

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
March 16, 2005**

The Committee on Government Affairs was called to order at 8:12 a.m., on Wednesday, March 16, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mrs. Marilyn Kirkpatrick
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

Mr. Joe Hardy (excused)
Mr. Bob McCleary (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Assembly District No. 16, Clark
County

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Eileen O'Grady, Committee Counsel

Kiz Malin, Committee Attaché

OTHERS PRESENT:

David Straus, Private Citizen, Las Vegas, Nevada

Vice Chairwoman Pierce:

[Meeting called to order and roll called. Vice Chairwoman Pierce opened the hearing on A.B. 178.]

**Assembly Bill 178: Revises provisions governing notaries public.
(BDR 19-1130)**

Assemblyman John Ocegüera, Assembly District No. 16, Clark County:

I requested the drafting of this bill on behalf of a Las Vegas attorney who contacted me, Mr. David Straus. Assembly Bill 178 removes one of the current prohibitions against notaries public. The measure authorizes a notary public who is a licensed attorney in the state of Nevada to notarize a document, if the fee the attorney receives for preparing the document is more than the fee authorized to be charged for notarizing the document.

Current law prohibits a notary public from notarizing documents under these circumstances. I would like to note that most states do not specifically authorize or prohibit an attorney from acting as a notary for documents that he has prepared. Additionally, at least seven states expressly allow the type of notary activity by attorneys detailed in A.B. 178. Madam Chairwoman, that is about all that I have for you to consider in this legislation. I have with me, in Las Vegas, Mr. David Straus.

David Straus, Private Citizen, Las Vegas, Nevada:

I am an estate planning, asset protection, and charitable planning attorney and have been doing so here for over ten years. Why I thought that this bill was very important is that I do estate planning and asset protection. Besides being an attorney, I am a certified public accountant and have a master's in taxation. The issue that I wanted to bring up is that a lot of estate planning attorneys in the state, here—I used to have a Reno office—with the staff that we have, makes it very difficult to always find a notary to help in some of the documents that we prepare for clients.

Most of the documents that we do prepare do not even require notaries or notarization anyway. It is done as a service for the client so that we can

examine the demeanor of the person and make sure they are competent, and also for the ease of administration of doing these services. We do not have to have extra staff people around to do it. As I explained to Assemblyman Ocegüera, it will reduce the attorney's fees for clients in the long run, because we will not have to have extra staff around to do this notarization. By having to pay less staff people to do this, it will allow us to charge less to clients. It will save clients attorney's fees in that regard.

We are not trying to get around the law, because seven states already allow attorneys to be notaries in documents that they prepare. Some states also allow you to become a notary without going through the notary requirements. That is not what we are doing in this case. If an attorney chooses to become a notary and notarize documents or pleadings that they prepare, they still have to go through the process of getting bonded, of complying with all the notary statutes and items, in order to qualify to do that. All we are saying is that we want to allow the attorney who prepares these documents to prepare this perfunctory type service. I think that it will provide an ease for clients. They won't have to run around to find notaries. It will cut down on attorney's fees in the long run.

Assemblyman Claborn:

Are you restricted right now, sir, from being a notary?

David Straus:

No. We are not restricted from being a notary; however, under current statute, if we prepare the documents, we technically should not be notarizing the documents.

Assemblyman Claborn:

Do you need a bill to do this? Why don't you just go down to the Governor?

David Straus:

Because if we notarize a document—let's say a trust or a power of attorney—that we prepare for a client, we are in technical violation of the statute.

Assemblyman Goicoechea:

My initial reaction to this would be that if you end up notarizing a document that you have written, it could allow it to be challenged. It would be easier to challenge that document. I can just see people jumping up and saying, "Well, that guy"—not speaking to either of the attorneys in front of me—"that shyster, he signed it and notarized the signature, so we have a problem with it." My initial reaction to it is that it does not make for good law, or I would think that you should have a third party notarize it that was not involved in either side of

the document. That would be like saying that if I was going to sell my ranch, I could notarize my own signature because I was the seller.

