

Can I Get a Witness?

**By Reg P. Wydeven
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One of the things I enjoy about being an elder law attorney (in addition to lots of hugs from clients) is the collegiality of other elder law attorneys throughout the state. One example is the elder law listserv, which allows members of the Elder Law Section of the Wisconsin Bar Association to bounce questions off each other.

Ben Adams, a fellow elder law attorney from Neenah, recently posted an interesting question posed to him from the Wisconsin State Medical Society.

A health care system employee asked whether technology could be used to facilitate the execution of a legal document, such as a health care power of attorney. A HCPOA must be signed in front of two witnesses. Many times a HCPOA is signed in a hospital prior to a surgery, which can be tricky because most health care providers preclude their employees from witnessing these documents. Therefore, the family often scrambles to find a chaplain, social worker or other visitor to witness the document being signed.

The employee wondered if someone could remotely witness the signing of a HCPOA using webcam technology with apps such as FaceTime or Skype. This would help someone sign a document without having to scramble for witnesses.

The employee contacted Ben because he is on the Steering Team for the Fox Valley Coalition for Advance Care Planning, an organization designed to improve understanding and communication for all people, their families, and their physicians in the Fox Valley. HCPOAs are an integral part of advance care planning.

Even though clients come to us because we are supposed to have the answers, sometimes we get stumped. The remote witnessing question was one such noodle-scratcher. The consensus of the listserv was that Wisconsin would probably not allow remote witnessing.

Other attorneys pointed to a consumer alert posted on the Wisconsin Secretary of State website warning residents about online notarization services. Apparently there are private companies touting this service where a person would sign a document in front of a webcam while the notary observes remotely.

The Secretary was quick to point out that in Wisconsin, the party must be physically present before the Notary Public. "A video image or other form of non-physical representation is not a personal appearance in front of a Notary Public under current state or federal laws," the alert reads. "The technology solution offered by this private company does not comply with Wisconsin law."

Based on this position, members of the listserv assumed that if remote notarization wasn't allowed, neither would remote witnessing. One attorney speculated that another individual could be off-camera pointing a gun at the head of the signer, thus coercing them to sign. This couldn't happen if the notary or witnesses were physically present.

So remote notarization isn't legal in Wisconsin...yet. In 2013, Virginia became the first state to allow its notaries to notarize documents for signers located anywhere in the U.S. or overseas. Other states, particularly rural ones like Montana, are looking into this concept, as residents sometimes have to travel more than 100 miles to reach their nearest notary.

In addition, the Uniform Law Commission recently began discussing adding remote notarization authorizing provisions to the Revised Uniform Law on Notarial Acts.

So it's possible that remote notarization and witnessing will someday be a widespread practice. While more convenient, it will certainly cut down on hugs.

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