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## Signed, Sealed, Delivered ... Disbarred - Notarial Misconduct by Attorneys, 31 J. Marshall L. Rev. 1085 (1998)

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# SIGNED, SEALED, DELIVERED . . . DISBARRED? NOTARIAL MISCONDUCT BY ATTORNEYS

CHRISTOPHER B. YOUNG\*

Attorney X sits in his office on a Friday afternoon. The clock on the wall reads fifteen minutes to five. He thinks to himself, "Where is the client?" He dials the client's telephone number. No answer. Attorney X paces the floor in his office. The clock now reads ten minutes to five. He dials the client's cell phone number. No answer. Time is running out. "This affidavit must be filed today," he mutters under his breath. He thinks to himself, "If I do not file the affidavit, I will lose an important motion." Attorney X knows losing this motion will cost him the case. He grabs the affidavit from his desk and signs his client's name. "I know this client fairly well and am certain he would not mind," he rationalizes. "Furthermore, it is in his best interest." Attorney X removes his notary stamp from his desk and affixes his seal to the document. He races across the street to the office of the clerk of the court and files the document just before five o'clock. Subsequently, the client does mind and files charges against attorney X. The State also charges attorney X with forgery<sup>1</sup> and with official misconduct<sup>2</sup> for violating the state's notary laws.<sup>3</sup> In addition, attorney X faces

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1. Illinois defines this offense as follows:

(a) A person commits forgery when, with intent to defraud, when he knowingly: (1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or (2) Issues or delivers such document knowing it to have been thus made or altered; or (3) Possesses with intent to issue or deliver, any such document knowing it to have been thus made or altered.

720 ILCS 5/17-3 (West 1993 & Supp. 1997).

2. Official Misconduct is defined as: Any unlawful behavior by a public officer in relation to the duties of his office, willful in its character, including any willful or corrupt failure, refusal, or neglect of an officer to perform any duty enjoined on him by law. BLACK'S LAW DICTIONARY 1084 (6th ed. 1990).

3. Each state and the District of Columbia regulates notaries through statutory law. Michael L. Closen & G. Grant Dixon III, *Notaries Public From the Time of The Roman Empire to the United States Today, and Tomorrow*, 68 N.D. L. REV. 873, 876 n.25 (1992). The applicable State statutes are as follows: ALA. CODE §§ 36-20-1 to -32 (1991 & Supp. 1997); ALASKA STAT. §§

possible termination of his notary commission and disbarment for violating Rules 3.3<sup>4</sup> and 8.4<sup>5</sup> of the Model Rules of Professional

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44.50.010 to -.190 (Michie 1996 & Supp. 1997); ARIZ. REV. STAT. ANN. §§ 41-311 to -326 (West 1992 & Supp. 1997); ARK. CODE ANN. §§ 21-14-101 to -205 (Michie 1996 & Supp. 1997); CAL. GOV'T CODE §§ 8200-8230 (West 1992 & Supp. 1998); COLO. REV. STAT. ANN. §§ 12-55-101 to -123 and 12-55-201 to -211 (West 1996 & Supp. 1997); CONN. GEN. STAT. ANN. §§ 3-91 to -96 (West 1988 & Supp. 1997); DEL. CODE ANN. tit. 29, §§ 4301 to 4328 (1997); D.C. CODE ANN. §§ 1-801 to -817 (1992 & Supp. 1997); FLA. STAT. ANN. §§ 117.01 to .108 (West 1996 & Supp. 1998); GA. CODE ANN. §§ 45-17-1 to -20 (Harrison 1990 & Supp. 1997); HAW. REV. STAT. ANN. §§ 456-1 to -19 (Michie 1995 & Supp. 1997); IDAHO CODE §§ 51-101 to -123 (1994 & Supp. 1997); 5 ILCS 312/1-101 to 8-104 (West 1993 & Supp. 1997); IND. CODE ANN. §§ 33-16-1-1 to 16-8-5 (Michie 1992 & Supp. 1997); IOWA CODE ANN. § 586.1 (West 1992 & Supp. 1997); KAN. STAT. ANN. §§ 53-101 to -601 (1983 & Supp. 1996); KY. REV. STAT. ANN. §§ 423.010 to -.990 (Michie 1992 & Supp. 1996); LA. REV. STAT. ANN. §§ 35:1 to -555 (West 1985 & Supp. 1998); ME. REV. STAT. ANN. tit. 4, §§ 951 to -959 (West 1989 & Supp. 1997); MD. CODE ANN., State Government §§ 18-101 to -112 (Michie 1995 & Supp. 1997); MASS. GEN. LAWS ch. 222, §§ 1 to -11 (1993 & Supp. 1997); MICH. COMP. LAWS §§ 5.1041 to -.1072 (1993 & Supp. 1997); MINN. STAT. §§ 359.01 to -.12 (1991 & Supp. 1998); MISS. CODE ANN. §§ 25-33-1 to -23 (1991 & Supp. 1997); MO. REV. STAT. §§ 486.100 to -.405 (1987 & Supp. 1998); MONT. CODE ANN. §§ 1-5-401 to -611 (1997); NEB. REV. STAT. §§ 64-101 to -215 (1996); NEV. REV. STAT. ANN. §§ 240.010 -.330 (1996 & Supp. 1997); N.H. REV. STAT. ANN. §§ 455:1 to :15 (1992 & Supp. 1995); N.J. STAT. ANN. §§ 52:7-10 to -21 (West 1986 & Supp. 1997); N.M. STAT. ANN. §§ 14-12-1 to -20 (Michie 1978 & Supp. 1997); N.Y. EXEC. LAW §§ 130 to -138 (McKinney 1993 & Supp. 1997); N.C. GEN. STAT. §§ 10A-1 to -16 (1991); N.D. CENT. CODE §§ 44-06-01 to -14 (1993 & Supp. 1997); OHIO REV. CODE ANN. §§ 147.01 to .99 (Banks-Baldwin 1994 & Supp. 1997); OKLA. STAT. tit. 49, §§ 1 to -121 (1988 & Supp. 1998); OR. REV. STAT. §§ 194.005 to .990 (1991 & Supp. 1996); 57 PA. CONS. STAT. ANN. §§ 31-169 (West 1996 & Supp. 1997); R.I. GEN. LAWS §§ 42-30-1 to -16 (1993 & Supp. 1997); S.C. CODE ANN. §§ 26-1-10 to -3-90 (Law Cop. 1991 & Supp. 1996); S.D. CODIFIED LAWS ANN. §§ 18-1-1 to -14 (Michie 1995 & Supp. 1997); TENN. CODE ANN. §§ 8-16-101 to 309 (1993 & Supp. 1997); TEX. GOV'T CODE ANN. §§ 406.001 to .025 (West 1990 & Supp. 1998); UTAH CODE ANN. §§ 46-1-1 to -19 (1993 & Supp. 1997); VT. STAT. ANN. tit. 24, §§ 441-446 (1992 & Supp. 1995); VA. CODE ANN. §§ 47.1-1 to -33 (Michie 1996 & Supp. 1997); WASH. REV. CODE §§ 42.44.010 to .903 (1991 & Supp. 1998); W. VA. CODE §§ 29-4-1 to -16 (1992 & Supp. 1997); WIS. STAT. § 137.01 (1989 & Supp. 1997); and WYO. STAT. ANN. §§ 32-1-101 to -113 (Michie 1997). *Id.*

4. Rule 3.3 provides that:

(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal; [or] (4) offer evidence that a lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.3 (1997).

5. Rule 8.4 states that:

It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; . . .

Conduct and Disciplinary Rules (DR) 1-102<sup>6</sup> and 7-102<sup>7</sup> of the Model Code of Professional Responsibility as codified by the state in which he practices.

Imagine another scenario: Attorney Y, a partner in a large firm, goes over a set of interrogatories with her client. At the conclusion of the lengthy meeting that lasts well into the night, attorney Y directs her client to sign the interrogatories. First thing the next morning, attorney Y takes the interrogatories to the firm's paralegal, who is a notary public,<sup>8</sup> to have them notarized. The notary tells attorney Y that he is not sure whether he can notarize the documents because he did not witness the client signing them. Attorney Y assures the notary that notarizing the documents is all right because she witnessed the signatures. Trusting the attorney's assurances and treasuring his job, the paralegal notarizes the documents. Checking his notary handbook later, the notary realizes he has improperly notarized the interrogatories. In an effort to mitigate the consequences, he reports his misdeed to the Secretary of State. Subsequently, the State charges attorney Y with solicitation<sup>9</sup> of official misconduct. In addition, attorney Y

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*Id.* at Rule 8.4.

6. DR 1-102 prescribes that:

(a) A lawyer shall not: (1) Violate a Disciplinary Rule. (2) Circumvent a Disciplinary Rule through actions of another. (3) Engage in illegal conduct involving moral turpitude. (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice . . . (8) Engage in any other conduct that adversely reflects on his fitness to practice law.

MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-102 (1997).

7. DR 7-102 mandates that:

(a) In the representation of a client, a lawyer shall not: . . . (4) Knowingly use perjured testimony or false evidence. (5) Knowingly make a false statement of law or fact. (6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false. (7) Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent. (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

*Id.* at DR 7-102.

