

NOTARY STUDY COMMITTEE MEETING

Minutes

January 17, 2002

The Notary Study Committee meeting was called to order at the State Capitol, Baton Rouge, Louisiana in House Committee Room No.1 at 10:00 a.m. authorized by House Concurrent Resolution No. 81 from the 2001 Regular Session of the Legislature.

Meeting called to order by Chairman, Cynthia Cotten.
Roll called by Chairman, Cynthia Cotten.

The following committee members were present: Al Ater, First Assistant to the Secretary of State, Warren Ponder, Executive Counsel for the Secretary of State, Jo Landry, Robert Singletary, Tracy Sudduth, Attorney for the Judiciary A Committee, Judy Bilich, Representative of the Association of Civil Law Notaries, William L. Pratt, Orleans Custodian of Notarial Records, Randy David, President of the Louisiana Notary Association, Stephen Broussard, President of the Notary Association of New Orleans, Paul A. Bello, International Union of Latin Notaries, Narciso Lomeli, Carvel Sims, Alan Jennings, Louisiana Notary Association, Ronald S. Wood, Sue Dier, John Shidler, Linda Davidson, Kathleen Clark and Walter E. Brunty.

Ronnie LeBoeuf, The Practicing Notary, and Glenn Stallings were absent.

Also present were: Merietta Spencer Norton, General Counsel for the Secretary of State, and Steve Hawkland, Attorney Supervisor, for the Secretary of State.

Cynthia Cotten, Chairman, presided and Lindsey Lejeune, Notary Department, recorded the proceedings of the meeting. Glenna Doucet, acting as secretary, took the minutes.

Cynthia Cotten, Chairman, introduced Al Ater, First Assistant to the Secretary of State.

Al Ater, First Assistant to the Secretary of State, welcomed all members and asked everyone to briefly give a few personal comments about themselves. He then recognized Cynthia Cotten, Chairman, for her dedicated work in the Notary Department.

Al Ater, First Assistant to the Secretary of State, thanked everyone for

coming. He wanted everyone to know how much the Secretary of State appreciated their time and willingness to be a part of this study. Mr. Ater thought he would recap what we see as our mission. He stated that the Secretary of State does not have a stake in this issue. What we have been charged to do by the legislature is to organize this study committee and let this committee: (1) assess the situation, is a statewide program something we want and something that is needed, and if so (2) what would we recommend and how do we think it should be set up. That's what the charge to the Secretary of State's office was by the legislature. It will be up to the legislature as to whether or not there is a program or is not a program. What our charge will be is to make a recommendation as to whether or not we think it is a good idea to have one and if so, what that program should look like. That's what we hope to accomplish through a series of meetings. I think what we hope to be able to do is encourage free thinking, free talking, free suggestion making and kind of talking outside the box and to think the whole process through. I think we are charged by January of 2003 to make these findings of this committee known. We wanted to call this meeting, and hopefully we'll be able to have one more before the legislative session starts. Then when the legislative session starts we will probably not be able to have any meetings again until after the legislature meets, so we may pick up in July or August and then really have to crunch something out to get the recommendations together. Once again, Mr. Ater introduced Cynthia Cotten, who will be chairing these meetings. Cynthia Cotten is an Administrative Assistant in the Secretary of State's office in charge of all our notary operations.

Cynthia Cotten, Chairman, discussed what was in the packets before each person: (1) copies of House Concurrent Resolution No. 81 (2) revised amendments of Title 35 (3) fee information gathered by all parishes (4) a list of questions we asked from other states, and (5) a list of the members of this committee, with addresses and phone numbers. Also, Cynthia stated the items mandated by HCR 81 were: (1) standards of conduct, standardized testing, and mandatory continuing education and, (2) system for the monitoring and enforcement of any standards or requirement developed to ensure the integrity of the profession. The Chairman then opened the floor for discussion.

