



United States Department of State

P920040-2101

Washington, D.C. 20520 2.4.1.

JUL - 5 1990

Dear Mr. Grabill:

I refer to your letter of December 29, 1989 to Bartolome Bestard Bonet, consular agent for the United States at Palma de Mallorca, Spain concerning execution of an acknowledgment by Sarah Whittier Brown before Mr. Bestard on September 12, 1973.

You have asked that the consular agent answer a series of questions related to the scope his duties, the length of his employment, the specifics of the notarial act and other circumstances regarding the grantor, her family and her personal legal and medical problems. It is the general policy of the Department not to encourage its employees to provide statements for use in connection with private legal disputes except in response to a request from a court of competent jurisdiction which expressly certifies that the information is necessary in the interests of furthering the ends of justice. In an effort to be helpful, however, we can provide some background information about consular agencies, notarial services, and the functions of consular officers which may serve to clarify some of the confusion.

Based upon an investigation conducted by the Office of Overseas Citizens Services of the Department's Bureau of Consular Affairs, neither the Embassy in Madrid, the Consulate General in Barcelona, the Department of State, nor Mr. Bestard, the consular agent in Palma de Mallorca, has any record or recollection of whatever problems Ms. Brown experienced in Spain in 1973 or of the notarial act in question. Records of notarial fees, required by title 22, U.S. Code, section 4213 and title 22, Code of Federal Regulations, sections 22.5(b), and 92.2, are only maintained for one year after the service is provided. There is no record of any communication between the consular agent, or the consular officers in Barcelona or Madrid and the Department of State concerning Ms. Brown in 1973.

Mr. David Grabill  
Attorney at Law  
612 Albermarle  
El Cerrito, California 94530

The copy of the instrument and consular certificate which you submitted suggests that Ms. Brown "acknowledged" her prior signature on a document which she had signed in the United States in 1972 relative to a divorce action. As defined in Volume 7, Foreign Affairs Manual, section 803. (6/30/84), an acknowledgment is merely "a declaration that one's act or a fact is genuine. For example, in the case of instruments, an acknowledgment could be either a formal declaration before the consular officer that the instrument is the requesting person's free act and deed, or the consular officer's certificate on the instrument that it has been so acknowledged. In consular practice, an acknowledgment is the consular officer's declaration that a certain person appeared before him and signed [or acknowledged signature of] a document."

The consular establishment in Palma de Mallorca is a consular agency, not a U.S. consulate. Consular agents are usually local business or professional persons, preferably American citizens, who serve part-time in isolated areas where a substantial number of Americans reside or visit, and where there is no Foreign Service post. They are appointed in accordance with title 22, U.S. Code, section 951 and Volume 3, Foreign Affairs Manual, sections 990-999. The U.S. consular agent in Palma de Mallorca, who is not a U.S. citizen, has held that position for twenty five years.

Consular agents perform limited consular services and act as points of contact between citizens and the principal consular officer. Consular agents operate under the supervision of the principal consular officer in the consular district in which they are located. The Consulate General in Barcelona has supervisory responsibility for the consular agency in Palma de Mallorca. Title 22, U.S. Code, sections 4215 and 4221, and title 22, Code of Federal Regulations, section 92.4(e) provide that consular agents have authority to perform notarial services. Consular officers and consular agents are prohibited by federal regulation (22 C.F.R. 10.735-206(a)(7), 71.5, 72.41, and 92.81) from acting as agents, attorneys, or in a fiduciary capacity on behalf on U.S. citizens in private legal disputes.

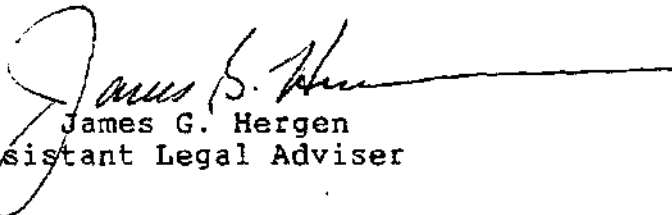
Enclosed are copies of various current and past Department regulations concerning the provision of notarial services by consular officers and consular agents. Under the Department guidelines applicable in 1973, Volume 7, Foreign Affairs Manual (12/20/61), section 833.3 et seq., before taking an acknowledgment the consular agent must have required the personal appearance

of the grantor, must have been satisfied as to the identity of the grantor, and must have assured himself that the person acknowledging an instrument understood the nature of the instrument. The phrases "to me personally known" and "freely and voluntarily" contained in the FS-88 "Certificate of Acknowledgment of Execution of An Instrument" are explained at 22 C.F.R. 92.31 and 7 FAM 833.3. This language reflects that the notarizing official was satisfied as to the grantor's identity, competence, and understanding of the document.

Based on the strong legal presumption that public officials perform their duties in the prescribed manner, Mr. Bestard's assertions that he has always followed requisite procedures in performing notarial services, and Mr. Bestard's reputation for correct performance of his consular responsibilities, we conclude that the proper and appropriate steps would have been taken to confirm the grantor's identity, competence, and understanding at the time of the acknowledgment in question.

I trust that the foregoing information will be of assistance.

Sincerely,

  
James G. Hergen  
Assistant Legal Adviser

Enclosure:

As stated.