THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY

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INTRODUCTION

Purpose of the Code

The Notary Public's key role in lending integrity to important transactions of commerce and law necessitates sound standards for the performance of notarial acts.

While many occupations pose professional and ethical norms for their practitioners, the need for guidelines is particularly acute with persons holding the office of Notary because of their unusual status as both public and private functionaries. In few offices is the practitioner more subject to conflicting pressures. Yet, in few offices are the guiding statutes so scant and inadequate.

The purpose of the *Code of Professional Responsibility* is to guide Notaries Public in the United States when statutes, regulations and official directives fall short.

The standards in this *Code* are of two types. The majority are principles, policies and practices that have proven over the years to be effective in helping Notaries perform their primary function of detecting and deterring fraud; in minimizing fraud, these standards also work to reduce the Notary's exposure to lawsuits. The remainder are standards derived from the conviction that a public officer in a democracy must serve all persons equally, without regard to such distinctions as race, nationality, ethnicity, citizenship, religion, politics, lifestyle, age, disability, gender or sexual orientation.

Because the acts of Notaries affect individual rights and property under both civil and criminal law, it is imperative that professional standards for Notaries be widely acknowledged as just, fair and well-developed. To that end, the standards in this *Code* were drafted with input from representatives of occupational fields with a large constituency of Notaries Public. Also contributing were state and local officials who regulate the activities of Notaries, as well as legal, business and surety experts.

Organization of the Code

This *Code of Professional Responsibility* is based upon 10 widely accepted "Guiding Principles" that clarify the multiple roles of the Notary Public in the United States. They are general rules for responsible conduct.

Each Principle in turn embraces particular "Standards of Professional and Ethical Practice" for the Notary. Each Standard works to maximize the public utility of the notarial office, while minimizing the Notary's exposure to liability.

The Standards of Professional and Ethical Practice are exemplified by "Illustrations" posing problematic situations that are common or typical for Notaries. Details are provided to help the reader visualize each situation.

For each Illustration, "The Ethical Imperative" or "The Professional Choice" indicates the course of action best exemplifying the pertinent Guiding Principle and Standard of Professional and Ethical Practice.

The Ethical Imperative identifies an action that, if not taken, would constitute a clear and serious violation of the Notary's fundamental role as an impartial witnessing official, as defined in the Guiding Principles.

The Professional Choice identifies an action that, if not taken, would undermine or lessen the Notary's effectiveness as a fraud-deterring public servant.

The 10 "Commentary" sections supplement the *Code* by explaining the drafters' views, concerns and rationales in shaping important provisions, and by discussing certain pertinent other matters not directly addressed by the *Code.*

Basis of the Code

The Guiding Principles and Standards of Professional and Ethical Practice are the distillation of decades of interaction between the National Notary Association and thousands of Notaries from every walk of life and from every state and U.S. jurisdiction. They address the

common problems, issues and questions encountered by Notaries, particularly matters of conflicting interest.

The Principles and Standards reflect the conviction that Notaries must operate in a businesslike fashion, basing their actions on proven practices of business and government, and always carefully documenting their official activities.

Statutory Requirements

In some jurisdictions, a particular Standard of Professional and Ethical Practice may already be a requirement of statute, such as the common but not universal legal mandate to keep a record of all notarial acts performed. In most cases, however, the Standards do not carry the force of law. Therefore, throughout the *Code*, the word "shall" does not necessarily denote a legal obligation for the Notary, but it always constitutes a compelling recommendation.

In rare cases, the Standards may contradict provisions in a state's Notary statutes or administrative regulations, particularly when these rules stipulate procedures for disposal of the seal or journal upon termination of the Notary's commission. In these instances, of course, pertinent statutes and regulations must be obeyed by the Notary.

For the overwhelming majority of Notaries, no statute or administrative rule will prevent adherence to any and every Standard of Professional and Ethical Practice in the *Code*.

Employer Expectations

The Standards frequently will contradict not the provisions of law but the policies or expectations of the Notary's employer. This is often the case when an employer wishes to discriminate between customers and noncustomers by providing or withholding notarial services that the *Code* stipulates should be available to all.

Notaries should understand that the *Code* is a model for preferred conduct and not a gauge of unlawfulness or criminality.

Uses and Benefits of the Code

This *Code* may serve as a tool to guide and educate not only Notaries Public, but also lawmakers, public administrators, private employers and any users of notarial services.

It is a moral imperative for progressive change, and a catalyst for improving notarial statutes and conventions in commerce and law.

Widespread implementation of the *Code* will reduce fraud and litigation.

Any Notary's adherence to the *Code's* Standards brings confidence that he or she is acting in accord with the highest professional and ethical traditions of the notarial office.

Widespread adherence to the Standards by Notaries in the United States will engender heightened respect and recognition for their notarial office in the enterprises of government and business, both in this nation and abroad.

Revision of the Code

The *Notary Public Code of Professional Responsibility* is not intended to be static and unchangeable. Its organization allows the separable Standards to be added, deleted or amended with little or no disruption of other elements in the *Code*.

While the 10 Guiding Principles of the *Code* are sufficiently general to embrace considerable change in the duties and practices of the Notary office without amendment to their current form, it is likely that the *Code's* 85 Standards may in time need revision or supplement to accommodate technological developments.

Periodic review and revision of the *Code* are intended.

NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY

Guiding Principles

I

The Notary shall, as a government officer and public servant, serve all of the public in an honest, fair and unbiased manner.

II

The Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.

III

The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.

IV

The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent.

V

The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.

VI

The Notary shall act as a ministerial officer and not provide unauthorized advice or services.

VII

The Notary shall affix a seal on every notarized document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.

VIII

The Notary shall record every notarial act in a bound journal or other secure recording device and safeguard it as an important public record.

IX

The Notary shall respect the privacy of each signer and not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose.

X

The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the notarial office.

GUIDING PRINCIPLE I

The Notary shall, as a government officer and public servant, serve all of the public in an honest, fair and unbiased manner.

Standards of Professional and Ethical Practice

Article A: Refusal to Notarize

I-A-1: Refusal without Due Cause

The Notary shall not refuse to perform a lawful and proper notarial act without due cause.

> **Illustration:** The Notary is asked by a stranger to notarize that person's signature on a document. However, the Notary is hesitant to notarize for any unknown individual because of a presumed increased likelihood of fraud and liability.
>
> *The Ethical Imperative:* As a public officer and servant, the Notary notarizes the stranger's signature if no improprieties are requested or detected.

I-A-2: Refusal for Reasonable Suspicion

The Notary shall refuse to notarize if the Notary has knowledge, or a reasonable suspicion that can be articulated, that the transaction is unlawful or improper.

> **Illustration:** The Notary is asked by a stranger to notarize that person's signature on a document. As proof of identity, the stranger presents a single identification card, a state driver's license. The Notary notices that the photograph on the license is raised from the surface of the card and appears to overlay a state seal and the signature of a DMV official.
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> *The Ethical Imperative:* The Notary refuses to notarize the stranger's document, since there is strong evidence that the ID has been tampered with and bears a false photograph, and that the stranger is an impostor.

I-A-3: Undue Cause for Refusal

The Notary shall not refuse to perform a lawful and proper notarial act because of the signer's race, nationality, ethnicity, citizenship, religion, politics, lifestyle, age, disability, gender or sexual orientation, or because of disagreement with the statements or purpose of a lawful document.

> **Illustration:** The Notary is asked by a stranger to notarize that person's signature on a document. The Notary notes that the stranger is a member of an ethnic minority group. The Notary has heard that most persons in this ethnic group are untrustworthy, through stories that family and friends have told over the years. The Notary hesitates to perform the notarization.
>
> *The Ethical Imperative:* The Notary notarizes the stranger's document, if no improprieties are requested or detected. Ethnicity here is irrelevant and, by refusing, the Notary may become liable for violating the stranger's civil rights.

I-A-4: Improper Refusal Due to Nonclient Status

The Notary shall not refuse to perform a lawful and proper notarial act solely because the signer is not a client or customer of the Notary or the Notary's employer.

COMMENTARY

GENERAL

Guiding Principle I sets the tone for the entire *Code.* By identifying the Notary as a public official, the Principle makes clear that a Notary Public has certain obligations to the general public, and must fulfill those obligations in a fair, honest and constitutionally acceptable manner. Consequently, many of the *Code's* 85 Standards direct Notaries to execute their official duties consistent with the demands put upon public officers.

PUBLIC OFFICIAL STATUS

Notaries have the power to impart an official imprimatur to a document or transaction. There are a plethora of judicial opinions that declare Notaries are "public officers." *(See, e.g., Britton v. Nicolls,* 104 U.S. 757, 765 (1881); *Werner v. Werner,* 526 P.2d 370, 376 (Wash. 1974); and *Commercial Union Ins. Co. v. Burt Thomas-Aitken Const. Co.,* 230 A.2d 498, 499 (N.J. 1967).) But public official status is different for a Notary than for many other public officials. Unlike some public officials, *e.g.,* elected officers, appointed administrators or policemen, a Notary is not a government employee, *per se.* This distinction can have far-reaching ramifications, especially in the area of personal liability. Usually Notaries are not afforded the sovereign immunity protection routinely available to public officials acting within the scope of their authority. Indeed, in some jurisdictions the enabling statute identifies the Notary as a quasi-public official *(see, e.g.,* KAN. STAT. ANN. § 53-101; and MO. REV. STAT. § 486.220.3) and in others the same result has been reached by court decision *(see, e.g., Transamerica Ins. Co. v. Valley Nat'l Bank,* 462 P.2d 814, 817 (Ariz. Ct. App. 1969); and *Ely Walker Dry Goods Co. v. Smith,* 160 P. 898, 900 (Okla. 1916)). These classifications, however, are primarily for liability purposes, and do not detract from the central thesis that a Notary is a public official empowered by the states to perform specified duties.

The Principle identifies the Notary as a public servant because notarial services are rendered to the public at large under the authority of state statutory rules. The Principle uses the public servant designation to reinforce the view that Notaries are important functionaries who are obligated to serve individual members of the public. Although notarial acts benefit the public at large by fostering reliance on various types of documents and acts, Notaries nevertheless are distinguishable from other public servants whose primary obligations are to the public as a whole, instead of individual members. Additionally, the drafters recognize that a substantial majority of state-commissioned Notaries are employees whose notarial services are only incidental to their principal job duties. For some of these Notaries, obligations to their employers, job site locations removed from public access, or both, raise important issues concerning their ability to serve members of the public at large. The *Code* addresses this problem consistent with the view that, absent special state legislation to the contrary, Notaries are public and not private servants. (*See* Standard I-4-A and accompanying Commentary.)

ARTICLE A: Refusal to Notarize

The Standards interpret the Principle consistent with the role expected of a public official. They are drawn from the *Model Notary Act,* Section 3-103(b), which reads, "A Notary shall perform notarial acts in lawful transactions for any requesting person…" Consequently, I-A-1 states the overarching proposition that a Notary should never refuse to act based upon the Notary's personal inclination or bias. As a public servant, the Notary is obligated to perform notarial services for all members of the public, regardless

Illustration: The Notary operates a business. A stranger walks in and requests notarization of a document. The Notary is reluctant to take time away from business to notarize for anyone but customers.

The Ethical Imperative: The Notary notarizes the stranger's document, if no improprieties are requested or detected. Notaries are commissioned to serve the public at large, not just the patrons of a particular business. While no document signer is justified in demanding that a Notary "drop everything" to perform a notarial act, the Notary should try to accommodate the request for notarial services within a reasonable time. However, for any sudden request that would be particularly time-consuming or disruptive to business (*e.g.,* notarize 100 documents immediately), it is reasonable for the Notary to reschedule the services to a more convenient time or to refer the signer to another nearby Notary available to perform the acts at once. Accommodating the public's need for notarial services is paramount for the publicly commissioned Notary.

Article B: Fees

I-B-1: Improper Assessment of Fee

The Notary shall not base the charging or waiving of a fee for performing a notarial act, or the amount of the fee, on the signer's race, nationality, ethnicity, citizenship, religion, politics, lifestyle, age, disability, gender or sexual orientation, or on agreement or disagreement with the statements or purpose of a lawful document.

Illustration: The Notary is asked by a stranger to notarize that person's signature on an affidavit for a ballot initiative the Notary opposes. The Notary is inclined to "punish" this proponent of the initiative by charging for the notarization, even though the Notary has never before charged for notarizing.

The Ethical Imperative: The Notary notarizes the stranger's affidavit without charging a fee. If it has been a consistent policy not to charge for performing notarial acts, the ethical Notary will not assess a fee as a punitive measure against a political opponent. The publicly commissioned Notary must strive to serve the public evenhandedly; thus, the best policy is for all to be charged the same, or for none to be charged. However, the Notary may waive the fee for ill or impoverished persons or for other charitable or *pro bono* causes.

I-B-2: Improper Assessment Due to Nonclient Status

The Notary shall not base the charging or waiving of a fee for performing a notarial act, or the amount of the fee, on whether the signer is a client or nonclient, or a customer or noncustomer, of the Notary or the Notary's employer.

Illustration: The Notary operates a business. A stranger walks in and requests notarization of a document. The Notary performs the notarization but wants to discourage future notarial services for noncustomers that take time away from business. Though never before charging for notarizations, the Notary ponders whether to charge the stranger and to impose a policy of charging noncustomers but not charging regular customers for notarial services.

The Ethical Imperative: The Notary does not charge the stranger for the notarization. Because Notaries are commissioned to serve the public evenhandedly, the ethical Notary does not "punish" persons who do not patronize a particular business by charging a fee for notarial services that are offered free to patrons of the same business. All should be charged the same, or none should be charged.

Article C: Dignity of Office

I-C-1: Dignity Befitting Public Office

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of any signer's beliefs or personal attributes. Most state statutes are silent on this issue. Many jurisdictions merely authorize or empower Notaries to perform specific acts *(see, e.g.,* ARK. CODE ANN. § 21-14-104; COLO. REV. STAT. 12-55-110; and TEX. GOV'T CODE § 406.014), which can be interpreted to mean Notaries are not required to honor all requests. There are, however, notable exceptions. (*See, e.g.,* UTAH CODE ANN. § 46-1-8(2), providing "a notary shall perform notarial acts in lawful transactions for any requesting person…"; and CAL. GOV'T CODE § 8205(a), imposing "the duty of a Notary Public, when requested" to perform acts authorized in the section.) Sometimes Notaries are specifically given discretion in exercising their authority. (*See* IOWA CODE § 9E.8, allowing a Notary to exercise "reasonable discretion" in deciding whether or not to perform notarial services; and CONN. GEN. STAT. § 3-94f, providing that a Notary shall not "unreasonably refuse" to perform a notarial act. *And compare* N.M. STAT. ANN. § 14-12-1 and § 14-12-10, the former section authorizing the Notary to perform various notarial acts and the latter requiring the Notary to perform "protests.")

Although Notaries serve the public, Standard I-A-2 makes clear that a paramount function of the Notary is to deter fraud. Thus, if the Notary knows or has reason to believe that a transaction is illegal or improper, he or she should refrain from providing notarial services. *(Accord* GA. CODE ANN. § 45-17-8(b)(1).) The Illustration of Standard I-A-2 applies the Standard to an impostor-signer situation. *(Note,* if the Notary proceeds, he or she may be liable to third parties injured by the fraudulent transaction. *See, e.g.,* VA. CODE ANN. § 47.1-26; and *Tutelman v. Agricultural Ins. Co.,* 25 Cal.App.3d 914 (1972). If the Notary actually knows the transaction is fraudulent, providing notarial services constitutes a criminal act. *See, e.g.,* N.C. GEN. STAT. § 10A-12; and N.M. STAT. ANN. § 14-12-18.)

The *Code* takes the position that the Notary cannot use personal bias as the basis for deciding whether or not the transaction is tainted with an irregularity. The Standard is written to be as expansive as possible in identifying potential biases. Of particular note is the proscription against using statements made in or the purposes for an otherwise lawful document as the basis for refusing to provide notarial services. Notwithstanding the goal of deterring fraud, the Standard does not anticipate that a Notary will make an independent investigation of the transaction. The *Code* merely posits that a Notary should refuse to put his or her official seal of approval on a transaction that the Notary has reason to believe is fraudulent or otherwise illegal. The Notary is expected to exercise the same care as would an ordinary, reasonable person under like circumstances. Thus, the *Code* neither imposes a special standard of care nor requires legal training for Notaries. This position has statutory support. (*See* IDAHO CODE § 51-111(1), providing Notaries are to use "reasonable care" in fulfilling their general duties.)

Perhaps the most troublesome issue concerning a Notary's decision either to render or withhold services arises in the case of the employee-Notary. Quite often employers dictate that the employee-Notary only provide notarial services for the employer's clients or customers. Arguably this practice has been approved by statutory rule (*see* CAL. GOV'T CODE § 8202.8), but it is not a universally accepted position (*see* IOWA CODE § 9E.8).

