



JUST HOW SMART IS YOUR PHONE?

by W. Christopher Barrier

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C

Coon Dog Twichell's clients were getting older (as was he, but that was not his point of concern). Just that morning, an elderly widow had cancelled an appointment to sign a beneficiary deed, (something which really needed to happen,) because she didn't feel up to the trip. That sort of thing happened with increasing frequency.

Twichell was not adverse to making house calls to confer with elderly or handicapped clients. And occasionally he would get documents signed in their homes. But, the catch was getting recordable documents, such as the beneficiary deed, acknowledged by a notary.

Until further notice...

His long-time assistant Nadine was a notary all right, but taking her with him in such instances meant closing the office for an hour or so.

A similar problem arose with the witnesses to wills, and getting proofs of will notarized. That could in fact be done later as part of the probate process, but Twichell hated to count on witnesses outliving the will signer.

Hold the phone...

On a few occasions, he had felt pretty comfortable relying on the case of Stallings v. Poteete, a 1986 ruling. In that case, which involved a lease renewal and which cited an earlier case regarding a mortgage, the notary had become familiar with the lessor's signature from notarizing prior documents.

In the same process, she had become familiar with the lessor's voice. So when she got a telephone call from the lessor assuring the notary that she had indeed signed a renewal, the notary was justified in considering the lessor to be "well-known" to her as the person signing the renewal---the purpose of the acknowledgement. If he had that fact situation before him---familiarity of signature and voice---he went ahead.

Stranger in town...

But, suppose, Twichell mused, he had taken his beneficiary deed by the widow's house and had her sign it, and then had her call Nadine, who had never met her or heard her voice? How different would that be, thought Twichell, from those occasions when a business client came in to sign documents requiring an acknowledgment and was "well-known" to Nadine only because he introduced them? In those cases, Nadine usually asked for a photo ID, not a bad idea.

Twichell's lawyer nephew "Pup" Twichell had offered to loan Coon Dog his WhyFone when he went by the widow's house with the deed. That would allow Nadine to observe the widow signing the deed and allow the widow to tell Nadine right there that she had signed it.

Instant familiarity

Pup suggested proof of wills could be handled the same way, a testator and her witnesses “appearing” before Nadine electronically, and becoming “well-known” by way of Coon Dog’s introduction and identification, the two vital elements.

Coon Dog thought Pup was on to something which could help him and his clients, but, until he had thought it through, he figured sticking with the Poteete fact situation was the wiser course.

CHRIS BARRIER is growing older with his clients at Mitchell Williams in Little Rock.