

Department of State

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or Territorial law digest, and in the absence of any special information from the attorney or other person requesting the document, the officer should prepare the certificate of authentication in the form which seems best suited to the needs of the case. When in his opinion the circumstances seem to warrant, and always in connection with certificates of marriage or divorce decrees, a consular officer should include in the body of his certificate of authentication a qualifying statement reading as follows: "For the contents of the annexed document I assume no responsibility."

§ 92.39 Authenticating foreign public documents (Federal procedures).

(a) A copy of a foreign public document intended to be used as evidence within the jurisdiction of the Federal Government of the United States must be authenticated in accordance with the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 948, sec. 92(b), 63 Stat. 103; 28 U.S.C. 1741). This provision of Federal law provides that a copy of any foreign document of record, or on file in a public office of a foreign country or political subdivision thereof, if certified, by the lawful custodian thereof, may be admitted in evidence when authenticated by a certificate of a United States consular officer resident in the foreign country, under the seal of his office.

(b) The consular officer's certificate should indicate that the copy has been certified by the lawful custodian.

(c) In the absence of a consular officer of the United States as an officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document may be authenticated by a consular officer of the United States resident in Rome, Italy (22 U.S.C. 1204).

§ 92.40 Authentication of foreign extradition papers.

Foreign extradition papers are authenticated by chiefs of mission.

§ 92.41 Limitations to be observed in authenticating documents.

(a) *Unknown seals and signatures.* A consular officer should not authenticate a seal and signature not known to him. See § 92.37(a) regarding the necessity for making a comparison with a specimen seal and signature.

(b) *Foreign officials outside consular district.* A consular officer should not authenticate the seals and signatures of foreign officials outside his consular district.

(c) *Officials in the United States.* Consular officers are not competent to authenticate the seals and signatures of notaries public or other officials in the United States. However, diplomatic and consular officers stationed at a United States diplomatic mission may certify to the seal of the Department of State (not the signature of the Secretary of State) if this is requested or required in particular cases by the national authorities of the foreign country.

(d) *Photostat copies.* Consular officers should not authenticate facsimiles of signatures and seals on photographic reproductions of documents. They may, however, authenticate original signatures and seals on such photographic reproductions.

(e) *Matters outside consular officer's knowledge.* A consular officer should not include in his certificate of authentication statements which are not within his power or knowledge to make. Since consular officers are not expected to be familiar with the provisions of foreign law, except in a general sense, they are especially cautioned not to certify that a document has been executed or certified in accordance with foreign law, nor to certify that a document is a valid document in a foreign country.

(f) *United States officials in foreign countries.* An authentication by a United States consular officer is performed primarily to cause the official characters and positions of foreign officials to be known and recognized in the United States. Consular officers should not, therefore, undertake to authenticate the seals and signatures of other United States officials who may be residing in their consular districts.

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(g) *Officers of the Foreign Service in other countries.* An officer of the Foreign Service stationed in one country is not expected to authenticate the signature or seal of an officer of the Foreign Service stationed in another country. When it is necessary for the seal and signature of an officer of the Foreign Service to be authenticated, such authentication will be done in the Department of State. An official of a foreign government requesting the authentication of the seal and signature of an officer of the United States Foreign Service who is, or was, stationed in another country should be informed that the document to be authenticated will have to be sent to the Department for this purpose. Any document bearing the seal and signature of an officer of the Foreign Service which is received at a Foreign Service post from a person in the United States with the request that it be further authenticated should be referred to the Department of State.

§ 92.42 Certification of copies of foreign records relating to land titles.

In certifying documents of the kind described in title 28, section 1742, of the United States Code, diplomatic and consular officers of the United States will conform to the Federal procedures for authenticating foreign public documents (§ 92.39), unless otherwise instructed in a specific case.

§ 92.43 Fees for notarial services and authentications.

The fees for administering an oath or affirmation and making a certificate thereof, for the taking of an acknowledgment of the execution of a document and executing a certificate thereof, for certifying to the correctness of a copy of or an extract from a document, official or private, for authenticating a foreign document, or for the noting of a bill of exchange, certifying to protest, etc., are as prescribed under the caption Documentary services in the Schedule of Fees (§ 22.1 of this chapter), unless the service is performed under a "no fee" item of the same caption of the Schedule. If an oath or affirmation is administered concurrently to several persons and only one consular certificate (jurat) is executed, only one fee is collectible. If more than one person

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joins in making an acknowledgment but only one certificate is executed, only one fee shall be charged.

[22 FR 10858, Dec. 27, 1957, as amended at 63 FR 6480, Feb. 9, 1998]

DEPOSITIONS AND LETTERS ROGATORY

§ 92.49 "Deposition" defined.

A deposition is the testimony of a witness taken in writing under oath or affirmation, before some designated or appointed person or officer, in answer to interrogatories, oral or written. (For the distinction between a deposition and an affidavit see § 92.22.)

§ 92.50 Use of depositions in court actions.

Generally depositions may be taken and used in all civil actions or suits. In criminal cases in the United States, a deposition cannot be used, unless a statute has been enacted which permits a defendant in a criminal case to have a deposition taken in his own behalf, or unless the defendant consents to the taking of a deposition by the State for use by the prosecution. (For exception in connection with the proving of foreign documents for use in criminal actions, see § 92.65.)

§ 92.51 Methods of taking depositions in foreign countries.

Rule 28(b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the following four methods:

(a) Pursuant to any applicable treaty or convention, or

(b) Pursuant to a letter of request (whether or not captioned a letter rogatory), or

(c) On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States. Notarizing officials as defined by 22 CFR 92.1 are so authorized by the law of the United States, or

(d) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony.

[60 FR 51722, Oct. 3, 1995]