Absent statutory authority to the contrary, the *Code* adopts the view that Notaries as public servants are required to serve all individuals who request notarial service. Understandably this position raises a number of difficult logistical problems. As demonstrated in the Illustration for Standard I-A-4, there is no expectation that a Notary either be "on-call" or at the "beck and call" of the public. The operating principle is "reasonable availability." (*See* 14 Op. Att'y. Gen. 250 (Cal. 1949).)

The thornier side of this issue is whether or not the public has access to the Notary-employee. The *Code's* position is well-suited to situations wherein the Notary-employee works in an establishment conveniently open to the public for other commercial purposes, such as a drug store, stationery supply shop or supermarket. But in quasi-public (*e.g.,* banks or real estate offices) or private (*e.g.,* law firms or business offices) venues, application of the Standard is more problematic. The drafters understand that Notary-employees are not at liberty to establish business policy. Therefore, they cannot be reasonably expected to jeopardize their jobs by disobeying employer directives that

The Notary shall conduct himself or herself with a dignity befitting a public officer and in a manner that does not bring disrepute or discredit upon the notarial office.

Illustration: The Notary is employed in an office with one other Notary, both notarizing affidavits for coworkers. Each affidavit requires administration of an oath to the affiant. The Notary has heard the colleague say to affiants at the start of an oath, "I know this is stupid, but will you please raise your right hand..."; jokingly, the colleague may also have the signer "swear" by placing a hand on a magazine. The Notary considers whether to be similarly flippant about notarial duties in order to fit in better with coworkers.

The Ethical Imperative: The Notary refrains from adopting the officemate's attitude toward notarization. The Notary cautions the colleague that such improprieties undermine the effectiveness of the notarial act, discredit the office of Notary and may jeopardize or invalidate the document. The Notary decides to report any further such improper liberties with official duties to a supervisor and, if the actions persist, to the state Notary-commissioning authority.

Article D: Advertising and Endorsement

I-D-1: Undignified Advertisement

The Notary shall not advertise notarial services in an undignified or excessively commercial manner.

Illustration: The Notary advertises in the telephone book a willingness to notarize "Anytime, Anywhere." To compete against other traveling Notaries, the Notary considers running a new ad that would state, "I Will Not Be Undersold!" and, "I'm Crazy — I'll Go Anywhere At Any Hour!"

The Ethical Imperative: The Notary does not place the new advertisement, since it treats the public office of Notary in both an undignified and an excessively commercial manner.

I-D-2: Misrepresentation

The Notary shall not misrepresent the notarial office; claim or advertise powers, authority, advantages or rights that the office does not give; nor use language that is likely to mislead non-natives of the United States about the powers of the office.

Illustration: The Notary owns a shop in an area with a large concentration of Latin-American immigrants. The Notary wants to put a sign in the shop window to advertise notarial services, but ponders whether it should read "Notary" or "Notario."

The Ethical Imperative: The Notary does not advertise using the Spanish term *Notario Publico* or *Notaria Publica* because this is the title of an attorney-like officer in Latin nations and it may mislead immigrants into thinking that U.S. Notaries have the same powers and are entitled to the same fees.

I-D-3: Endorsement Improper

The Notary shall not use or allow use of the Notary's seal or title ("Notary Public") to endorse, extol or denigrate a product, service, program, proposal, individual, candidate, organization or contest, or to corroborate or disprove claims about them.

Illustration: The Notary is a volunteer for a charity that will raffle off a new car to raise funds. So that the raffle is perceived as honest and aboveboard, the president of the charity wants to advertise that the contest will be "Notary-Supervised and Guaranteed," using the name of the Notary.

The Ethical Imperative: The Notary does not allow the

include providing notarial services only for the employer's customers. The *Code* does not encourage Notary-employees to disregard their employers' policies, even ones that may seem inappropriate, though such employees are urged to try tactfully to "educate" their employers. Also, in those instances where the Notary-employee works in a restricted area, it will be either impossible or impracticable for the public to gain access to the Notary-employee. Through its silence, the *Code* does not seek to interfere in these situations. Indeed, the Introduction states that the *Code* is designed to be a model, not a mandate, for preferred conduct. Nonetheless, the *Code* adheres to the general view that Notaries are public servants and should be available to perform their services for the public at large. By focusing on this problem, the drafters hope appropriate state authorities will act to clarify the situation in their respective jurisdictions.

ARTICLE B: Fees

Most state Notary statutes establish a schedule that sets out the allowable charges for the different notarial services that may be provided. Generally there is no requirement that a Notary charge for providing a notarial service. (*Accord* GA. CODE ANN. § 45-17-11(c).) Charging excessive fees, however, can be grounds for having one's commission revoked. (*See* OHIO REV. CODE ANN. § 147.13.) Although not addressed in the *Code,* preferred practice suggests that a fee schedule be posted in the vicinity where notarial services are provided. (*Accord* 5 ILL. COMP. STAT. 312/3-103(b); and DEL. CODE. ANN. tit. 4, § 310(c).)

Sometimes a Notary's decision on whether to charge a fee may carry an improper bias. Standard I-B-1 posits that personal bias should never be used as a basis for determining whether or not a fee should be charged. This is consistent with the view that a Notary may not use personal bias in determining whether or not to render notarial services. (The Illustration demonstrates the application of the Standard on this matter.)

Standard I-B-2 addresses a different type of discriminatory practice, that of basing the decision to charge a fee on whether or not the signer is a client of either the Notary or the Notary's employer. This is a common problem because Notaries tend not to be exclusively in the trade or business of being a Notary. Consistent with the view that a Notary is a public servant, the *Code* adopts the position that the Notary should treat all members of the public evenhandedly. If the Notary's primary business customers are not charged for notarial services, then non-customers should be treated similarly.

Again, as is the case with providing notarial services, Notary-employees may be subject to employer policies that preclude them from following the Standard. The Illustration of Standard I-B-2 specifically addresses Notaries who can control or set policy. These Notaries are admonished not to discriminate on the basis of "customer" status. By not providing a corresponding Illustration for Notary-employees subject to their employers' dictates, drafters of the *Code* tacitly accept that discriminatory practices imposed upon the Notary are an unfortunate reality and that imposing an ethical obligation on Notary-employees in such sensitive and tenuous positions may be unfair. Each such Notary-employee must decide whether to tolerate such discrimination, attempt to "educate" the employer, defy the policy, or voluntarily terminate employment.

In developing Article B, the drafters were not unmindful of the rationale supporting "customer" status fee discrimination. There are costs associated with providing notarial services that must be paid (*e.g.,* licensing fees, supplies and lost business time). Businesses must absorb these costs and account for them in some way. It is not unreasonable to consider the expenses and cost of doing business and allocate them to the general business overhead. These costs are then built into the pricing of goods and services offered by the business. Thus, customers in a sense "pay" for the Notary-related fees, but non-customers do not. From this perspective, it may be regarded as both appropriate and fair to charge non-customers for the notarial services. Failing to do so could be argued as discriminatory to the customers who are paying for the non-customer's otherwise

notarial office to be used to lend seeming integrity or credibility to a contest, regardless of the nobility of its cause. Guaranteeing and certifying the integrity of contests is not an authorized notarial act. Further, the Notary should not notarize any document (*e.g.*, an affidavit signed by the president of the charity) with knowledge that the notarial seal or title will be used in a solicitation or endorsement, since some persons associate any involvement by a Notary with official government certification.

Article E: Ability and Availability to Serve

I-E-1: Resignation if Impaired

The Notary shall resign from office if any permanent change in the Notary's physical status would prevent or significantly impair the proper performance of notarial duties.

> **Illustration:** The Notary is a retiree whose eyesight has deteriorated considerably in recent years. Even with glasses, the Notary is only able to read if the letters are unusually large and bold; distinguishing faces is very difficult.
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> *The Ethical Imperative:* The Notary must immediately resign the commission, since such poor eyesight prevents the careful scrutinizing of ID cards and faces required for proper performance of notarial duties and protection of the public from document fraud. Any physical condition that prevents a Notary from directly and personally gleaning information about a signer's identity and about the circumstances of a particular notarization, without reliance on an assistant or intermediary to make such determinations, is a disqualifying one.

I-E-2: Refusal for Lack of Knowledge

The Notary shall decline to notarize if the Notary does not feel sufficiently knowledgeable or competent to perform properly any requested notarial act.

> **Illustration:** The Notary is asked to execute a protest by a stranger who presents a technically-worded notarial form. When the Notary admits to having no idea how to complete the form, the stranger says, "Don't worry, I'll walk you through it."
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> *The Ethical Imperative:* The Notary declines to notarize without the knowledge to proceed competently and confidently. Only a specially trained or experienced Notary who is familiar with pertinent provisions of the Uniform Commercial Code should undertake the technically complex notarial act of protest.

I-E-3: Reporting Pertinent Change

The Notary shall report to the commissioning agency any pertinent change in personal status — including change of name or address, conviction of a felony, or adjudicated liability in a lawsuit involving a notarial act — affecting the Notary's availability to the public and the repute of the Notary as a person of integrity.

> **Illustration:** The Notary is planning a permanent move to live and work in another state. There are two years remaining in the commission term.
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> *The Ethical Imperative:* The Notary reports the move to the state Notary-commissioning authority and resigns the commission. State officials must know the whereabouts of all Notaries and be kept apprised of their availability to serve the state's citizenry.

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free receipt of the notarial services. Notwithstanding the economic appeal of this argument, the *Code* falls back on its general position that Notaries are public servants and should deal with all members of the public similarly. Additionally, it can be argued that a private business that has a Notary available for its own uses at all times should pay for the convenience by treating all users equally. The Standard does not suggest the employer should provide free notarial services for the public; it only asks that all members of the public be treated in the same manner.

ARTICLE C: Dignity of Office

The Standard adopts the view that Notaries are obligated to comport themselves in a professional manner. Notaries often play an essential role in validating documents or transactions. It is imperative that the Notary understand that those actions that tend to denigrate the office may ultimately impact the efficacy of a document or transaction. A flippant attitude or disrespect for the office should not be countenanced.

ARTICLE D: Advertising and Endorsement

The *Code* does not disapprove of Notary advertisements, but frowns upon those that are not done in a professional and tasteful manner. As a public official, the Notary should not resort to "hucksterism" in an effort to generate notarial business.

The *Code* takes a much stronger stance against misrepresentation and endorsements. Notaries are only empowered to perform specified acts. Misrepresenting those powers is a serious breach of one's professional obligation and, in some instances, may violate the law. (*See, e.g.*, OR. REV. STAT. § 194.162; and TEX. GOV'T CODE ANN. § 406.017(d).) Of particular concern is the fact that many foreign countries confer broader authority upon their Notaries than is given to Notaries in the United States. The *Code* makes clear that any attempt by a United States Notary to deceive non-United States citizens into believing the Notary can perform certain acts not authorized by state statute is unethical. (*See* Illustration for Standard I-D-2 and CAL. GOV'T CODE § 8219.5 (prohibiting deceptive non-English advertising of notarial services).)

Any improper use of the notarial office is wrong. The *Code* focuses on the "endorsement" question. It concludes that endorsements and testimonials are improper, and admonishes Notaries not to make them. This position has both statutory and regulatory support. (*See, e.g.*, UTAH CODE ANN. § 46-1-10; and WASH. ADMIN. CODE § 308-30-160.)

ARTICLE E: Ability and Availability to Serve

Standards I-E-1 and -2 reinforce the professional role of the Notary. The Illustrations are straightforward. A Notary whose health makes proper notarizations problematic is advised to resign the commission. A Notary who does not understand the technicalities of a specific notarial service is directed not to act. These are commonsense, reasonable restrictions that are beyond dispute.

Standard I-E-3 addresses "availability," but uses this term to mean "physical presence." A Notary who leaves the jurisdiction in which he or she is commissioned to serve as a Notary is obligated to resign the commission. This direction is in accord with a number of statutes that rule on this matter. (*See, e.g.,* OKLA. STAT. tit. 49, § 9; and IDAHO CODE § 51-115(2).)

GUIDING PRINCIPLE II

The Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.

Standards of Professional and Ethical Practice

Article A: Improper Gain

II-A-1: Actual or Potential Gain Improper

The Notary shall decline to notarize in any transaction that would result, directly or indirectly, in any actual or potential gain or advantage for the Notary, financial or otherwise, apart from the fee for performing a notarial act allowed by statute.

> **Illustration:** The Notary sells machinery and related maintenance contracts, which must be notarized. The Notary's receipt of a sales commission depends on the employer's receipt of a notarized contract signed by the customer. After convincing a customer to purchase a contract, the Notary then often quickly notarizes the customer's signature out of fear that the person's mind will change, even though there usually are other employees available who could notarize.
>
> *The Ethical Imperative:* The Notary decides not to notarize while profiting financially from a transaction, letting an uninvolved person perform the required notarization. The roles of impartial witness and advocate are incompatible. Notaries should never take actions to deter signers from changing their minds; one of the major purposes of notarization is to ensure that signers are acting freely.

II-A-2: Commission or Fee Improper

The Notary shall not notarize for a client or customer who will pay the Notary a commission or fee for the resulting transaction, apart from the fee for performing a notarial act allowed by statute.

> **Illustration:** The Notary is an attorney preparing documents for an ailing client who will pay a fee for the task. Several of the documents require notarization. Since the attorney must go to the home of the bedridden client to secure the needed signatures, there will be no paralegal or secretary on hand to notarize the papers. The attorney considers the propriety of serving as Notary in this situation.
>
> *The Ethical Imperative:* The Notary decides not to notarize, lest it be falsely alleged that a financial interest in the documents resulted in undue influence or the overlooking of lack of mental capacity. Instead, the attorney arranges to have a truly impartial Notary visit the client's home to notarize the documents.

Article B: Improper Personal Interest

II-B-1: Notarization of Own Signature Improper

The Notary shall not notarize his or her own signature.

> **Illustration:** The Notary is about to sign an insurance affidavit of loss for a fire in the Notary's house. At the end of the document is a jurat with blank space for a Notary's

COMMENTARY

GENERAL

Guiding Principle II enunciates the Notary's primary role: being an impartial witness. The Principle is consistent with other official interpretations on this point. (*See, e.g., Notary Public Information,* 2nd ed., Wis. Sec. of State (1994), which reads, "A notary public is…to serve the public as an impartial witness …") The Notary is first and foremost an impartial witness. It is the Notary's impartiality that lends credence to other parties' actions, whether it be signing a document or some other participation in a transaction. Importantly, the Principle does not suggest that a Notary guarantees the genuineness of the parties' intentions or future performances. The Notary only serves as a witness to other parties' present actions with respect to a document or transaction. (For an early judicial pronouncement supporting this proposition, *see Coffin v. Bruten,* 95 S.W. 462 (Ark. 1906).)

In order to ensure impartiality, the Principle mandates that a Notary not provide notarial services in any situation where the Notary would financially profit or otherwise benefit from the notarized document or transaction. In this respect the Principle mirrors the rule found in preferred legislation. (*See, e.g., Model Notary Act,* Section 3-102(2), which "disqualifies" a Notary from acting when any benefit, apart from the statutory fee, would be received. Several statutes provide similar restrictions. *See, e.g.,* W. VA. CODE § 29C-3-102.) The prohibition does not apply to fees allowed by statute for rendering notarial services.

ARTICLE A: Improper Gain

The Standards, through their Illustrations, demonstrate a variety of ways in which a Notary could improperly "gain" from providing a notarial service. The Standards make clear that the Notary should refrain from acting if a benefit would flow either directly or indirectly to the Notary. Thus, the Standards embrace the notion that a Notary should not act if a close relative rather than the Notary himself or herself will gain from the transaction. Furthermore, the Principle uses the word "gain" to supplement "profit" and contemplates that a Notary should refrain from acting if he or she would receive any advantage or benefit, including non-financial ones, from the transaction. The message is clear. The only way to ensure impartiality is to make sure the Notary would have no reason whatsoever to provide services, other than to fulfill his or her obligations as a public servant. By failing to follow this practice a Notary will unnecessarily create actual or perceived conflicts of interest and breaches of ethical conduct.

The Illustration for Standard II-A-1 provides a simple example of how a Notary could improperly profit from a notarized document. After highlighting the Notary's conflict of interest, the Illustration stresses the point that "[t]he roles of impartial witness and advocate are incompatible." Although the conflict in the Illustration appears straightforward, there nonetheless may be some authority for the Notary to act. (*See, e.g.,* 5 ILL. COMP. STAT. 312/6-104(a); and N.C. GEN. STAT. § 10A-9(c)(2).) Irrespective of any countervailing view, the *Code* adopts the position that ethical concerns dictate a Notary take all reasonable steps to avoid a conflict of interest, notwithstanding the fact that the action at issue may otherwise be legal.

Standard II-A-2 addresses a more direct conflict of interest. The Illustration presents a situation in which the Notary will actually receive a fee for acting in a capacity other than a Notary in a transaction that requires the Notary to render notarial services. The gravamen of the problem is that there is a great likelihood the Notary will be more interested in seeing the transaction completed than in following proper notarial procedure. This is so because the notarial fee will be insignificant as compared to the

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

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

II-B-2: Notarization of Cosignature Improper

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

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

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

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

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

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

The Ethical Imperative: The Notary declines to notarize because, being named in the document as the individual who is thereby given certain life-and-death decision-making powers, the Notary has an obvious personal interest in it that is incompatible with a requisite impartial role.

