INCREASING IMPORTANCE OF NOTARY FEES & ASSOCIATED FEES

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Introduction

1. Overcharging for fees is a frequent complaint against notaries in discipline cases before notary commissioning agencies.

2. May a notary charge fees to some principals/signers but not to others, and may a notary charge some principals/signers more (or less) than the notary charges other principals/signers?

3. At least two multi-million dollar class action lawsuits against notaries and their employers are now being litigated in two states for alleged overcharging of fees.
4. Since the notary is the commissioned public official, and the notary has full and unlimited personal liability for damages caused by faulty notarizations, are the employers of notaries permitted to take all or part of the notary fees?

5. Notary fees must be reported as income for tax purposes by the notary and/or the notary’s employer (if the employer retains some or all of the notarial fees).

6. As notary fees continue to rise, the issues surrounding fees will become more important and more complex [e.g., electronic and remote notarizations].

7. Unlike some clergy, notaries do not take a vow of poverty.
Notary Maximum Fee Statutes And Regulations

Historical Background.

1. High notary fees in early history – 1700s-1800s.
2. Fees remained largely unchanged in 1900s – at minimal levels.
3. Estimated less than 25% of notaries charge fees.
4. Consequences of charging no fees or trivial fees.
5. Very few court decisions.
Notary Maximum Fee Statutes And Regulations

Number Of Jurisdictions With Maximum Notary Fee Statutes.

1. About 41 states and DC have maximum notary fee statutes.
2. About 8 states have maximum statutory notary fees of less than $5.
3. About 23 states have maximum statutory notary fees of $5-$6 [Texas].
4. About 10 states have maximum statutory notary fees of $10.
5. One state has a maximum statutory notary fee of $15 [California].
Notary Maximum Fee Statutes And Regulations

What Is A Notary Fee?

1. The fee charged only for the official act of notarization. OR

2. The fee which can be charged only for the official service that a notary is authorized to perform.

3. There can be no notarial fee for unofficial acts.
Notary Maximum Fee Statutes And Regulations

Statutory Coverage.

1. Beware – Fee statutes may be incomplete and/or ambiguous. May not cover all types of notarial acts.

2. Cover only official acts and, in some states, travel fees and some types of copy fees [distinguish copies of notarized documents vs. copies of journal entries].

3. Carefully review statutes for electronic and remote notarizations [e.g., the costs of accessing technologies and for third-party security providers may, or may not, be included in the maximum notary fees; same issues for travel and copy fees].
Notary Maximum Fee Statutes And Regulations

Statutory Coverage.


Where There Are No Maximum Notary Fee Statutes

About 9 States Have No Maximum Notary Fees Statutes.

1. May notaries therefore charge whatever fees they wish? OR

2. Is there a limitation upon the fees which notaries may charge in those states?
Where There Are No Maximum Notary Fee Statutes

Effect Of Public Servant Status Of Notaries.

1. Ethical, fiduciary, and professional responsibilities apply.

2. Official regulations and guidelines/directives, and expert authorities views.
Where There Are No Maximum Notary Fee Statutes

Notaries In Those States Cannot Charge More Than Reasonable Fees.

1. How to determine what is a reasonable fee?

2. Consider the type of notarial act involved [e.g., oral oath or affirmation, acknowledgment, marriage ceremony, opening/inventorying delinquent bank deposit boxes].

3. Consider what other honorable and experienced notaries in the area charge.

4. Consider the amounts set in fee statutes in other states.
Waiving And Reducing Fees

1. Notaries Are Not Required To Charge Fees. If fees are not charged or collected, place a ‘0’ in the fees section of the notary journal entry, or note zero fees somewhere in the journal entry.

2. For Good Faith Charitable, Patriotic, Humanitarian Reasons, Notaries May Waive Or Reduce Fees [e.g., homeless, veterans, first responders, prisoners, college students, active military, seniors, hospice & hospital patients, terminally ill, fellow notaries].
Waiving And Reducing Fees

3. Cannot Charge Fees Or Charge Higher Fees For Improper/Unlawful Discriminatory Reasons [race, religion, gender, sexual orientation, physical disability, advanced age, national origin, ethnicity, citizenship, marital status].

4. Non-Client/Non-Customer Status Of Notary Or Notary’s Employer [see below].
Associated/Unofficial Fees

1. Maximum Fee Statutes And Reasonable Fee Standards Apply To Official Notarial Acts Only.

2. Associated/Unofficial Fees Are Not Covered – Such As:
   - Providing copies of notarized documents.
   - Providing lay witnesses.
   - Mailing/shipping fees.
   - Travel expenses [transportation, meals, hotels]. Covered in some notary statutes.
   - Travel time.
   - Administrative/service fees.
Associated/Unofficial Fees

Justifications For Such Associated Fees.