David Straus:

Yes. When we prepare documents for clients, if they are not competent at the time that they execute the document, there is a challenge based on that anyway. Competency does not really have much to do with it. The second issue is that right now, title companies are notarizing documents that they prepare. They are having a staff person notarize those. So, theoretically, title companies are preparing documents and they are notarizing them right in the title company. I have not seen any cases where that is an issue with those companies. To have a restriction just because lawyers are doing it, I don't think is fair. I don't believe that it will reflect on any competency issue at all, because lawyers can still witness wills.

There is no restriction on lawyers witnessing wills, and it is very common in today's practice for the lawyers to do that. We are allowed to witness a will; we just can't notarize a signature. All we are doing by being a notary is getting a driver's license or some type of identification, recording it inside of our notary journals, and performing a perfunctory type service that a lot of states allow. I really do not see that, by us notarizing documents, it is going to increase any will contests or trust contests or anything like that. In fact, like I said, title companies are already doing it. They prepare their own documents, and they are notarizing those documents whenever you close on a home. The reason why they do that is for ease of administration.

We just wanted to be treated the same way, so that we can have a law firm where we prepare documents and the attorney notarizes the documents that are prepared. I just want to point out one last time that attorneys are allowed to witness wills anyway in Nevada. There is no restriction on that, so I do not think that their being a notary, there will be any additional restriction whatsoever.

Assemblyman Ocegüera:

Mr. Goicoechea, in your example of selling your own ranch, there is actually a prohibition in this statute that says that the notary public is not named in the document, or he has to swear that it is not one of his relatives. So, in your example, you could not notarize something if it was someone that was related to you or something that you would gain from.

Assemblyman Christensen:

This question could be for Assemblyman Ocegüera or Mr. Straus, either one. First of all, I am all about saving money, especially on attorney's fees. When it

comes to looking through the Reader's Digest version of the bill and how it specifies that the attorneys have been one layer removed from being able to notarize these documents, which this bill would change, how long has it been the way that it is? I am curious if it was something like ten years, because maybe something happened? Or has this been the case for thirty years and maybe it is a little bit antiquated, and maybe we could go more with the title company example that has been given?

Assemblyman Ocegüera:

I defer. I do not have the details on how long or why this statute came, but maybe Mr. Straus does.

David Straus:

No. I do not have any information on how long. It may just be antiquated, as you point out, because a lot of states allow lawyers, once they become a lawyer, to automatically be able to notarize whatever it is, even without complying with the notary statute. I am unsure, to answer your question.

Assemblyman Christensen:

Assemblyman Ocegüera, are there groups that oppose this? Are there groups that have come to you that have talked to you about concerns about this?

Assemblyman Ocegüera:

No one has spoken to me about this bill.

Assemblyman Sibley:

I just have a comment about the bill. I am a notary. One of the things about having an attorney notarize a document is that all they are doing is verifying that the person that is signing the document is that actual person. I have always felt that an attorney has more to lose by doing something wrong, because they have a law license that could be revoked from them. With a notary public—I have several of them in my office; they are just not 19, 20, or 21 year old kids—it is a \$50 bond to get your notary, and if they do something inappropriate, they just lose their notary, where an attorney will lose their career over it. So, I do not see a problem with them notarizing documents. With the will issue, there are times when an attorney has to go to a client's house to get something signed because the person is incapacitated and cannot leave, and you do then have to send to people out to the house. That person has to pay that bill because the attorney cannot notarize a simple document. I think this is a good bill.

Chairman Parks:

In the testimony, we have heard that there were seven other states that have similar law. I was wondering what those states were and if they are western states.

David Straus:

I do not know which states. I thought that Oregon was one of them. I believe California was one of them, but that is based on reasonable belief. I have not pulled up those specific states, but I thought California and Oregon, and New Jersey rings a bell with me. I believe that in California, the attorneys can do it.

Assemblyman Ocegüera:

Mr. Parks, I have that information in the research that I compiled on this in my office. I would be happy to provide it to you.

Vice Chairwoman Pierce:

[Closed the hearing on A.B. 178 and adjourned the meeting at 8:28 a.m.]

RESPECTFULLY SUBMITTED:

Nancy Haywood
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

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EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 16, 2005

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Assembly Committee Government Affairs	on Agenda