II-B-4: Notarization of Personal Document Improper

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

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

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

II-B-5: Notarization for Close Relative Improper

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

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

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

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

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

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

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

ARTICLE B: Improper Personal Interest

Standards II-B-1 through -5, and the Illustrations thereto, are designed to reinforce the view that impartiality is compromised when the Notary has a personal interest in the transaction to be notarized. The Standards cover a wide range of potential conflicts, running the gamut from the obvious (Standards II-B-1 and -2: notarizing one's own name as either sole or cosigner) to the less evident (Standard II-B-4: notarizing a document that may touch upon the Notary's personal affairs even though the Notary is neither a signer of nor a party named in the document). Each Standard has statutory support. (*See, generally,* CONN. GEN. STAT. § 3-94g; IDAHO CODE § 51-108(2) through -(4); and VA. CODE ANN. § 47-1.30.)

Article C: Avoiding Appearance of Partiality

II-C-1: Compromise of Impartiality

The Notary shall decline to notarize in any transaction that would impugn, compromise or call into question the Notary's impartiality or propriety, or has the potential for doing so.

> **Illustration:** The Notary is asked by the godmother of the Notary's children to notarize a document that will create a trust fund to benefit the children. The godmother will endow the trust with her own funds. The Notary is not mentioned in the document.
>
> *The Ethical Imperative:* The Notary declines to notarize, since impartiality and undue influence may otherwise become issues in a transaction that will greatly benefit the Notary's own children. The Notary asks the godmother to have an uninvolved person notarize the document.

Article D: Proper and Improper Influence

II-D-1: Avoidance of Influence in Lawful Transaction

The Notary shall not attempt to influence a person to sign or not sign, to act or not act, nor to proceed or not proceed in any lawful transaction requiring a notarial act that is to be performed by the Notary.

> **Illustration:** The Notary is asked by an acquaintance to notarize that person's signature on documents related to the purchase of a restaurant. Aware of the high failure rate of such businesses, the Notary considers whether to urge the acquaintance to reconsider the decision to purchase.
>
> *The Ethical Imperative:* The Notary notarizes the documents, if no improprieties are requested or detected. It is not the role of the impartial Notary to argue for or against a signer's participation in a lawful transaction.

II-D-2: Refusing Unlawful Transaction

The Notary shall refuse to participate and shall attempt to influence a person not to sign, not to act or not to proceed in any unlawful transaction requiring a notarial act that is to be performed by the Notary.

> **Illustration:** The Notary is asked by an acquaintance to notarize that person's signature on an affidavit for an immigration petition. The affidavit contains false statements that the Notary knows are fabrications by the signer.
>
> *The Ethical Imperative:* The Notary refuses to notarize and thereby abet the unlawful act of perjury. The Notary urges the acquaintance not to sign an untruthful affidavit.

Article E: Notarization for Employer

II-E-1: Notarization by Employee Proper

The Notary who is an employee shall be permitted to notarize for any officer, executive, supervisor, coworker, subordinate, client or customer of the employing organization, as long as the Notary will not gain a commission, bonus or other consideration as a result of the notarial act, other than the regular salary or hourly wage and the statutory notarial fee.

> **Illustration:** The Notary is employed in an office and every day notarizes the signature of a supervisor on dozens of documents. The Notary wonders whether it is proper to be notarizing for the person who supervises one's work and signs one's paycheck.
>
> *The Ethical Imperative:* As long as the "in-house" Notary receives no special compensation as a result of any notarization and is not asked to notarize improperly, that Notary may notarize company documents.

The *Code* also singles out two other questionable activities. Standard II-B-5 admonishes the Notary not to notarize the signature of a close relative. A similar prohibition can be found in the statutes of a number of jurisdictions. (*See, e.g.,* ME. REV. STAT. ANN. tit. 4, § 954-A; and FLA. STAT. ANN. § 117.05.) The Standard identifies a number of specific "close" relationships, but the preferred view is to treat the list as illustrative rather than inclusive, and consider any close relationship as being within the purview of the rule. Standard II-B-3 warns the Notary against notarizing a document that contains the name of either the Notary or any close relative of the Notary. (*Accord* 5 ILL. COMP. STAT. 312/6-104(b).) Both Standards are justified on the theory that the situations presented constitute a conflict that may compromise the Notary's ability to act impartially.

ARTICLE C: Avoiding Appearance of Partiality

Standard II-C-1 is in a sense a catch-all provision designed to preserve the integrity of the notarial act. It calls for the Notary to refrain from acting in any instance where to do so would raise the appearance of a conflict that could compromise the Notary's integrity. Like Caesar's wife, the Notary must be not only above reproach, but above the thought of reproach. (*Accord* CONN. GEN. STAT. § 3-94a(7)(B) (defining Notary misconduct to include any action "against public interest").)

ARTICLE D: Proper and Improper Influence

Standard II-D-1 presents the simple general rule that a Notary should not influence the person seeking the notarization. To do so clearly compromises the Notary's impartiality. *(Accord* UTAH CODE ANN. § 46-1-8(1).) Standard II-D-2 provides a proactive exception to the rule that posits a Notary may properly try to influence someone else from executing a proposed illegal transaction. The *Code* does not contemplate that the Notary will make determinations as to the legality or illegality of any specific transaction. The Standard is directed to obvious irregularities apparent on the face of the document to be notarized.

ARTICLE E: Notarization for Employer

Standard II-E-1 addresses the sometimes controversial issue of whether or not a Notary may render notarial services for the Notary's employer. Following the lead of the statutes that specifically permit this action (*see, e.g.,* IND. CODE § 33-16-2-7; and S.C. CODE ANN. § 26-1-120), the *Code* similarly condones such notarizations. However, the Standard supplies an important *caveat.* The notarization is unethical if the Notary receives additional special compensation for acting. (*Accord* W. VA. CODE § 29C-3-102.) Receipt of any additional payment over and above the Notary's normal salary and Notary fee constitute a conflict and potentially compromises the Notary's impartiality. Also, Notaries who are bank employees, stockholders, officers or directors are advised to review local law to determine those situations wherein they are prohibited from rendering notarial services for their employers or corporations. (*See* OR. REV. STAT. § 194.100(b); ARIZ. REV. STAT. ANN. §§ 41-32A and B; and GA. CODE ANN. § 45-17-12(b) (each authorizing Notaries to act provided they are not a party to the instrument to be notarized).)

GUIDING PRINCIPLE III

The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.

Standards of Professional and Ethical Practice

Article A: Physical Presence

III-A-1: Insisting That Signer Appear

The Notary shall insist that the signer and any witness identifying the signer be present before the Notary at the time of the notarization.

> **Illustration:** The Notary is telephoned by a client who has just signed and mailed several documents for the Notary to notarize without personal appearance. "You know my signature, so there shouldn't be any problem," the client says over the telephone.
>
> *The Ethical Imperative:* The Notary declines to perform a "telephone notarization" without the physical presence of the signer, since it would be a clear violation of the law, even though the Notary feels relatively certain about the identity, volition and awareness of the signer.

Article B: Screening for Identity and Willingness

III-B-1: Three Identification Methods

The Notary shall carefully identify each signer through either personal knowledge, at least one reliable identification document bearing a photograph, or the sworn word of a credible witness.

> **Illustration:** The Notary is approached by a friend and a stranger identified by the friend as a business associate. The friend requests notarization of the associate's signature on a document, but is not involved in the transaction. When the Notary asks the associate for identification, the friend becomes indignant that "you won't take my word as my bond."
>
> *The Ethical Imperative:* The Notary continues to insist either that the associate produce a reliable form of identification bearing a photograph or that the friend be formally sworn in as a credible witness vouching for the associate's identity.

III-B-2: Deterring Undue Influence

The Notary shall not notarize for any person if the Notary has a reasonable belief that can be articulated that the person is being bullied, threatened, intimidated or otherwise unduly influenced into acting against his or her will or interest.

> **Illustration:** The Notary is called to the hospital room of a patient to notarize that person's signature on several documents. The patient appears disinterested in the documents and expresses a desire to be allowed to sleep. Also present is the patient's spouse, who insists that the patient first attend to signing the documents. The spouse places a pen in the patient's hand and directs it to the signature space on one of the documents, but the patient makes no effort to sign.

COMMENTARY

GENERAL

Guiding Principle III prescribes appropriate conduct on a number of interrelated issues that, taken together, address the very essence of notarization. Some of the practices addressed are mandated by statute in most jurisdictions. Thus, the *Code* only serves to reinforce them. Other issues, particularly regarding the proper role, if any, the Notary should play in determining a signer's capacity, are more problematic. Since most notarial statute is silent on these issues, the *Code* takes a more proactive position with respect to them.

Standards III-A-1 and III-B-1 principally restate the accepted practice necessary for a proper notarization. Standards III-B-2 and III-C-1 through -3 address the Notary's obligation to assess the capacity of the person for whom the notarization is performed. Whether or not a Notary is required to be concerned about "capacity" and the ramifications of imposing such a requirement have proven to be a controversial subject. The *Code* adopts a position that forces the Notary to take a thoughtful, professional approach to notarizations, and recognizes that a Notary may exercise some discretion with respect to whether or not the notarization should be performed. Standards III-D-1 through -7 offer the Notary guidance on how to properly handle notarizations that involve the use of witnesses confirming the identity of the person who signed the document to be notarized.

ARTICLE A: Physical Presence

The *Code* mandates that the Notary require the physical presence of a signer or any person serving in a witness capacity. The use of "shall" makes this a mandatory charge. The use of "insist" leaves no room for discretion. Physical presence is the only reliable way a Notary can verify the identity of the signer or witness. This verification is the essence of the notarial act itself, and is routinely required by statute. (*See, e.g.,* N.J. REV. STAT. § 46:14-2.1(b); TEX. CIV. PRAC. & REM. CODE ANN. § 121.004; and MICH. COMP. LAWS § 565.264.) Failure to meet this directive is not only unethical, but probably unlawful as well. (*See, e.g.,* S.D. CODIFIED LAWS § 18-1-11; and N.C. GEN. STAT. § 10A-12(b).)

ARTICLE B: Screening for Identity and Willingness

Standard III-B-1 reminds the Notary that the identity of every signer must be carefully established. Indeed, some jurisdictions impose a higher standard of care for proving identity than for performing other notarial functions. (*See, e.g.,* IDAHO CODE § 51-111(1).) The applicable statute in every jurisdiction requires proper identification. Some statutes enumerate the different types of acceptable identification (*see, e.g.,* CAL. CIV. CODE § 1185; and FLA. STAT. ANN. § 117.05(5)), others merely call for satisfactory evidence (*see, e.g.*, OHIO REV. CODE ANN. § 147.53; and IOWA CODE § 9E.9.6). The Standard emphasizes that the Notary must properly follow the state-imposed rules. The key word is "properly." The Illustration makes clear that although a signer's identity can be proved by a credible witness, the witness must formally swear to the signer's identity. The act of establishing the identity of and swearing in the witness becomes the notarial act. As such, the Notary must perform the act in conformity with established rules of law. A person's identity cannot properly be established by the unsworn testimony of a witness, regardless of how highly regarded or well-known the witness is to the Notary.

The *Code* states that "reliable identification" is acceptable proof of identity. The *Code,* however, neither specifies nor attempts to define what is "reliable identification." Notaries are presumed to know what constitutes acceptable proof of identification under the law of their respective jurisdictions. For those Notaries who do not, the Standard implicitly directs them to ascertain what is required.

The Ethical Imperative: The Notary respects the patient's wish to sleep, promising to return later and to notarize if the patient appears alert and willing to sign the documents.

Article C: Screening for Awareness

III-C-1: Awareness Essential in Signer

The Notary shall not notarize for any person if the Notary has a reasonable belief that can be articulated that the person at the moment is not aware of the significance of the transaction requiring a notarial act.

Illustration: The Notary is called to the home of an elderly person to notarize that individual's signature on several documents. The Notary is introduced to the would-be signer by the person's relative. Acting in a childlike manner, the elderly person appears disinterested in the documents. Though the relative urges the Notary to act, the Notary is unable to get a coherent response to simple questions regarding the notarial act (*e.g.*, "Is that your signature, and have you signed this document willingly?").

The Ethical Imperative: The Notary does not notarize the documents, since the person's conduct indicates a strong likelihood that the individual is not at the moment capable of responsible action.

III-C-2: Coherent Communication Necessary

The Notary shall not notarize for any person unable to communicate coherently with the Notary at the time of notarization.

Illustration: The Notary is called to a nursing home to notarize documents for a bedridden patient, whose friend is also present. The patient is awake and sitting up, with both documents signed and resting on a tray table. However, the patient's speech is slurred and the individual is not coherently responsive to the Notary's greeting and questions. The friend urges the Notary to notarize.

The Ethical Imperative: The Notary declines to notarize because, without clear and direct two-way communication with the signer, the Notary cannot be sure of the individual's awareness. The Notary must not rely on an "interpreter" who may have a motive for misrepresenting the signer's condition or intent.

III-C-3: Direct Communication Necessary

The Notary shall not notarize for any person with whom the Notary cannot directly communicate in the same language, regardless of the presence of a third-party interpreter or translator.

Illustration: The Notary is approached by a client and a stranger who does not speak English, but offers a foreign passport as proof of identity. The client says the stranger wants to have a signature notarized on an English-language power of attorney authorizing the client to conduct business on the stranger's behalf. With no knowledge of the stranger's language, the Notary must rely on the client to communicate.

The Ethical Imperative: The Notary declines to notarize for the stranger, since there can be no certainty of this individual's intent or awareness without direct communication. Further, the client has a clear interest in the transaction that compromises reliability as a truthful interpreter. The safest policy would be to direct the two to a Notary who speaks the stranger's language or to the nearest consulate of the stranger's country.

Article D: Qualification of Witnesses

III-D-1: Honesty, Capacity and Disinterest Essential

The Notary shall require any witness identifying a principal signer to be honest, mentally capable and

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In those jurisdictions where a jurat does not require the Notary to verify the signer's identity, the Notary may legally proceed without doing so. (*See, e.g.,* CAL. CIV. CODE § 1185, which stipulates identification requirements for acknowledgers but not for affiants.) However, good practice dictates that the Notary nonetheless screen *all* signers for identity. This deters fraud and provides important information for the Notary who maintains a notarial journal. (*See,* Standard VIII-A-2 and accompanying Commentary.)

Standard III-B-2 tackles a more difficult and, perhaps, controversial issue: deterring undue influence. Although recognized as a laudable goal, there are those who suggest that this activity is not within the purview of performing a notarial act. Today, notarial authority is exclusively a product of statute. Statutes usually do not specifically direct a Notary to ascertain whether or not a party to a notarization is subject to undue influence, but there are exceptions. (*See, e.g.,* GA. CODE ANN. § 45-17-8(b)(2) (providing a Notary is not "obligated" to act if he "feels" the person seeking the notarization "is being coerced").) Consequently, there is little direct authority for a Notary to refrain from acting if undue influence is suspected.

The *Code* adopts the position that the Notary, as a public official who performs a function relied upon by innocent third parties not privy to the notarization, should be proactive in executing his or her obligations. Consistent with the view that notarizations in general are designed to deter fraud, it logically follows that Notaries should strive to strengthen lawful documents so that they will not fall victim to challenge. While a Notary does not and cannot guarantee the efficacy of a document, users of that document ought to be able to rely on the fact the signature is what it purports to be. The *Code* favors the view that a signature not voluntarily provided is suspect.

The *Code* does not obligate the Notary to investigate all of the facts surrounding every transaction. Instead, it assumes the Notary will rely on personal observation to determine whether or not the signer is acting under his or her own free will. The Standard uses the terms "bullied, threatened and intimidated" for illustrative purposes only. The drafters recognize that from a legal perspective these terms imply acting under duress, and not undue influence. Although the two concepts are related, they are distinct. In not drawing the legal distinction, the *Code* sends the general message that the Notary should not participate in a transaction that on its face involves an unwilling signer, regardless of how that fact is manifested. The *Code* recognizes that there is no "bright line" test as to when a person has been deprived of his or her own free will. Each situation is special unto itself, and the Notary is left to use his or her best judgment as to whether or not to proceed with the requested notarization. The Standard serves to alert Notaries to the "undue influence" issue and admonishes them to avoid becoming involved in these situations.

ARTICLE C: Screening for Awareness

Standards III-C-1 and -2 wrestle with perhaps the thorniest issue confronting Notaries: signer awareness. This problem is distinguishable from the "willingness" issue of Standard III-B-2, although both standards address "capacity." The "willingness" problem arises when a person with full control of his or her mental faculties is being improperly persuaded or forced to act. The "awareness" problem involves only the signer, and focuses on whether or not the signer understands what he or she is doing.

Both in earlier drafts of the *Code* and in other texts, the "awareness" issue has been referred to as "signer competence." Although the same matter is being addressed, *i.e.,* the signer's ability to understand his or her acts, the *Code* adopts the view that testing for "awareness" is a more meaningful and reasonable function.