Warren Ponder, Executive Attorney for the Secretary of State, addressed the committee informing them that the Secretary of State has been charged by the Legislature through House Concurrent Resolution No. 81 to find out what the notaries public statewide want. (1) do we need to do any changes to the existing law, (2) do we need to expand to statewide jurisdiction for the notaries, and (3) do we want to have statewide commissions. If we do feel we need to have statewide commissions, (1) who is going to administer the test, (2) will it be a standardized test for statewide application, (3) who is going to oversee, and do we need continuing education. The legislature wants us to study and answer these issues. We want to do what the legislature tells us to do. They are the ones who will be making the decisions. It is incumbent on each committee member here to talk to the members of your organization and other notaries to find out what their feelings are

and what they think we should do as far as going to a statewide commission. Once we get that decision, even if it is no, and everyone is satisfied with the way it is now, I believe the legislature has charged us with the duty that if we go statewide what should it look like. In other words, if the answer you get is no, we do not want a change in the notary profession, tell them there will be a change-tell us what you want if it is changed. We want these meetings informal, open for suggestions, discussions, and all the input we can get from the notary profession.

Ronald S. Wood, attorney, expressed his concerns whether the rules we are here to talk about for notaries will apply to attorney notaries or lay notaries? Are we working toward setting up a commission with standardized testing and continuing legal education that would apply to both groups, are is there going to be a separation between attorney notaries and lay notaries? I would think that the attorneys with the continuing legal education that they must meet for the Louisiana Bar Association would qualify them for any rules we may come up with for continuing legal education for notaries. As far as the testing, I do not know whether that anticipates just one initial test in order to get a commission or will there be continuing testing yearly or every so many years or just what is anticipated. Would there be a separation between the two entities? Also, he mentioned cyber notaries, what would happen there? He thought that may pose a problem. He was part of a group that was trying to do this same thing regarding abstractors, trying to form a commission that would license abstractors statewide. It just never got going. This study as been initiated by the legislature so that gives us a step ahead. The Louisiana Land Title Association was the one that was trying to have something like this for the abstractors. I guess the reason it never got that far was that the abstractors were opposed to it statewide. Mr. Wood mentioned we do not know what the notaries, statewide, will feel about this issue. Also, Mr. Wood mentioned there would have to be some way to appropriate funds. If we are going to set up a committee will it be responsible for drafting the testing guidelines, taking care of the CLE qualifications, and handling the CLE? Would these people volunteer to serve? If there is going to be some type of committee would it require an office with an executive staff? Is this going to necessitate an expense like that?

Warren Ponder, Attorney for the Secretary of State, stated that these are the pertinent questions that need to be discussed with our members. Ponder stated that traditionally attorney notaries have been treated separate and apart from the non attorney notaries. That is one of the issues we need to present to the legislature and how it should be resolved, or how we recommend it to be solved.

Paul Bello, Union of Latin Notaries, stated that attorneys already have continuing education but who would regulate the education in non attorney notaries? He suggested a committee or a notary board. He recognized that William Pratt, Orleans Custodian of Notarial is the only non-judicial person in the state who regulates notaries.

Carvel Sims stated that ex-officio notaries, attorney notaries, and non attorney notaries all have the same power except the ex-officio notary. He sees notary malpractice in all three divisions, but more documented are the attorney notaries. All misconduct throughout the state is reported to the wrong people. Any misconduct needs to be reported to the Secretary of State or in our case the local district judges who have the regulatory power over the notary. He proposed to get a handle on this we are going to have to find a distinction between the ex-officio notaries, attorney notaries, and non attorney notaries. Clerks of court and deputy clerks of court acting as ex-officio notaries also pose a problem. They have no training and should only be performing notarial acts concerning their employment which they do not adhere to. Does the secretary of state want to be the notary police? Maybe each ex-officio notary could be given a number.

Robert Singletary addressed the committee saying we were not here to feud regarding the distinction between attorney notaries and non attorney notaries and ex-officio notaries. We need a central authority, there is no single voice out there. What do notaries want. We have the chance to change the laws.

Sue Dier, sees hundreds of instances where deputy clerks and justices of the peace are notarizing documents where there is no witness, and never filed. Malpractice is not only with attorneys. This is a real problem. We need continuing education, but she admits that it would be a real problem to regulate. You are either ethical or not. If the notary does not accomplish their continuing education, do we take away their commission?

Linda Davidson, stated that when she undertook the notary profession she was scared. The fact that the notary profession has so much power and so little regulation. People have gone bankrupt through negligence from the notary. To make matters worse, the exams are totally different in every parish. All other professions require continuing education. The notary might need to pay fees, we all have a vested interest in this profession. Definite changes are warranted, due to the power a notary has.

