

## December 2000

**EXECUTIVE OFFICE OF THE GOVERNOR  
NOTARY SECTION  
Notary E-Mail E-ducation December 2000**

Greetings Florida Notaries!

I hope everyone is enjoying the holiday season! Recently, I attended a conference for court reporters and had numerous questions about depositions so this month we will take a look at the proper procedures to follow when administering the oath to the deponent.

### **DEPOSITIONS**

A deposition is the testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution. The person giving the testimony is called the deponent.

Notaries are authorized to administer an oath for a deposition for use in a court case or an investigation. When administering the oath, the notary must require the deponent's physical presence and properly identify him or her. If the notary keeps a journal or record of notarial acts, the journal entry should be made at this point, including the deponent's signature. The notary would then administer the oath or affirmation, perhaps by having the deponent raise his or her right hand and asking:

*"Do you swear (or affirm) that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth (so help you, God)?"*

Once an affirmative answer is given, the deponent is now under oath, and the notary's responsibility is over.

Although depositions may be taken over the telephone, the deponent must be in the physical presence of the notary public, or other official authorized to administer oaths, at the time the oath or affirmation is given. There is no exception to the presence requirement, even if the attorneys for both parties stipulate otherwise. (See Attorney General Opinion, No. 92-95, December 23, 1992.) This means that, if you are asked to swear in a person over the phone, you must decline. A notary, or other authorized official, would have to be present with the deponent for the administration of the oath or affirmation.

When asked to make a written certificate of the notarial act, we suggest that you make a certificate in substantially the form provided:

STATE OF FLORIDA  
COUNT OF \_\_\_\_\_

In my capacity as a Notary Public of the State of Florida, I certify that on the \_\_\_\_ day of \_\_\_\_\_, 200\_, at (time) a.m./p.m., (name of deponent) personally appeared before me and took an oath (or affirmation) for the purpose of giving testimony in this matter:

\_\_\_\_\_.

Identification:  
Personally Known \_\_\_\_\_

or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

NOTARY SIGNATURE  
PRINT, TYPE OR STAMP NAME OF NOTARY

You should also know that, as a notary public, you are not authorized to take a deposition. That is, you may not actively participate in questioning a witness who is giving a deposition in a criminal or civil proceeding. A Florida appellate court recently ruled that the taking of a deposition constitutes the practice of law under section 454.23, Florida Statutes. Notaries who are not licensed attorneys are prohibited from engaging in the practice of law and may be suspended from office by the Governor for such violation. The referenced case involved two paralegals, one of whom was a notary public, who owned a business that performed paralegal functions. Neither was a licensed attorney, but both readily admitted their active participation in several depositions. In its opinion, the Court explained:

*A deposition is an important, formal, recorded proceeding in which lawyers must observe the Florida rules of court and must rely on their legal training and skills to question witnesses effectively. The activities and services involved in participating in a deposition often implicate ethical questions and strategic considerations of the utmost importance. The effectiveness of the person deposing a witness can have a significant impact on whether objectionable information is identified and addressed or waived, whether a case is made, and how the evidence therefrom is used in any subsequent legal proceeding . . . Without a doubt, the process of directly examining or cross-examining a witness can affect important rights under the law . . . We conclude that, lacking adequate legal training, a nonattorney participating in the examination of a witness poses the very dangers of incompetent, unethical, or irresponsible representation . . . we hold that the nonlawyer appellees' active participation in questioning witnesses in depositions . . . constitutes the unauthorized practice of law in violation of section 454.23, Florida Statutes.*

The notary involved has been denied a renewal appointment by the Governor's Office and both persons have pending criminal charges for the unlicensed practice law. Be careful that you do not overstep your authority when asked to swear in a person for a deposition. The unauthorized practice of law is a serious matter and one that is not taken lightly by the Governor's Office or the Court.

*For additional information oin the court case, see State v. Foster, 674 So.2d 747 (Fla. 1st DCA 1996).*

#### **NEW NOTARY LAW BOOKLETS AVAILABLE**

Our office has available the new Laws Related to Florida Notaris Public effective July 1, 2000. Please e-mail us or fax a request to our office at (850) 410-1294. Be sure to give us your name and mailing address, and we'll put one in the mail to you. If you prefer, you can print the laws from our website:

Thank you and have a happy and prosperous New Year!

Thank you for your time!  
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