1. Extra time & costs may be involved.

2. Business overhead [costs of notary applications, commissioning fees, costs of seals and journals, bonds and/or insurance, advertising of services].
Associated/Unofficial Fees

Exclusion Of Professional Fees For Advising About, Drafting, And/or Preparing Documents To Be Notarized.

1. Notaries may also be attorneys or professionals in law-related fields [such as accountants, bankers, paralegals, real estate & mortgage brokers, tax preparers, etc.] – and therefore are qualified to advise about, draft, and prepare documents in their respective fields.

2. The impartiality obligation of notaries demands that notaries not serve in both roles [notary and advisor/drafter/preparer] of a document which is to be notarized. There is some difference of opinion on this matter.
Associated/Unofficial Fees

Exclusion Of Professional Fees For Advising About, Drafting, And/or Preparing Documents To Be Notarized.


4. Thus, notaries should not be collecting two sets of fees for those two roles.
Best Practices For Charging, Collecting, And Recording Fees

1. State Laws Vary Widely On Issues Of How To Carry Out The Fee Process. Each notary who intends to charge fees should review the state notary law and regulations to determine requirements in regard to charging, collecting, and recording such fees.
Best Practices For Charging, Collecting, And Recording Fees

2. Best Practice Steps.

• Inform or give notice to principals in advance of the actual notarization [use signs, and a printed handout showing the notarial fees and any associated fees].

• Prior to the notarization itself, obtain agreement of principal to pay the stated fees for the notarization.

• Obtain payment prior to performing the notarization [as this step will avoid possible confusion/disagreement about fees; and, a notarization once performed cannot be cancelled/undone, but if the notarization is not thereafter performed, the pre-paid fee can be returned or cancelled].
2. Best Practice Steps.

- Provide an itemized receipt to principal and retain a copy for the notary [to itemize both official notary fees and associated/unofficial fees].

- Record the itemized notarial and associated fees in the notary journal [this step is important to document the compliance with fees statutes, to provide supporting documentation for income tax purposes, and to help dispel concerns about possible unauthorized practice of law].
Best Practices For Charging, Collecting, And Recording Fees

2. Best Practice Steps.

- Before concluding the notarization ceremony, proofread the fees receipt and the fees section of the notary journal entry and make any necessary additions or corrections.

- Following such best practice steps would help to avoid misunderstandings about fees and resulting litigation. See Hutton v Fidelity National Title, 213 Cal.App.4th 486 (2013) [about the notary’s failure to itemize fees].
Notary Fees In Employment Settings

1. Who Controls Whether Notary Fees Are Charged & Amounts Of Fees.

2. Can Private Employer Collect & Retain Fees.
   - Many statutes do not address this issue.
   - As notary fees increase in value, the revenue resulting from notary fees can be significant for some employers [especially for employers with multiple locations and multiple notary-employees].
   - The notary is the publicly commissioned official, not the employer.
   - Incidentally, employers who retain notary fees will certainly have vicarious legal liability for notary negligence and faults that cause financial injuries.
Notary Fees In Employment Settings


4. Different Fees For Clients/Non-Clients.
Overcharging Of Fees

1. Possible Criminal Violations [Extortion, Official Misconduct -- possible incarceration, probation, fines, penalties, attorney fees & court costs].

2. Possible Civil Liability [for recovery of overcharges & possible penalties, attorney fees & court costs].

3. Possible Administrative Discipline [revocation/suspension of commission, fine, penalties, mandatory education, reimbursement of administrative costs, attorney fees & costs].
Conclusion

1. Notary fees are a very serious matter, and are becoming more important.

2. Each notary should be familiar with the relevant statute governing fees, should abide strictly by that statute, and should follow the best practices suggested above even if not required by the fees statute.
Further Reading


Michael Closen, Chapter 24, “ Proper Roles Of Notary-Employees And Their Employers,” in PROFESSOR CLOSEN’S NOTARY BEST PRACTICES, pages 385-387 [about fees].

Charles Faerber/National Notary Association, U.S. NOTARY REFERENCE MANUAL [online] (discussing the notary fees statutes and practices for each of the 50 states and D.C.).


Peter Van Alstyne, “Fees Charged By Notaries,” in VAN ALSTYNE’S NOTARY PUBLIC ENCYCLOPEDIA, pages 113-115.
Questions?
Contact Information

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