

LETTER OPINION
97-L-194

November 24, 1997

Mr. Garylle B. Stewart
Fargo City Attorney
PO Box 1897
Fargo, ND 58107-1897

Dear Mr. Stewart:

Thank you for your letter asking whether a notary public must comply with the notarization formalities when a criminal complaint is sworn to and subscribed before such notary. North Dakota Rule of Criminal Procedure (N.D.R. Crim. P.) 3(a) provides that a criminal complaint "must be sworn to and subscribed before an officer authorized by law to administer oaths within this state and be presented to a magistrate." N.D.C.C. § 44-05-01 sets forth a list of persons authorized to administer oaths in this state. Included in that list is a "[n]otary public anywhere in the state, upon complying with section 44-06-04."¹ N.D.C.C. § 44-05-01(4). Interestingly, a notary public is not authorized to act in the same manner with regard to federal criminal complaints. See 1 Charles Allen Wright, Federal Practice and Procedure § 41 (2d ed. 1982).

The form of the state criminal complaint typically used within North Dakota is set out in the North Dakota Rules Annotated, Appendix of Forms as Form 1. Although the forms contained in the Appendix of Forms are illustrative and not mandatory, the forms are helpful and

¹ N.D.C.C. § 44-06-04 provides in part that "[e]ach notary public, before entering upon the duties of office, shall file the notary public's oath and bond, in the office of the secretary of state. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public."

Mr. Garylle B. Stewart
November 24, 1997
Page 2

are commonly used. See N.D.R. Crim. P. 58. I assume for purposes of this letter that Form 1, or its substantial equivalent, is being utilized.

Consistent with N.D.R. Crim. P. 3(a), Form 1 is drafted as a sworn statement. Further, following the line for signature of the complainant, the traditional jurat language is reproduced on Form 1.²

The question you raise concerns the manner in which the complaint should be executed by a notary public, i.e., whether the notary public is only required to sign and date the document or whether the notary must also include the formalities customarily included when a notary notarizes any other type of sworn statement.

It has been asserted that the notary need only date and sign the criminal complaint because N.D.C.C. § 44-05-01, listing the persons authorized to administer oaths, does not contain any explicit requirement for the notary to append the notary's printed name, seal or stamp, and date of expiration of commission. However, N.D.C.C. § 44-06-12 provides:

Every notary public taking an acknowledgment to any instrument immediately following his signature to the jurat . . . shall legibly print, stamp, or type his name and shall endorse the date of the expiration of such commission. Such endorsement may be written legibly, stamped, or printed upon the instrument either connected to or disconnected from the seal, and must be substantially in the following form: My commission expires _____, 19__.

This section regulates the manner in which a notary public must perform his or her duties as a notary. See 1956 N.D. Op. Att'y Gen. 139. Thus, while neither N.D.R. Crim. P. 3(a) nor N.D.C.C. § 44-05-01 explicitly requires a notary to affix the notary's name, seal or stamp, and date of expiration of commission, it is my opinion that a notary is nevertheless required by the provisions of N.D.C.C. § 44-06-12 to include the statutory formalities in taking any sworn statement, including a criminal complaint, which incorporates the jurat language. See 1971 N.D. Op. Att'y Gen. 261 (November 30, 1971) (signature of arresting officer on chemical test refusal form is an oath and sworn statement as required by statute if made before notary public who has properly signed it, affixed seal, etc.).

Sincerely,

² The traditional jurat language is "subscribed and sworn to before me this ____ day of _____, 19__."

Mr. Garylle B. Stewart
November 24, 1997
Page 3

Heidi Heitkamp
ATTORNEY GENERAL

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