

## Notarized Signatures: The Document Examiner's Dilemma

by

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**Abstract:** This article illustrates factors that cause a dilemma when questioned signatures appear on notarized documents. Procedures for becoming a notary public and the requirements for fulfilling the process of witnessing signatures on official documents are discussed. Includes case studies and a glossary of terms.

**Key Words:** Document examiner, notary public, commission, affidavits, acknowledgement, oath, jurat, questioned signatures.

### What is the purpose of having notaries?

Around the United States there is growing concern about the authenticity of signatures on official documents such as ballots, petitions, election registration forms, checks, wills, witness statements and other important records. To protect the public and private sectors from obtaining illegal or other unlawful signatures, most states use a system of commissioning notary publics. Notaries verify the identity of the person who signs a document in front of them by examining official forms of identification such as driver licenses, passports or other forms of photo identification. In many states, when a signature is notarized it is also recorded in an Official Notary Public Journal that is signed by the person signing the original document. If done correctly, this notarial method actually results in obtaining two signatures—one on the document itself and one in the journal.

If procedures for performing notarizations were strictly followed, document examiners would not be needed to verify notarized signatures or appear in court at all, since signatures would technically all be genuine.

### The Dilemma: What is old is new.

Ninety years ago Albert Osborn wrote about the role of notaries in signature validations in his classic book *Questioned Documents*. The authenticity

of signatures on notarized documents was questioned back then and Osborn even thought that such occurrences presented document examiners with situations that showed both negligence and possible unlawfulness in the notarizing system.

“The formal attestation of a document by a notary public or a commissioner of deeds is supposed to be a positive validation of it, as having been signed by the one by whom it purports to have been signed, and this would be true if certain careless practices in this country were not so common. It is unfortunately a fact that this formal act, accompanied as it should be by a solemn oath, has been cheapened and degraded and in many instances the attestation act is performed with a carelessness that is almost if not actually criminal.

“Thousands of documents are attested for those who are total strangers to the officer, and signatures are attested on documents in the absence of the alleged writer, and attestations are put on documents not yet signed.”

“There is no doubt that justice be safeguarded by following some of the excellent practices of the notarial system in operation in Louisiana and the province of Quebec, Canada. One important change that would bring about needed improvement would be much greater care in the appointment of notaries and commissioners and more severe penalties for violations, or careless disregard, of the duties of the important office.”<sup>1</sup>

### How difficult is it to become a notary?

In most states, if a person is 18 years old, a U.S. citizen, able to read and write English and has not been convicted of a felony within the previous ten years or a misdemeanor in the previous two years, it is easy to apply to become a notary. With

<sup>1</sup> Osborn, Albert: *Questioned Documents*. Boyd Printing Company, Albany, NY, 1929, p.687.

the completion of a state application in the county of residence, the taking of an oath at the county clerk's office that the information is accurate, and the payment of a small fee, almost anyone can become a notary public. Once approved by the state, an additional bonding fee is required before official notarizing can begin. Fees for notarizing a document are nominal and are made on a per case basis. Perhaps the process for becoming a notary is part of the problem since there are very few states that offer extensive training or testing of notaries.

### **What is the challenge for document examiners?**

When signatures are questioned, there is an understanding among examiners that the contents of the signed document are in dispute. Whether the signature is on a last will and testament, a car title, the transfer of property with a deed, an employment contract, an IOU, an insurance beneficiary form or another type of contract, there is a disagreement by the parties involved. When such a document has the signature and date of signing of a notary public on the jurat or acknowledgement and an official stamp or embossment, there is purportedly an eye witness to the signing of the disputed signature. These features normally add weight to the likelihood that it is a genuine signature and the credibility of the action since a notary has identified a person and actually witnessed the signing of the signature. In executing a jurat the notary will ask the individual to take an oath as to the content of the document. Requirements differ between states; detailed descriptions of such requirements may be found on their individual websites.

A jurat implies that the notary asks the signer to take an oath to what s/he is signing and actually sees the person write the signature on the document. The notary witnesses the act of signing and the document will say "subscribed" before me.

An acknowledgement indicates that the document was already signed by someone who must prove who they are and that they in fact signed and acknowledge said document. The signature block states as "acknowledged" on a particular date but does not confirm that it was signed by that person.

If unable to verify the authenticity of the signature the notary must request that the document be signed again.