Paul Bello, International Union of Latin Notaries, agrees that ex-officio notaries go beyond their authority, but the legislation has charged us with the problem of commissioned notaries. Maybe at a later date we can address the problem of ex-officio notaries.

John Shidler agrees with the comments Linda Davidson stated regarding continuing education. It is a good idea. Anything that raises the reputation of the notary is good for all of us.

Carvel Simms agrees that continuing education is very important, but who is going to pay for it? The problem I see is that the figure that has been circulated is 12 hours a year and that has to be done over a 2 day period. If you look at that you

cannot get a one day class for less than \$100, so the impact we are going to have on these people, at 6 hours a year we are talking a 6.2 million dollar expense and at 12 hours a year the cost would be 12.4 million dollars a year. Who ever monopolizes notary education is going to have a gold mine. We are looking at 18 to 19 million dollars a year that is going to be spent by the notaries of the state. Maybe a fee of \$100 a year would work, but who would monitor it? Should the notary bond be higher to protect people? We do need to look into malpractice issues.

Walter E. Brunty, a notary in a rural parish, admits that he has not attended any of the educational courses but he does keep up with the latest education regarding his profession. But he also states that he and other rural parish notaries could not afford to travel to a city for a few days to accomplish an education course. He's not sure that is what we want to do to those notaries, but he does agree that something needs to be done in terms of making notaries maintain knowledge of the laws to protect the citizens. He fears the notaries that could afford to attend continuing education would develop a monopoly over the notaries that could not afford the added expense.

William Pratt, Orleans Custodian of Notarial Records, stated it's his understanding that the reason this committee is here is that the system has outgrown itself and is somewhat a wild west as such. I'm looking at the quantities of notaries by type that are on this list. We have 25,071 notaries that are unknown as to whether their status is attorney or non attorney notaries. There are a total of at least 62,000 notaries in this state and I have had the pleasure to see some of the examinations given from around the state, I give it in New Orleans, and some of them are an absolute joke. I've seen some that have thirty questions, two lines to answer, what is a deed is the big question first one out of the box and these guys can walk into a situation where they can do oil and gas leases, they can do transactions of all types, wills, they can do anything a lawyer can do. I know some lawyers that have gone to law school for three years, come out, and still aren't necessarily capable and competent notaries. The power that is given to a notary is very vast, very large. Beauticians and Barbers have more oversight than do notaries. I think this is set up for a potential disaster for some notaries that are out there practicing. You've got to remember that notaries and attorneys are the front line for the public records doctrine for the state of Louisiana. When you start putting forth shoddy workmanship, people who don't have the authority to notarize things, people who do not keep abreast of the law, which is constantly changing and evolving, case law changes things notaries have to do. If you don't subscribe to advance sheets you are not going to know about changes in the law. If the legislature passes certain laws and regulations you are not going to know about it because you don't get advance sheets, that opens you up to screwing up. You might not see a lot of malpractice with notaries because a lot of notaries don't have a lot to chase, if they do screw something up. Lawyers tend to carry big malpractice insurance and they tend to do bigger transactions. Mr. Sims stated that he didn't see many malpractice cases with notaries and that kind of surprises me, to tell you the truth. The opportunity for one

