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Guidance on the Performance of Notarial Acts Based on Personal Knowledge

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Most common notarial acts, such as witnessing an individual's signature, require a notary public to have either "personal knowledge or satisfactory evidence" of the identity of that individual.¹ What qualifies as "satisfactory evidence" may vary depending on whether the notarial act occurs in person or via remote means,² but the standards for evaluating whether the notary has "personal knowledge" of the individual are the same regardless of how the notarial act is performed. Whether in person or remote, a notary "has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed."³

While there is no set formula for determining when the notary's prior dealings with an individual are sufficient to provide reasonable certainty as to the individual's identity, courts have noted that it "involves something more than mere casual meetings, and must be based upon a chain of circumstances surrounding the person tending to show that he is the party he purports to be."⁴ Relevant circumstances include the length of time the notary has known the individual, the types of interactions, and the level of information gleaned from these interactions. Before performing a notarial act on the basis of personal knowledge, a notary should ask:

- 1) Do I have something more than a mere acquaintance with the individual?
- 2) How long have I known the individual? How many times have we spoken?
- 3) Have I seen the individual interacting with others? Do these other people know the individual by the same identity as I do?
- 4) How many times have I seen others I know interact with the individual? Have they identified the individual as the same person I know them to be?
- 5) Do I have any reasonable doubts about the individual's identity?

¹ WIS. STAT. § 140.05(1), (2) and (3).

² "Satisfactory evidence" can be attained by reviewing a passport or other government-issued identification (for in-person notarial acts), by implementing more [comprehensive identity proofing measures \(for remote notarial acts\)](#), or via verification by a credible witness known to the notary by personal knowledge or satisfactory evidence of identity. WIS. STAT. § 140.07(2).

³ WIS. STAT. § 140.07(1).

⁴ *Anderson v. Aronsohn*, 219 P. 1017, 1018 (Cal. Ct. App. 1923).

6) Am I willing to risk the consequences if I am wrong about the individual's identity?⁵

Notaries should err on the side of caution when assessing these factors, because they can be held liable for damages if they neglect their duties in ascertaining the individual's identity. WIS. STAT. § 140.02(8) ("If any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained."). While cases imposing liability against notaries for neglecting these duties are rare, they serve as a reminder of the risks notaries assume when they rely on "personal knowledge" without first giving careful consideration to these factors.⁶ If the notary's dealings with the individual are insufficient to provide reasonable certainty that the individual has the identity claimed—or if the notary simply wishes to eliminate that risk—then the notary should require satisfactory evidence of the individual's identity rather than relying on personal knowledge.

⁵ *Notary Tip: Identifying Signers Using Personal Knowledge*, NATIONAL NOTARY ASSOCIATION BULLETIN (Nov. 12, 2015), at <https://www.nationalnotary.org/notary-bulletin/blog/2015/11/notaries-use-personal-knowledge-identify-signers>. See also *Q&A on "Personally Known,"* AMERICAN ASSOCIATION OF NOTARIES, at <https://www.notarypublicstamps.com/members/notary-faqs/personally-known>.

⁶ For example, in *Anderson*, a notary was found liable for damages for notarizing loan documents for "Louetta" and "Mary" based on purported personal knowledge. Though the notary had been introduced to the individuals and later had several "chance" meetings with them, the California Court of Appeals found these superficial encounters were insufficient to allow the notary to claim reasonable certainty of their identities. *Anderson*, 219 P. at 1018-19. See also, e.g., *Villanueva v. Brown*, 103 F.3d 1128, 1137 (3d Cir. 1997); *State ex rel. Kleinsorge v. Meyer*, 2 Mo. App. 413, 414-22 (Mo. Ct. App. 1876). See generally PETER J. VON ALSTYNE, *The Notary's Duty of Care for Identifying Document Signers*, 32 J. MARSHALL L. REV. 1003 (1999).