8. Notary Public is defined as:

A public officer whose function it is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same; and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage. One who is authorized by the state or federal government to administer oaths, and to attest to the authenticity of signatures.

BLACK'S LAW DICTIONARY 1060 (6th ed. 1990). For convenience, the terms, "notary public" and "notary" shall be used interchangeably throughout this Comment.

9. In Illinois, "solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense. 720 ILCS 5/2-20

faces sanctions for violating Rules 5.3<sup>10</sup> and 8.4<sup>11</sup> of the Model Rules of Professional Conduct and Disciplinary Rule DR 1-102<sup>12</sup> of the Model Code of Professional Responsibility.

These hypotheticals illustrate common situations involving misconduct on the part of an attorney both as a notary public and as an attorney directing a notary public. When attorneys commit misconduct either in their capacity as a notary public or while directing one, they compromise the integrity of both professions and instill mistrust in potential clients. The importance of avoiding conduct which dishonors these professions and leads to sanctions, including possible disbarment, is paramount.

This Comment focuses on the task of alerting the legal community to the scope, manifestations, and repercussions of notarial misconduct. Part I discusses the history of the notary public as it bears upon the role of the notary in the American legal system. Part II surveys reported cases involving notarial misconduct by lawyer notaries and lawyers who employ and/or direct notaries. Part III provides an analysis of the sanctions imposed on attorneys and looks at the mitigating and aggravating factors used in determining sanctions. Part IV proposes effective ways to decrease notarial abuse in the legal profession.

## I. HISTORICAL BACKGROUND

The notary is an important feature of the American legal system with a legacy dating back hundreds of years. Section A of this Part provides a brief history of the notary from the Roman Empire to present-day America. Section B discusses the notary's status as a public official. Section C illustrates the role of the notary in the legal system.

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(West 1993 & Supp. 1997).

10. Rule 5.3 requires that:

With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.3 (1997).

11. See *supra* note 5 for the specific language of the rule.

12. See *supra* note 6 for the specific language of the rule.

A. *From the Roman Empire to Today*

The birth of the notary occurred in Roman times when the art of writing was not widespread.<sup>13</sup> The duty of putting documents in writing and holding them in safekeeping fell upon the shoulders of a public official<sup>14</sup> known as a *notarius*.<sup>15</sup> For a nominal fee, these officials drafted and held important documents such as contracts and wills.<sup>16</sup> In the likely event that a party to the agreement was unable to write, a metal or clay disk with a distinctive design or coat of arms was impressed into wax melted onto the document.<sup>17</sup> Roman society held documents formalized in this manner in high esteem when prepared by a *notarius*.<sup>18</sup>

From this start, notaries solidified their role in history. As the Roman Empire grew, so did the need for the services of the *notarius*.<sup>19</sup> The use of notaries spread throughout the provinces of the Empire, including what are now England, France, and Spain.<sup>20</sup> The fall of the Roman Empire, however, did not diminish the need for the notary. The continuing vitality of the notary is exemplified by the fact that Charlemagne, the emperor of the West, decreed that all bishops, abbots, and counts have a notary.<sup>21</sup>

The growth of civilization inspired the manufacture of paper and led to increased literacy.<sup>22</sup> Rules and laws became necessary to govern agreements.<sup>23</sup> Eventually, attorneys assumed the duty of drafting documents such as contracts and wills thus removing that responsibility from the notary.<sup>24</sup>

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13. RAYMOND C. ROTHMAN, *NOTARY PUBLIC PRACTICES AND GLOSSARY* 1 (1978).

14. *Black's Law Dictionary* defines Public Official as: "A person who, upon being issued a commission, taking required oath, enters upon, for a fixed tenure, a position called an office where he or she exercises in his or her own right some of the attributes of sovereign he or she serves for benefit of public." BLACK'S LAW DICTIONARY 1230 (6th ed. 1990).

15. ROTHMAN, *supra* note 13, at 1.

16. Closen & Dixon, *supra* note 3, at 875.

17. ROTHMAN, *supra* note 13, at 1.

18. Closen & Dixon, *supra* note 3, at 875.

19. *Id.*

20. *Id.*

21. *Id.*

22. ROTHMAN, *supra* note 13, at 1. Early notarized agreements were often several pages in length and tied together by a ribbon woven through holes placed in the margin of the document. *Id.* To insure the ribbon was not broken, the notary melted wax over the knot and impressed his official seal onto the wax. *Id.* The definition of the verb "seal" derives from this act. *Id.* at 2.

23. *Id.* at 1-2.

24. *Id.* at 2. The notaries function became more ministerial. *Id.* He testified in writing to the identity of the persons who signed and/or affixed their seal to the agreement; he witnessed the signing of the agreement and took the acknowledgment of the parties to the desired effect of the agreement; he ensured the agreement was properly sealed so that it could not be tampered with by the parties; and he kept and preserved the document in a safe place.

At first, the colonists of the United States had even less need for the services of a notary.<sup>25</sup> Their main objective was the development of the country.<sup>26</sup> As the country developed, trade between the Colonies and Europe increased. This increase in trade between the Colonies and Europe resurrected the necessity of the notary.<sup>27</sup> To this day, the notary plays an integral role in American law and society.

### B. Notary's Status as a Public Official

One of the most important features of notaries is their status as public officials.<sup>28</sup> This status is relevant for two reasons. First, as a public official, the notary is an agent, or trustee, of the public.<sup>29</sup> Second, notaries may be subject to criminal liability for official misconduct when wrongfully performing their duties as notaries.<sup>30</sup>

Status as a public official and the relationship this status creates with the public demonstrates the significance of the notary. In *Villanueva v. Brown*,<sup>31</sup> a notary notarized a limited power of at-

*Id.*

25. *Id.* For example, the notary did not participate in early land agreements. *Id.* These agreements were made in open court before an official, usually a judge. *Id.* The agreement became effective upon the judge's recording of the terms in the court record. *Id.*

26. *Id.* at 2.

27. *Id.* at 3. Trade between the continents required an official of high moral character who could witness and draft simple agreements for the purchase and sale of merchandise. *Id.*

28. Many courts recognize a notary as a public official. 66 C.J.S. *Notaries* 1(a) (1950 & Supp. 1997); 58 AM. JUR. 2D *Notaries Public* § 2 (1989). *E.g.*, *Smith v. Gale*, 144 U.S. 509, 521 (1892); *Pierce v. Indseth*, 106 U.S. 546, 548 (1882); *Britton v. Nicolls*, 104 U.S. 757, 766 (1881); *Krueger v. Miller*, 489 F. Supp. 321, 328 (E.D. Tenn. 1978); *Jii v. Rhodes*, 577 F. Supp. 1128, 1130 (S.D. Ohio 1983); *Transamerica Ins. Co. v. Valley Nat'l Bank*, 462 P.2d 814, 816 (Ariz. Ct. App. 1969); *Succession of Michel*, 225 So. 2d 480, 484 (La. Ct. App. 1969); *Commercial Union Ins. Co. of N.Y. v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967); *Patterson v. Department of State*, 312 N.Y.S.2d 300, 303 (N.Y. App. Div. 1970); *People v. Olensky*, 397 N.Y.S.2d 565 (N.Y. Sup. Ct. 1977); *Wright v. Bedford*, 182 N.Y.S.2d 660, 662 (N.Y. Sup. Ct. 1958); *McGee v. Eubanks*, 335 S.E.2d 178, 182 (N.C. Ct. App. 1985); *Meyers v. Meyers*, 503 P.2d 59, 61 (Wash. 1972).

29. RICHARD B. HUMPHREY, *THE AMERICAN NOTARY MANUAL* 7 (4th ed. 1948). Public offices are created for the purpose of effecting the end for which government has been instituted, which is the common good, and not for the mere profit, honor or private interest of any one man, family, or class of men. *Id.* The term "public office" embraces the idea of these things, namely, tenure, duration, fees, emoluments, powers and duties. *Id.* All these taken together constitute public office. *Id.* The word "officer" is one inseparably connected with office. *Id.* It follows that only those who hold public office are public officers. *Id.*

30. 58 AM. JUR. 2D *Notaries Public* § 62 (1989).