Proponents of a strict test for competence rest their position on the fact that the law allows no less. Although it is true that by definition an "acknowledgment" implicitly requires the Notary to determine the signer's competence (*see* ARIZ. REV. STAT. ANN. § 33-505; IND. CODE § 26-3-60; and *Poole v. Hyatt,* 689 A.2d 82 (Md. 1997)), not all notarizations are "acknowledgments." Indeed, many are not. (*See, e.g.,* WASH. REV. CODE § 42.44.090.100.) Nonetheless, this camp suggests that the very nature of every notarial act implies the

unaffected by the transaction requiring a notarial act.

> **Illustration:** The Notary is asked by a former school classmate to swear that person in as a subscribing witness vouching for the signature of an absent "business associate" on a deed. Over the years, the Notary has developed a poor opinion of the classmate's integrity, having knowledge of a conviction for trafficking in stolen goods.
>
> *The Ethical Imperative:* The Notary declines to accept the former classmate as a reliable subscribing witness, urging this individual to have the absent business associate appear in person before a Notary.

III-D-2: Oath or Affirmation Necessary for Identifying Witness

The Notary shall administer an oath or affirmation to any witness identifying a principal signer in order to compel truthfulness.

> **Illustration:** The Notary is telephoned by a client who promises to stop by later in the day with a deed to be notarized. The client mentions that the deed requires one witness in addition to the Notary, and asks if a friend may witness the signature on the document before it is brought in.
>
> *The Professional Choice:* The Notary explains that the client may sign the deed and have the signature witnessed outside of the Notary's presence prior to appearing before the Notary to acknowledge the signature. The Notary also explains that it will not be necessary for the witness to appear and take an oath, since the Notary will positively identify the client based on personal knowledge of identity and not rely on the witness to make the identification.

III-D-3: Personal Knowledge of Identifying Witness Essential

The Notary shall personally know any individual serving as the sole witness identifying a principal signer in the Notary's presence, and the witness shall personally know the principal signer.

> **Illustration:** The Notary works in an office. An elderly stranger walks in and requests notarization of a document. However, the stranger no longer drives and cannot present a driver's license or other reliable ID card as identification. At that moment, a longtime coworker of the Notary enters and greets the stranger by name. The coworker has known the individual for years.
>
> *The Professional Choice:* The Notary notarizes the signature of the elderly stranger, who is identified through the vouching under oath of the coworker. The critical chain of personal knowledge exists: the Notary personally knows the identifying witness and the identifying witness personally knows the signer. State law may provide assistance in usefully defining "personal knowledge of identity."

III-D-4: Identifying Witness Must Be Unaffected

The Notary shall disqualify any person from serving as an identifying witness if that individual is named in or affected by the document signed by the principal.

> **Illustration:** The Notary is asked by a married couple to notarize their signatures on a document. The Notary personally knows one of the two as a former college classmate, but has never met the other, who does not drive nor have a driver's license or other photo ID. The couple suggests that the Notary swear in the classmate as a witness to identify the spouse.
>
> *The Professional Choice:* The Notary agrees to notarize the signature of the spouse who is personally known, but declines to notarize the signature of the unknown spouse, since identification would be based on the word of a

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requirement to screen for competence. Notwithstanding this belief, if the signer merely seeks to have a document "witnessed," there is no authority requiring the Notary to determine the signer's competence. (*But see* FLA. STAT ANN. § 117.107(5) (requiring a Notary to refrain from acting if it appears the signatory is "mentally incapable of understanding the nature and effect of the document"); and GA. CODE ANN. § 45-17-8(b)(3) (giving the Notary the opportunity to decline to act if he has "compelling doubts" about whether the signer "knows the consequences of the transaction requiring the notarial act").) To self-impose a standard of determining signer competence could expose the Notary to legal liability if the Notary uses a perceived lack of competence as a basis for improperly refusing a notarization, and harm results.

The *Code* accepts the position that determining competence is problematic. Not only is it of dubious legal necessity, but it also may require abilities beyond the ken of many Notaries. Moreover, when "competency" is tested for legal matters such as a will or a contract, much more than a cursory examination is made. Attorneys have statutory and judicial guidance detailing how they should proceed on these matters. Moreover, the process can be quite time-consuming. Thus, even for those Notaries who would feel comfortable in performing such a review, the time involved for such a task is probably prohibitive.

The *Code* does not posit that the Notary should mindlessly proceed with any notarization upon request. Instead, it erects an "awareness" standard. Notaries are expected to judge for themselves whether the signer has the requisite awareness to proceed. Standard III-C-1 calls for the Notary reasonably to believe the signer to be "aware of the significance of the transaction requiring a notarial act." The Standard does not require the signer to understand detailed legal ramifications of the act, or to be able to recite from memory any part of the document. The key to the "awareness" standard is the signer's self-recognition that he or she is engaged in a transaction sufficiently significant to require proof of the signer's participation in it.

In meeting the "awareness" test, the signer need not divulge particulars of the document nor provide the Notary with an overview of the transaction. Such a requirement might violate confidentiality rules established in Guiding Principle IX of the *Code.* (*See* Standards IX-A-1 and B-2.) Instead, it is sufficient for a signer to indicate, for example, that the document is a will or a contract, although such specificity is not required. Indeed, a Notary ethically could proceed upon hearing the signer say he needs an important document notarized, if the signer's demeanor conveyed to the Notary that the signer understood the significance of the act. Recognizing that there is not just one exclusive method for determining "awareness," the *Code* does not offer any methodology on how a Notary should proceed, partially out of concern that the suggestions might become the only ones used. Such a result clearly would be contrary to the *Code's* position that determining "awareness" is not an exact science. Instead, the *Code* relies upon the Notary's ability to judge from the facts and circumstances presented whether or not the signer satisfies the "awareness" standard.

The Illustration for Standard III-C-1 presents a typical dilemma faced by many Notaries. The signer demonstrates a sufficient disorientation to raise a question in the Notary's mind as to whether the signer is aware of what is transpiring. The Notary asks some simple, yet straightforward questions to determine the signer's "willingness." If a signer cannot identify or acknowledge a signature as his or her own, the Notary should not proceed. If the signer responds that he or she did not sign the document willingly, the Notary must not proceed. In the latter situation, the Notary who proceeds not only acts unethically, but also may be considered a party to a fraud.

The essence of the *Code's* position is that while being commissioned as a Notary does not qualify one to determine legal competence, a Notary may nonetheless make a basic assessment as to whether or not the signer is willing and aware enough to proceed. The *Code* does not require the Notary to actually prove "awareness," but asks only that the Notary formulate a reasonable belief that the signer has "awareness." The issue will not arise in many notarizations. The *Code* seeks to provide guidance for those situations in which the signer's actions raise doubt in the Notary's mind as to whether the signer can proceed.

witness who is clearly involved in and affected by the transaction. The Notary suggests that the unknown spouse visit a Notary who personally knows that spouse, or rely on a disinterested credible acquaintance who personally knows a Notary to make the identification.

III-D-5: Personal Knowledge of Subscribing Witness Essential

The Notary shall personally know any individual offering to serve as a subscribing witness to identify a principal signer who is not in the Notary's presence.

Illustration: The Notary is asked by a stranger to take a proof of execution for the signature of the stranger's absent spouse. The stranger explains that the spouse was suddenly called out of town on emergency business, but that the stranger saw the spouse sign the document.

The Professional Choice: The Notary declines to allow the stranger to serve as a subscribing witness for a proof of execution because this individual is not personally known to the Notary. Because proofs have a high potential for fraud, Notaries must know well any individual they trust to vouch for an absent signer's identity, volition and awareness.

III-D-6: Subscribing Witness Must Be Unaffected

The Notary shall disqualify any person from serving as a subscribing witness if that individual is named in or affected by the document signed by the absent principal.

Illustration: The Notary is asked by a friend to perform a proof of execution for the signature of the friend's parent on a health care power of attorney naming the friend as attorney in fact. The parent is described as too sick to appear before the Notary.

The Professional Choice: The Notary declines to allow the friend to serve as a subscribing witness for a proof of execution because this individual is named in and affected by the document and the person's credibility as a reliable witness would be compromised.

III-D-7: Two Witnesses to Mark Must Be Disinterested

The Notary shall require that two individuals in addition to the Notary witness the affixation of a mark, and neither witness shall be named in or affected by the marked document.

Illustration: The Notary is called to the bedside of a patient to notarize this person's signature on a power of attorney naming a spouse as attorney in fact. Ill and extremely weak, the patient is only able to affix an "X" rather than a normal signature. The spouse offers to sign as a witness to the mark.

The Professional Choice: The Notary explains that two persons in addition to the Notary must witness the making of the mark. The Notary disqualifies the spouse as a witness, since this individual is both named in and affected by the document. Instead, the spouse finds two neighbors, both of whom present reliable ID cards, to witness the patient's mark.

Standard III-C-2 and -3 address a different aspect of the "awareness" issue, that of the signer being able to communicate effectively with the Notary. The Illustration for Standard III-C-2 cites a situation wherein the physical condition of the would-be signer raises doubts as to the signer's awareness of the transaction. Although the Illustration instructs the Notary not to proceed, it must not be mindlessly applied to all similar situations. Individuals with slurred speech or who cannot speak at all often may nonetheless effectively communicate their wishes in a variety of other ways. The result reached in the Illustration rests largely on the fact that the would-be signer could not respond effectively to the Notary's questions. Standard III-C-3 takes the communication problem a step further by admonishing Notaries not to perform notarizations through an interpreter, even though several states allow translators to explain the nature and effect of an English-language document to a non-English-speaking signer. (*See, e.g.,* FLA. STAT. ANN. § 117.107(6).) Drafters of the *Code* considered the inherent risk of fraud to be too great when the Notary relies on the words of a third party who may have a motive for dissembling. There are other ways for persons who speak a foreign language not understood by the Notary to obtain notarizations, including taking advantage of consular services. Advising the client to take one of those options is the ethical path to pursue.

ARTICLE D: Qualification of Witnesses

Standards III-D-1 through -7 offer advice on the proper use of witnesses in notarization. Although not mandatory, taken together the Standards create a protocol of good practice.

Standard III-D-1 states the three minimum requirements for a witness: honesty, mental capacity and disinterest. The Notary will have to draw upon his or her personal knowledge of the witness to assess these qualifications. As to "disinterest," the Notary will have to ascertain this fact at the time of notarization. Standard III-D-4 addresses this issue more directly. Any witness with a direct interest in the document to be notarized must be disqualified. (*Accord* CAL. CIV. CODE § 1185(c)(1)(E).) Standard III-D-6 provides the same rule for subscribing witnesses. (For guidance as to what may constitute an improper personal interest, *see* Guiding Principle II, Article B.)

Standards III-D-3 and -5 set out the foundation for the Notary's knowledge of the witness' identity. The former relates to identifying witnesses in general, the latter to subscribing witnesses. In both instances the Notary must have personal knowledge of the witness' identity. Standard III-D-3 indicates that state laws may usefully define "personal knowledge of identity" (*see, e.g.,* ARIZ. REV. STAT. ANN. § 41-311 (defining personal knowledge of identity as "familiarity with an individual resulting from interactions with that person over a sufficient time to eliminate reasonable doubt that the individual has the identity claimed")). Notaries are advised to review the relevant law in their respective jurisdictions on this matter.

Standard III-D-2 requires that an identifying witness be put under oath, an action dictated by many statutes. (*See, e.g.,* FLA. STAT. ANN. § 117.05(5)(b).) This simple procedure is designed to provide the assurance needed to verify the unknown signer's identity. It is an essential link in the notarial process needed to deter fraud.

Standard III-D-7 addresses the use of marks as signatures. This situation can arise when the signer is physically incapable of writing his or her own signature, or does not know how to write the signature. In either event, a mark (*e.g.,* "X") can constitute a valid signature, as long as proof is provided of the mark's authenticity. The Standard suggests that the Notary always use at least two disinterested witnesses when notarizing a document signed with a mark, a requirement imposed by many state laws. Use of two witnesses in addition to the Notary will help guarantee the validity of the document should it ever be challenged. As with any other witness, the Standard alerts the Notary of the need to make the witnesses prove their identities. Note that since the witnesses are not serving to verify the identity of the signer, they need not be personally known to the Notary nor put under oath.

GUIDING PRINCIPLE IV

The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent.

Standards of Professional and Ethical Practice

Article A: Certificate Mandatory

IV-A-1: Notarial Wording Required

The Notary shall not notarize any document unless it bears jurat, acknowledgment or other notarial "certificate" wording that specifies what the Notary is attesting.

> **Illustration:** The Notary is asked by a stranger to "certify" an engineering drawing to protect an invention. When the Notary appears perplexed by the request, the stranger says, "Just stamp, date and sign it — that's all I need."
>
> *The Ethical Imperative:* The Notary declines to "notarize" any document that does not bear notarial certificate language. Merely "stamping, dating and signing" is insufficient because there is no wording to indicate exactly what the Notary's seal and signature are certifying.

Article B: Fraudulent Certificate

IV-B-1: False Statement Improper

The Notary shall not knowingly issue a certificate containing information that is false, deceptive, inaccurate or incomplete.

> **Illustration:** The Notary is asked by a friend to notarize a deed bearing the signatures of the friend and an absent spouse, who "is out of town on business for several days." The acknowledgment form has been prepared beforehand and states that both friend and spouse "personally appeared" before the Notary. The friend explains that the document must be quickly notarized and recorded before the spouse returns because of an escrow deadline.
>
> *The Ethical Imperative:* The Notary declines to notarize using the prepared notarial certificate, since it falsely states that the spouse was in the Notary's presence. However, the Notary offers to notarize the signature of the friend alone if permitted to cross out the spouse's name and modify the notarial certificate to reflect that only the friend appeared.

IV-B-2: False Date Improper

The Notary shall not knowingly issue a certificate for a notarial act that indicates a date other than the actual date on which the notarial act was performed.

> **Illustration:** The Notary is asked by a friend to notarize several documents related to charitable contributions. All of the notarial certificates have been prepared for the Notary, who notices that the jurat on one of the documents bears a date in the previous year. When the Notary points this out, the friend explains that a significant financial loss will be suffered unless a contribution is backdated to fall on or before the previous December 31. The friend asks the Notary to "just do a small favor and overlook the minor discrepancy regarding the date."
>
> *The Ethical Imperative:* The Notary declines to notarize using a certificate with a false date, since it untruthfully states that the notarization was performed on a day on which the friend had not actually appeared.

COMMENTARY

GENERAL

The Principle presents quite simply the basic premise that a Notary, both as a public officer and someone others depend upon for impartiality and honesty, shall not engage in improper activities. Doing so will detract from the public trust and confidence necessary in order for notarial acts to be accorded respect. Despite its simplicity, the Principle addresses some situations that do not lend themselves to easy resolution. In each of these, the *Code* takes the position that the Notary must refrain from acting because the possibility of actual or perceived impropriety is too great.

ARTICLE A: Certificate Mandatory

Standard IV-A-1 addresses whether a Notary should notarize a document that does not have a notarial certificate. Notarial certificates routinely are required by statute. (*See, e.g.,* KAN. STAT. ANN. § 53-505; and WASH. REV. CODE § 42.44.090.) The Standard concludes that a Notary should not notarize without a certificate because it would then be uncertain exactly what service the Notary provided. The Standard does not preclude a Notary from adding a certificate to the document, but the Notary as a ministerial official should not be the authority who determines the correct type of certificate to be added. (*See, generally,* Guiding Principle VI and Standards thereto addressing "unauthorized advice" issues.)

ARTICLE B: Fraudulent Certificate

Standards IV-B-1 and -2 are based upon the directive found in the *Model Notary Act,* Section 3-104. The Illustrations in these Standards provide clear examples of invitations to the Notary to perform unethical acts. The Standards are unwavering in the position that, regardless of the relationship between the Notary and the person requesting notarial services, the Notary should never notarize a document inconsistent with its certificate nor intentionally misdate the notarization. The Standards are consistent with the view taken in many jurisdictions that prohibit such activities. (*See, e.g.,* GA. CODE ANN. § 45-17-8(d).)

ARTICLE C: Certificate Completion and Attachment

Standard IV-C-1 addresses a matter of good practice. It is not unusual for a Notary to be asked to notarize a document that has a preprinted certificate or one that does not have ample space for a certificate and seal. Notaries should inspect preprinted certificates to ensure they properly state the type of notarial service the Notary is providing. The certificate should also be reviewed for errors or omissions. A Notary should not surrender his or her accountability for proper document certification to the document preparer. Doing so ultimately could result in the notarization being challenged.

Article C: Certificate Completion and Attachment

IV-C-1: Completion by Notary Essential

The Notary shall personally prepare or verify all information and insertions on a notarial certificate, and allow no other person to affix the Notary's official signature and seal.

> **Illustration:** The Notary is asked by a stranger to notarize that person's signature on a document. The Notary notices, however, that the document's notarial certificate wording has been filled in beforehand with an incorrect out-of-state venue.
>
> *The Professional Choice:* Before completing the certificate, the Notary corrects its venue by lining through the inappropriate state and county, then right above printing the state and county in which the notarization is actually being performed. After initialing the venue changes, the Notary completes the certificate.

