

**REPORT AND RECOMMENDATIONS
ON NOTARIES' LIABILITY**

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The statutes establishing the office of notary are found at C. 52:7-10 to 21. These sections provide in detail for the appointment of notaries. R.S. 41:2-1 includes notaries among those who may take oaths, and R.S. 46:14-6 includes notaries among those who may take acknowledgments. An inclusive list of the notarial functions is found not in the statutes, but in the case law. See Commercial Union Ins. Co. v. Thomas-Aitken Constr. Co., 49 N.J. 389, 393 (1967), aff'd, 54 N.J. 76 (1969). C. 41:1-4 to 6 describes the taking of oaths, but contains little about the role of the officer administering the oath. R.S. 46:14-6 refers only obliquely to the officer's duty in regard to acknowledgments.

For a statement of the duty owed by a notary, one must turn to judicial opinions. A notarial officer must use reasonable care to satisfy himself of the identity of the person whose oath or acknowledgment is being taken. Immerman v. Ostertag, 83 N.J. Super. 364, 370 (Law Div. 1964); In re H.C., Jr., 81 N.J.Eq. 8, 15 (Ch. 1912). The method of ascertaining the identity is not material. In re H.C., Jr., supra at 16. The notary must actually administer an oath to a person whose oath or acknowledgment is taken. Immerman v. Ostertag, supra at 371, 372. While a notarial officer is not an insurer of the truth of what is sworn to or of the identity of the persons swearing, he must exercise due care in performing his functions and may be held civilly liable for failure to exercise such care. Commercial Union Ins. Co. v. Thomas-Aitken Constr. Co., 54 N.J. 76, 81 (1969).

A notary is often called on to take an oath or acknowledgment for a person whom he has not previously met. If the person is not who he represents himself to be, then despite having exercised due care, the notary may be civilly liable. The cost of subsequent litigation may be high. Some notarial officers, such as attorneys, may have malpractice insurance; for others, insurance is impractical or unavailable. The burden of civil liability must be judged in light of the fees set by statute for notarial acts -- \$.50 for administering an oath or taking an affidavit and \$1.00 for taking an acknowledgment. N.J.S. 22A:4-14.

The Commission considered it appropriate to provide protection from civil liability for a notarial officer. Such protection for public officers is common. The immunity which the Commission recommends is qualified. It would protect against claims based on negligence. It would not protect against knowing participation in fraud or other affirmative misconduct.

NEW SECTION

A notary or other officer authorized to perform notarial acts shall be immune from civil liability for negligence in any act or omission in the performance of a notarial act.