31. *Villanueva v. Brown*, 103 F.3d 1128 (3d Cir. 1997).

torney without witnessing the signature.<sup>32</sup> The court determined that notaries are public officials who owe a duty to the public to perform their functions with diligence.<sup>33</sup> The court further stated that the notary owes this duty to any member of the public who relies on the officer's certification.<sup>34</sup> By virtue of this status and responsibility, the notary provides an essential link between the public and the efficient workings of society. One author stated that the office of the notary is so important, that the notary is "indispensable to the carrying out of modern business."<sup>35</sup> Because of the integral role the notary plays in society, the notary's office is called into action more often than any other public office in the country.<sup>36</sup>

As a public official, the notary is subject to liability for the crime of official misconduct when he or she wrongfully performs a duty in his or her official capacity. When defining official misconduct, the wrongful activity need not be intentional. Negligent or reckless behavior is sufficient. Additionally, many statutes include a provision which subjects the employer of a notary to liability as well.<sup>37</sup>

For an attorney who is a notary or an attorney employing a notary, knowing the repercussions for official misconduct is vitally important. Intentional misconduct and negligent or reckless misconduct by a notary receive different treatment in most statutes. The difference lies in the penalties imposed. In the state of Illinois, notaries who intentionally commit official misconduct are guilty of a Class A misdemeanor, while notaries whose misconduct is the result of recklessness or negligence, are guilty of a Class B misdemeanor.<sup>38</sup>

Not only are attorneys subject to statutory penalties, but they are governed by their state bar's disciplinary rules. When attorneys commit or solicit notarial misconduct, they violate the Code of Professional Responsibility and the Rules of Professional Conduct.<sup>39</sup> Thus, attorneys who commit or solicit notarial misconduct

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32. *Id.* at 1137.

33. *Id.*

34. *Id.*

35. HUMPHREY, *supra* note 29, at 9.

36. *Id.*

37. See, e.g., 5 ILCS 312/7-102 (West 1993 & Supp. 1997). Illinois provides that:

The employer of a notary public is also liable to the persons involved for all damages caused by the notary's official misconduct, if: (a) the notary public was acting within the scope of the notary's employment at the time the notary was engaged in the official misconduct; and (b) the employer consented to the notary public's official misconduct.

*Id.*

38. 5 ILCS 312/7-105 (West 1993 & Supp. 1997).

39. See *supra* notes 4-7 & 10 for the specifics language of the applicable rules.

are also subject to sanctions in their professional capacity.

### C. Notaries and the Legal System

The advent of notarial involvement in the legal system occurred in the nineteenth century.<sup>40</sup> Due to distance and slow transportation, witnesses did not always appear in the courtroom to give testimony.<sup>41</sup> As a result, the notary, empowered by the court, took the depositions of witnesses and delivered them to the court.<sup>42</sup>

Many scholars and courts recognize the notary as a quasi-judicial officer<sup>43</sup> who still has the power to take depositions<sup>44</sup> and may also administer oaths.<sup>45</sup> In the case of *Bevan v. Krieger*,<sup>46</sup> the United States Supreme Court held that a notary had the power to hold a reluctant witness in contempt for refusing to answer questions in a deposition.<sup>47</sup>

One of the most significant powers a notary possesses is to take an acknowledgment.<sup>48</sup> For a notary to properly take an ac-

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40. ROTHMAN, *supra* note 13, at 3.

41. *Id.*

42. *Id.* at 3-4. An attorney or judge made up a set of questions that the notary would submit to the witness. *Id.* at 4. The notary wrote down the witness' replies, administered an oath to him, obtained his signature, and delivered the deposition, properly signed and sealed, to the court. *Id.*

43. Closen & Dixon, *supra* note 3, at 882. "The notary is a quasi-judicial and nominally-paid officer acting on behalf of the court but controlled by the legislative and executive branches." *Id.*

44. *Id.* at 882 n.63. See *Bevan v. Krieger*, 289 U.S. 459, 464 (1933) (stating that a notary may take a deposition); *Clifford v. Allman*, 24 P. 292, 292 (Cal. 1890) (discussing the notary's power to take depositions).

45. Closen & Dixon, *supra* note 3, at 873 n.4. See *United States v. Morehead*, 243 U.S. 607, 616 (1917) (stating that notaries are authorized to administer oaths); *In re Estate of Martinez*, 664 P.2d 1007, 1013 (N.M. Ct. App. 1983) (stating that a "notary public" is one who is authorized by the state or the federal government to administer oaths and to attest to the authenticity of signatures); *Crockford v. Zecher*, 347 N.Y.S.2d 105, 108 (N.Y. Sup. Ct. 1973) (stating that a notary public is a public officer and is authorized by law to administer oaths).

46. 289 U.S. 459 (1933).

47. *Id.* at 464. The power of an Ohio notary to hold a reluctant witness in contempt still exists today. Closen & Dixon, *supra* note 3, at 883 & n.71 (citing *Gall v. Saint Elizabeth Med. Ctr.*, 130 F.R.D. 85, 86 (S.D. Ohio 1990)). See also *Gargan v. State*, 805 P.2d 998, 1004 (Alaska Ct. App. 1991) (holding that a notarized statement was a sworn statement for purposes of perjury).

48. Acknowledgment is defined as: a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented therein. UNIFORM LAW ON NOTARIAL ACTS § 1 (1982). See also MODEL NOTARY ACT § 1-105 (1984) (defining acknowledgment as a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily for its

knowledge of a document, certain requirements must be met. First, the notary must determine from personal knowledge or from satisfactory evidence that the person appearing before the notary is the person whose true signature is on the document.<sup>49</sup> Second, the notary must ensure that the person signing the document is signing it for what the document purports to be.<sup>50</sup> An acknowledgment of a deed<sup>51</sup> or a contract to a notary authenticates the credibility of the document.

The most frequently used function of the notary is the attestation of signatures.<sup>52</sup> The notary's requirements in attesting a signature differ slightly from the requirements of an acknowledgment. Only the validity of the signature is certified.<sup>53</sup> Many court filings, including pleadings, proofs of service, interrogatory answers and depositions, require attestation by a notary.<sup>54</sup>

The notary's powers and duties, as illustrated by the examples above, undoubtedly provide a necessary "cog in the wheel" of the judicial system. As such, the importance of recognizing misconduct by lawyer notaries and lawyers who employ notaries is necessary to strengthen the integrity of both professions.

## II. ATTORNEYS AND NOTARIAL MISCONDUCT: A CASE SURVEY

The notary and the legal system have been dependent on each other for many years. Given this dependency, many attorneys become notaries and, in some states, acquire the title of notary public based solely on their position as attorneys.<sup>55</sup> For those attorneys who are not notaries, they, or the firms or agencies for which they work, usually hire paralegals, secretaries, or clerks specifically for the function of serving as notaries. This Part surveys the existing case law involving attorneys and notarial misconduct. Section A

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stated purpose).

49. UNIFORM LAW ON NOTARIAL ACTS § 2 (1982).

50. *Id.* at Comm'r cmt.

51. See John H. Wigmore, *Notaries Who Undermine Our Property System*, 22 ILL. L. REV. 748, 749 (1928) (averring that the notary's certificate of acknowledgment of a deed is the pillar of our property rights). All titles depend on official records, and all records depend on the notary's certificate of acknowledgment. *Id.*

52. Closen & Dixon, *supra* note 3, at 883.

53. UNIFORM LAW ON NOTARIAL ACTS § 2 Commissioners' cmt. (1982).

54. Closen & Dixon, *supra* note 3, at 884.

55. California allows a district attorney to take acknowledgments and proofs in a limited jurisdiction based on the county or city in which they are appointed. CHARLES N. FAERBER, 1996 - 1997 NOTARY SEAL & CERTIFICATE VERIFICATION MANUAL 33 (3d ed. 1995). Connecticut allows for any attorney admitted to the state bar to take acknowledgments within the state. *Id.* at 49. Delaware authorizes an attorney licensed to practice law in the state to perform notarial acts. *Id.* at 56. Maine grants attorneys who are admitted and eligible to practice in the courts of the state all the powers of a notary. *Id.* at 149. New Jersey allows attorneys to take acknowledgments and proofs. *Id.* at 217.

discusses cases involving attorney-notaries and examines cases according to the motive for committing the misconduct.<sup>56</sup> Section B examines a case involving an attorney who improperly directed a notary.

#### A. Attorney as a Notary

"[A]ttorneys who undertake to exercise the functions of a notary public must constantly bear in mind the seriousness of the possible consequences of a failure to perform such a function in strict accordance with the requirements of the law."<sup>57</sup> A number of cases involve attorneys sanctioned for misconduct while acting in their capacity as notaries public.<sup>58</sup> Reasons for committing misconduct usually stem from one of three motives: selfishness, a desire to obtain a just result for the client, or the expedition of the client's claim.<sup>59</sup> Generally, a correlation is made between the motive and the sanction imposed. Attorneys committing notarial misconduct for selfish reasons receive more severe sanctions, such as lengthy suspensions or disbarment.<sup>60</sup> Attorneys committing

56. The motives used in this discussion come from a presentation by Nancy P. Spyke at the 18th Annual Conference of Notaries Public. Nancy P. Spyke, Address at the Attorney's Program, 18th Annual Conference of Notaries Public at 2-4 (May 31, 1996).

57. *In re Kraus*, 616 P.2d 1173, 1177 (Or. 1980).