Although the content of documents, deeds and written wishes upon death may cause disagreements and disputes, if the protocols for notaries are precisely followed, most cases involving notarized signatures would not end up in court.

### **How does the document examiner demonstrate the findings before a jury or a judge?**

Document examiners inspect many signatures that are witnessed or notarized. When those signatures are determined by the examiner to be non-genuine, it becomes apparent that the signatures were not signed in front of the listed notary. This means at least one side in the dispute is not forthcoming in their statements. Either the person was there and signed the document or they were not. It is the juries and judges who must then weigh the evidence, explanations, exhibits and credibility of the document examiner, as well as the testimony of the notary, witnesses and/or opposing examiner. The following court cases demonstrate some variances of notary signings.

#### **Case Study #1 — Warranty Deed**

Representing the estate of Horace Green in a jury trial, the document examiner was asked to review a notarized Warranty Deed done with an acknowledgment of its signing. With the use of composites, color photographs and enlargements, it was possible to show dissimilarities between the questioned and known signatures. Displaying a comparison chart with individual letter formations engaged the jury during testimony. Jurors could see for themselves the differences in the less conspicuous parts of the letter shapes. The jury returned a verdict that the property was not legally transferred and that, although notarized, the Warranty Deed was not signed by Horace Green and he could not have acknowledged his signature. After the trial, it was learned that a doctor testified Mr. Green was unconscious at the time of signing. (See Figures 1-2.)

## WARRANTY DEED — 861

Available from TARGET INFORMATION MANAGEMENT, INC. • P.O. Box 22003, Lansing, MI 48909

(State Bar of Michigan Form)

LI 25016 PA 155

The Grantor(s) Horace Green, a single man  
4508 Letson Street, Brighton, Ala. , whose address is  
convey(s) and warrant(s) to Clifton & , his  
wife  
whose address is Detroit, Michigan  
the following described premises situated in the City  
of Detroit , County of Wayne  
and State of Michigan:

Lot 115 THE MILLS SUBDIVISION NO. 4, Liber 28, Page 8  
of Plats, Wayne County Records (Commonly known as 6845 Mack Ave.)

for the sum of FOUR THOUSAND (\$4,000.00) Dollars

subject to easements and building and use restrictions of record and further subject to

Dated this 8th. day of November , 1990

Signed in presence of:

*Douglas D. Green*  
• Douglas D.  
*Willie Green*  
• Willie Green

Signed by:

*Horace Green*  
• Horace Green

No. 49626  
City taxes against the within described property  
are paid: Current city and current special taxes  
excluded (C.L. 48 Section 211.135).

FEB 25 1991

*Virginia Libera*, Treasurer  
By Wayne County *C. Higgins*

STATE OF MICHIGAN, } SS.  
COUNTY OF Wayne }

The foregoing instrument was acknowledged before me this 8th. day of November  
19 90, by Horace Green

This is to certify that there are no tax liens or titles on this  
property and that taxes are paid for FIVE YEARS previous to  
date of this instrument EXCEPT 1990 not examined

No. 48  
County Treasurer's Certificate  
Date 2/3/91 Clerk *[Signature]*

*Douglas D. Green*  
• Douglas D.  
Notary Public, Wayne County,  
Michigan  
My commission expires: June 9, 1992

City Treasurer's Certificate

Fig. 1—Case Study #1: Questioned Document



# QUESTIONED

QD-1

Signed by:

Horace Green

Signature on Warrenty Deed, #1/8/90  
Lot 115 The Mills Subdivision No. 4  
Liber 28, pg 8 - Wayne County, MI

# KNOWN

QD - 2

Horace Green

Signature, page 3, Power of  
Attorney, State of Alabama  
6/4/90

K - 1

Horace Green

HORACE GREEN

Signature on page two,  
Last Will and Testament of  
Horace Green. 12/17/69

K - 2

Horace Green

Signature card for joint bank  
account/NBD Office #24  
Faxed copy.

K - 3

Horace Green Co.

Signature on Chrysler Cor-  
poration Employment Record  
Undated.

K - 4

Horace Green Dr.

Signature on Chrysler Cor-  
poration Employment Record  
Undated.

