



JAN BREWER
SECRETARY OF STATE
STATE OF ARIZONA

July 3, 2008

Mark Abshire
704 Yvette Marie Drive
Lafayette, LA 70508

Re: Cheryl Krough, Notary Public Commission

Dear Mr. Abshire:

Pursuant to A.R.S. § 41-331, the Attorney General's Office ("AGO") has completed the investigation into the complaint brought against the Notary, Cheryl Krough ("Notary") by Mark Abshire ("Complainant") alleging that the Notary improperly notarized a document titled "Deployment Form" ("Form"). The Complainant claims the signer of the Form, Scott Bernard ("Signer"), was not in the Notary's presence when she notarized the Form.

In this complaint, the only issue that the Secretary of State's Office ("Secretary") is authorized to assess is whether, under the notary statutes, the Notary properly notarized the Form. The Secretary does not have the authority to determine whether any signature on the Form was forged or to settle any legal disputes regarding the Form.

A. The Notary Responded to the Complaint.

A notary is required to respond to an Attorney General's Office investigation about her notarial services. A.R.S. §§ 41-313 (B)(4) and 41-331(B). In addition a notary public is required to maintain a journal and produce a copy if requested. A.R.S. § 41-319(A). The Notary in this instance wrote a short response to the complaint on a post it note. She affixed the note to a copy of the Form that she provided, and she also provided a copy of her notary journal. The Notary has met the standards of the notary laws.

When a notary has "personal knowledge" of a signer, the notary may retain a paper or electronic copy of the notarized document in lieu of recording the notarial act in her journal. A.R.S. § 41-319(B). The notary must then provide the requestor a copy of that "retained document." *Id.*

B. The Notary's Journal is Deficient.

A notary's journal must contain the following for each notarization: (1) the date of the notarial act; (2) the document description; (3) the printed name of the signer as well as his or her

State Capital: 1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007-2888
Telephone (602) 542-6187 Fax (602) 542-4366

address and signature; (4) the type of evidence for the signer's identity; (5) the specific identity information of the signer; and (6) the fee charged for the notarization. A.R.S. § 41-319.

The Notary's journal entry lacks requisite information and raises questions about the notarial act. The journal page the Notary provided lists four (4) separate notary transactions, and the one in question is listed at the top of the page. For all the entries, the lines for the "Date Notarized" and "Time of Notarization" are blank. In addition, the Notary fails to identify the type of "NOTARIAL SERVICE" performed and the "TYPE/NAME OF DOCUMENT" notarized. The printed name, signature, address, and telephone number of each signer is included in each one, but the "TYPE OF ID" is not provided for any of them. Furthermore, the "FEE" line is blank in each entry, although that might indicate the Notary did not charge a fee.

Thus, the Notary's journal entries of the Form in question and the other three recorded notarizations lack requisite information. The Notary has failed to meet the standards of the law.

C. The "Personal Knowledge" Exemption Is Not Available.

When a notary has "personal knowledge" of a signer, the notary may retain a paper or electronic copy of the notarized document in lieu of recording the notarial act in her journal. A.R.S. § 41-319(B). The notary must then provide the requestor a copy of that "retained document." *Id.*

The Notary provided a copy of the Form with her written response. However, the Notary does not claim that she personally knew the Signer, and her journal entry does not indicate she personally knew him. If the Notary knew the Signer she would not have been required to record the notarial act in her journal, and she would not have needed to have her journal evaluated. The "personal knowledge" exemption is not available to her for not maintaining her journal.

D. We Are Unable to Determine Whether the Signer Was Present.

The Notary wrote on her (post it note) response that she obtained the Signer's signature in her notary journal when he "was in Arizona for training." Her journal entry does not clearly support her defense. She offers no explanation for why the Form and the other three (3) entries on the page are not dated. The Signer's signature in the notary journal indicates he signed it. Without notarization dates for any of the four (4) entries on the page, however, the timing of the Signer's signature on either the Form or in the journal cannot be evaluated. In short, it cannot be determined whether the Signer was in the Notary's presence when the Notary notarized the Form.