58. See *Illinois Cent. R.R. Co. v. R.R. Land, Inc.*, Nos. CIV.A.86-86, 91-543, 1992 WL 38109, at \*8 (E.D. La. Feb. 18, 1992) (ordering attorney to perform pro bono legal work); *In re West*, 805 P.2d 351, 360 (Alaska 1991) (suspending attorney for 90 days from the practice of law); *The Florida Bar v. Blum*, 515 So. 2d 194, 196 (Fla. 1987) (suspending attorney for three years from the practice of law); *In re Thebeau*, 489 N.E.2d 877, 879 (Ill. 1986) (suspending attorney for two years from the practice of law); *In re Crapo*, 542 N.E.2d 1334, 1335 (Ind. 1989) (suspending attorney for ninety days from the practice of law); *Committee on Prof'l Ethics and Conduct v. Hutcheson*, 504 N.W.2d 898, 900 (Iowa 1993) (suspending attorney for no less than one year from the practice of law); *O'Bryan v. Kentucky Bar Ass'n*, 824 S.W.2d 877, 877 (Ky. 1992) (affirming a motion from attorney to resign for one year from the practice of law); *Louisiana State Bar Ass'n v. Perez*, 550 So. 2d 188, 192 (La. 1989) (disbarring attorney); *In re Danna*, 403 N.W.2d 239, 241 (Minn. 1987) (suspending attorney from the practice of law for ninety days); *In re Finley*, 261 N.W.2d 841, 846 (Minn. 1978) (censuring attorney publicly); *In re Dobbertin*, 458 N.Y.S.2d 775, 775 (N.Y. App. Div. 1983) (disbarring attorney); *In re Silverblatt*, 454 N.Y.S.2d 443, 444 (N.Y. App. Div. 1982) (censuring attorney); *In re Picciano*, 439 N.Y.S.2d 221, 223 (N.Y. App. Div. 1981) (censuring attorney); *Blum v. Comm. on Prof'l Standards*, 432 N.Y.S.2d 268, 269 (N.Y. App. Div. 1980) (suspending attorney for two years from the practice of law); *In re Morin*, 878 P.2d 393, 403 (Or. 1994) (disbarring attorney); *In re Sims*, 584 P.2d 766, 767 (Or. 1978) (reprimanding attorney publicly); *In re Walter*, 427 P.2d 96, 96 (Or. 1967) (reprimanding attorney); *In re Hopkins*, 103 P. 805, 807 (Wash. 1909) (disbarring attorney); *Board of Prof'l Responsibility v. Neilson*, 816 P.2d 120, 121 (Wyo. 1991) (disbarring attorney).

59. Spyke, *supra* note 56, at 2-4.

60. See *Blum*, 515 So. 2d at 195 (suspending attorney for three years for

misconduct based on obtaining a just result for the client or expediting the client's claim usually receive a lesser suspension or a reprimand.<sup>61</sup>

### 1. *Selfish Motives*

Six of the surveyed cases involved an attorney who committed notarial misconduct for selfish reasons.<sup>62</sup> The case of *In re Morin* provides one example.<sup>63</sup> *In re Morin* involved an Oregon attorney who conducted "living trust" seminars and sold "living trust pack-

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signing a release as notary public and commingling funds); *Perez*, 550 So. 2d at 189-92 (disbarring attorney for withdrawing funds associated with a vacant succession in which attorney was appointed to as inventorying notary); *Dobbertin*, 458 N.Y.S.2d at 775 (disbarring attorney for settling a client's outstanding claim, forging and notarizing client's signature to release documents and depositing settlement check into personal bank account); *Blum*, 432 N.Y.S.2d at 269 (suspending attorney for two years for signing a release as notary public and commingling funds); *Morin*, 878 P.2d at 403 (disbarring attorney for notarizing wills outside the presence of clients); *Neilson*, 816 P.2d at 121 (disbarring attorney based on a conviction of five felonies related to back-dating notarized deeds after notary commission expired).

61. See *Illinois Cent.*, 1992 WL 38109, at \*8 (ordering attorney to perform pro bono legal work for falsely notarizing affidavit of client); *West*, 805 P.2d at 360 (suspending attorney for 90 days for counseling client to affix a false signature to a legal document); *Crapo*, 542 N.E.2d at 1335 (suspending attorney for ninety days for forging and notarizing clients signature on a petition to modify visitation in order to expedite proceeding); *Hutcheson*, 504 N.W.2d at 900 (suspending attorney for not less than one year for falsely notarizing unsigned documents); *O'Bryan*, 824 S.W.2d at 877 (granting motion of attorney to resign for one year due in part to falsely certifying, as notary public, a client's dissolution petition); *Danna*, 403 N.W.2d at 241 (suspending attorney for 90 days for signing clients name and notarizing an affidavit); *Finley*, 261 N.W.2d at 846 (censuring attorney for falsely notarizing documents not signed in attorney's presence); *Silverblatt*, 454 N.Y.S.2d at 444 (censuring attorney for improperly attesting to signatures not made by client); *Sims*, 584 P.2d at 767 (reprimanding attorney publicly for signing and notarizing client's verification form for a marriage dissolution proceeding); *Walter*, 427 P.2d at 96 (reprimanding attorney for taking acknowledgment of a deed, as notary public, without seeing the grantor of the deed). But see *Thebeau*, 489 N.E.2d at 879 (suspending attorney for two years for practice of fraud and deceit upon the court when allowing client to sign client's brothers' names to a deed and then acknowledging the signatures); *Hopkins*, 103 P. at 807 (disbarring attorney for falsely certifying affidavits used in clients' pension claims).

62. *Blum*, 515 So. 2d at 194; *Perez*, 550 So. 2d at 188; *Dobbertin*, 458 N.Y.S.2d at 775; *Blum*, 432 N.Y.S.2d at 268; *Morin*, 878 P.2d at 393; *Neilson*, 816 P.2d at 120.

In *Dobbertin*, Dobbertin settled a client's outstanding claim, then forged and notarized the client's name to two releases. 458 N.Y.S.2d at 775. Dobbertin then received the settlement check and falsely endorsed and deposited the check for his own use. *Id.*

In *Blum v. Comm. on Prof'l Standards*, Blum forged his client's name to a release and settlement draft, then affixed his signature as notary public to the release. *Blum*, 432 N.Y.S.2d at 269. Blum subsequently commingled the client's funds with his own. *Id.*

63. 878 P.2d 393 (Or. 1994)

ages" in Northern California and Oregon.<sup>64</sup> Interested clients met with Morin or one of his paralegals to gather information necessary for the preparation of documents, such as pour-over wills and directives to physicians.<sup>65</sup> The directives to physicians and the pour-over wills required the signatures of two witnesses in the presence of the client in order to be valid.<sup>66</sup> Due to difficulties in having the documents witnessed at seminar sites, the paralegals sent the documents already signed by the client to Morin's office so that other staff members could sign the documents as witnesses.<sup>67</sup> Morin or another staff member then notarized the documents.<sup>68</sup>

In 1992, an attorney sent Morin a letter regarding the validity of one of the wills.<sup>69</sup> Morin responded by admitting to the invalid witnessing practice and subsequently sent a copy of the attorney's letter and his reply to the Oregon State Bar.<sup>70</sup> Morin claimed he made an exception in that particular client's case, which he conceded was a mistake.<sup>71</sup>

At a later point, Morin and his secretary both stated to an investigator from the Local Professional Responsibility Committee (LPRC) that the mistake was a one-time occurrence.<sup>72</sup> However, prior to the disciplinary trial, Morin's secretary admitted to lying to the LPRC investigator and stated that many of the wills were prepared without valid witnesses.<sup>73</sup> In Morin's amended answer, he admitted that he and his staff used the procedure with nearly 300 clients.<sup>74</sup> Further evidence showed that Morin charged between \$900 and \$1500 for the "packages" containing the invalid wills.<sup>75</sup>

The disciplinary panel found that Morin violated many disciplinary rules from the Model Code of Professional Responsibil-

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64. *Id.* at 394.

65. *Id.*

66. *Id.* at 395.

67. *Id.*

68. *Id.*

69. *In re Morin*, 878 P.2d 393, 395 (Or. 1994). The same attorney sent a previous letter to Morin questioning the validity of the will. *Id.* In response, Morin altered his form letter and omitted a description of his office's witnessing procedures. *Id.* However, Morin did not change the practice of "witnessing" outside the presence of the client. *Id.*

70. *Id.* The Bar sent Morin a letter asking him to respond to the allegation. *Id.* Morin denied that the practice of witnessing outside the presence of the client was a common occurrence in his office. *Id.*

71. *Id.*

72. *Id.* The State Professional Responsibility Board (SPRB) initiated formal charges against Morin following the LPRC investigation. *Id.* In his answer to the charges, Morin once again stated that the mistake was an isolated incident. *Id.*

73. *Id.*

74. *Id.* at 396.

75. *In re Morin*, 878 P.2d 393, 396-98 (Or. 1994).

ity.<sup>76</sup> Significantly, the disciplinary panel found that Morin violated DR 1-102<sup>77</sup> because Morin committed the crimes of solicitation and false swearing.<sup>78</sup> The court stated that the jurat,<sup>79</sup> notary seal and signature ensured that the witnesses signed the will in good faith.<sup>80</sup> The court further stated that the intent of such precautions is to attest to the validity of the information in the will and in the witness statement.<sup>81</sup> The Oregon Supreme Court affirmed the disciplinary panel's decision to disbar Morin for his conduct.<sup>82</sup>

The substantial income Morin received from his "living trust packages" unquestionably influenced his illegal conduct. Morin's status as a notary facilitated the number of packages he could produce by authenticating otherwise invalid wills. Morin's conduct exemplifies how selfishness motivates an attorney-notary to breach his duty of trust and responsibility to the public and to the courts. Selfishness represents one motive for an attorney to commit notarial misconduct.

