

§ 92.15

(3) Name of local community (city, town, or village);

(4) Name of the Foreign Service post.

(b) When a notarial act is performed, and the notarial certificate executed, at a locality in a consular district other than the locality in which the Foreign Service office is situated, the venue should mention only the name of the country (or dominion, territory, colony, island, as appropriate), and the name of the consular district.

(c) The venue used at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should bear the notation "American Consular Service" in place of the post name.

§ 92.15 Signing notarial certificate.

The notarizing officer should sign a notarial certificate on the lower right-hand side. The name and full official title of the notarizing officer should be typed, stamped with a rubber stamp, or printed in ink on two separate lines immediately below his signature. When the notarizing officer is assigned to a Foreign Service post in both a diplomatic and consular capacity, he should use his consular title in the notarial certificate. (See § 92.7.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.16 Sealing the notarial certificate.

The notarizing officer should seal a notarial certificate with the impression seal of the post on the lower left-hand side of the certificate. A notarial certificate executed at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should be sealed with an impression seal bearing the legend "American Consular Service" and the name of the locality.

§ 92.17 Fastening of pages.

When the instrument or document to which a notarial act relates consists of more than one sheet, or when the notarial certificate will be attached and not written on the document itself, the notarizing officer should bring all the

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sheets comprising the document together under his official seal.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

SPECIFIC NOTARIAL ACTS

§ 92.18 Oaths and affirmations defined.

(a) *Oath*. An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. In a broad sense the word "oath" includes all forms of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly, and in this sense it includes "affirmation".

(b) *Affirmation*. An affirmation is a solemn and formal declaration or asseveration in the nature of an oath that a statement, or series of statements, is true. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by any person having conscientious scruples against taking an oath. As a general rule, an affirmation has the same legal force and effect as an oath.

§ 92.19 Administering an oath.

The usual formula for administering an oath is as follows: The officer administering the oath requests the person taking the oath to raise his right hand while the officer repeats the following words: "You do solemnly swear that the statements set forth in this paper which you have here signed before me are true. So help you God." Whereupon the person taking the oath answers, "I do."

§ 92.20 Administering an affirmation.

In administering an affirmation the procedure followed is generally the same as in the case of an oath, but the formula is varied by the use of the following words: "You do solemnly, sincerely, and truly affirm and declare that . . ., and this you do under the pains and penalties of perjury."

§ 92.21 Notarial certificate to oath or affirmation.

The written statement attesting to the administration of an oath or affirmation is known as a jurat. The jurat

must be signed and sealed by the notarizing officer (see §§92.15 and 92.16 on signing and sealing notarial certificates).

§ 92.22 “Affidavit” defined.

An affidavit is a written declaration under oath made before some person who has authority to administer oaths, without notice to any adverse party that may exist. One test of the sufficiency of an affidavit is whether it is so clear and certain that it will sustain an indictment for perjury, if found to be false. An affidavit differs from a deposition in that it is taken *ex parte* and without notice, while a deposition is taken after notice has been furnished to the opposite party, who is given an opportunity to cross-examine the witness.

§ 92.23 Taking an affidavit.

The notarizing officer taking an affidavit should:

(a) Satisfy himself, as far as possible, that his notarial act will be acceptable under the laws of the jurisdiction where the affidavit is to be used (see §92.5);

(b) Require the personal appearance of the affiant at the time the affidavit is taken;

(c) Require satisfactory identification of the affiant; and

(d) Administer the oath to the affiant before the affiant signs the affidavit.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.24 Usual form of affidavit.

Affidavits are usually drawn by competent attorneys or are set out in established forms. The form and substantive requirements of an affidavit depend principally upon the purpose for which it is made and the statutes of the jurisdiction where it is intended to be used. When a notarizing officer finds it necessary in the discharge of his official duties to prepare an affidavit, or when he assists a private person in preparing an affidavit (see §92.11(b)), he should, where possible, consult the pertinent statutory provisions.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.25 Title of affidavit.

Generally an affidavit taken for use in a pending cause must be entitled in that cause so that it will show to what proceedings it is intended to apply, and may support an indictment for perjury in case it proves to be false. If there is no suit pending at the time the affidavit is taken or if the affidavit is not to be used in any cause in court, no title need be given.

§ 92.26 Venue on affidavit.

The venue must always be given and should precede the body of the affidavit. (See §92.14 regarding venue on notarial certificates generally.)

§ 92.27 Affiant’s allegations in affidavit.

(a) *Substance of allegations.* Although a notarizing officer is generally not responsible for the correctness of the form of an affidavit or the manner in which the allegations therein are set forth (see §92.11(a) regarding the preparation of legal documents by attorneys; §92.11(b) regarding the preparation of legal documents by notarizing officers; and §92.24 regarding the form of an affidavit), he may, in appropriate instances, draw the affiant’s attention to the following generally accepted criteria as regards the substance of the allegations:

(1) Material facts within the personal knowledge of the affiant should be alleged directly and positively. Facts are not to be inferred where the affiant has it in his power to state them positively and fully.

(2) If the matters stated in the affiant’s affidavit rest upon information derived from others rather than on facts within his personal knowledge, he should aver that such matters are true to the best of his knowledge and belief.

(3) If the allegations made on information and belief are material, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be made.

(4) If the conclusions of the affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the authority to whom the affidavit is presented may