

32<sup>nd</sup> Annual AAML Harold R. Kemp Family Law Symposium  
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## Oaths and Affirmations

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## Oaths and Affirmations

1. The Notary Modernization Act, effective September 20, 2019, permits individuals who are traditional notaries in Ohio to apply and, once approved by the notary commission, perform online notarizations. This Act also no longer requires a notary commission to be filed in the county or another office. You can verify whether someone has a notary (online or otherwise) by viewing it in the online public database.
2. Supreme Court of Ohio
  - a. On June 8, 2020, the Supreme Court of Ohio issued an Administrative Action permitting remote oaths/remote depositions, but this would expire July 30, 2020. However, on July 31, 2020, the Action was extended (2020-Ohio-3861). This is retroactive to March 9, 2020. Any oath or affirmation required by a rule of the Court may be administered remotely by using audio or video communication technology, so long as the person administering the oath/affirmation can positively ID the person taking the oath/affirmation.
  - b. The Supreme Court of Ohio issued an Administrative Action June 8, 2020 (2020-Ohio-3226) which states that during the pandemic, they have temporarily removed the notary requirement from certain forms & includes language in its place. These include the 4 family law affidavits, motion & affidavit for contempt, petitions for CPOs, etc.
3. To become an online notary:
  - a. You must already be a traditional notary or apply to become a traditional notary simultaneously
  - b. You must complete an online 2-hour class and then pass a test (80% or higher) - \$250
    - i. Ohio Notary Services, LLC is the authorized provider:  
<https://www.becomeanohionotary.com/index.cfm?pg=semwebCatalog&panel=showSWOD&seminarid=10423>
  - c. You must apply online:
    - i. Submit a certificate of completion of course and passing test to Secretary of State of Ohio - \$20 fee
    - ii. Certify you are complying with Ohio laws
    - iii. Disclose your technology vendor/system
    - iv. Disclose any license/commission revocations or any other disciplinary actions
    - v. Provide email address
    - vi. Provide decryption instructions or keys/codes to review your e-journal
  - d. Questions: (614) 644-4559

4. Performing an online notarial act
  - a. Notary must be located within Ohio, though signer may be outside Ohio
  - b. Notary must be legal resident of Ohio
  - c. Signer must appear through a real-time audio and video conferencing system
  - d. Notary must ID the individual who is signing in 1 of 3 ways:
    - i. Must have personal knowledge of the individual
    - ii. Must have evidence of the signer's identity (U.S. government issued photo ID such as valid state driver's license or passport, credential analysis of the ID provided, and Identity proofing of the signer)
      1. Credential analysis – 3<sup>rd</sup> party affirms validity of government issued ID through review of public & proprietary data sources (confirms the ID is authentic)
      2. Knowledge-based authentication (KBA) is used with most vendors – this is a form of identity proofing based on a set of questions created from public or private data sources for which the principal has not provided a prior answer
    - iii. Oath or affirmation by 1 or more witnesses appearing before the notary who can be identified by personal knowledge or #2 above.
  - e. Typical notary requirements apply – no blanks, proper notarial certificate language appears, signer understands the document & the consequences of signing it, signer can communicate directly with signer, oath/affirmation given, witness signature, etc.
  - f. Can charge up to \$25 for online notarization (per notarial act, not signature).
  - g. There is an e-seal you must use. Can be purchased by vendor.
  - h. Must keep an e-journal for term – this goes with employee if they leave employer as does the notary seal.
  - i. Must refuse to the conduct online notarization at that time if:
    - i. Cannot verify the ID the signer (i.e. fails the identity proofing test twice)
    - ii. The signer or notary must exit the session or the resolution or the quality is such that the process has become compromised (in that case, must restart from the beginning).
5. Renewal
  - a. Expires every 5 years
  - b. Must take an online notary public renewal class (1 hour provided by Online Notary Services, LLC) - \$160
6. Vendor options (note: most are helpful for real estate closings, but not family law...good option would be DocVerify for family law)
  - a. DocVerify
  - b. Notarize
  - c. Notary Cam
  - d. Pavaso
  - e. ClearSign by Nexsys
  - f. SoftPro 360
  - g. BlackKnight
  - h. SignNixc
  - i. Submitted but not approved by Secretary of State of Ohio: Zoom, Docutech, SnapDoc, DocMagic, Veritext Virtual, and Simplifile

# The Supreme Court of Ohio

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## ADMINISTRATIVE ACTIONS

June 8, 2020

[Cite as *06/08/2020 Administrative Actions, 2020-Ohio-3226.*]

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### **In re Notary Requirements for Domestic-Relations, Juvenile, General, and Probate Forms**