IV-C-2: Secure Attachment by Notary Essential

The Notary shall take steps in attaching a "loose" notarial certificate to a document that will deter its fraudulent removal and reattachment to an unintended document.

> **Illustration:** The Notary is asked by a stranger to notarize that person's signature on a document that was prepared in another state. However, the document bears preprinted acknowledgment certificate wording that is unacceptable in the Notary's state because it does not detail how the signer was identified. The Notary explains to the stranger that a "loose" certificate bearing acceptable wording will have to be attached. The Notary then completes, signs and seals the certificate, stapling it to the left margin of the document's signature page.
>
> *The Professional Choice:* To make fraudulent reattachment of the certificate difficult, the Notary writes a brief description of the document on the certificate (*e.g.*, "This certificate is attached to a grant deed dated . . . for property in . . ."). In addition, the Notary embosses the certificate and signature pages together with a seal bearing the Notary's name, writing, "Attached document bears this embossment," on the certificate as well.

IV-C-3: Completion or Attachment by Another Improper

The Notary shall not deliver a signed notarial certificate to another person and trust that person to complete or attach that certificate to a document outside of the Notary's presence.

> **Illustration:** The Notary receives a telephone call from a person for whom eight days earlier the Notary had notarized a deed. Calling from out of state, this individual reports that the Notary neglected to affix a seal imprint on the deed's acknowledgment certificate and that the missing seal has prevented the document from being recorded, thereby "putting an important deal on hold." The caller claims that the Notary's mistake has delayed and possibly endangered a land transaction involving multiple parties and hundreds of thousands of dollars in escrow. The caller asks the Notary to complete and overnight-mail another certificate to replace the defective one. "Since we're being held up by your mistake, you have an obligation to help us get this deal back on track as soon as possible," the caller tells the Notary.
>
> *The Ethical Imperative:* The Notary declines to complete and mail a new acknowledgment certificate, not trusting an unseen person to attach it to the appropriate document. However, the Notary offers to correct the original certificate by adding the missing seal imprint, if the deed is returned.

Article D: Potentially Fraudulent Documents

IV-D-1: Incomplete Documents Improper

The Notary shall refuse to notarize any document whose text is blank or incomplete.

Similarly, Notaries must take extra care when executing "loose" certificates. Standard IV-C-2 offers the good practice procedure of securely fastening the certificate to the appropriate document. Failure to do so could result in an unscrupulous party transferring the certificate to another document. Standard IV-C-3 addresses the Notary's delivery of an unattached, completed "loose" certificate. As the Illustration demonstrates, this situation can arise when a Notary is asked to correct his or her prior notarization error. The *Code* adopts the position that it is unethical for the Notary to comply with any such request to forward a loose completed certificate. Although this is often an easy and practical remedy to the problem, it is an invitation to trouble. Once sent, the Notary has no control over the use of the certificate, and may end up being a party to a fraud. Although critics may suggest that strict adherence to this Standard will be difficult and may sometimes produce a hardship for the erring Notary, the drafters feel the position is justified because the risk of impropriety attendant to the delivery of a "loose" certificate is just too great. The *Code* only speaks to ethical considerations. On a practical note, the Notary may consider offering to pay for all delivery and incidental costs created by the error.

ARTICLE D: Potentially Fraudulent Documents

Standards IV-D-1 and -2 address situations that raise practical concerns. The first suggests that a Notary not notarize any document that has blanks or is otherwise incomplete. Although some jurisdictions specifically require this by statute (*see,e.g.,* FLA. STAT. ANN. § 117.107(3)), others do not. There is no hard and fast rule that a Notary must read a document before notarizing the signature on it. Indeed, there are those who believe that maintaining confidentially argues against such an intrusion. Nonetheless, the *Code* adopts the position that both the signer and society are better served by having a completed document notarized, and advises Notaries to act accordingly. The second Standard urges Notaries to certify only original signatures. Although there may not be a statutory proscription against notarizing facsimile signatures, such an action may lead to difficulties because in some instances the facsimile may not be accepted as a lawful signature. Consequently, the *Code* adopts the position against notarizing facsimile signatures as a protection for the client.

ARTICLE E: Fraudulent Notarization or Transaction

Standards IV-E-1 through -3 impose ethical obligations upon Notaries to deter fraud. Standard IV-E-1 mandates that the Notary not perform notarizations that are in any way improper, and obligates the Notary to adhere to Principles of the *Code.* Standard IV-E-2 further stipulates that the Notary not perform a notarization if the Notary knows or has a reasonable suspicion that either the transaction or document itself is illegal or otherwise improper. (*Accord* GA. CODE ANN. § 45-17-8(d).) Drafters of the Standard do not contemplate that a Notary be required to make a detailed investigation every time he or she is asked to perform a notarial act. Instead, they anticipate a commonsense approach whereby either irregularities apparent on the face of the document or circumstances attendant to the transaction would raise a "red flag" for a reasonable person that something improper is afoot. The central message is that, as a public official, a Notary should neither be a part of nor abet an improper act. Finally, Standard IV-E-3 requires the Notary to report knowledge of Notary-related illegalities to the appropriate authority. The *Code*'s position is consistent with the Notary's role as a fraud-deterrent public official and member of a profession. (*See* Standard X-C-1 and accompanying Commentary.)

Illustration: The Notary is asked by a stranger to notarize that person's signature on a document containing blank spaces. "That information isn't available right now and I want to get the notarization out of the way," the stranger says. "It shouldn't make any difference, since you're just certifying my signature, not the terms in the document."

The Professional Choice: The Notary refuses to proceed as asked, explaining to the stranger that the document will be less subject to legal challenge if the signer knows all its terms at the time of notarization.

IV-D-2: Facsimile Signature Improper

The Notary shall refuse to notarize any signature not affixed by hand in pen and ink, unless the law expressly allows otherwise.

Illustration: The Notary works in an office and notarizes several dozen documents every day for an executive. One day, the executive presents a stack of documents for notarization that, instead of being signed by pen, have been stamped with an inked facsimile signature. "I've decided to start using the stamp to save time," the executive tells the Notary.

The Professional Choice: The Notary asks the executive to affix an *actual* signature on the documents in pen and ink, explaining that the stamped facsimile may not be accepted as a lawful signature.

Article E: Fraudulent Notarization or Transaction

IV-E-1: Improper Notarization

The Notary shall refuse to perform any notarial act that is illegal, dishonest, deceptive, false, improper or in violation of The Ethical Imperatives of this *Notary Public Code of Professional Responsibility*.

Illustration: The Notary is asked by a client to notarize a document bearing the client's own signature and that of a stranger whom the client introduces as a spouse. The stranger has no documentary identification, claiming to have left it in a car several blocks away. The client grows indignant when the Notary expresses concern about the stranger's lack of IDs and suggests that the person return to the car to get them. The client threatens to do business elsewhere if the Notary does not "trust me enough to do me a small favor."

The Ethical Imperative: The Notary refuses to notarize unless the stranger returns with proper identification, because an introduction by a clearly interested party does not suffice as a reliable identification. It would be illegal and deceptive for the Notary to certify the stranger as personally known or positively identified when this is not actually the case.

IV-E-2: Improper Transaction

The Notary shall refuse to perform any notarial act in connection with a document or transaction that the Notary knows, or has a reasonable suspicion that can be articulated, is illegal, dishonest, deceptive, false or improper.

Illustration: The Notary is asked by an acquaintance to notarize that person's signature on an "affidavit of citizenship" to facilitate travel in a foreign country. The affidavit contains statements that the Notary knows are false.

The Ethical Imperative: The Notary refuses to notarize, explaining to the acquaintance that, having knowledge that statements in the affidavit are false, the Notary has an obligation as a public official not to abet a deception.

IV-E-3: Reporting Illegality

The Notary shall report to appropriate law enforcement or disciplinary authorities any illegality requested, required, proposed or performed that involves a notarial act by the Notary or by any other Notary.

Illustration: The Notary is asked by a stranger to notarize that person's signature on a property deed. The stranger presents a Social Security card and a birth certificate as identification. When the Notary explains that these are inadequate proofs of identity and that a governmentally issued photo-bearing ID such as a driver's license must be presented, the stranger says, "I've lost my driver's license. Will five hundred dollars be enough to expedite this notarization?"

The Ethical Imperative: The Notary refuses to notarize because of the inadequate documentation of identity. Having a strong suspicion that the stranger is an impostor, the Notary reports the encounter to the forgery division of the local police department, providing whatever information the police require.

GUIDING PRINCIPLE V

The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.

Standards of Professional and Ethical Practice

Article A: Precedence of Law

V-A-1: Conflict with Dictate or Expectation

The Notary shall obey and give precedence to any pertinent law, regulation or official directive, or any of The Ethical Imperatives of this *Notary Public Code of Professional Responsibility*, when they conflict with the dictates or expectations of an employer, supervisor, client, customer, coworker, associate, partner, friend, relative or any other person or entity.

> **Illustration:** The Notary notarizes daily for executives in a company headquarters. State law requires the Notary to maintain a journal of all notarial acts, including the signature of each document signer. As a convenience to the busy executives, a supervisor directs the Notary to secure the signature of each in the front of the Notary's journal and to have that suffice as the required signature for any future notarial act. The supervisor explains that this will take up less of the executives' time.
>
> *The Ethical Imperative:* The Notary declines, explaining to the supervisor that state law requires a journal signature from each document signer at the time of notarization; doing so provides physical evidence that the signer actually appeared before the Notary and willingly engaged in the transaction. The Notary further explains that such strict adherence to procedure will render each document less subject to legal challenge, and that failure to comply may cause revocation of the Notary's commission.

V-A-2: Waiving Personal Appearance Improper

The Notary shall not waive the requirement that each signer personally appear before the Notary at the time of notarization at the direction or request of an employer, supervisor, client, customer, coworker, associate, partner, friend, relative or any other person or entity.

> **Illustration:** The Notary is asked by a supervisor to notarize several documents that have been signed and handed to the supervisor by the firm's president, who "will be in important meetings all day and won't have time to be interrupted." All documents bear acknowledgment certificates stating that the signer "personally appeared" before the Notary. The supervisor explains that the Notary may rely on familiarity with the president's signature, having notarized for this executive "hundreds of times before." The supervisor promises that the president will sign the Notary's journal as soon as time allows.
>
> *The Ethical Imperative:* The Notary refuses to notarize unless the executive is present, as the acknowledgment certificates clearly stipulate and as the law clearly requires. The Notary suggests that the supervisor consider whether proofs of execution might be acceptable substitutes for the acknowledgments, with the supervisor serving as a subscribing witness and declaring under oath that the signatures were acknowledged in the supervisor's presence and are genuine; such proofs, however, would

COMMENTARY

GENERAL

The Principle states a universally applicable rule. It is included in the *Code* primarily to reinforce the absolute obligation imposed upon Notaries to obey all applicable laws. Despite the Principle's seemingly unassailable nature, the Standards highlight situations wherein parties may have to be reminded of this basic rule.

ARTICLE A: Precedence of Law

The three standards in this Article each address a serious problem that often occurs. The situations presented are often particularly difficult for the employee-Notary. In each instance the Notary is asked to disregard the law by waiving the requirement either to make a journal entry, to be in the presence of the signer, or to be shown identification documents. Such requests typically are made by a close friend, relative or employer, believing that the Notary should do as asked because of the personal or professional relationship. The *Code* takes as strong a position as possible against the Notary honoring such requests. Under no circumstances should a Notary ever disregard an applicable law with respect to notarial acts. Aside from ethical concerns, potential criminal sanctions await the Notary who does. (*See, generally,* W.VA. CODE § 29C-6-201 and -202; S.D. CODIFIED LAWS § 18-1-11; and N.M. STAT. ANN. § 14-12-18.)

The drafters appreciate that many employers believe their employee-Notaries owe a special obligation to the employer, and this justifies the Notary disregarding the rules. This can be especially troublesome for the Notary when the employer suggests that by not honoring the request, the Notary is showing a lack of trust of or disrespect for the employer. This can put the Notary in an unpleasant situation, one which the Notary may feel puts his or her job in jeopardy. Nonetheless, the *Code* insists that the Notary not violate the law or breach ethical dictates. The Notary is better served to surrender the commission than to perpetrate an illegal act. Indeed, the employer would be wise to encourage the Notary to follow the letter of the law, and institute policies to ensure the same; otherwise, any misdeed of the Notary may be attributed to the employer and result in liability to injured parties. (*See* 5 ILL. COMP. STAT. 312/7-102; IDAHO CODE § 51-118; and VA. CODE ANN. § 47.1-27. *Accord Islen-Jefferson Fin. Co. v. United Calif. Bank*, 549 P.2d 142 (Cal.1976); and *Transamerica Ins. Co. v. Valley Nat'l Bank,* 462 P.2d 814 (Ariz. Ct. App. 1969).)

ARTICLE B: Commission of Employee

Standard V-B-1 provides guidance to the employee-Notary upon leaving employment. The Standard states the rule that the commission belongs to the individual Notary, and not to the Notary's employer, even if the employer paid for the commission. A Notary commission is not delegable. Consequently, the decision to resign a commission or surrender a commission certificate is solely that of the individual Notary. (*See* CAL. GOV'T CODE § 8207.)

The *Code* only recites the legal rule and provides The Ethical Imperative. It does not address private arrangements that may have existed between the parties. Thus, if the employer and employee had agreed as part of the employment engagement that the commission would be resigned upon the Notary's termination of employment, a cause of action may lie against the Notary who does not resign the commission. The employment contract can only give rise to damages for the employer, but it cannot force

necessitate replacing the acknowledgment forms.

V-A-3: Informal Introduction Improper

The Notary shall not base the identification of any signer on the word of an employer, supervisor, client, customer, coworker, associate, partner, friend, relative or any other person unless the latter is formally sworn in as a credible witness and is not personally a party or beneficiary of the transaction.

Illustration: The Notary is asked by a supervisor to notarize the signature of a client who will be visiting later in the day to sign a contract. The client is a stranger to the Notary. The supervisor directs the Notary to be "as unobtrusive as possible." When the Notary asks what being unobtrusive means, the supervisor says, "It means don't bother the client by asking for ID cards."

The Ethical Imperative: The Notary informs the supervisor that state law requires "satisfactory evidence of identity" for any document signer not personally known. Though the law does not define "satisfactory evidence of identity," it is the Notary's policy to accept only a reliable ID bearing a photograph, or the sworn word of a personally known credible witness who is not involved in the transaction, in lieu of personal knowledge. Knowing the visiting client and not being personally involved in the transaction, the supervisor offers to be sworn in as a credible witness.

Article B: Commission of Employee

V-B-1: Notary Retains Commission

The Notary shall not be required by an employer to surrender or resign the commission upon termination of employment, even if the employer paid for the commission.

Illustration: The Notary informs an employer of the intent to leave in two weeks for another job. The employer says that office policy will require the Notary to hand over the commission certificate and cancel the bond, because the Notary was commissioned and bonded at the company's expense.

The Ethical Imperative: The Notary declines to surrender the commission certificate or resign the commission. Regardless of who paid for the commission, it belongs solely to the Notary, not the employer, and any decision to resign belongs solely to the Notary. In addition, the Notary's surety bond may not unilaterally be cancelled by the Notary or an employer; it must remain in place for the full commission term to protect the public against misconduct by the Notary.

the Notary to resign the commission. Granting and regulating a Notary commission is a state power. It cannot be controlled by agreements between private parties. (*But see* OR. REV. STAT. § 194.152 (providing that the Notary journal shall be delivered to the employer upon the Notary employee's termination of employment); and *compare* CAL. GOV'T CODE § 8206(d) (ruling that the notarial records of a Notary are the Notary's exclusive property and must not be delivered to the employer upon the Notary-employee's termination of employment).)

GUIDING PRINCIPLE VI

The Notary shall act as a ministerial officer and not provide unauthorized advice or services.

Standards of Professional and Ethical Practice

Article A: Prescribing Notarial Act

VI-A-1: Selecting Certificate Improper

The Notary who is not an attorney, or a professional duly trained or certified in a pertinent field, shall not determine or prescribe the particular type of notarial act or notarial certificate required in a given transaction.

> **Illustration:** The Notary is asked by a stranger to notarize a letter giving the stranger's friend permission to authorize medical treatment for a child. When the Notary asks the type of notarization needed — jurat or acknowledgment — the stranger says, "You decide for me. I have no idea."
>
> *The Ethical Imperative:* The Notary shows the language of a standard jurat and a standard acknowledgment certificate, then asks the stranger to decide which is appropriate. If the stranger cannot decide, the Notary must ask this individual to contact either the person or agency directing that the letter be notarized, or the medical facility where the letter would be presented, for further instructions.

Article B: Prescribing or Preparing Document

VI-B-1: Selecting Document Improper

The Notary who is not an attorney, or a professional duly trained or certified in a pertinent field, shall not determine or prescribe the particular type of document required in a given transaction.

> **Illustration:** The Notary is asked by a stranger for assistance in obtaining documentary proof that the stranger is a U.S. citizen. Planning to start a trip to a neighboring country the next day and with no time to get a U.S. passport, the stranger was told by a travel agent that any Notary could provide the proof of U.S. citizenship that foreign authorities will need to see. The stranger asks the Notary to supply whatever is needed.
>
> *The Ethical Imperative:* The Notary directs the stranger to telephone a consulate of the neighboring nation for definitive information on the paperwork needed to visit that nation.