K - 5

Horace Green

Signature on NBD savings  
withdrawal slip, 10/25/83

K - 6

Horace Green

Signature on NBD check # 1731  
9/25/87

K - 7

Horace Green

Signature on NBD check # 1739  
10/8/87

K - 8

Horace Green

Signature on NBD check # 1695  
7/22/87

Fig. 2—Case Study #1: Questioned & Known Signatures

### Case Study #2—Affidavits signed by Attorney

Retained by the owner of a building, the document examiner was asked to review two affidavits allegedly signed by the renter concerning the renewal of a rental agreement. The questioned documents (QD-1 and QD-2) were notarized affidavits allegedly signed by the renter of the space. His known (K) signatures, on very poor quality copies, were examined, and although the opposing attorney testified that the signatures were his client's signatures, it was this examiner's testimony that the known person did not sign the affidavits. Opposing counsel testified that they were fast versions of the renter's normal signatures.

The signatures on the affidavits were also notarized by a secretary who testified in court that she witnessed the signings. In examining the entire file at the building owner's attorney's office and in the court house records, it became clear that the affidavits were in fact signed by the opposing attorney whose standard (S) signatures were examined for the purpose of comparison and identification.

The opposing side presented testimony from an attorney client saying it was a fast form of his own signature, testimony from his secretary/notary and an opposing document examiner who testified (without exhibits) that the questioned signatures were fast variations of the usual signature. Using