## 2. *Just Result for the Client*

An overwhelming number of the surveyed cases involved attorney-notaries who committed notarial misconduct in order to ob-

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76. *Id.* at 396-401 (citing DR 1-102(A)(2) & (3), DR 1-103(C), DR 2-106(A), DR 3-101(A), and DR 7-102(A)(5), (6), & (8)).

77. See *supra* note 6 for the specific language of the rule.

78. *Morin*, 878 P.2d at 399. Morin argued to the Oregon Supreme Court that neither he nor his employees committed false swearing because none of them had made "sworn statements." *Id.* The Oregon Supreme Court looked to the statutory definition of a "sworn statement" and determined that the language of the jurat on the wills, signed by the witnesses and notarized by Morin, fit within the statutory definition of "sworn statement." *Id.* at 400. See OR. REV. STAT. § 161.435 (Butterworth 1990 & Supp. 1996) (stating a person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor . . . the person commands or solicits such other person to engage in that conduct); OR. REV. STAT. § 162.075 (Butterworth 1990 & Supp. 1996) (stating that a person commits the crime of false swearing if the person makes a false statement and knows the statement to be false). See also OR. REV. STAT. § 161.155 (Butterworth 1990 & Supp. 1996) (stating "a person is criminally liable for the conduct of another person that constitutes a crime if: . . . (2) With the intent to promote or facilitate the commission of the crime the person: (a) Solicits or commands such other person to commit the crime").

79. Jurat is defined as a "[c]ertificate of [an] officer or person before whom [a] writing was sworn to." BLACK'S LAW DICTIONARY 852 (6th ed. 1990). "In common use, [the] term is employed to designate [a] certificate of [a] competent administering officer that [the] writing was sworn to by [the] person who signed it." *Id.*

80. *Morin*, 878 P.2d at 400.

81. *Id.*

82. *Id.* at 403.

tain a just result for the client.<sup>83</sup> Obtaining a just result for the client, as distinguished from a selfish motivation, means the attorney seeks no pecuniary advantage from the improper notarial act other than his or her attorney fees.<sup>84</sup>

*In re West* involved an attorney who represented his client in an effort to recover damages arising from a trucking accident.<sup>85</sup> West represented the truck driver in a claim against the State of Alaska for uninsured items on the truck damaged in the accident.<sup>86</sup> After filing a complaint, West entered into settlement negotiations with an insurance company acting on behalf of the State.<sup>87</sup> The insurance company made a settlement offer which West's client rejected.<sup>88</sup>

Shortly thereafter, West's client died of a heart attack.<sup>89</sup> The client's widow contacted West to inform him of her husband's death and discuss the future of the lawsuit.<sup>90</sup> West recommended accepting the settlement offer and the client's widow agreed.<sup>91</sup> West contacted the insurance company to discuss the settlement but he did not inform them of his client's death.<sup>92</sup> West agreed to

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83. Spyke, *supra* note 56, at 3. 10 out of 20 cases surveyed were of this type. See *Illinois Cent. R.R. Co. v. R.R. Land, Inc.*, Nos. CIV.A.86-86, 91-543, 1992 WL 38109, at \*7 (E.D. La. Feb. 18, 1992) (notarizing affidavit of client in support of a motion when client did not appear before notary); *In re Thebeau*, 489 N.E.2d 877, 878 (Ill. 1986) (acknowledging signatures on a contract, of which only one signature, the client's, had been witnessed by attorney-notary); *Committee On Prof'l Ethics and Conduct v. Hutcheson*, 504 N.W.2d 898, 899 (Iowa 1993) (notarizing unsigned documents for clients and giving the unsigned documents to the clients so they could obtain necessary signatures); *O'Bryan v. Kentucky Bar Ass'n*, 824 S.W.2d 877, 877 (Ky. 1992) (certifying as notary public that client appeared and attested to a dissolution petition when in fact client did not appear on the day indicated); *In re Danna*, 403 N.W.2d 239, 240 (Minn. 1987) (signing client's name and notarizing affidavit in support of a motion for increased child support); *In re Finley*, 261 N.W.2d 841, 842 (Minn. 1978) (certifying and notarizing documents for client that were not subscribed and sworn to in attorney-notary's presence); *In re Silverblatt*, 454 N.Y.S.2d 443, 443 (N.Y. App. Div. 1982) (attesting to clients' signatures on releases knowing they had not been signed by clients); *In re Sims*, 584 P.2d 766, 766 (Or. 1978) (signing client's name to a verification form required for a marriage dissolution proceeding, then notarizing and filing the form in order to avoid default); *In re Walter*, 427 P.2d 96, 96 (Or. 1967) (taking an acknowledgment to a deed as notary public without seeing the grantor of the deed); *In re Hopkins*, 103 P. 805, 805 (Wash. 1909) (certifying clients' signatures to affidavits and declarations used in pension claims when client's did not appear before attorney-notary).

84. Spyke, *supra* note 56, at 3.

85. 805 P.2d 351, 351 (Alaska 1991).

86. *Id.* at 352.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *In re West*, 805 P.2d 351, 352 (Alaska 1991).

92. *Id.*

dismiss the case and release the State from liability for a \$5,500 consideration.<sup>93</sup>

Fearful of the State withdrawing the settlement offer upon learning of the death of his client, West instructed the widow to sign both her name and the deceased client's name on the release form.<sup>94</sup> West subsequently notarized, signed and dated the release in his capacity as a notary public.<sup>95</sup>

Subsequently, an attorney working on the estate of West's client discovered West's misconduct and notified West to that effect.<sup>96</sup> West responded by letter to the attorney and stated, "I was faced with the choice of doing something according to the rules and seeing a client get screwed or not telling the defendant and getting something."<sup>97</sup> Prior to sending the letter to the attorney, West notified the Alaska Bar Association about his misconduct. Thereafter, the Alaska Bar Association initiated disciplinary proceedings against West.<sup>98</sup>

The disciplinary panel found that West violated DR 1-102(A)(4), (5) and (6),<sup>99</sup> as well as DR 7-102(A)(5)<sup>100</sup> of the ABA Code of Professional Responsibility and recommended West be suspended for ninety days.<sup>101</sup> A review board affirmed the panel's conclusions regarding the violations of the Code of Professional Responsibility.<sup>102</sup> However, the review board concluded that West should be suspended for two years, required to petition for reinstatement and pass the Multistate Professional Responsibility Exam (MPRE).<sup>103</sup> In reviewing the conclusions of both the panel and board, the Alaska Supreme Court affirmed West's violations of

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93. *Id.*

94. *Id.* At this time, the widow had not been named as a personal representative of her husband's estate. *Id.* However, West argued to the Alaska Supreme Court that he considered the widow a "de facto personal representative." *Id.* at 352 n.1.

95. *Id.* at 353. The release contained the following language: "On the 26th day of March, 1986, before me personally appeared the above [referring to the client and his wife] to me known to be the person(s) named herein and who executed the foregoing Release and they acknowledged to me that they executed the same." *Id.*

96. *Id.* at n.2.

97. *West*, 805 P.2d at 353 n.2. West went on to say:

I guess I wonder what one is to do when faced with the situation where if you do the right thing, your client might suffer or suffer a great deal and bending the rules to get something for the client. . . It just really bothers me that if we had done nothing, the defendant would have prevailed, when they were so clearly at fault.

*Id.*

98. *Id.*

99. See *supra* note 6 for the specific language of DR 1-102(A)(4) & (5).

100. See *supra* note 7 for the specific language of the rule.

101. *West*, 805 P.2d at 353.

102. *Id.*

103. *Id.*

DR 1-102(A)(4) and (5) and DR 7-102(A)(5).<sup>104</sup> In deciding the appropriate sanction for West, the court stated that the bar and the public have a right to expect lawyers not to misuse their notary powers to confirm what they know are erroneous signatures or to use documents falsely signed and notarized in settlement of legal claims.<sup>105</sup> The court then suspended West for ninety days.<sup>106</sup>

West, by his own admission, sought to obtain a just result for his client. However, in doing so, West abused his notary status and violated the Code of Professional Responsibility. As a result, West received a ninety day suspension. This case demonstrates the repercussions for committing notarial misconduct when an attorney seeks a just result for his client.

### B. Desire to Expedite Claim

A desire to expedite the client's claim appeared the least in the surveyed cases.<sup>107</sup> The reason for this is due to the nature of the circumstances surrounding the notarial misconduct and the unlikelihood of being caught.<sup>108</sup> Nevertheless, *In re Crapo* provides an excellent example of how an attorney commits misconduct by using his notary status to expedite his client's claim.<sup>109</sup>

In *Crapo*, the client sought to file a modification for visitation and support of his children.<sup>110</sup> To do so, a Verified Petition to Modify Visitation and Support needed to be filed with the court.<sup>111</sup> Crapo and his client reviewed the petition, but the client failed to sign the petition before leaving Crapo's office.<sup>112</sup> Not wanting to delay the process, Crapo signed his client's name, notarized the

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104. *Id.* at 354. West argued that the panel and board erred in holding that his actions constituted conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5). *Id.* West asserted that his conduct facilitated rather than prejudiced justice. *Id.* The court dismissed West's contention calling it "devoid of merit" and stated that admittedly notarizing a false statement is undisputedly conduct prejudicial to the administration of justice. *Id.*

105. *Id.* at 359.