VI-B-2: Preparing Document Improper

The Notary who is not an attorney, or a professional duly trained or certified in a pertinent field, shall not prepare a document for another person or provide advice on how to fill out, draft or complete a document.

> **Illustration:** The Notary is asked by a stranger to provide a "notarized affidavit of citizenship" that will allow the stranger to visit a neighboring country. An airline had informed the stranger that any Notary may prepare such a document.
>
> *The Ethical Imperative:* The Notary informs the stranger that a nonattorney is not authorized to prepare documents

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Although Notaries are public officials, the *Code* recognizes that they possess limited, albeit important, powers. Notwithstanding the significant effect a notarization can have on a document or transaction, a Notary's powers are ministerial in nature. The United States Supreme Court has stated this to be the case. (*SeeBernal v. Fainter*, 467 U.S. 216 (1984).) The *Code* adopts that view and in this Principle places ethical restraints on attempts to use the Notary office in any other manner. The *Code* limits the Notary only in his or her capacity as a Notary. Consistent with applicable law, Notaries who are licensed or otherwise authorized to provide services to the public are not prohibited from doing so. (*See* S.C. CODE ANN. § 26-1-110.) The thrust of the Principle is to reinforce the view that Notaries not mislead the public with respect to notarial authority. (*See, generally,* IDAHO CODE § 51-112(c) and -(d) (identifying as sanctionable misconduct activities that lead members of the public to believe the Notary is cloaked with authority that, in fact, does not exist). *Accord* 5 ILL. COMP. STAT. 312/7-109; and GA. CODE ANN. § 54-17-8.2.)

ARTICLE A: Prescribing Notarial Act

Standard VI-A-1 admonishes a Notary from providing advice about the type of notarial certificate needed for a given document. It is, however, permissible to show the client a variety of different notarial certificates, and have the client determine or find out which one to adopt. In such circumstances the Notary should not select the certificate for the client, nor even suggest which one would be more appropriate. (*But see* OR. REV. STAT. § 194.162(1) (permitting a Notary to select from the statutorily approved certificates).) A Notary who is an attorney or qualified as an expert in a pertinent field could select the notarial certificate, but only pursuant to the authority of being an attorney or otherwise qualified. The position adopted by the *Code* is consistent with the statutory rule in numerous jurisdictions. (*See, e.g.,* N.M. STAT. ANN. § 14-12-13(3); and MO. REV. STAT. § 486.385(6).)

ARTICLE B: Prescribing or Preparing Document

Standards VI-B-1 and -2 expand the prohibition of Standard VI-A-1 to selecting or suggesting the type of the document the client should use, and preparing or completing any document presented by the client. Again, the *Code* is setting the standard that a Notary has limited powers that do not include offering advice in matters apart from the proper performance of a notarial act. The Standards provide the same exception found in Standard VI-A-I for attorneys and other qualified individuals.

ARTICLE C: Providing Unauthorized Advice

Standard VI-C-1 ethically restrains Notaries from offering any unauthorized advice. The proscription is intended to be interpreted broadly and apply to all Notaries other than attorneys and those otherwise duly qualified to provide advice on the specific matter in question. (*Accord* W. VA. CODE § 29C-7-201 (providing injunctive relief against a non-attorney Notary who renders services that constitute the unauthorized practice of law).)

for other persons. The Notary asks the stranger to compose the document after finding out what it must contain. Once the document is in its final form, the Notary will be able to witness the stranger's signature, administer an oath and execute a jurat certificate, as required for any affidavit.

Article C: Providing Unauthorized Advice

VI-C-1: Legal Counseling Improper

The Notary who is not an attorney, or a professional duly trained or certified in a pertinent field, shall not provide advice on how to act or proceed in a given legal matter that may or may not involve a notarial act.

Illustration: The Notary is asked by a friend, "Do you know anything about wills?" The friend then expresses a desire to make sure that a relative will receive all the friend's property in the event of death. The friend asks, "Can I just write out what I want and then have you notarize it?"

The Ethical Imperative: As a nonattorney, the Notary declines to offer legal advice about the preparation of a last will and testament, urging the friend to seek the advice of an attorney.

Article D: Providing Unauthorized Services

VI-D-1: Certifying Vital Record or Recordable Document Improper

The Notary shall not certify the accuracy and completeness of a copy if the original is a photocopy, a vital record or a recordable document, nor certify any hand-rendered reproduction.

Illustration: The Notary is asked by a stranger "to certify a copy of my birth certificate." The stranger needs a birth certificate for foreign travel but does not want to risk losing the "original."

The Ethical Imperative: The Notary declines to certify a copy of a birth certificate, because it is a vital record that only a custodian of vital statistics may properly certify; a Notary's "certification" of a birth, death or other vital record may lend credence to a counterfeit or tampered document. Very likely, the "original" presented by the stranger is itself a certified copy and, for a modest fee, the stranger may obtain another such copy from the bureau of vital statistics in the locality of birth.

VI-D-2: Certifying Photograph Improper

The Notary shall not certify the accuracy or authenticity of a photograph.

Illustration: The Notary is asked by a stranger to notarize that person's signature on a document bearing text, jurat language and a photograph of the stranger at the end. The stranger directs the Notary to affix the seal partially over the photograph.

The Professional Choice: The Notary complies with the stranger's instruction. In notarizing a document with text, a signature and some form of jurat or acknowledgment certificate, the Notary may affix the seal partially over an attached photograph. The document's text may declare the accuracy or authenticity of the photograph, but the Notary's certificate may not.

VI-D-3: Certifying Translation Improper

The Notary shall not certify the accuracy or completeness of a translation.

Illustration: The Notary is asked by a stranger to "certify" a translation of that person's foreign birth certificate for an immigration petition.

The Ethical Imperative: The Notary declines to perform such a certification, because Notaries in the United States are not authorized to certify the accuracy of translations, though they may notarize the signature of a translator on a translator's declaration.

ARTICLE D: Providing Unauthorized Services

Standards VI-D-1 through -3 identify specific activities that can raise problems for Notaries.

Standard VI-D-1 instructs the Notary not to certify the accuracy and completeness of copies of certain documents. The ethical restraint is justified on the ground that in some instances the Notary either is not authorized to perform the act (*e.g.,* only a custodian of vital records can certify the records) or that performing the act would produce an unreliable reproduction (*e.g.,* a handwritten copy).

Standard VI-D-2 indicates that it is not good practice to certify the accuracy or authenticity of a photograph. The Illustration recognizes, however, that in some instances, such as applications for medical licensing, photographs may be attached to documents on which an applicant's signature may properly be notarized.

Standard VI-D-3 provides an ethical restraint on the practice of certifying the accuracy or completeness of a translation. The certification of translations is not an authorized notarial power for the ministerial Notary of the United States. (For examples of procedures for dealing with would-be signers who neither speak nor understand English, *see* IND. CODE § 33-16-2-2; and FLA. STAT. ANN. § 117.107(6).)

GUIDING PRINCIPLE VII

The Notary shall affix a seal on every notarized document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.

Standards of Professional and Ethical Practice

Article A: Affixation of Seal

VII-A-1: Seal Important on Every Document

The Notary shall affix a legible imprint or impression of an official seal on every document notarized.

> **Illustration:** The Notary resides in a state that does not require Notaries to affix seals of office on notarized documents; however, using a seal is not prohibited and many Notaries do opt to affix a seal. The Notary ponders whether use of a seal justifies the expense.
>
> *The Professional Choice:* Even though state law does not require a seal, the Notary opts to obtain and use one, believing it imparts a sense of ceremony and official completion to the act of notarizing that most document signers seem to expect and appreciate. The Notary also knows that a well-placed seal impression can deter forgers and eliminate potential recording problems when a document is sent out of state to a jurisdiction where Notaries use seals. The Notary decides that the minor expense of purchasing a seal is far outweighed by its advantages.

VII-A-2: Manual Affixation of Seal Necessary

The Notary shall manually affix every impression of the official seal, unless electronic affixation is expressly permitted by law, in which case the Notary shall maintain exclusive control over the means of such affixation.

> **Illustration:** The Notary considers whether it might be handy to "scan" the inked impression of the Notary seal and store it in a computer. That way, each notarial certificate may be printed out with a Notary seal already neatly and legibly affixed. Law in the Notary's state is silent about electronic affixation of seals.
>
> *The Professional Choice:* Since state law does not expressly authorize electronic affixation of Notary seals, the Notary continues to affix the seal manually at the time of each notarization, keeping it under lock and key when not in use. The Notary realizes that putting an image of an official seal in a computer compounds the seal security problem. Persons with access to the computer would be able to print out the seal on unauthorized documents, or copy it for use on other computers.

VII-A-3: Preprinted Seal Disallowed

The Notary shall not affix nor allow the official seal to be affixed or preprinted on any certificate or document prior to the time of notarization.

> **Illustration:** The Notary is asked by a supervisor for an impression of the Notary's seal so that it may be reprinted on multiple copies of certain standard office forms. "That way, we don't have to worry about smeared or illegible seal impressions," the supervisor says. The Notary is told that the resulting copies will be under the Notary's strict control.

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Principle VII furnishes advice and guidance on the proper use and handling of the notarial seal. The *Code* recognizes the seal as an important symbol of office, and requires that it not be used in a fraudulent or deceitful manner or in any way that could bring disrespect to the Notary profession.

ARTICLE A: Affixation of Seal

Standards VII-A-1 and -2 prescribe the proper use of the notarial seal. Although some jurisdictions do not require the use of a notarial seal (*see, e.g.,* N.J. REV. STAT. § 52:7-19; S.C. CODE ANN. § 26-1-60; IOWA CODE § 9E.6(3); and ME. REV. STAT. ANN. tit. 4, § 951), most do (*see, e.g.,* ARK. CODE ANN. § 21-14-107; HAW. REV. STAT. § 456-3; and MONT. CODE ANN. § 1-5-416). Standard VII-A-1 offers the view that use of a seal represents the preferred practice. The seal not only imparts a psychological significance to the notarization, but also helps deter fraud when properly affixed to a document. Standard VII-A-2 disapproves the electronic storing and use of one's seal because of the attendant security risks. Seals should be affixed manually to each document notarized. (*Accord* TEX. GOV'T CODE § 406.013(c); and 5 ILL. COMP. STAT. 312/3-102.)

Standard VII-A-3 states it is unethical for a Notary to affix the notarial seal prior to the time of notarization. (*Accord* 5 ILL. COMP. STAT. 312/3-102 (stating the seal shall be affixed at the *time of notarization*) [emphasis supplied].) If a Notary affixes the seal to an unsigned document, there are no safeguards to protect against a subsequent forgery. The dictates against notarizing blank certificates (*see* Standards IV-C-1 and -3) apply equally to affixing one's seal to an unsigned document. Such an act is tantamount to the Notary relinquishing personal control of the seal, and invites false notarizations.

ARTICLE B: Control of Seal

The seal is the exclusive property of the Notary (*see* MO. REV. STAT. § 486.285.3; and WASH. REV. CODE § 42.44.090(4)), and as such is the Notary's responsibility (*see* N.C. GEN. STAT. § 10A-11). Consequently, Standard VII-B-1 advises Notaries to safeguard their notarial seals. Failure to do so can result in fraudulent notarizations. Lost or stolen seals should be reported to the appropriate authority. (*Accord* GA. CODE ANN. § 45-17-14; and W. VA. CODE § 29C-4-203.) Also, worn or damaged seals should be replaced to eliminate potential challenges. (*See* N.C. GEN. STAT. § 10A-11.)

Standard VII-B-2 states the rule that it is unethical for a Notary to allow another person to use his or her notarial seal. This prohibition even applies to a situation wherein one Notary allows another duly commissioned Notary of the same state to use the former's seal. The notarial seal can be used only by the Notary to whom it was issued. (*Accord* WASH. REV. CODE § 42.44.090(4); and MO. REV. STAT. § 486.285.3.) Indeed, mere possession of a Notary seal by unauthorized persons can constitute a criminal act. (*See* FLA. STAT. ANN. § 117.05(9); MO. REV. STAT. § 486.380; WASH. REV. CODE § 42.44.050; and W.VA. CODE ANN. § 29C-6-204.) Also, it is unethical for two or more duly licensed Notaries to share a seal.

Standard VII-B-3 addresses a serious concern over improper use of the Notary seal after it is affixed to a document. The seal should only be used to complete a notarial certificate. It should never be used for commercial, advertisement, solicitation or testimonial purposes by the Notary or anyone else. (*See, generally,* Standard I-D-3

The Ethical Imperative: The Notary refuses to allow the official seal to be preprinted on any document, because it would effectively mean surrendering control of the seal.

Article B: Control of Seal

VII-B-1: Safeguarding When Not in Use

The Notary shall safeguard the official seal to prevent its misuse by others when it is out of the Notary's sight.

Illustration: The Notary maintains a desk in a large and busy office with nearly 30 other desks nearby. The Notary finds it convenient to keep the official seal and journal at this desk.

The Professional Choice: The Notary always keeps the seal and journal in a locked drawer when not in use. The key is safeguarded on the Notary's person.

VII-B-2: Use or Possession by Another Improper

The Notary shall not allow the official seal to be used or possessed by another person.

Illustration: The Notary is asked by a coworker for permission to "borrow" the Notary's seal and sign the Notary's name until the coworker's commission is renewed. Having failed to keep track of the commission expiration date, the coworker tearfully claims that not being able to notarize may result in dismissal from the job.

The Ethical Imperative: Understanding that Notaries are commissioned to deter fraud and not to abet it, the Notary refuses to let another person use the official seal and title to perform deceptive notarizations that will amount to criminal acts on the part of both individuals. To help out, the Notary offers to notarize for any person referred by the coworker.

VII-B-3: Reproduction in Advertisement Improper

The Notary shall not allow others to use or reproduce the Notary's seal in a commercial advertisement, solicitation or testimonial.

Illustration: The Notary is asked by a stranger to notarize an affidavit. After signing the document in the Notary's presence, the stranger instructs the Notary to "be extra neat" and take special care in affixing the seal because "we intend to duplicate the affidavit by the thousands in advertisements" for a new product.

The Ethical Imperative: The Notary declines to notarize, not wanting the official signature, seal, certificate and title "Notary" reproduced in a commercial solicitation that may mislead some people into believing that the product is governmentally sanctioned or approved. A Notary need not investigate every transaction to ensure that a particular notarial certificate will not be reproduced, but the Notary should decline to notarize when having knowledge that the Notary's name or the words "Notary" or "notarized" will appear in a promotion.

Article C: Disposal of Seal

VII-C-1: Surrendering Seal to Employer Improper

The Notary shall not surrender the seal to an employer or supervisor upon termination of employment, even if the employer paid for the seal.

Illustration: The Notary gives an employer two weeks' notice before leaving for a new job. The employer responds that the Notary must surrender the seal before departing, since the employer paid for it.

The Ethical Imperative: The Notary informs the supervisor that the seal will not be surrendered, since it is the personalized symbol and certifying tool of the notarial office and its use by anyone but the Notary would be unlawful.

VII-C-2: Destruction or Defacement Necessary

To prevent its misuse by others, the Notary shall destroy or deface the official seal when the term of office it denotes ends or is cut short by revocation or resignation, provided the law does not prescribe another disposition.

Illustration: The Notary moves to another state for a new job.

The Professional Choice: Before moving, the Notary sends a letter of resignation to the state Notary-regulating office by certified mail, indicating a date of resignation. On that date, the Notary defaces the seal so that it may not be misused.

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and accompanying Commentary.) The Notary can control his or her own use of the seal, and here personal accountability is not a problem. But the Notary cannot control how the seal image is used once the document to which it is affixed returns to the client's possession. The client could then quite easily use the seal image for improper purposes. The *Code* requires the Notary to refrain from notarizing a document that the Notary knows will result in the seal impression being used to certify or impart credibility to anything but the performance of a notarial act.. The Notary acts unethically only if he or she knows or has reason to know that the seal image will be misused, but nonetheless proceeds with the notarization. A Notary cannot be accountable for matters beyond his or her control, but in any event is advised to be alert to potential misuse of the seal and guard against the situation as best as possible.

ARTICLE C: Disposal of Seal

Standards VII-C-1 and -2 address issues concerning the proper disposal of the Notary seal. Just as the Notary commission cannot be delegated to another (*see* Standard V-B-1 and accompanying Commentary), neither can the Notary seal. In a sense, the seal is a part of the office and cannot be separated from it. Consequently, Standard VII-C-1 provides that a Notary cannot surrender the seal to his or her employer upon termination of employment even when the employer paid for the Notary's commission, seal and supplies. (This accords the rule for resigning one's commission, *see* Standard V-B-1 and accompanying Commentary. *And see* MO. REV. STAT. § 486.285.3; and WASH. REV. CODE § 42.44.090(4).) Additionally, Standard VII-C-2 suggests that when the Notary's commission either expires or is resigned, the Notary should take steps to ensure that the seal is not misused by others. The Standard indicates that either destroying or defacing the seal may be appropriate, but advises the Notary to look to controlling local law for any legally required steps to be taken with respect to the seal in such situations. Some jurisdictions require the Notary, or the Notary's personal representative, to tender the seal to the appropriate authority after the Notary's commission expires without renewal, is resigned, is revoked or ends with the Notary's death. (*See, e.g.,* GA. CODE ANN. §§ 45-17-16 through -18; HAW. REV. STAT. § 456-3; W. VA. CODE §§ 29C-4-401 through -404; and OHIO REV. CODE. ANN. § 147.04.)