to be sued for malpractice is vast. I know a lot of notaries out there who are not attorneys that do a tremendous amount of volume and could conceivably step in it very easily. I think what we're here to do is to try and fix this and try and regulate it somewhat and believe me, regulation goes against the core of my very being, but this is so wide open at this point something has to be done, there is no continuity amongst the parishes as far as examinations are concerned. I give a 101 questions exam, it's about 15 pages long, I've seen the one in Baton Rouge, it's 40 pages long, we're all over the parking lot as far as examinations go. That's one of the reasons we are here, do we do a statewide examination? That's something that desperately needs to be looked at. As far as the CLE's are concerned, I feel that definitely needs to be addressed. I'm not so concerned with monopolies, I think anybody can get in the game to provide courses and teaching, so long as we have an arbiter that says that it is suitable. The Bar has such a mechanism, if you want to teach a CLE class it has to be approved by the Bar Association. I'm sure there is some sort of committee that could be put together. But the bottom line is there has to be some sort of central control here. In New Orleans parish I am completely separate and apart from what everyone else does. I control my notaries, I have them annually put forth an annual fee they have to post their bonds and show me that it has been done. I have zero unknowns. I'm looking at the Secretary of States records, I do not think they have any oversight that I have. Annually I have to file a rule against any notaries who have not complied. I send them a statement they either send in their money and evidence that they have a bond, this is for the non attorney notaries. The attorneys have to do the same, except that do not have the bond aspect. Also if they are in military service, if they've been disbarred, or if they're deceased, I have to put that in a rule as well. I have to file in Civil District Court and have to tend the rule and after it is advertised in the Times Picayune twice and no one has responded to my request to come and comply, I then get a court order to rule them off and those that have complied are put in good standing. That is what I do, as far as I'm knowledgeable of it is not done anywhere else in the state. That's why you are seeing 25,000 unknown status of notaries on this list out of 62,000. I keep close tabs on my notaries, I have to, that's what the law mandates me to do. Obviously, Orleans parish is going to be somewhat different than most parishes because we have bigger commercial work for notaries to do. All in all, you're still doing transactions that effect the public records doctrine and if it is not complied with it will be undermined, as with the bankruptcy trustee stated earlier, she sees it all the time. It disallows you from having executory process if something is done wrong, I see that constantly. Someone didn't get the proper signature, somebody gave a little crack in the door for the attorney to go through the ordinary process for his executory process. That is a mistake that the notary accomplished on behalf of his client. It is not malpractice, necessarily, but those are the types of mistakes that people constantly have to deal with when a notary doesn't properly serve his function. So I think this committee has been given a big opportunity to fix what is broken out there, and a lot of it is broken, mainly because there is no oversight outside of Orleans Parish. A five thousand bond, that's nothing, compared to the damage you could actually put forth to somebody. I carry 1 to 2 million dollars worth of malpractice insurance, but I'm not saying you need

malpractice insurance, if you want to go out there and be uninsured, so be it! Those are just some of the topics that I think we are here to talk about and now is the opportunity to fix what's broken. It's in disarray, we've got to do something.

Paul Bello, International Union of Latin Notaries, addressed the problem of rural notaries who could not afford a two day education class out of their area. Mr. Bello stated that education classes would not entail two days. We really do have to consider the rural parish notaries. I think what you will find and I have found it in other areas, there are distant courses and correspondence courses that are employed in other areas in the country for other professions. I think this addresses the concerns you have for your notaries in rural Louisiana. You wouldn't have to uproot yourself and travel to New Orleans, Baton Rouge, Shreveport, or Lafayette. You could do it by distance and correspondence. And I think if such a requirement is ever imposed I can almost assure you that the marketplace would answer that necessity.

Ronald Wood, Attorney, stated he thinks the civil law system has been eroded to the point that we don't have a whole lot left of what was our traditional type civil law system. I think the problem we have here is that as we all know the notary publics in Louisiana have much broader powers than notaries in any other state. Basically notaries in other states perform the function of acknowledging signatures and I think that probably most lay notaries only do that. The ones that do automobile titles and notarize documents for people are performing the type of function that notaries in the rest of the country do. Now these notaries in other states get a commission for only a certain number of years, it is not a life time commission, I disagree with Mr. Sims in that I think we need to have two classifications of notary publics in Louisiana. We basically need a classification for the notaries that will function like those of other states who will only do acknowledgments and then we need a class of notaries that has the qualifications or powers to execute legal documents. When I became a notary, in 1968 the title of notary public was virtually a state office, you had to go through a legislator to sponsor you, to get your commission, and you got a certificate signed by the Governor appointing you as a notary public. I'm not sure that still happens (Chairman Cotten affirms that it does still happen). The traditionally civil law system notary has broad powers as Mr. Sims said, and I do think you have to have more control and regulation over notaries who have those type of powers, as far as continuing legal education and so forth. But I also think there is a need for other types of notaries. I thought at one time there was some control over the number of notaries who could be qualified in the state. Apparently, there is no such regulation any more. But I personally feel that we need two classes of notaries in the state.

