

## NOTARIES

While the majority of notaries are employed by the state government, several are employed by other offices and by private entities. The duties of a notary public are the same, regardless of where they are employed. A notarization performed by a court employee carries the same weight as a notarization performed by a privately employed individual. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary cannot and does not verify or confirm the statements in the affidavit because the notary does not have personal knowledge of those statements. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Generally, a notarized signature is presumed to be authentic. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Until a party has become aware of operative facts to discover that the signature may have been forged, that party is entitled to rely on the authenticity of the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

Under both the Pohnpei and FSM statutes, a notary public has the privilege and is authorized to receive proof and acknowledgments of writings and all copies of certification under his or her hand and the notarized seal shall be received as evidence of such transaction. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

By virtue of having affixed the notary seal, a notary acknowledges the identity and signature of the individual who signed the document. This is because the notary receives proof of identity and signature before giving his or her imprimatur, as evidenced by the seal. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Recognition of a notarized signature as indicia of reliability, is consistent with the governing statute(s), the rules of evidence, and case law; thereby meeting the reasonable inquiry requirement set forth in Rule 11. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title must be notarized and submitted to the Registrar for recordation. Signatures that are executed at different times or in different locations must be notarized separately. The signature page of each document may consist of as many duplicate pages as necessary for proper notarization. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

When the purported transferor's signature and that of his witnesses were not notarized on a duplicate page, but the notarization was instead on a page separate from their signatures, and since the Registrar must not accept any document which is not properly notarized, it is doubtful that the Land Court should have accepted for filing a deed of gift in this form, even if it had been accompanied by the surrender of the old certificate of title, which it was not. Since the deed of gift was in a doubtful form and since the transferor's certificate of title was not surrendered with it, the Land Court should not have issued the transferee a certificate of title for that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

The Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title be notarized and submitted to the Registrar for recordation. Each document must reflect the printed name and signature of each person signing the document, and the date of the signing. Signatures which are executed at different times or in different locations must be notarized separately, and the signature page of each document may consist of as many duplicate pages as necessary for proper notarization. The Registrar shall not accept any document which is not properly notarized. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).