106. *Id.* at 360. One Justice dissented stating that West's conduct warranted a suspension of at least eighteen months. *Id.* at 362.

107. A review of the surveyed cases produced only one case, *In re Crapo*, 542 N.E.2d 1334, 1334 (Ind. 1989), fitting into the category of expediting the client's claim.

108. Telephone Interview with Charles N. Faerber, Vice President of Legislative Affairs and Editor of Publications, National Notary Association (Apr. 2, 1997) [hereinafter Faerber April 1997]. Mr. Faerber opined that expedition of the client's claim generally was not the only motivation behind the notarial misconduct. *Id.* Mr. Faerber stated that expediting the claim appeared to be the "flip-side" of another motivation such as obtaining a just result for the client. *Id.*

109. 542 N.E.2d 334 (Ind. 1989).

110. *Id.*

111. *Id.*

112. *Id.* at 1335.

petition, and filed it with the court.<sup>113</sup>

The Supreme Court of Indiana concluded that Crapo made a false statement of material fact to a tribunal.<sup>114</sup> Additionally, the court found that Crapo committed a criminal act which reflected adversely on his honesty, trustworthiness, and fitness as a lawyer.<sup>115</sup> Finally, the court ruled that Crapo engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, and conduct prejudicial to the administration of justice.<sup>116</sup> As a result, the court suspended Crapo for ninety days.<sup>117</sup>

Although the situation in *Crapo* represents the least reported type of case, the circumstances that led to Crapo's suspension arguably occur every day.<sup>118</sup> The workload imposed on most attorneys and the time constraints they face facilitate such an abuse.<sup>119</sup> The preceding examples illustrate notarial misconduct by attorney-notaries. The next section illustrates the repercussions for attorneys who direct notarial staff or independent notaries to commit misconduct.

### C. Attorneys Who Direct Notaries

Notarial misconduct in the legal profession is not limited to attorney-notaries. The need for notarization of legal documents is so vital to the legal process that many law firms or attorneys in private practice either employ staff to perform this function or request notarial services from an independent notary.<sup>120</sup> Attorneys who employ notaries and request they perform improper notarial acts encounter the same penalties as attorney-notaries. The number of reported cases involving attorneys sanctioned for misconduct for improperly using notaries is significantly less than cases involving attorney-notaries.<sup>121</sup> This fact in no way diminishes the importance of recognizing attorney misuse of notarial staff or independent notaries, for even one instance is worthy of recognition.

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113. *Id.*

114. *Id.*

115. *In re Crapo*, 542 N.E.2d 1334, 1335 (Ind. 1989).

116. *Id.*

117. *Id.*

118. Telephone Interview with Charles N. Faerber, Vice President of Legislative Affairs and Editor of Publications, National Notary Association (Mar. 21, 1997) [hereinafter Faerber March 1997].

119. *Id.*

120. *Id.*

121. See, e.g., *In re Reback*, 513 A.2d 226, 228 (D.C. 1986) (directing secretary to notarize a complaint not signed in her presence); *Superior Bank FSB v. Golding*, 605 N.E.2d 514, 516 (Ill. 1992) (alleging notary employed by law firm wrongfully notarized a signature); *In re Boyd*, 430 N.W.2d 663, 664 (Minn. 1988) (directing notary public in office to certify a false signature); *In re Smith*, 636 P.2d 923, 925 (Or. 1981) (directing reluctant secretary to notarize signature not signed in her presence).

Moreover, as the following case illustrates, the practice of attorneys committing misconduct by way of notarial staff or independent notaries, is a common occurrence.

*The Florida Bar v. Farinas* involved an attorney who represented his clients in a lawsuit arising from the purchase of a business.<sup>122</sup> Farinas' clients completed interrogatories necessary for the suit but failed to have their signatures notarized.<sup>123</sup> Farinas took the interrogatories to a notary who illegally notarized them.<sup>124</sup> The Florida Bar charged Farinas with engaging in conduct unlawful or contrary to honesty and justice, violating the Rules of Professional Conduct, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engaging in conduct prejudicial to the administration of justice.<sup>125</sup>

In addition to claiming he was unaware that the signatures needed to be witnessed by the notary when signed, Farinas stated that the practice of finding a notary to notarize a client's signature without the client being present is common among members of the Bar.<sup>126</sup> The court found this justification unpersuasive and sanctioned Farinas with a public reprimand.<sup>127</sup>

The case of *Florida Bar v. Farinas* illustrates two important realities regarding attorneys and notarial misconduct. First, *Farinas* displays the lack of knowledge on the part of an attorney as to notarial laws, and second, *Farinas* verifies the frequent practice of attorneys requesting notaries to perform illegal notarial acts. These occurrences are undoubtedly not limited to the State of Florida.

The number of cases involving attorneys who commit misconduct in their capacity as notaries or employing notaries is substantial.<sup>128</sup> An overwhelming majority of the cases are fairly recent

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122. 608 So. 2d 22, 23 (Fla. 1992).

123. *Id.* Farinas' clients moved to another state thus making it difficult for Farinas to send the interrogatories back to his clients for proper notarization. *Id.*

124. *Id.* The notarization was illegal under Florida law which prescribes that:

Every notary public in the state shall require reasonable proof of the identity of the person whose signature is being notarized and such person must be in the presence of the notary public at the time the signature is notarized. Any notary public violating the above provision shall be guilty of a misdemeanor of the second degree. . . . It shall be no defense under this section that the notary public acted without intent to defraud.

FLA. STAT. ANN. § 117.09(1) (West 1996 & Supp. 1998) quoted in *Farinas*, 608 So. 2d at 24.

125. *Farinas*, 608 So. 2d at 24.

126. *Id.*

127. *Id.* at 24. The court also assessed Farinas with costs in the amount of \$2,582.60. *Id.*

128. *E.g.*, Illinois Cent. R.R. Co. v. R.R. Land, Inc., Nos. CIV.A.86-86, 91-

decisions.<sup>129</sup> The necessary conclusion reached from this fact is that the courts and the bar organizations are more conscious of notarial misconduct and are reacting accordingly. As a result, attorneys must become more aware of the factors that lead to notarial misconduct because those factors often determine the sanction given by the court.

### III. AGGRAVATING AND MITIGATING FACTORS USED TO DETERMINE SANCTIONS

The *ABA Standards for Imposing Lawyer Sanctions* provides the framework by which most courts determine the appropriate sanction.<sup>130</sup> This Part discusses the aggravating and mitigating factors used by a majority of the courts in determining sanctions for attorney-notaries and employers of notaries guilty of misconduct. Section A discusses the relevant aggravating circumstances applied in the surveyed cases, and Section B discusses the relevant mitigating circumstances applied in the surveyed cases.

#### A. Aggravating Circumstances

The *ABA Standards for Imposing Sanctions* set forth ten aggravating factors to consider in determining the sanction resulting

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543, 1992 WL 38109 (E.D. La. Feb. 18, 1992); *In re West*, 805 P.2d 351 (Alaska 1991); *In re Reback & Parsons*, 513 A.2d 226 (D.C. 1986); *The Florida Bar v. Farinas*, 608 So. 2d 22 (Fla. 1992); *The Florida Bar v. Blum*, 515 So. 2d 194 (Fla. 1987); *Superior Bank FSB v. Golding*, 605 N.E.2d 514 (Ill. 1992); *In re Thebeau*, 489 N.E.2d 877 (Ill. 1986); *In re Crapo*, 542 N.E.2d 1334 (Ind. 1989); *Committee on Prof'l Ethics and Conduct v. Hutcheson*, 504 N.W.2d 898 (Iowa 1993); *O'Bryan v. Kentucky Bar Ass'n*, 824 S.W.2d 877 (Ky. 1992); *Louisiana State Bar Ass'n v. Perez*, 550 So. 2d 188 (La. 1989); *In re Boyd*, 430 N.W.2d 663 (Minn. 1988); *In re Danna*, 403 N.W.2d 239 (Minn. 1987); *In re Finley*, 261 N.W.2d 841 (Minn. 1978); *In re Dobberty*, 458 N.Y.S.2d 775 (N.Y. App. Div. 1983); *In re Silverblatt*, 454 N.Y.S.2d 443 (N.Y. App. Div. 1982); *In re Picciano*, 439 N.Y.S.2d 221 (N.Y. App. Div. 1981); *Blum v. Comm. on Prof'l Standards*, 432 N.Y.S.2d 268 (N.Y. App. Div. 1980); *In re Morin*, 878 P.2d 393 (Or. 1994); *In re Benson*, 814 P.2d 507 (Or. 1991); *In re Smith*, 636 P.2d 923 (Or. 1981); *In re Kraus*, 616 P.2d 1173 (Or. 1980); *In re Sims*, 584 P.2d 766 (Or. 1978); *In re Walter*, 427 P.2d 96 (Or. 1967); *In re Hopkins*, 103 P. 805 (Wash. 1909); *Board of Prof'l Responsibility v. Neilson*, 816 P.2d 120 (Wyo. 1991).