GUIDING PRINCIPLE VIII

The Notary shall record every notarial act in a bound journal or other secure recording device, and safeguard it as an important public record.

Standards of Professional and Ethical Practice

Article A: Record of Notarial Acts

VIII-A-1: Entering Every Official Act Critical

The Notary shall maintain a complete, sequential record of every notarial act performed by the Notary in a bound journal or other secure recording device allowed by law.

> **Illustration:** The Notary resides in a state where keeping a record of notarial acts is not required by law. The Notary ponders whether to document each notarization in a recordbook.
>
> *The Professional Choice:* Even though state law does not mandate record keeping, the Notary opts to maintain a journal in the belief that all responsible and businesslike public servants should keep a record of their official activities. In addition, the journal will prove invaluable as protective evidence of the Notary's use of reasonable care in the event of a lawsuit.

VIII-A-2: Essential Components of Entry

For every notarial act performed, the corresponding entry in the Notary's journal shall contain, at least: the date, time and type of the notarial act; the date and description of the document or transaction; the name, address and signature of each person whose signature was notarized or who served as a witness; a description of the evidence used to identify any signer who is not personally known; and the fee charged for the notarial act.

> **Illustration:** The Notary is asked by a stranger to notarize "some sensitive personal papers." The stranger presents only the signature pages of the documents. "They relate to a very messy and painful divorce," the stranger tells the Notary, "and there's no need for anyone but myself, my ex-spouse and our lawyers to know the details." The stranger keeps the text of all the documents hidden from the Notary.
>
> *The Professional Choice:* The Notary refuses to notarize unless handed all pages of each document. "I have no intention of reading or divulging information from your documents," the Notary tells the stranger, "but I do have a need to scan them for certain data to record in my journal, including each document's title and number of pages." The Notary further explains that the act of notarization that will protect the stranger's rights in the divorce necessarily requires surrendering to the public record certain minimally descriptive information about the transaction; it is part of the small cost of protection assured by the notarial act.

VIII-A-3: Entry Contemporaneous with Act

A complete record of any notarial act performed by the Notary shall be entered in the journal at the actual time of the notarial act, not before and not after.

> **Illustration:** The Notary arrives at the home of a client to

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Guiding Principle VIII addresses the proper use of and control over Notary journals. Some jurisdictions require Notaries to maintain journals (*see, e.g.,* ALA. CODE § 36-207; CAL. GOV'T CODE § 8206; and 57 PA. CODE § 16(a)), but most do not. The *Code* favors the use of journals in all jurisdictions, including those wherein they are not required. This position is grounded in the belief that a Notary's maintenance of a journal serves the public interest. The journal not only provides a reliable record of notarized documents that can be referred to when questions arise in the future, but also helps deter fraud by requiring the Notary to obtain important information incident to the notarization that impostors may not be able to produce. The Standards offer professional guidance on how Notaries should maintain their journals to maximize their effectiveness and prevent their misuse.

ARTICLE A: Record of Notarial Acts

Standard VIII-A-1 presents the basic tenet that a Notary should maintain a journal, regardless of whether or not state law requires it. The Illustration offers the supporting rationale for this position. Standard VIII-A-3 establishes the good practice that all journal entries be made contemporaneously with the notarization.

Standard VIII-A-2 specifies the essential elements of a proper journal entry. Although it takes a cue from the *Model Notary Act,* Sections 4-102(a)(1) through (6), the *Code* does not adopt all of the *Model Act* journal requirements. For example, the *Code* does not call for the Notary to record the place of notarization if it is different from the Notary's place of business. (*See Model Notary Act,* Section 4-102(7).) The Standard offers the essential elements needed for a useful entry. Notwithstanding the *Code's* suggestion to the contrary, some jurisdictions have minimal journal requirements. (*See* ALA. CODE § 36-20-7 (requiring only that the Notary "keep a fair register of all his official acts"); and 57 PA. CODE 161 (not requiring addresses of parties, names of witnesses, nor evidence used to prove identities). More notably, *see* OR. REV. STAT. § 194.152(1) and OHIO REV. CODE ANN. § 147.04, mandating that only commercial note protests need be recorded in the journal.) Other jurisdictions have journal requirements that more closely mirror those suggested by the *Code.* (*See, e.g.*, CAL. GOV'T CODE § 8206(2)(A) through (F); TEX. GOV'T CODE ANN. § 406.014 (a)(1) through (9); and ARIZ. REV. STAT. ANN. § 41-319.A(1) through (6).) In any event, the Notary must record all items required by the controlling statute. It is worth noting that, unless specifically stated to the contrary, the statutes enunciate only the minimum entry requirements. Thus, the *Code* can be read as an advisory for Notaries to expand upon the journal entry elements prescribed by the controlling statute.

As to the journal entries themselves, most of this information is easily obtainable and presents no problems for the Notary. In calling for the description of the document or transaction, the *Code* does not contemplate that the Notary must make a detailed inspection of the document or investigation of the transaction. Nor is it anticipated that the Notary have legal, real estate or any other professional training in order to be able to make the journal entry. The entry requirement is satisfied simply by referring to the title of the document or identifying in general terms the physical nature of the paper or acts that are the subject of the notarization.

The Illustration to Standard VIII-A-2 responds to the difficult task of balancing proper journal entries with client confidentiality. Clients may seek to prevent the Notary from reading the contents of the documents to be notarized. A commonly held view by the public at large is that a Notary only "notarizes" the client's signature, and that it

notarize documents but forgot to bring the journal of notarial acts along. The client urges the Notary to proceed with the notarization anyway, and promises to stop by the Notary's office later to sign the journal.

The Professional Choice: Declining to notarize without the journal, the Notary leaves to retrieve it and returns shortly to the client's home. The Notary realizes the importance of securing a journal signature and ID description at the time of the notarization rather than later, when a change of mind by the signer might cause the notarization to be falsely challenged.

Article B: Public Inspection

VIII-B-1: Limiting Access to Journal

The Notary shall show or provide a copy of any entry in the journal of notarial acts to any person identified by the Notary who presents a written and signed request specifying the month and year, the document type, and the name of the signer(s) for the respective notarization.

Illustration: The Notary is approached by a stranger who claims to be an attorney representing a person for whom the Notary had notarized a document several months earlier. The stranger says the document is now at issue in a lawsuit, and asks to look at the journal of notarial acts.

The Professional Choice: As a public official and servant, the Notary understands that private citizens may have a legitimate need to verify facts related to a particular notarization by looking at the journal. The Notary asks the stranger to present identification, as well as a written, signed request stating the month and year of the notarization, the name of the person whose signature was notarized, and the type of document. The Notary explains that the stranger may only see the entries specified in writing, to respect the privacy of other signers and discourage opportunistic "fishing expeditions."

VIII-B-2: Control of Record Essential

To prevent loss, theft or tampering, the Notary shall safeguard and maintain control over the journal of notarial acts, and not surrender it to any person who does not present a subpoena or other lawful written authorization.

Illustration: The Notary is asked by an acquaintance to see a particular entry in the journal of notarial acts, through presentation of a written, signed request. After viewing the entry, the acquaintance asks to make a photocopy. When the Notary responds that there is no photocopier available on the premises, the acquaintance asks, "May I take the journal to the copy shop around the corner and come right back?"

The Professional Choice: The Notary declines, explaining, "It's my policy never to surrender control of the journal of notarial acts except when presented with a subpoena." As a courtesy, the Notary offers to make a copy of the journal entry that evening, if the acquaintance will return the next day.

Article C: Disposal of Journal

VIII-C-1: Surrender to Employer Improper

The Notary shall not surrender the journal to an employer upon termination of employment, even if the employer paid for the journal, unless law expressly authorizes.

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is only necessary for the Notary to observe the client sign the document. Of course, this is not completely accurate. Some notarizations, such as acknowledgments and proofs, require more and necessitate that the Notary look at the documents to be notarized. Additionally, Standard IV-D-1 advises Notaries not to notarize documents that contain blanks or are otherwise incomplete. This practice helps deter fraud. In order to meet these obligations and to make an accurate journal entry, the Notary must have access to all of the pages of the document. (*See, also,* Standard IX-A-1 and accompanying Commentary.)

The *Code* does not require or even suggest that the Notary actually read each word or every page. The Notary's principal objective is to determine if the document contains blank sections or obvious omissions, and to glean enough information to record an accurate description of the document in the journal of notarial acts. This goal can be achieved by carefully looking at the pages without actually reading the text. The *Code* takes the position that it is possible both to allow the client confidentiality and help prevent fraud.

ARTICLE B: Public Inspection

Public access to the Notary journal is a critical issue that has stirred much debate. The problem can be analyzed by answering two sequential questions. The first question asks whether or not individual members of the public can gain access to the journal. If answered in the affirmative, the second question asks how that access should be allowed.

Standard VIII-B-1 takes the position that a Notary should allow members of the public access to the journal provided the request sufficiently identifies the document, its signer and the date it was notarized. The Standard seeks to require that the Notary be given enough information to locate the journal entry with reasonable ease, while simultaneously putting sufficient restraints on the parties seeking the information to prevent "fishing expeditions." Additionally, there are confidentiality concerns. (*See* ARIZ. REV. STAT. ANN. 41-319A, specifically providing that "[r]ecords of notarial acts that violate the attorney client privilege are not public record," even though the balance of notarial journal entries are. Consequently, those acts are not subject to journal inspection. *See* ARIZ. REV. STAT. ANN. 41-319D.)

Special issues not addressed directly by the Standard may arise for employee-Notaries whose commissions are paid for by their employers. In these instances the employee-Notary may have special contractual obligations to or be performing notarizations exclusively for the employer. In these situations it may be appropriate to allow the employer access to the journal, but only for the purpose of checking notarizations executed for the benefit of the employer. Although this view has statutory support (*see, e.g.,* CAL. GOV'T CODE § 8206(d)), it puts the onus on the Notary to develop procedures that will assure the confidentiality for non-employer clients.

The restriction suggested by the Standard should only be applied if there are no applicable contradictory statutes or administrative rules. Some jurisdictions consider the Notary journal to be a public document open to unrestricted public use. (*See,e.g.,* ALA. CODE § 36-20-7; and 57 PA. CODE § 161(b).) Notaries in these jurisdictions must obey the governing rules and make their journals accessible to the public as prescribed by law. (*Compare* TEX. GOV'T CODE ANN. § 406.014(c) (requiring the Notary, upon payment of fee, to supply a certified copy of any journal entry) *with* CAL. GOV'T CODE § 8206(c) (requiring the Notary to reproduce copy of an entry only upon receipt of clearly identifying information).)

Another camp concludes that if the applicable jurisdiction does not require the Notary to maintain a journal, then the Notary's journal is a private, personal record. The main purpose of keeping the journal in such cases, they argue, is for the Notary's personal use and protection. By having a record of the documents notarized and what identification was required, the Notary will be better able to defend against liability suits or present testimony as needed. Additionally, the Notary may feel that in order to preserve client confidentiality, unauthorized access to the journal must be denied. This may be particularly important for journals that record personal information from driver's licenses or other forms of identification that can be used by unscrupulous parties to gain access to bank accounts or other private property. Since artful computer hackers can easily use such information for improper purposes, taking extra care to maintain certain critical information as confidential may be the order of the day.

Whereas the *Code* drafters do not gainsay there are risks inherent in making the journal accessible to the public, they adopted the position that a Notary can provide access without unduly compromising confidentiality. The Standard offers a prudent procedure which when followed should sufficiently limit the risk of serious confidentiality breaches. In any event, the Standard makes clear that the journal, whether a public record or not, is always subject to inspection pursuant to court or other enforceable order.

Illustration: The Notary gives notice of intent to leave for a new job in two weeks. The Notary's supervisor says that the firm will require the official journal of notarial acts to be left behind, since "it contains important information for our business records."

The Professional Choice: The Notary refuses to surrender the journal to the employer. The journal is the official record of a particular notarial officer; it must be kept in the custody of that officer, who will be solely accountable for its accuracy and its availability as evidence for the public benefit. However, the Notary is not prohibited from providing the firm with copies of all entries made in connection with its business.

VIII-C-2: Storage of Record

In the absence of official rules for disposal of the journal of notarial acts, the former Notary shall store and safeguard each journal at least 10 years from the date of the last entry in the journal.

Illustration: The Notary reports for work at a new job to find that there are a more than sufficient number of Notaries on staff to handle the office's business. With the commission about to expire, the Notary decides not to renew and to "retire" as a Notary.

The Professional Choice: On the day after commission expiration, the Notary stores the journal of notarial acts in the locked fireproof cabinet used to store all of the Notary's important personal documents. The Notary attaches a note on the cover that the journal must not be discarded or destroyed prior to a particular date, 10 years from the last entry in the journal. Notaries in states where statutory limits on civil lawsuits extend beyond 10 years may opt to preserve the journal as potential evidence as long as they feel it prudent.

(*Accord* MO. REV. STAT. § 486.270.)

Once it is established that there is a right to inspect the Notary journal, the second question concerning the development of workable rules for permitting access must be answered. The Standard seeks to set a reasonable procedure that does not unduly impact clients who are not the subject of the inquiry. When the journal is considered a public record, unless state law provides otherwise, there may not be any mechanism available to prevent unreasonable requests. (*See, e.g.*, ARIZ. REV. STAT. ANN. § 41-319D; and TEX. GOV'T CODE ANN. § 406.014(c).) Searching the journal for numerous, inadequately defined requests may place an undue burden on the Notary's time. Consequently, the better approach is not to allow indiscriminate searches, but to require a specific, well-defined, written request. (*See* CAL. GOV'T CODE § 8206(c); and ARIZ. REV. STAT. ANN. § 41-319D.) Moreover, some Notaries may elect not to allow public inspection of and access to the journal itself, but instead only supply a photostatic copy of the appropriate entry line from the journal. (*See* ALA. CODE § 36-20-7.)

Standard VIII-B-2 suggests that the Notary never relinquish control of the journal (*accord* CAL. GOV'T CODE § 8206(d) (stating the journal is the Notary's exclusive property); and 57 PA. CODE § 161(b) (insulating the journal from seizure and attachment)), except pursuant to court order or other legal authorization. In those jurisdictions where the journal is a public record, the Notary is an official custodian and should ascertain what additional requirements, if any, are imposed because of this fact. The Notary also should safeguard the journal from theft or loss, such as by keeping it in a locked drawer or file cabinet. (*Accord* MO. REV. STAT. § 486.305 (requiring Notary to immediately notify the secretary of the state if the journal is lost or stolen).) For other issues regarding control of the journal, *see,* Standard IX-B-3 and accompanying Commentary.

ARTICLE C: Disposal of Journal

Standard VIII-C-1 suggests that it is improper for an employee to surrender the Notary journal to his or her employer upon terminating employment, even if the employer paid for the Notary commission, journal and other supplies. (*Accord* ME. REV. STAT. ANN. tit. 4, § 955-B; *but see* OR. REV. STAT. § 194.152(3) (allowing employer to retain journal of Notary-employee).) The Illustration elaborates on this point by noting that the Notary is the custodial officer of the journal, and as such has full responsibility for it. (*Accord* CAL. GOV'T CODE § 8206(d) (stating the journal is the exclusive property of the Notary).) The Notary should only surrender the journal to appropriate, legally recognized authorities. A Notary seeking to surrender a Notary journal should investigate the applicable law of his or her jurisdiction, and then act according to its directives. Although the *Code* does not specifically address the point, the Notary journal must be surrendered if the law requires when the Notary's commission is resigned, surrendered, revoked or terminated by the Notary's death. (*Accord* ALA. CODE § 36-20-8 (delivery of journal to probate judge); and ARIZ. REV. STAT. ANN. § 41-317.A (delivery of journal to county recorder).)

Standard VIII-C-2 advises the Notary to ascertain and abide by local law rules with respect to completed journals, *i.e.*, journals for which there is no room for additional entries. The Standard suggests that in the absence of such rules, the Notary properly store and safeguard a completed journal. Given the confidential nature of some of the entries, it seems appropriate to require the Notary to continue to honor the rights of past clients. The Standard suggests keeping the journal for at least 10 years after the last entry. (*See* CAL. GOV'T CODE § 8209(c): "After 10 years from the date of deposit with the county clerk, if no request for or reference to such records has been made, they may be destroyed upon order of court.") The time period was selected with an eye toward the use of the journal in possible future lawsuits. It was believed most lawsuits would be stale, or past the applicable statute of limitations, after 10 years. Although some statutes of limitations reach 20 years (notably those relating to real estate adverse possession claims), the *Code* adopts a shorter time period. Since this is not an ethical imperative, the Notary is free to retain the journal for as long as he or she feels is necessary. In Arizona, after a journal is delivered to a county recorder, the recorder is only required to retain the journal for five years. (*See* ARIZ. REV. STAT. § 41-317B.) In California, the holding period after relinquishing a journal is 10 years. (*See* CAL. GOV'T CODE § 8209(c).) Once the Notary's commission expires, is surrendered or terminates with the Notary's death, appropriate disposition of the journal must be made. (*See* Standard VIII-C-1 and accompanying Commentary.) Failure to do so could result in penalties. (*See* ARIZ. REV. STAT. ANN. § 41-317.A (fine of between $50 and $500); ALA. CODE § 36-20-9 (fine not less than $100); and CAL. GOV'T CODE § 8209(a) (a misdemeanor).)