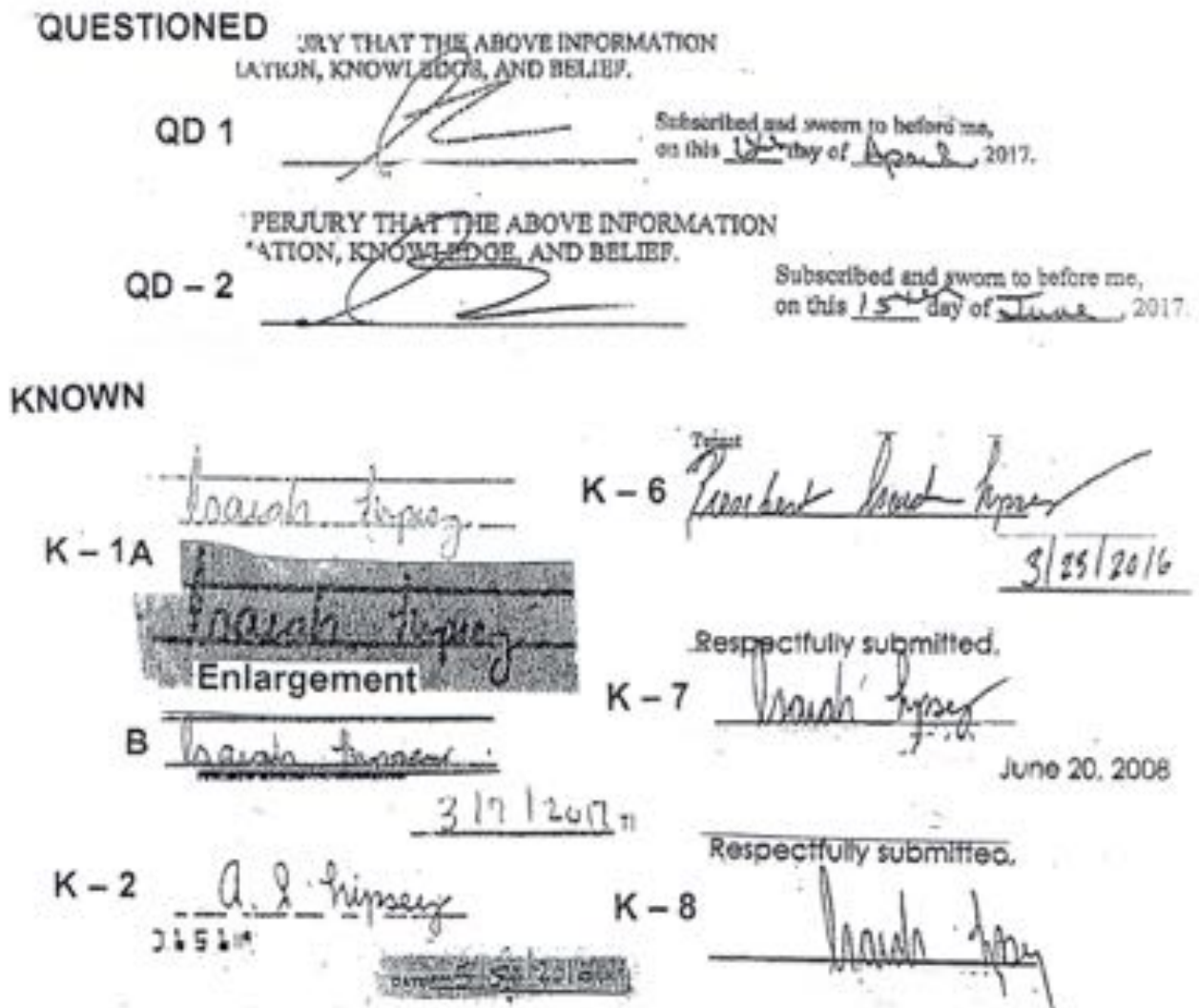


Fig. 3—Case Study #2: Questioned Signatures Compared to Known Signatures

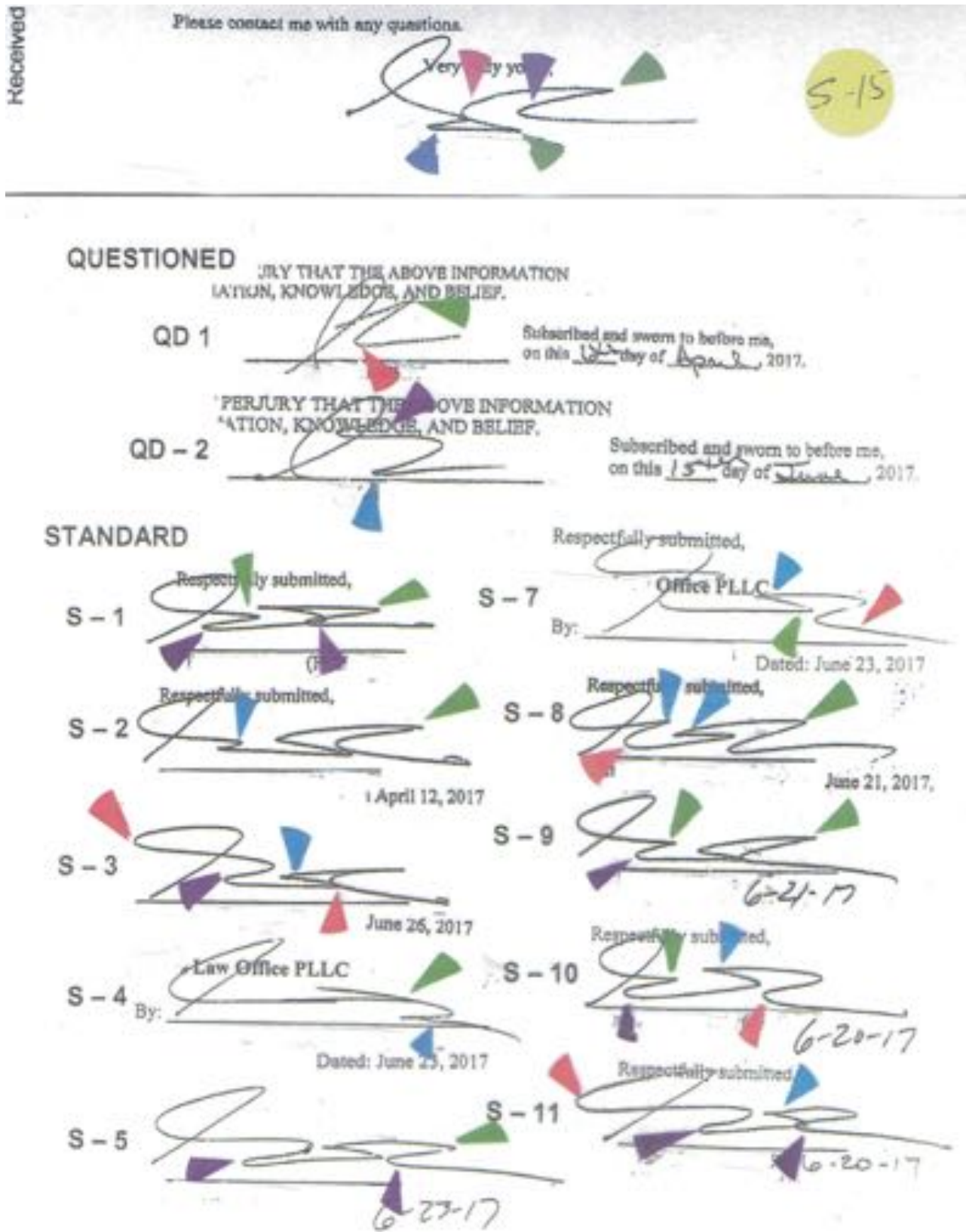


Fig. 4—Case Study #2: Questioned Signatures Compared to Standard Signatures

detailed composites, colored markings and colored overlays it was possible to point out the multiple similarities to the standard signatures of the acting attorney. It might have been for reasons of expediency that the attorney signed the affidavits for his client, but the judge in this bench trial ruled that exhibits had demonstrated the findings of this document examiner. (See Figures 3-4.)

### **Case Study #3—Last Will and Testament before suicide**

Representing the long-term partner of the deceased (Jason), the document examiner was asked to examine the hand-printing on a holographic Last Will and Testament leaving everything he owned to his girlfriend Cindy. It was compared to known printing on a two-page letter to her along with 21 other known documents. The will was signed and stamped by the secretary of Jason's attorney who witnessed him writing the document. Jason took his life shortly after writing his will. Jason's family contested the printing on the will. The examiner's testimony was that the will was printed by the same person whose known printing was analyzed. The judge found the handwriting testimony to be non-credible since only copies were examined before coming to court. The original documents, being held by the police until they were brought to court for the bench trial, were not examined until just before testimony. The notary/witness to the will was found to be non-credible since she worked for Jason's attorney. Cindy was found to be non-credible because she was too upset on the stand. (See Figures 5-6.)

### **Is there a solution to improving the qualifications and training of notaries?**

The answer to this question is the need for more education about the role and importance of notaries in the judicial system. With advancing forms of verification in notarizing signatures with videos and electronic signatures, perhaps the standards

for notaries will be changing. In the meantime, document examiners should be aware of county and state requirements for notaries. Even taking the training to become a notary and staying current on signature modalities will help in understanding how notaries function and how they should perform their responsibilities. Every state has vast amounts of information on their government websites including detailed descriptions about the duties of notaries.

### **Is there a role for document examiners in the offices of the Secretary of State?**

Nationally, the role of the Secretary of State and the Office of the Great Seal has expanded in many ways from overseeing elections, registering voters, gathering petitions and even verifying signatures at election time. Witness what happened in Georgia when almost 50,000 votes were set aside since early voter registration form signatures did not match current signatures. A judge ruled that the signatures had to be counted.

Document examiners could have been helpful in another state where absentee ballots were collected and completed by the same person. This action invalidated the ballot count and the result was the call for a new election.

If document examiners were part of the instruction process, they could explain to notaries in training how signatures may change over time and instruct them about ranges of variation that are normal but not disqualifying.

Now is the time for document examiners to become active participants of the team that improves the quality of services in the office of the Secretaries of State, including the training of notaries and the preparation of petitioners in collecting signatures for ballot issues and referendums. With better education of notaries, there might be opportunities for document examiners to use their knowledge, training and experience to assist in raising notary publics to more professional standards.