129. *E.g., Illinois Cent.*, 1992 WL 38109; *West*, 805 P.2d 351; *Blum*, 515 So. 2d 194; *Thebeau*, 489 N.E.2d 877; *Crapo*, 542 N.E.2d 1334; *Hutcheson*, 504 N.W.2d 898; *O'Bryan*, 824 S.W.2d 877; *Perez*, 550 So. 2d 188; *Danna*, 403 N.W.2d 239; *Morin*, 878 P.2d 393; *Benson*, 814 P.2d 507; *Neilson*, 816 P.2d 120.

130. ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (1991). The ABA standards set forth four factors to be examined in determining the appropriate sanction: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *Id.* § 3.0. The ABA standards also discuss the appropriate sanction for attorneys who are public officials and engage in conduct prejudicial to the administration of justice. *Id.* § 5.2.

from misconduct.<sup>131</sup> One of the more common aggravating circumstances applied in the surveyed cases by the courts is a dishonest or selfish motive.<sup>132</sup> The court in *In re West*, discussed in Part II, determined that the aggravating circumstance of a selfish motive extended to West solely because of the attorney's fees he received.<sup>133</sup> Additionally, the court applied as aggravating factors West's experience in the practice of law and prior disciplinary offenses.<sup>134</sup> In *In re Morin*, also discussed in Part II, the court determined Morin's conduct was aggravated by a number of factors. The court noted Morin's selfish motive, a pattern of misconduct, multiple offenses, and a lack of candor during the Oregon Bar's investigation.<sup>135</sup>

*West* and *Morin* exemplify how courts look to the *ABA Standards* when determining the appropriate sanction. Particularly, *In re West* displays the discretion a court may use in applying an aggravating factor. Although West only received attorney's fees, the court determined that such fees rose to the level of selfish motivation, thus aggravating the sanction for his professional misconduct.

### B. Mitigating Circumstances

In addition to the aggravating circumstances, the *ABA Standards* list thirteen mitigating factors that may warrant a lesser sanction for an attorney's misconduct.<sup>136</sup> The court's recognition of

131. *Id.* § 9.22. The factors are:

(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; and (j) indifference to making restitution.

*Id.*

132. See *Perez*, 550 So. 2d at 191 (listing dishonest or selfish motive as an aggravating factor); *Morin*, 878 P.2d at 402 (stating that accused acted out of a selfish and dishonest motive); *Neilson*, 816 P.2d at 123 (finding that accused acted out of a dishonest and selfish motive).

133. *West*, 805 P.2d at 358. The court determined that collecting attorney's fees was conceivably a selfish or dishonest motive in determining an aggravating factor. *Id.*

134. *Id.* The court determined that the attorney's experience in the practice of law was the most significant aggravating circumstance. *Id.* See also *Neilson*, 816 P.2d at 123 (listing substantial experience in the practice of law as an aggravating factor).

135. *Morin*, 878 P.2d at 402.

136. ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (1991). The factors are:

(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith

mitigating factors in *In re West* led to a suspension of West for a period of ninety days.<sup>137</sup> The court recognized that West suffered from severe personal and emotional problems and gave deference to several attorneys who testified as to West's good character and reputation.<sup>138</sup> One justice dissented, however, and concluded that West deserved a suspension of at least eighteen months.<sup>139</sup> Likewise, in *In re Crapo*, the court mitigated Crapo's sanction because Crapo made a timely good faith effort to rectify the consequences of his misconduct.<sup>140</sup> As a result, the court suspended Crapo for only ninety days after determining that he violated numerous Rules of Professional Conduct.<sup>141</sup>

The attorneys in *West* and *Crapo* undoubtedly benefited from the courts' recognition of mitigating factors. However, the court in *Morin* did not give such deference to the mitigating circumstances in Morin's situation. The court recognized that Morin lacked a prior disciplinary record, was remorseful for his misconduct, and suffered from personal and emotional problems.<sup>142</sup> However, the court determined that the intentional nature of Morin's conduct overshadowed all the mitigating factors.<sup>143</sup> As a result, the court disbarred Morin.<sup>144</sup>

The contrast between the sanction imposed on Morin and West illustrates the court's discretion when determining sanctions. Both West and Morin committed intentional misconduct in their capacities as notaries and attorneys. Although the two cases are distinguishable by the motive behind the notarial misconduct, such a disparity between the sanctions imposed for similar violations of the disciplinary rules and similar aggravating and mitigating factors illustrates the necessity for a better understanding of the repercussions for committing notarial misconduct.

#### IV. DECREASING NOTARIAL ABUSE IN THE LEGAL PROFESSION

Notarial abuse is rampant in the legal profession.<sup>145</sup> This Part

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effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical or mental disability or impairment; (i) interim rehabilitation; (k) imposition of other penalties or sanctions; (l) remorse; and (m) remoteness of prior offenses.

*Id.*

137. *West*, 805 P.2d at 360.

138. *Id.*

139. *Id.* at 362.

140. *In re Crapo*, 542 N.E.2d 1334, 1335 (Ind. 1989).

141. *Id.* See *supra* note 104 and accompanying text for a listing of the rules violated.

142. *In re Morin*, 878 P.2d 393, 402 (Or. 1994).

143. *Id.*

144. *Id.* at 403.

145. Faerber March 1997, *supra* note 118. Mr. Faerber stated that there is

proposes effective ways to decrease notarial abuse in the legal profession. Section A proposes that law schools and bar organizations begin recognizing and educating current and future attorneys about the role of notaries and the gravity of the repercussions for notarial misconduct. Section B proposes that states strengthen their notarial requirements. Section C proposes that a portion of the soon to be published Code of Ethics for Notaries include a section on ethical responsibilities for employers of notaries.

### A. *Educating the Legal Community*

One of the most prevalent reasons attorneys commit notarial misconduct is due to the lack of education provided to them.<sup>146</sup> Decreasing notarial abuse by attorneys depends upon proper education at the law school level.<sup>147</sup> The study of legal ethics provides an appropriate forum for educating prospective attorneys regarding the repercussions for notarial abuse.<sup>148</sup> For attorneys already in practice, the obligation of educating them lies with the respective State Bar Organizations. A majority of states require attorneys to participate in continuing legal education (CLE).<sup>149</sup> For those states that require CLE, discussing proper notarization practices and the penalties for improper notarization practices need to be implemented immediately. For those states that do not require CLE, the time to implement such programs is now. Recognition, awareness, and education of notarial misconduct by attorneys will undoubtedly decrease the number of situations in which attorneys receive sanctions for their notarial improprieties.

### B. *Strengthening Statutory Requirements*

Another reason for notarial misconduct by attorneys stems from the trivial nature in which the office of notary public is

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more notarial abuse in the legal profession than any other field. *Id.* In the course of a day, the National Notary Association receives between 200 and 300 phone calls from notaries who are asked to perform improper notarizations. *Id.* More often than not, the person asking the notary to perform the improper notarization is an attorney. *Id.*

146. Faerber April 1997, *supra* note 108.

147. Interview with Michael L. Closen, Professor of Law, The John Marshall Law School and Notary Public (Mar. 21, 1997). At present, two law schools specifically address the notary public's function in the legal profession. *Id.* Northern Illinois University College of Law offered a course in the fall of 1997 and The John Marshall Law School offered a course in the spring of 1998. *Id.*

148. Interview with Frank Morrissey, Professor of Legal Ethics, The John Marshall Law School (Mar. 21, 1997). Professor Morrissey stated that in his experience of teaching legal ethics, the problem of notarial misconduct by attorneys had not been addressed. *Id.* Professor Morrissey added that in his experience as a practicing attorney, the frequency of improper notarizations solicited by attorneys was a very common occurrence. *Id.*

149. Interview with Michael L. Closen, *supra* note 147.

viewed.<sup>150</sup> Such a trivial view relates directly to the minimal requirements for obtaining a notary commission.<sup>151</sup> In order to im-

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150. Interview with Corinne Morrissey, Director of Student Advising and Academic Support Services, The John Marshall Law School (Mar. 21, 1997). In Mrs. Morrissey's experience working in a large Chicago law firm, most attorneys viewed the process of notarizing documents as a needless inconvenience. *Id.*