WHEREAS, on March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global “pandemic” requiring “urgent and aggressive action” to control the spread of COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency;

WHEREAS, certain domestic-relations, juvenile, general, and probate forms promulgated by the Court include a notarization requirement;

WHEREAS, several domestic-relations, juvenile, general, and probate matters are widely acknowledged as “matters requiring immediate attention” under the Court’s May 15, 2020, Nunc Pro Tunc Order;

WHEREAS, social distancing must be observed during the emergency period in order to mitigate the spread of COVID-19;

WHEREAS, social distancing impedes the ability to have these forms notarized in person;

WHEREAS, online notarization may not be readily known or available, may be costly for indigent litigants, and requires access to the internet;

WHEREAS, it is imperative to maintain access to the courts during the emergency period while ensuring confidence in the veracity of filings with the courts;

NOW THEREFORE, the Court hereby orders the following:

(A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall remain in effect until further order of the Court.

(B) The domestic-relations, juvenile, general, and probate forms available on the Court's website may be used by courts and parties in lieu of the similar versions of the forms requiring notarization in the Ohio Rules of Civil Procedure, the Ohio Rules of Juvenile Procedure, and the Rules of Superintendence for the Courts of Ohio.

# The Supreme Court of Ohio

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## ADMINISTRATIVE ACTIONS

July 31, 2020

[Cite as *07/31/2020 Administrative Actions, 2020-Ohio-3861.*]

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### **In re Use of Technology and Remote Administration of Oaths and Affirmations**

WHEREAS, on March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global “pandemic” requiring “urgent and aggressive action” to control the spread of COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency;

WHEREAS, social distancing must be observed during the emergency period in all court proceedings and in each court in order to mitigate the spread of COVID-19;

WHEREAS, it is imperative that courts remain operational during the emergency period and are strongly encouraged to use technology to conduct trials and proceedings remotely;

WHEREAS, Civ.R. 30(B)(6) allows a deposition to be taken by telephone or other remote means upon stipulation of the parties or order of the court;

WHEREAS, the Court’s May 15, 2020 Nunc Pro Tunc Order providing that any requirement in a rule of the Court that a party appear in person may be waived and that the party may appear remotely by use of technology expired on July 30, 2020;

WHEREAS, the Court's June 3, 2020 Order providing that an oath or an affirmation required by a rule of the Court may be administered remotely by use of audio or video communication technology expired on July 30, 2020;

WHEREAS, the Court has released over \$6,000,000 in emergency-grant funding to help local courts purchase technology equipment to deal with the impact of the COVID-19 emergency and the necessary measures to mitigate the spread of virus;

NOW THEREFORE, the Court hereby orders the following:

(A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall remain in effect until further order of the Court.

(B) As used in this order:

(1) "Rules of the Court" means the following rules promulgated by the Court:

- (a) The Ohio Code of Judicial Conduct;
- (b) The Ohio Rules of Appellate Procedure;
- (c) The Ohio Rules of Civil Procedure;
- (d) The Ohio Rules of Criminal Procedure;
- (e) The Ohio Rules of Evidence;
- (f) The Ohio Rules of Juvenile Procedure;
- (g) The Ohio Rules of Professional Conduct;
- (h) The Ohio Traffic Rules;
- (i) The Rules for Appointment of Counsel in Capital Cases;
- (j) The Rules for the Government of the Bar of Ohio;

- (k) The Rules for the Government of the Judiciary of Ohio;
- (l) The Rules of Practice of the Supreme Court of Ohio;
- (m) The Rules of Superintendence for the Courts of Ohio;
- (n) The Supreme Court Rules for the Reporting of Opinions;
- (o) Mayor's Courts Forms, Instructions, and Education & Procedure Rules.

(C)(1) Any requirement in a rule of the Court that a party appear in person or requiring in-person service may be waived by the Court, local court, hearing panel, board, or commission, as applicable. Appearance, service, or oral argument by use of technology shall be allowed if it sufficiently guarantees the integrity of the proceedings and protects the parties' interests and rights.

(2) Proceedings for which the personal appearance of a party may be waived include, but are not limited to, the following:

- (a) Arraignments pursuant to Crim.R. 10;
- (b) Pleas pursuant to Crim.R. 11;
- (c) The issuance of a warrant pursuant to Crim.R. 41;
- (d) Oral arguments pursuant to App.R. 21, provided nothing in this order shall deny a party oral argument when properly requested;
- (e) Arraignments pursuant to Traf.R. 8.

(D) Any oath or an affirmation required by a rule of the Court may be administered remotely by use of audio or video communication technology, provided the technology shall allow the person administering the oath or affirmation to positively identify the person taking the oath or making the affirmation.