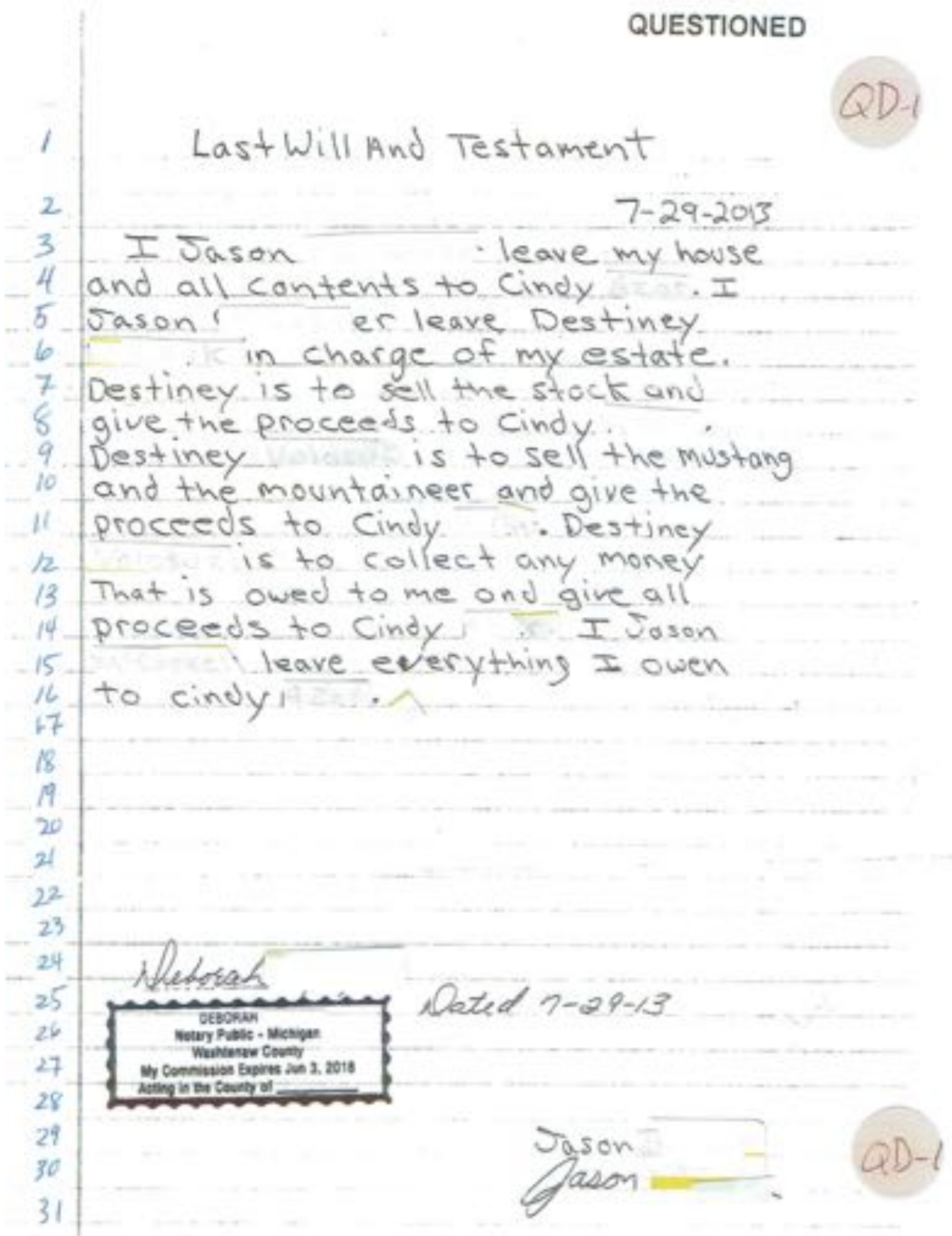


Fig. 5—Case Study #3: Questioned Document



KNOWN

1 To Cindy  
 2 Cindy I want you to know that  
 3 I LOVE you and Brooke I will NOT  
 4 Be the Reason that you and Brooke  
 5 are not together I was already planning  
 6 this I am lazy and don't want to  
 7 work. You deserve better than me.  
 8 You have always been there to support  
 9 me and I want to tell you that you  
 10 are a lot smarter than you think.  
 11 The house is yours it always has been  
 12 and always will be yours. I want to say  
 13 I am sorry for all the arguing it  
 14 was my fault because I was lazy and  
 15 didn't want to do anything and I am  
 16 very sorry about that. I know that you  
 17 will be fine because you are one of the  
 18 strongest persons I have ever known  
 19 Cindy I LOVE you I always have and  
 20 you will make it you have no choice  
 21 you have Brooke to take care of you  
 22 are her mother and always will be don't  
 23 ever be your mother no matter what.  
 24 Baby if anyone can do this you can I LOVE  
 25 you and baby please take care of Max  
 26 he loves you. I LOVE you and I will  
 27 miss you I DID NOT TOUCH Brooke  
 28 I DIDN'T LOVE her like that I LOVE  
 29 YOU AND I crashed in the Ford  
 30 Stock a long time ago and if I  
 31 fight this you will lose the house  
 32 I would have to sell the house

Fig. 6—Case Study #3: Known Hand-printing

## Glossary of Notary Terms

The following glossary might prove useful as a basic understanding of the terms and functions of notary publics. It comes from a training handout of the American Society of Notaries (ASN). (For a more complete listing of terms visit: <http://www.asnnotary.org/index.php?form=termsanddefinitions>.)