151. *Comparison of State Notary Provisions*, NAT'L NOTARY MAG., May 1996, at 31-32. Alabama: Minimum Age - 18, Minimum Residency - one day, Examination - No, Endorsement - three county citizens, Commission Fee - \$11 to \$15, Bond Requirement - \$10,000; Alaska: Minimum Age - 19, Minimum Residency - 30 days, Examination - Yes, Endorsement - Local superior court clerk, Commission Fee - \$40, Bond Requirement - \$1000; Arizona: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$12.50, Bond Requirement - \$1000, Other - No felony conviction; Arkansas: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$20, Bond Requirement - \$4000; California: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - None, Commission Fee - \$72, Bond Requirement - \$10,000, Other - Fingerprints; Colorado: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - None, Commission Fee - \$10; Bond Requirement - None, Other - Must read and write English and no felony conviction; Connecticut: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - Public official or reputable person, Commission Fee - \$60, Bond Requirement - None; Delaware: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - two letters of recommendation, Commission Fee - \$53, Bond Requirement - None; District of Columbia: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - three letters of reference, Commission Fee - \$50, Bond Requirement - \$2000; Other - Letter from applicant or employer; Florida: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - one character witness, Commission Fee - \$39, Bond Requirement - \$5000; Georgia: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - two adult county citizens, Commission Fee - \$15, Bond Requirement - None; Hawaii: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - Letter of recommendation, Commission Fee - \$35, Bond Requirement - \$1000, Other - letter justifying need for notary; Idaho: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$30, Bond Requirement - \$10,000, Other - Must read and write English; Illinois: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - None, Commission Fee - \$10, Bond Requirement - \$5000, Other - Must read and write English and no felony conviction; Indiana: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$10, Bond Requirement - \$5000, Other - May hold no lucrative public office; Iowa: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$30, Bond Requirement - None; Kansas: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$10, Bond Requirement - \$7500, Other - Must read and write English, no felony conviction or loss of professional license; Kentucky: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - Local judge, legislator or county official, Commission Fee - \$10, Bond Requirement - Varies per county; Louisiana: Minimum Age - 18, Minimum Residency - None, Examination - Yes (for non-attorneys only), Endorsement - District judge, Commission Fee - \$35, Bond Requirement - \$5000

(attorneys exempt); Maine: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - Registered voter, elected official, municipal clerk or registrar of voters, Commission Fee - \$25, Bond Requirement - None; Maryland: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - Local state senator, Commission Fee - \$21, Bond Requirement - None; Massachusetts: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - Lawyer and three others, Commission Fee - \$25, Bond Requirement - None; Michigan: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - Local judge or any legislator, Commission Fee - \$3, Bond Requirement - \$10,000; Minnesota: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$40, Bond Requirement - None; Mississippi: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$25, Bond Requirement - \$5000; Missouri: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - two registered voters, Commission Fee - \$25, Bond Requirement - \$10,000, Other - Must read and write English; Montana: Minimum Age - 18, Minimum Residency - one year, Examination - No, Endorsement - None, Commission Fee - \$20, Bond Requirement - \$5000, Other - No felony conviction; Nebraska: Minimum Age - 19, Minimum Residency - None, Examination - No, Endorsement - 25 registered voters in home county, Commission Fee - \$30, Bond Requirement - \$10,000, Other - No felony conviction; Nevada: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - None, Commission Fee - \$35, Bond Requirement - \$10,000; New Hampshire: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - two notaries and one registered voter, Commission Fee - \$50, Bond Requirement - None; New Jersey: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - State senator or assembly member, or secretary of state or asst. secretary, Commission Fee - \$25, Bond Requirement - None, Other - No conviction for dishonest crime; New Mexico: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - two character witnesses, Commission Fee - \$10, Bond Requirement - \$500, Other - Must read and write English, no felony convictions nor commission revocation; New York: Minimum Age - 18, Minimum Residency - None, Examination - Yes (for non-attorneys only), Endorsement - None, Commission Fee - \$20, Bond Requirement - None; North Carolina: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - Elected official or Notary course instructor, Commission Fee - \$25, Bond Requirement - None, Other - Must complete course at community college; North Dakota: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - None, Commission Fee - \$25, Bond Requirement - \$7500; Ohio: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - Judge, Commission Fee - \$5, Bond Requirement - None, Other - Judge may require exam; Oklahoma: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$25, Bond Requirement - \$1000; Oregon: Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - None, Commission Fee - \$20, Bond Requirement - None, Other - No felony conviction; Pennsylvania: Minimum Age - 18, Minimum Residency - one year, Examination - No, Endorsement - State senator and two reputable citizens, Commission Fee - \$40, Bond Requirement - \$3000; Rhode Island: Minimum Age - 18, Minimum Residency - one month, Examination - No, Endorsement - Member of local board of canvassers, Commission Fee - \$40, Bond Requirement - None, Other - Must read and write English; South Carolina: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - Half of legislators in county or local state senator and representative, Commission Fee - \$25, Bond Requirement - None; South Dakota:

prove the level of professionalism, states must raise the qualifications, education, testing and fees related to the office of notary public.<sup>152</sup> By improving the requirements, the notary will regain the dignity and respect the office once held. Once the office of the notary regains dignity and respect, attorney-notaries and attorneys who direct notaries will view notarial functions more seriously, thus decreasing notarial misconduct.

### C. Notary Code of Ethics

Promulgating extensive requirements for notaries will not put an end to notarial abuse entirely. Professionalism depends on developing ethics which govern the activities of those in the profession. Many areas of business, health and law have developed codes of professional responsibility to guide the conduct of their members.<sup>153</sup> Likewise, the responsibility for directing the conduct of notaries and those who utilize their services lies within the profession of the notary public. Last year, the National Notary Asso-

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Minimum Age - 18, Minimum Residency - None, Examination - Yes, Endorsement - None, Commission Fee - \$5, Bond Requirement - \$500; Tennessee: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - County commissioner, Commission Fee - \$12, Bond Requirement - \$10,000; Texas: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$21, Bond Requirement - \$10,000, Other - No conviction for a felony or crime of moral turpitude; Utah: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - two registered voters, Commission Fee - \$15, Bond Requirement - \$5000, Other - Must read and write English; Vermont: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$15, Bond Requirement - None; Virginia: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - State official plus two voters, Commission Fee - \$25, Bond Requirement - None, Other - No felony conviction; Washington: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - three adult residents of home county, eligible to vote and not relatives, Commission Fee - \$20, Bond Requirement - \$10,000, Other - Must read and write English; West Virginia: Minimum Age - 18, Minimum Residency - 30 days, Examination - No, Endorsement - three qualified voters, Commission Fee - \$50, Bond Requirement - None, Other - Must read and write English; Wisconsin: Minimum Age - 18, Minimum Residency - None, Examination - No, Endorsement - None, Commission Fee - \$15, Bond Requirement - \$500, Other - Must have a minimum of an eighth-grade education and no convictions related to notary duties; Wyoming: Minimum Age - 18, Minimum Residency - None, Examination - Yes (test encouraged but not mandatory), Endorsement - None, Commission Fee - \$30, Bond Requirement - \$500, Other - Must read and write English.

152. Michael L. Closen, *Why Notaries Get Little Respect*, NAT'L L.J., Oct. 9, 1995, at A23, A24. The fees paid for notary services make the strongest case for the notary's trivialized position. *Id.* Additionally, the bond requirements for those states that require bonds are so low that they are useless and misleading. *Id.* See generally Michael L. Closen and Michael J. Osty, *The Illinois Notary Bond Deception*, CHI. DAILY L. BULL., Mar. 2, 1995, at 6.

153. See generally CODES OF PROFESSIONAL RESPONSIBILITY (Rena Gorlin ed., 2d ed. 1990).

ciation adopted the task and drafted a preliminary code of ethics for notaries.<sup>154</sup> Although the Code provides excellent guidance for notaries, the Code fails to address the responsibilities of employers of notaries. Professions like the legal profession, that frequently employ notarial staff, must be included in the Code. When an employee becomes a notary, the relationship between the employer and employee changes. Essentially, the employee performs official public duties completely separate from any responsibility as an employee. The distinction between the two responsibilities warrants adding a section to the Code specifically for employers to eliminate any confusion regarding the employer's conduct toward the notary-employee. A section for employers in the Code will decrease notarial abuse by setting forth appropriate conduct by which the employer directs the notary-employee.

Notarial misconduct by attorney-notaries and attorneys who direct notaries undermines the integrity of both professions. The first step in rectifying notarial misconduct by attorneys requires recognition by the legal community that notarial misconduct is a problem. Once recognized, measures like those listed above can be implemented to decrease attorney-notarial misconduct and restore the notary to a position of dignity and respect.

#### CONCLUSION

The purpose of this comment is to notify the legal community as to the existence of notarial misconduct and the repercussions for its occurrence. From the days of the Roman Empire, the notary public represented an important functionary in society. Today, the notaries' function remains essential to the legal profession. Many legal documents require notarization, thus many attorneys become notaries or hire notary staff to accomplish notarial tasks. However, many attorneys abuse the notary system and risk receiving sanctions for violating the disciplinary rules of their state bar. Both the legal profession and the notary profession suffer when attorneys commit notarial misconduct. The legal and notary professions must take responsibility and implement plans to accomplish the task of decreasing notarial abuse by attorneys.

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154. NOTARY PUBLIC CODE OF ETHICS (Preliminary Draft Mar. 1, 1997). The National Notary Association is now closer to finalizing the Code. NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY (Semi-Final Draft Mar. 1, 1998).