Patricia D. Daret, a witness, who is a commissioned notary and also a legal secretary stated that she can appreciate Mr. Wood wanting two classes of notaries. Those that could only acknowledge documents and those of us who actually function with all the powers given to us. I also appreciate Ms. Davidson's statement as to how it just blows you away when you realize that being a notary is serious and important

job. This is not something someone can sit in the store front and sign documents. As a legal secretary, I have worked for an attorney who had no clue on what a notary could do. I use a form I have developed for wills that the client fills out, I can give no legal advice, so I tell the person who fills out the form if they have any questions, please call an attorney. When my boss found out I was doing wills, he forbade me, due to the fact that the client might come back on him, as he is an attorney. I informed him that notaries can do wills. He had no idea!! If there is to be another level, it needs to be called something else. Notaries do not want there to be a Notary A and Notary B because people in the community will only see notary. I do not think that attorneys should be excluded from the continuing education for the reason I already gave. Many of them haven't got a clue!

Deborah F. Landreneau, a witness, with The Professional Association of Notaries stated that she has the same concerns regarding a monopoly due to the fact that some notaries could not afford the continuing education if were not local. Also, she feels that a number system should be used just as the attorneys have. This way an inactive notary or an authentication could be better kept up with. She agrees that we need continuing education.

Carvel Sims stated that maybe the reason there are too many unknown notaries is the fact that according to 35:71, the notary bonds have to be approved by your local clerk of court. It does not require it to be recorded, however, most clerk of court will not approve it if it hasn't been recorded. The average notary believes he has recorded his bond. But the requirement by law states it must be recorded by Secretary of State and pay an additional fee. It is confusing whether or not the attorney notary or the nonattorney notary are inactive or active on the web site. Maybe a bond application by the Clerk of Court and a declaration with the Secretary of State might work. Many notaries are filing with the Clerk of Court and not with the Secretary of State which causes a problem, many think they are active when indeed they are not. We need a central authority. He addressed the problem of ex-officio notaries and the need for them to have continuing education. There is no simple solution.

Linda Davidson, finds it interesting that New Orleans is the only parish in the state that regulates and keeps up with the notary profession and has an appointed office to handle notaries. Judges in other parishes are the only regulatory force and she suggests that they would not object to giving up their power on this issue. She stated that evidently everyone must be happy with the way things are handled now, due to the fact that there are very few people here to join in on this notary study.

Mr. Pratt replies that all other parishes have a clerk of court system and Orleans Parish has a Registrar of Conveyances and Recorder of Mortgages. I preserve the papers. It was set up in 1867 for all notarial papers to be in one office. Orleans parish also enables me to regulate my notaries. Judges regulate notaries in all the other parishes. Mr. Pratt agrees that the judges would probably not fight to

give up their power in regulating notaries.

Paul Bello, International Union of Latin Notaries, in relation to both the question of whether there should be two classes of notaries in Louisiana and to create the appearance in the United States of other civil law notaries in Florida, Alabama, Oklahoma and Washington D.C. It is a movement which is continuing and it is an encouraging movement. I've learned with my involvement through the UNIL I've met some people involved in Florida and Alabama and it's truly encouraging to me and it's ironic that the people in this room are discussing a plan to create a common law class for notaries that other states are doing because of the pressure of world wide trade and the globalization of economies have found it necessary to actually immolate our system and create a civil law notary system that will allow their instruments to be easily recorded and enforceable in foreign civil law jurisdictions. We feel an odd ball because we have the only civil law state, even considering the erosion of our system with the pressures of American homogenization. We are in the family of nations, we are in the majority. I've become more aware of that as I have come in contact with other distinguished notaries such as Mr. Lomeli who I would like to thank now for offering his experience and knowledge and allowing us to have a broader look at the civil law notary that will enable us to see how we fit in a civilian world, and what other jurisdictions are doing around the world who we share our system with. One other point, looking at other systems, I have come to know the notaries of British Columbia, and it was a big surprise to me that in Canada, other than Quebec, they have notaries who have powers similar to ours. Such are the notaries of British Columbia, who like us are not required to be attorney. They consider themselves common law notaries under the law of 1858 which was the bench mark decision where solicitors in Britain were successfully able to strip notaries from conveyances authority and power and other such things. But they remained articulated under the prior law of 1858 so they retained many Latin notary characteristics. We would do well to look at British Columbia as a model.

