

LETTER OPINION
2001-L-06

March 7, 2001

Mr. Fritz Fremgen
Stutsman County State's Attorney
511 2nd Ave SE
Jamestown, ND 58401-4210

Dear Mr. Fremgen:

Thank you for your letter asking whether a county veterans' service officer or the officer's assistant may make a certified copy of a veteran's discharge papers (DD 214) which are filed with the county veterans' service officer under N.D.C.C. § 37-01-34 if the certifying official is not a notary public.

Upon request, a veteran is entitled to a certified copy of all public records without charge, including the veteran's discharge papers. N.D.C.C. §§ 37-01-34, 37-01-36. "Official documents may be proved . . . (5) . . . by the original or by a copy, certified by the legal keeper thereof." N.D.C.C. §31-09-10. The legal keeper would be either the county register of deeds or other official designated by the county commission. N.D.C.C. § 37-01-34. I assume the Stutsman County Commission designated the county veterans' service officer.

Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there is any, or if such officer is a clerk of a court having a seal, under the seal of such court.

N.D.C.C. § 31-04-10. The North Dakota Rules of Evidence authorize this method of authenticating a public record. See N.D.R. Ev. 902(4) (certified copy is self-authenticating by certificate "complying with any law of the United States or of this state"); N.D.R. Ev. 1005 cmt. ("the methods of proving official documents contained in N.D.C.C. ch. 31-09 are permissible under Rule 1005); Frost v. North Dakota Dept't of Transp., 487 N.W.2d 6 (N.D.

1992). None of these statutes or rules requires the custodian of public records to be a notary or to have the custodian's signature on the certificate notarized.¹

It is my opinion that the authorities cited above authorize a county veteran's services officer to make a certified copy of a DD 214 even if the officer is not also a notary public. A certification under N.D.R. Ev. 902(4) may be made by "the custodian or any other person authorized to make the certification." (Emphasis added).

As applied to domestic records, the phrase "other person authorized to make certification" applies to deputy custodians or others in the office of the custodian who are authorized to make copies of the records in their keeping. [The person's] authority should be assumed on the basis of [the person's] certification alone.

Frost, 487 N.W.2d at 10 (quotation omitted). Assuming the assistant of a county veteran's service officer is authorized by the officer to make certified copies of records in the possession of the office, it is my further opinion that the assistant may make certified copies of a DD 214.

Given the statutory authority described above for a county veterans' service officer or the officer's assistant to make a certified copy of a DD 214, it is my further opinion that it is unnecessary for the certifying officer to also be a notary. "The purpose of requiring a notarized signature on a document is to assure the authenticity of the signature." 1993 N.D. Op. Att'y Gen. L-127. The law presumes that the public custodian's certificate and signature are authentic. See Frost 487 N.W.2d at 10.

Along with your opinion request, you attached the current certification used by the clerk, whose signature is not notarized. I know of no reason why a certification by a county veterans' service officer or the officer's assistant which is authorized by state law would be any less acceptable without a notarization of the officer's signature. However, I note that the proposed certification by the county veteran's service officer enclosed with your letter includes a proposed seal. N.D.C.C. § 44-08-06 establishes requirements for "every seal of a court or officer of this state required or authorized to have a seal." However, I have found no authority for a county veteran's service officer to have a seal of office, nor is one

¹ It would make little sense for a custodian of public records to have to be a notary. First, notaries have no power or authority to certify copies of public records. See generally, N.D.C.C. ch. 44-06 and §§ 47-19-14.1 through 47-19-14.7. Second, a notary may not notarize the notary's own signature on a document. N.D.C.C. § 44-06-13.1(3). Consequently, if there was a requirement that a custodian of public records signature on a certification be notarized, the notarization would have to be done by a different notary.

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required under N.D.C.C. § 31-04-10 in order for the officer to make a certified copy of a record. A seal is only required under that statute if the certifying official has a seal of office.

Sincerely,

Wayne Stenehjem
Attorney General

jfc/vkk