**Acknowledgement.** A formal declaration before a notary public or other authorized person by an individual signing an instrument that such execution is his or her free act and deed, and that it was signed willingly for the purpose defined in the instrument.

**Affiant.** Person who makes and subscribes an affidavit.

**Affidavit.** A written statement of facts made voluntarily, verbally confirmed to be true by an oath or affirmation, and signed before a notary public or other person authorized to administer oaths.

**Affirm.** To make a solemn, formal declaration of the truth of a statement or testimony, under penalty of perjury.

**Affix.** To attach or impress the notary seal to a document.

**Apostille.** A certificate of notarial authority issued by the Secretary of State, the Lieutenant Governor or the country clerk's office, usually needed to authenticate documents going to foreign countries. Testifies to the validity of the notary.

**Attest.** To certify or bear witness to, to affirm to be true or genuine.

**Attorney-In-Fact.** An individual authorized to act in another's behalf by power of attorney.

**Authentication.** Process of verification of notarial authority, usually used when a document is going to a foreign country that does not recognize or accept the authority of the Apostille.

**Certified Copy.** An exact, complete and unaltered copy of a document that is not a publicly recorded document, signed as a true copy of the original by the public official who made the copy. Note: notaries in some states are authorized to make certified copies: notaries in other states are not authorized to do so. In these states, notaries may take an affidavit from the document holder, called a certification of a copy. This affidavit states the document holder, not the notary, made a copy of the original document, and the notary completes a jurat.

**Coercion.** Forced or compelled into compliance, through fear, intimidation, or threats. A notary must ensure that no coercion is used in the signing of a document. All parties must sign willingly. If the notary suspects coercion he should refuse to notarize the document.

**Commission.** The certificate verifying appointment as a notary, authorizing the notary to perform the official acts of that office. Also refers to the term of office. Commission

term varies in length, depending on your state, from two years to lifetime appointments.

**Deed.** A document by which a person conveys (transfers) real property.

**Jurat.** The notary's written certificate on any sworn statement or affidavit. Document must be signed and sworn to or affirmed before the notary.

**Oath.** A solemn affirmation of the truth of any statement, under penalty of perjury.

**Perjury.** Making a false statement under oath or affirmation. Usually punishable by fine, prison term, or both.

**Personally known.** Having an acquaintance derived from association with an individual, which establishes the individual's identity with at least a reasonable certainty.

**Power of Attorney.** A document authorizing a person to act as another's agent or representative for a specific purpose.

**Principal.** The person making the power of attorney.

**Reasonable Care.** That degree of care which a person of ordinary prudence and intelligence would exercise in the same or similar circumstances. Failure to exercise such care is negligence.

**Satisfactory evidence.** Acceptable identification of an individual not personally known to the notary. Identification must have a photograph, physical description and personal data about the individual, such as height, date of birth, and is preferably government-issued.

**Subscribe.** To sign a document. "To sign at the bottom of a document," from Latin subscriber "write, write underneath, sign one's name; register," also figuratively "assent, agree to, approve," from sub "underneath" + scribere "to write".

**Swear.** To take an oath.

**Testator.** Person making a will.

**U.P.I.** An abbreviation for the "Unlicensed Practice of Law." Notaries should proceed with extreme caution whenever asked to perform duties that appear to have legal implications.

**Venue.** The location (state and country) the notarial act actually takes place.

**Will.** An instrument by which an individual makes a disposition of his/her real and personal property, to take effect after his/her death.

*Ruth Holmes, CDE* is a professional handwriting and document examiner whose forensic firm, Pentec, Inc., in Bloomfield Hills, Michigan, advises individual, legal and corporate clients in the U.S. and overseas. She is certified by NADE and is a Diplomate and Life Member of NADE. She is currently acting as NADE Vice-President and has served in many positions within the organization since the early 1980s. She is qualified as an expert witness in federal, state and local courts.

For almost 25 years, Ruth has worked as a document examiner for the Office of the Oakland County Prosecutors Office in numerous criminal trials in Michigan. She is a nationally recognized speaker, media guest, writer, and jury and trial consultant.

Her daughter, Sarah Holmes Tucker, completed her graduate work at Boston University, joined Pentec, Inc. in 1997, and lives near Boston.

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