Sue Dier, stated that in response to the different classifications of notaries, the problem I see with doing something like that is that the public has no earthly idea if you are a jurat notary and can do affidavits, or if you are a fully commissioned notary with all the powers. The reason I say this is the public doesn't even know the difference between notaries and Justices of the Peace. I'm talking about my parish, people come to me. I am trying to educate my constituents. I have a brochure and I explain what a commissioned notary is and what an attorney is and then I give the explanation of a Justice of the Peace. They say why have they been going to a Justice of the Peace for a real estate or other similar document. I see a problem with this. I am one in the fore front for continuing education, I even teach a notary class in Livingston Parish, which has one of the hardest tests in the state. Congratulations to Jo Landry for passing the test recently. She is the first one in five years!! It is a very, very, hard test. We need uniform testing.

Jo Landry, suggested that notaries need to know civil law. Many notaries have no idea what the civil law book contains. Is it fair to the public that there are notaries in Louisiana that do not know the civil code law?

Sue Dier, I agree with what Jo is saying. I went to talk with a group of notaries and some did not even know what the civil code was. I am for statewide exams and I'm sure continuing education will be in our future. The problem is, some notaries only want to do car titles and simple documents. I do not believe these notaries should be forced to take continuing education. I believe if you're a notary worth your salt you are going to continue your education. As far as the attorneys, in defense of them regarding malpractice, there are several notaries I know who have been suspended or put on probation, it is not only attorneys. I agree that notaries need a state wide exam and that the notaries need a commission number, similar to the attorneys.

Warren Ponder, Attorney, stated that a lot of questions need to be answered and we are not going to make any decisions today, we have a year to do it. But I think it is incumbent on all of you, which we are a small number, to contact the larger number and educate them as to what is going on, this is the input we need. Let us go ahead and give the legislature something it can use. I'll call your attention to HCR No. 81 which is in your packet and the pertinent information which says "Therefore, be it resolved that, as a prerequisite to the Legislature of Louisiana considering the availability of a statewide commission for non-attorney notaries public, the secretary of state shall develop standards of conduct, including standardized testing and mandatory continuing education, and a system for the monitoring and enforcement of any standards or requirements". Also, the fees, I can tell you that generally the legislature has been going to fees being generated by the persons effected. In other words, this will not be a general tax on the population. The notaries public are going to be the ones paying. The committee needs the input from the larger number of attorney notaries and non attorney notaries not represented here at this meeting. We need to find out if notaries would pay a fee to be regulated. By 2003 we need to report our findings to the legislation.

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Paul Bello, International Union of Latin Notaries, asked Warren Ponder if the reports each notary compiles on this issue need to be in writing.

Warren Ponder, Attorney stated that would not be necessary.

William Pratt, Orleans Custodian of Notarial Records, stated that notaries throughout the state need to be notified of this study.

Warren Ponder, Attorney, stated that we also need to look into what other states do.

Kathleen Clark, stated that state wide commissions and standardized testing are a must.

Judy Bilich, agrees that we need statewide testing. Maybe required continuing education could be managed through the universities and the Internet. Rural people would still have access. We do not want to see any powers taken away from our current notaries. We do not want separate classes and feel it would be harmful to the public.

John Shidler, wanted to know if any thought had been given to subcommittees? Also, he jokingly asked if the committee had thought of having a meeting in north Louisiana (closer to his home).

Cynthia Cotten, Chairman, stated the committee had thought it would be a good idea to select subcommittees and that would be addressed in the next meeting. She jokingly stated that the committee would think about having a meeting in north Louisiana.

Paul Bello, International Union of Latin Notaries, stated that regarding the issue of offering continuing education through the universities, he feels that Louisiana community and technical colleges are considering offering notary curriculums. It would be an ideal place for it. Hopefully, the development will continue and will be accomplished.

Cynthia Cotten, Chairman, stated that the discussions needed to come to a close and announced that the next meeting would be held on February 27, 2002. The Chairman told the committee she would be available for any questions or comments.

There being no further business, the meeting was adjourned at 11:50 a.m. by the Chairman, Cynthia Cotten.

Secretary