GUIDING PRINCIPLE IX

The Notary shall respect the privacy of each signer and not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose.

Standards of Professional and Ethical Practice

Article A: Needless Intrusions

IX-A-1: Scrutinizing of Text

The Notary shall scrutinize the non-notarial text of a document for two purposes only: to ascertain if it appears complete and to extract data for recording in the journal of notarial acts.

> **Illustration:** The Notary is asked by a man and woman to notarize their prenuptial agreement. After they identify themselves and hand over the document, the couple is distracted for several minutes in making a telephone call. Alone with the document, the Notary is tempted to closely read its provisions.
>
> *The Ethical Imperative:* The Notary intrudes no further than to scan the document for blank spaces and missing pages, and to glean certain bits of data to record in the journal, including the document's title, date and number of pages. The Notary realizes that reading the document would be an invasion of the couple's privacy and a breach of public trust.

IX-A-2: Extracting or Copying Unnecessary Information

The Notary shall not needlessly extract or copy information from the text of a notarized document or from other documents possessed by its signer.

> **Illustration:** The Notary observes that a coworker Notary always makes and keeps a copy of each document notarized and of each ID card presented. The coworker explains, "It's protection for me in case I'm sued."
>
> *The Professional Choice:* The Notary points out to the coworker that this policy constitutes an unwarranted invasion of each signer's privacy, and risks the possibility of theft or loss of a copy and unauthorized dissemination of sensitive personal information. The Notary explains that a detailed journal entry for each notarial act that includes a description of any ID card presented and a signature will serve the same protective purpose in the event of a lawsuit.

Article B: Unauthorized Use of Information

IX-B-1: Revealing Document Particulars Improper

The Notary shall not divulge information about the circumstances of a notarial act to any person who does not have clear lawful authority and a need to know.

> **Illustration:** The Notary is notarizing mortgage papers for a stranger when a close friend walks in. After the signer has left, the friend asks, "That person just bought the house down the street from me. Did you happen to notice the selling price?"
>
> *The Ethical Imperative:* Though by chance noting the price on one of the documents just notarized, the Notary declines

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COMMENTARY

GENERAL

In keeping with the notion that a Notary is a public official whose duties may provide access to a client's personal matters, the *Code* stresses the importance of respecting the privacy rights of those who are served. To this end, the *Code* exhorts the Notary to act professionally when dealing with clients, especially when sensitive matters are involved, and to be diligent in protecting the confidentiality of private information.

ARTICLE A: Needless Intrusions

A Notary is obligated to determine whether or not a document is complete before performing the requested notarization with respect to it. (*See* Guiding Principle IV, Article D and accompanying Commentary.) A Notary who maintains a journal will record information that is obtained from the document. (*See* Standard VIII-A-2 and accompanying Commentary.) Standard IX-A-1 ethically restricts the Notary's purview of information in a client's document to these two purposes. In a sense, the Standard establishes and seeks to enforce a "limited-access" rule. Although the Standard directs a Notary to scrutinize a document for these purposes, the use of "scrutinize" is not intended to authorize the Notary to closely read the document for the purpose of learning its contents or particulars. The drafters debated with whether to use "scrutinize" or "scan" and opted for the former. This choice was made principally because they felt "scan" would result in Notaries either merely glancing at documents or performing cursory checks that could not determine the completeness of the document. In weighing the risks of the overly zealous Notary who would interpret "scrutinize" as a license to intrude upon the client's privacy against that of the lazy Notary who would interpret "scan" to necessitate little more than a cavalier flip through the pages, the drafters determined it was preferable to err on the side of deterring fraud and protecting those who rely on notarizations. Notaries are strongly admonished, however, to follow the dictates of the Standard closely. There is no call for a Notary to examine a document beyond checking for blank spaces and obtaining necessary descriptive journal information. (*Accord* GA. CODE ANN. § 45-17-8(f).) Furthermore, as to the latter objective, the Notary's actions should be consistent with the mandates established in correlative Standards. (*See* Standards VIII-A-1 through -3 and accompanying Commentary.)

Consistent with the justification for a limited-access rule, Standard IX-A-2 offers guidance on how best to meet its spirit. The Standard specifically advises against "needless" extraction from or copying of a client's document. Regrettably, "needless" is not defined, and thus it is left up to the discretion of each Notary to determine its meaning. The conclusion to be drawn from the Illustration is that making copies for the Notary's personal files as a protection in the event of a possible future lawsuit is not appropriate. Properly maintaining a detailed journal will provide ample protection and not be as intrusive on the client's confidentiality. Moreover, although the Illustration does not address the matter, a Notary who retains personal copies of all notarized documents would have ethical obligations to safeguard those papers against theft or unauthorized reading. Over the years the Notary might accumulate a substantial library of documents which could cause serious security and space concerns.

ARTICLE B: Unauthorized Use of Information

Standards IX-B-1 through -3 are designed to alert Notaries to their obligation not to use any information obtained from a notarization in an unauthorized manner. Failure to observe these dictates is unprofessional and constitutes a breach of public trust. The drafters contemplate that the Standards will be interpreted liberally, and

to inform the friend about any particulars in the documents. The Notary would regard such a revelation as an invasion of the stranger's privacy and a breach of public trust.

IX-B-2: Personal Use of Information Improper

The Notary shall not use for personal gain any information extracted from the text of a document that he or she has notarized.

Illustration: Notarizing a heavy volume of documents for walk-in customers every day, the Notary is approached by the agent of a company that prepares and files homestead documents for homeowners. The agent offers to pay the Notary a finder's fee for providing the names and addresses of new home purchasers from the many deeds notarized daily.

The Ethical Imperative: The Notary declines the offer, refusing to profit personally from use of information extracted from the text of notarized documents.

IX-B-3: Random Journal Perusal Improper

Except for the access allowed by Standard VIII-B-1, the Notary shall not allow perusal of the journal of notarial acts by any person who does not present a subpoena or other evidence of official authorization.

Illustration: The Notary is approached by a stranger who presents identification and a written request to see a particular entry in the Notary's journal pertaining to the notarization of a deceased spouse's signature on a deed. The signed request is specific about the date of notarization and the type of document. The Notary finds the requested journal entry, but, before showing it, covers other entries on the same page. After studying the information, the stranger asks to look at other entries in the journal, fearing that the deceased spouse "may have been involved in other scams to cheat me out of property."

The Ethical Imperative: The Notary declines to show the stranger any other journal entries unless the person is equally specific about these recorded notarial acts. The Notary is sensitive about all signers' privacy and will not reveal their transactions to anyone who cannot be specific or present a subpoena or other evidence of official authorization.

that to the extent a question arises concerning disclosure or personal use of information, the Notary should err on the side of caution and refrain from compromising the client's privacy unless required to do so by order of law.

Standard IX-B-1 posits the simple rule that a Notary must not disclose information concerning notarial acts performed. Although the Standard specifically proscribes disclosure regarding "circumstances" of the notarization, the Illustration points out that information obtained from the a reading of the document itself cannot be disclosed. Thus, the drafters intended the word "circumstances" to be given a broad interpretation. Consistent with this view, a Notary must not disclose the type, nature, purpose or contents of the document, as well as the client's demeanor, time of day, who, if anyone, appeared with the client, or any other fact attendant to the notarization.

Strict application of the above Standard is imperative. Since a Notary is prohibited from reading a tendered document for content (*see* Standard IX-A-1 and accompanying Commentary), a Notary should not know about detailed facts in the document. Having this information itself could constitute a breach of ethics. Disclosing it would only compound the misdeed. Sometimes, however, a Notary will inadvertently obtain confidential information while performing the notarization. (*See* Standard IX-A-1 and accompanying Commentary allowing the Notary to ascertain the completeness of the document and obtain material needed to complete journal entries.) The inadvertently-gained information must not be disclosed. It is private information obtained by a public official incident to performing an official act and generally not available for the public at large unless otherwise prescribed by rule or law. (For limited disclosure based on access to journal entries, *see* Standard VIII-B-1 and accompanying Commentary.) As a practical matter, disclosure of inadvertently-gained information will not only make the Notary answerable for the improper disclosure, but also will force the Notary to sufficiently explain the circumstances under which the information was obtained. This will be necessary so as to avoid the additional charge of violating the ethical obligation not to breach the client's privacy rights or the public trust by reading documents for improper purposes.

Standard IX-B-1 places an additional restriction on the Notary before he or she discloses information to otherwise authorized persons based upon their "need to know" the requested information. The additional requirement is not intended to give the Notary discretion to determine who has a legitimate "need to know." Instead, it was designed to protect the Notary by prescribing disclosure only to authorized officials when acting in their official capacities. This protects the public from unwarranted privacy intrusions by individuals cloaked with authority, but not pursuing legitimate interests.

Standard IX-B-2 makes clear that a Notary cannot use information contained in a document he or she has notarized for personal gain, benefit or advantage. Although not explicitly stated, the same proscription applies to any information that the Notary obtained incident to his or her official role as a Notary. The restriction, however, is limited to information directly related to the notarization. Thus, if during casual conversation while the Notary was signing the certificate the client offered investment advice, the advice would not be considered information gained incident to the notarization. The Standard is designed to prevent the misuse of information obtained solely by dint of the Notary's public official status.

Standard IX-B-3 seeks to balance the rights of the general public to gain access to information in a Notary's journal against the privacy rights of those individuals whose dealings are recorded in the journal. The Standard operates from the position as set out in Standard VIII-B-1 that the public, upon making a proper specific request, has limited access to journal information. Standard IX-B-3 directs the Notary not to allow an otherwise unauthorized person unlimited access to the entire journal. Furthermore, when a person produces a satisfactory request to inspect an journal entry, the Notary has the duty to ensure that only that specific journal entry is inspected. The balance of the journal entries should be protected from an unwarranted search. (For a complete discussion of permitting access to Notary journals, *see* Standards VIII-B-1 and accompanying Commentary.)

GUIDING PRINCIPLE X

The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the notarial office.

Standards of Professional and Ethical Practice

Article A: Seeking Knowledge

X-A-1: Studying Official Literature Essential

The Notary shall study all official pamphlets, handbooks, manuals and other literature pertaining to the performance of notarial acts in the Notary's jurisdiction.

> **Illustration:** An employee is asked by a supervisor to become a Notary. The supervisor provides a telephone number to call to request commission application materials. The employee soon receives an application form, an instruction sheet and a slim brochure titled "Notary Handbook."
>
> *The Professional Choice:* The would-be Notary completes and returns the application form. While waiting for the new commission, the employee studies the "Notary Handbook."

X-A-2: Studying Laws and Regulations Essential

The Notary shall study all laws, regulations and official directives that pertain to the performance of notarial acts in the Notary's jurisdiction.

> **Illustration:** After receiving a commission in the mail, the first-time Notary follows instructions to file an oath of office and purchases a seal. However, the Notary still feels inadequately prepared to perform official acts, since the "Notary Handbook" offers just a minimal description of notarial duties, with no specific instructions or practical guidelines.
>
> *The Professional Choice:* The new Notary obtains copies of the statute sections cited in the "Handbook." The Notary carefully studies these laws and keeps them handy at work.

X-A-3: Supplemental Guidance Often Necessary

In order to achieve a solid understanding of the basic principles and practices of notarization, the Notary shall be proactive in seeking out expert guidance and in supplementing any official training or materials with those provided by respected educational institutions and professional organizations.

> **Illustration:** The newly commissioned Notary has studied the state's Notary laws and "Notary Handbook," but finds they offer no practical procedures and guidelines for performing notarial duties. The Notary still lacks confidence about how to notarize.
>
> *The Professional Choice:* The new Notary finds a helpful, experienced Notary, who tells the beginner to call if any questions arise while performing a notarization. The experienced Notary also lends the new Notary several publications from professional organizations for Notaries.

X-A-4: Continuing Education Essential

The Notary shall keep current on new laws and regulations and on any other developments that affect the performance of notarial acts in the Notary's jurisdiction.

> **Illustration:** The Notary is asked to notarize a document by a stranger who presents a "green card" as proof of identity. When the Notary explains that such a card is not on the statutory list of acceptable IDs, the stranger claims to have no other IDs. However, another Notary advises that a recent change to the state's Notary code now allows use of green cards to identify signers, and shows an announcement of the law change in a periodical from a professional organization for Notaries.
>
> *The Professional Choice:* The Notary completes the notarization, resolving to subscribe to the publication in order to keep abreast of new laws affecting notarial duties.

Article B: Dispensing Knowledge

X-B-1: Providing Expertise to Others

COMMENTARY

GENERAL

Drafters of the *Code,* as evidenced by its title, consider the Notary a professional, albeit within a narrow field — an individual trained and trusted to execute duties imposed by law. The *Code* drafters also anticipate that the conscientious and professional Notary will abide by its Guiding Principles, Standards, Ethical Imperatives and Professional Choices where these are not inconsistent with applicable law. To further foster the status of the Notary as a professional, the *Code* enunciates aspirational educational and personal goals consistent with those set for other professionals. The *Code* recognizes that professionalism is not a status to be achieved and then neglected, but instead results from an on-going process of self-development and commitment to excellence.

ARTICLE A: Seeking Knowledge

Standards X-A-1 through -4 lay the educational foundation one would expect from a professional. The Notary should study all relevant material to ensure that he or she is fully knowledgeable in notarial matters. The public has a right to expect that the Notary will be able to properly perform any lawful notarization requested and provide any needed directions relative to such acts. Generally, incident to their initial appointment, Notaries are required to either state or swear they have read and are familiar with the applicable notarial laws. (*See, e.g.,* 5 ILL. COMP. STAT. 312/2-104; W.VA. CODE § 29C-2-204; and FLA. STAT. ANN. § 117.01(3).) Some jurisdictions require the person to pass an examination prior to appointment as a Notary (*see, e.g.,* OR. REV. STAT. 194.022), or take a notarial training course (*see* N.C. GEN. STAT. § 10A-4(b)(3)). The Standards further

The Notary shall freely provide notarial expertise to less experienced Notaries and step forward to offer needed corrective advice on the proper performance of notarial acts.

> **Illustration:** The Notary observes that another Notary in the same office consistently fails to ask document signers to present identification.
>
> *The Ethical Imperative:* The Notary approaches the coworker and tactfully explains the disservice to the public and the potential personal liability of failing to identify strangers.

Article C: Maintaining Standards

X-C-1: Reporting Misconduct

The Notary shall report to the commissioning authority violations of the statutes, regulations and directives governing the conduct of Notaries.

> **Illustration:** The Notary observes that another Notary in the same office consistently fails to ask document signers to present identification. After the coworker ignores repeated tactful warnings about the danger of this policy, the Notary reports the misconduct to their supervisor. However, even after a word from the supervisor, the colleague remains cavalier and careless about notarial duties. "I don't care," the coworker tells the Notary, "If they fire me, they fire me."
>
> *The Ethical Imperative:* Worried that the coworker's carelessness will be exploited to facilitate frauds, the Notary sends a letter to the state Notary-commissioning authority, detailing the colleague's habitual misconduct.

exhort Notaries, as professionals, to continue their educations, and keep abreast of changes and recent development relative to Notary law and practices. (*Accord* IDAHO CODE § 51-120 (furnishing each applicant with a Notary handbook); ME. REV. STAT. ANN. tit. 5, § 82-A (requiring the Secretary of State to send informational publications to Notaries seeking to have their commissions renewed); and TEX. GOV'T CODE ANN. 406.008 (sample certificate forms sent to Notaries).) Some states require that handbooks be published and made available to Notaries. (*See, e.g.,* VA. CODE ANN. § 47.1-11.)

ARTICLE B: Dispensing Knowledge

Standard X-B-1 suggests that as a member of a professional group, the Notary is obligated to share his or her expertise with less experienced Notaries. As a professional, the Notary must realize that he or she has a responsibility to the group as a whole. Helping other members better serves the public and develops the *espirit de corps* shared by professionals.

ARTICLE C: Maintaining Standards

Standard X-C-1 speaks to the importance of maintaining standards within the profession. A profession cannot exist without standards. Standards that are not enforced are meaningless. The only way for a profession to earn its deserved recognition is for its members to enforce fair and reasonable standards. Regrettably, it is not enough for a member to learn and abide by the Standards; he or she must be willing to protect the integrity of the group by reporting violations when discovered. Only by honest self-policing can Notaries elevate themselves to the status of professionals.

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