E. The Notary Executed an Improper Notarial Certificate.

1. The Jurat is Deficient.

The notarial certificate of the Form is a jurat because it contains the phrase "SUBSCRIBED AND SWORN BEFORE ME." A.R.S. § 41-311(6). the proper notarization of a "jurat" requires the following: (1) the signer's identity be proven by satisfactory evidence; (2) the signer's signature be made voluntarily in the presence of the notary; and (3) the signer takes an

oath or affirmation vouching for the truthfulness of the signed document. A.R.S. § 41-311(6) (defining "jurat"); Manual ¶¶ 208, 217 & 219.

Here, because the Notary's journal fails to contain satisfactory evidence of the Signer's identity it cannot be ascertained that the Signer actually signed the journal. As stated above, it cannot be determined whether the Signer affixed his signature to the Form in the notary's presence. Therefore, since the journal entry is not dated it also cannot be determined whether the Notary administered the jurat oath to the Signer. The Notary executed a notarial certificate containing a false statement, providing the Secretary grounds for suspension or revocation. A.R.S. § 41-330(A)(9).

2. **The Form is Incomplete.**

The notary statutes prohibit notaries from notarizing a jurat on a document that is "incomplete." A.R.S. § 41-328(A) A document is "incomplete" where the signature line has not been signed or where other obvious blanks appear. A.R.S. § 41-311(5).

The "COMMENTS" line on the Form is blank, so if comments were unnecessary then a notation of "Not applicable" or something to that effect should have been written on the line. Plus, the "SCHOOL ZONE DEPLOYMENTS" section above and to the right of the "COMMENTS" line is not completed; either the "Yes" or "No" box should have been marked. Therefore, the Form is "incomplete." The Secretary has grounds to revoke or suspend the Notary's commission based on the Notary's failure to complete the jurat at the time she affixed her signature and seal to the document. A.R.S. § 41-330(A)(8).

F. **Conclusion**

The Secretary possesses special knowledge and expertise in interpreting the notary statutes and believes that the definitions, requirements (i.e. oath & bond) and duties outlined in A.R.S. § 41-311 through A.R.S. § 41-332 are standards to which each notary must comply.

The Secretary believes that in addition to the specific offenses outlined by the Arizona legislature which would warrant action against a notary's commission, in cases where there is substantial evidence that the notary's actions fail to meet the standards described in the notary statutes, the Secretary has grounds to refuse, revoke or suspend a notary's commission for "failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public." A.R.S. § 41-330(A)(4)

Therefore, the Secretary of State has determined to revoke the Notary's commission effective immediately. The revocation of the Notary's commission is based on the following violations of Arizona notary law:

1. The Notary failed to record requisite information in her journal. A.R.S. §41-319.
2. Execution of a statement known to be false. A.R.S. §41-330(A)(10).
3. Execution of a jurat notarial certificate on a document that contains blanks. A.R.S. § 41-328(A)

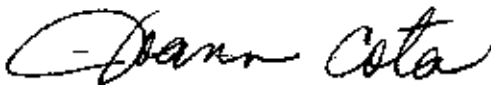
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Telephone (602) 542-6187 Fax (602) 542-4366

4. The Notary Failed to fully and faithfully discharge the duties or responsibilities required of a notary public. A.R.S. § 41-330(A)(4).

The Notary has a right to request an evidentiary hearing pursuant to A.R.S. § 41-1092.03 by filing a written notice of appeal with the Office of the Arizona Secretary of State within thirty (30) days of receipt of this notice. If you request an evidentiary hearing as referenced above, you may also request an informal settlement conference pursuant to A.R.S. § 41-1092.06. If a hearing is not requested within the time provided by the statute, the decision will stand.

If you have any concerns regarding this issue, you may contact Holly Textor at 602-542-6181.

Sincerely,



Joann Cota, Assistant Director
Business Services Division

Cc: Attorney General's Office
Notary File