsdale	Personal Knowledge	1 20 does for debt collections various clients	\$
117	"	2	\$
"	"	3 20 does for debt coll. var. clients	\$
"	"	4	\$
"	"	5	\$
"	"	6	\$
"	"	7	\$
"	"	8	\$
420 S. Henry Cityview	Mont. Driver's Lic	9 Does you have file # 01234	\$
"	"	10	\$
"	"	11	\$
"	"	12	\$
"	"	13	\$
"	"	14	\$
"	"	15	\$
"	"	16	\$
"	"	17	\$
"	"	18	\$

Page	DATE NOTARIZED	TYPE OF NOTARIZATION	DATE OF DOCUMENT	TYPE OF DOCUMENT	PRINTED	SIGNATURE OF INDIVIDUAL	SIGNATURE
1	3/6/09	Signatures	3/6/09	Off. (20)	Sally Lawyer	Sally Lawyer	
2	3/9/09	ack	3/6/09	Off. (6)	"	"	"
3	3/9/09	ack	3/7/09	Off. (4)	"	"	"
4	3/9/09	ack	3/8/09	Off. (10)	"	"	"
5	3/9/09	jurat	3/9/09	jurat	"	"	"
6							
7							
8							
9	3/9/09	ack jurat	3/9/09	ack jurat	Jane Doe	Jane Doe	
10	"	"	"	"	Jane Doe	Jane Doe	
11							
12							
13							
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16							
17							
18							

Pat - Elwood asked me to deliver this to you. Joe Stamm

Montana Notary Guild

PO Box 275
Billings, MT 59103-0275

March 5, 2009

Representative Dennis Himmelberger, Chairman
and members of the Committee
State Administration Committee
Montana House of Representatives
Montana State Capitol
Helena, MT 59624

Re: Senate Bill 299, Notaries Public

Mr. Chairman, Members of the Committee:

My name is Elwood English. I am a practicing attorney in Billings and the Executive Director of the Montana Notary Guild. I have served as Chief Legal Counsel for two of Montana's Secretaries of State: Jim Waltermire and Brad Johnson. Because I was unable to personally appear this morning, Secretary McCulloch, in her testimony, expressed the support of the Montana Notary Guild for SB299. I would, however, like to submit the following information to supplement some of the testimony introduced in the hearing.

The Montana Notary Guild was formed a couple of years ago in cooperation with the Office of the Montana Secretary of State to assist them in providing training to Montana notaries, a cause which we fully endorse.

Many users of notary services in Montana are small businesses who hire a young office worker, instruct him or her to get a notary commission through the Office of the Secretary of State, and put the person to work notarizing their documents. Often the employee has no introduction to the job except receiving the fine manual from the Secretary of State.

Next, the employer, also being uninformed about the duties of notaries, begins to bring notary work to the new notary, sometimes innocently expecting the notary to notarize a car title signed weeks ago in another time and place, by a person unknown and unseen by the notary. Other industries have their own needs and common violations often done in all innocence. The appellate case from Illinois, that Mr. Reiniger spoke to you about, addresses just this issue for many small businesses in Montana.

I would like to share a couple of specific cases with which I am personally familiar to illustrate how unsophisticated and untrained Montana notaries have been caught by the lack of knowledge and training.

Poor understanding of purpose and duty of the notary results in things like the signing of a car title by someone other than the owner who was in the state prison at the time. When he got out and could not find his car, he sued the notary whose name was on the fraudulent title. The notary claimed she just notarized the ex-wife's signature who was before her. She didn't realize that the blank on the state title form could be filled in by someone with fraudulent intent making it look like she had notarized the husband's signature along with the wife's. Had she used a journal, she would have been able to prove that she had not notarized the husband's signature. Only the wife's signature would have been recorded as having been notarized.

This is like the rancher trying to sell the ranch without telling his estranged wife. He brings the deed back to the notary, signed by the "wife" at home last night. The notary knows the couple, and sees nothing wrong with taking the husband's word for the legitimacy of the signing. Or, being a sophisticated sort, the notary insists on calling the wife at the ranch to confirm her signature. She doesn't know the rancher's new girlfriend is at home primed to answer and claim to be the wife. That notary should have had both parties in front of her in person to sign and have their documents notarized. Again, a trained notary who required both signers to sign the journal would have thwarted this travesty.

Finally I have seen a situation with a notarized document that transferred most of a gentleman's assets from being inherited by his children to being inherited by the new wife. He called over the phone from out of state to his Montana notary. He signed and faxed a document to the notary who, knowing him and having talked to him on the phone, notarized the document when it was received by fax in Montana. No one will ever know if that man had a gun to his head or what illness or incompetence he might have been suffering from, or if, in fact, he fully intended the subsequent asset transfer. That is now a matter for the heirs and the courts to determine since he died only a few days later. The notary, and her employer, may be held responsible for notarizing a document signed out of state as if it had been signed in the notary's presence in Montana.

We even find attorneys who think a notary can sometimes authenticate a signature of someone who did not appear before the notary. That just is not true. One might be asked to authenticate the signature of a witness to someone else's signature. That only means the person before the notary swears he saw a certain other person sign a document and he swears to it before the notary. The first signature may be proved by the testimony of the witness, but only the witness' signature is authenticated by the notary.

If a notary is asked to authenticate the signature of a person before him, but the person has no picture identification, the notary may authenticate the signature based on the word of a credible witness that the person is who he says he is. The credible witness must be known and trusted by the notary, and the

signer still must sign or acknowledge the signature in person in front of the notary—always.

My colleague, Bruce Spencer, to whom I have owed a dinner since the 2005 session, by the way, has cried to you about the journal this bill would require. He claims it will violate his lawyer-client privilege and duty of confidentiality. I think not. First of all, the notary office is a public trust from which some transparency may be required. Secondly the journal is generally kept by the notary subject to his or her privacy rights. Third, the information in it would only go so far as to identify the person signing a document, the date, the type of document, and the kind of identification used.

Let's say Bruce's client signs a deed to transfer an important piece of real estate to an out of state corporation. The news media is eager to find out if such a deal has been done and whether the rumor is true that the client has sold to Wal-Mart. Only a subpoena in an actual lawsuit, with reason, could reach the notary's journal, and all one would find is that the named client had signed a deed (or Bruce might put "real estate document") on a certain date. The buyer would not be identified, nor would the property in question. Even the state where the property is located would not be identified, only the state in which the notarization took place, Montana.

Years later when Bruce retires, his records are to be placed with the county clerk and recorder. That is already the law. The only difference is that, if a journal were required, Bruce would have some records to deposit with the clerk. With all notaries filing their records, Bruce's would not stand out. Only people doing historical research or specific legal research would be looking in them. Don't worry, Bruce, the statute of limitations would no doubt have run on most things by then. So, the question is, should Bruce keep a journal?

I once took a course taught by attorney Peter Van Alstyne, a notary expert from the Notary Institute in Utah. I was one of only two or three males in a class of twenty females, and perhaps the only lawyer in the bunch. I was feeling remnants of my male and lawyer chauvinism when Van Alstyne asserted that it is the law in Montana that a notary must keep a journal. Having already, at that time, served one Montana Secretary of State as his Chief Legal Counsel, I was dead certain no such law had been passed by the Montana legislature. I quickly raised my hand, and Van Alstyne just as quickly, too quickly, called on me.

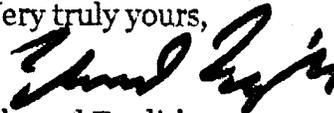
"Sir," he said forcefully. Having been recognized, I asserted, "There is no Montana law requiring a notary to keep a journal." "Are you an attorney?" he asked. "Yes, I am," I tried to sound modest. "Then, sir, you are familiar with the common law and the reasonable person standard, aren't you?" "Yes, of course," I told him, "The common law is the development of laws by courts in the absence of legislative edict, and the reasonable man is the guide to determining whether someone, a driver for instance, has acted with or without negligence."

"Perfect," he said. "You are a good student." I must have beamed with pride because my classmates laughed. I think they had already seen the trap into which I had jumped. "There has been no claim in Montana yet against a notary claiming negligence for failure to keep a journal, but in every case around the country where such a claim has been brought in the absence of legislative rule, every jury has found the notary negligent for failure to adopt accepted practice in the profession to protect the notary and his or her clients from fraud by keeping a journal. I predict the first Montana notary to be faced with such a suit will be found negligent even though the legislature has not yet articulated the rule. Do you disagree?" As a long time advocate of a journal requirement, I could not disagree. The next week I actually bought my first journal.

So it may already be negligence in Montana for a notary to fail to keep a journal. It is just that the least sophisticated of our notaries do not know about it. They don't read the National Notary magazine, and many of them don't know another notary. They haven't had a class in notary practice, nor do they know where to find one. They have read the Montana Notary Public Handbook, which was all re-edited and nicely rewritten in recent years, but it is still hard to understand.

Please give notaries and their clients a break. Require them to keep a journal. Require them to get some training. Help them to fulfill this important function in a much more conscious and conscientious manner. That's what they want to do. They just need your help.

Very truly yours,



Elwood English
Executive Director
Montana Notary Guild