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A study prepared as part of the project:

*The Concept of Marriage Through the Prism of Imperative Requirements Theory*

Title of the study:

*Marriage in the Law on Notaries*

*(expert opinion)*

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Ministerstwo Edukacji i Nauki

NAUKA DLA SPOŁECZEŃSTWA

POJĘCIE MAŁŻEŃSTWA

*Publikacja dofinansowana ze środków budżetu państwa w ramach programu Ministra Edukacji i Nauki pod nazwą „Nauka dla Społeczeństwa"*
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**Introduction**

The legal opinion presented here was prepared under a work contract with the Foundation Institute for Constitutional Law. The work was performed as part of the task carried out within the framework of the research project: *The Concept of Marriage Through the Prism of Imperative Requirements Theory,* contract no: NdS/537637/2021/2021.

The subject of the expert opinion is the issue of marriage in notarial law. Due to the rudimentary regulation of this issue in Polish legislation, the study is devoted to the question of the impact of marriage on the practice of the notarial profession in the Polish legal system. The fact that a notary remains married means that, according to Article 84 of the Notary Act, a notary is prohibited from performing notarial acts that „concern" his or her spouse. Therefore, the subject of this expert opinion will be an analysis of the exclusion of a notary from performing notarial activities in the situation where the activity concerns the notary's spouse but also in the situation where the notary's spouse is a member of the bodies of the legal person performing the notarial activity.



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**Legal basis**

The normative acts of the Polish domestic legal system regulating the institution of marriage and the practice of the profession of notary are the legal basis of this opinion:

- Constitution of the Republic of Poland of April 7, 1997 (Journal of Laws of 1997, No. 78., item 483);
- Law of February 25, 1964 - Family and Guardianship Code (Journal of Laws of 2020, item 1359, as amended), hereafter FGC;
- Law of February 4, 2011 - Private International Law (unified text Journal of Laws 2023, item 503), hereinafter referred to as PIL;
- Law of February 14, 1991 - Law on Notaries (unified text Journal of Laws 2022, item 1799). (hereinafter referred to as LN).

**Marriage and practicing as a notary**

I. The normative act regulating the profession of notary and notarial activities in the Polish legal system is the Law of February 14, 1991. The scope of application of this Law includes the system of notaries and notarial activities. Pursuant to Article 80 § 2 of the Notary Law, when performing notarial activities, a notary is obliged to ensure proper protection of the rights and legitimate interests of the parties and other persons for whom the activity may have legal consequences. A notary is a person of public trust appointed to perform acts to which the parties are obliged or wish to give notarial form (notarial acts). A prerequisite for the proper performance of notarial acts is that the notary observes the principle of impartiality and objectivity; therefore, the legislator has provided for a legal prohibition of notarial acts performed by notaries (deputy notaries).

According to Article 84 § 1 of the LN, a notary is not allowed to perform acts concerning

1) the notary himself
2) his spouse
3) the notary's relatives or affinities in the direct line without limitation, and in the collateral line relatives and affinities up to and including the third degree;
4) persons related to the notary by adoption, guardianship, custody or in a close



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relationship.

The above-mentioned prohibition on the performance of activities with persons who have family or other types of close relationship with the notary, on the one hand, frees the notary from „dilemmas" regarding the preservation of impartiality when performing activities with the aforementioned persons and, on the other hand, strengthens public confidence in the activities performed by the notary. The institution of the notary, as a public function of great importance, cannot be indifferent to the public perception of this group of public officials. A notary, as a person of public trust, remains outside the official structure of the State but draws up notarial deeds, which, according to Article 2 § 2 of the LN, if drawn up in accordance with the law, have the character of an official document. As the Constitutional Court stated in its decision of July 7, 2011[2]: „A notary is not a free legal profession providing certain legal services, but a special type of public functionary organizationally linked to the administration of justice". The foregoing considerations support the existence of such legal regulations that eliminate the risk of a notary performing his functions solely in the interest of the client.

II. It is generally accepted in the jurisprudence that Art. 84 LN contains the prohibition of a notary to perform acts in relation to persons specified in the provision as contrary to the legal order, social order and good morals, and at the same time, indicates the obligation of a notary to prohibit official acts only in the cases specified by the law[3]. The prohibition under Article 84 of the LN is intended to protect the notary's impartiality in the act's performance and a kind of independence (independence of the notary). At the same time, it avoids the presumption that the notary has acted in the interest of the person referred to in this provision, even if the content and effects of the act do not indicate this, but the mere existence of a legal-familial bond or close factual ties could give rise to such a presumption. The prohibition in Article 84 of the LN is absolute, and the obligation to refrain from performing acts involving the persons mentioned

[2] U. 8/2008.
[3] See S. Szer, *Prawo o notariacie. Komentarz do czynności notarialnych*, Warsaw 1934, pp. 17-18, A. Oleszko, *Prawo o notariacie, Komentarz*, Part II, Vol. II, Warsaw 2011, p. 379.



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in this provision is imposed on the notary himself[4]. The notary must assess whether there are any legal or factual relations between him and the person to whom the act relates that would preclude him from performing the notarial act. While the notary's awareness of the existence of a certain family relationship, in particular, the bond of marriage (as well as guardianship, custody or adoption) and the bond of affinity arising from marriage, seems obvious, the assessment of the existence of a close relationship may already pose some difficulties.

The scope of the subject matter of this opinion determines that the focus should be on excluding a notary from performing notarial acts involving his or her spouse. However, it should not be forgotten that another type of legal-family relationship, i.e. a relationship of affinity, also arises in connection with the conclusion of a marriage. Significantly, the prohibition of a notary from performing acts concerning his spouse or relatives, according to Article 84 § 3 of the LN, continues even after the dissolution of the marriage. Thus, the following discussion will concern the prohibition of a notary from performing acts concerning his spouse and relatives, as well as acts concerning persons with whom the notary has a close relationship, particularly in informal relationships.

III. The provisions of the Law on Notaries do not define marriage in any way, so it is necessary to refer to the content of this concept, which results from other legal acts, i.e. first of all, the Constitution of the Republic of Poland and the provisions of the Family and Guardianship Code. According to Article 18 of the Constitution of the Republic of Poland, „marriage as a union of a man and a woman [...] shall be placed under the protection and care of the Republic of Poland".

There is no doubt that the prohibition to perform notarial acts, as provided for in Article 84 of the LN, applies to the notary's spouse but only to the spouse with whom the notary has contracted a marriage that produces effects under civil law, as provided for in Article 1 of the FGC. This prohibition does not, of course, apply to religious marriages that do not produce civil effects. However, a notary remaining in a marriage contracted only in a religious form will fall

[4] Cf. H. Nawara-Barcz, *Przesłanki wyłączenia notariusza na podstawie art. 84 prawa o notariacie*, „Rejent", No. 2, 2001, p. 91.



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within the prohibition of acts involving persons in a close relationship with the notary. Article 84 of the LN contains a prohibition on the performance of acts involving the notary's spouse, which implies that this prohibition begins at the time of the notary's marriage. However, there is no doubt that, prior to the formal conclusion of the marriage, the candidate(s) for the notary's spouse are persons in a close relationship with the notary, which means that they belong to another category of persons in respect of whom the notary may not perform notarial acts. However, while the mere fact of marriage is a civil law event that is recorded in the civil registry and usually known to the public, a close relationship with a person not only does not find the required formal certification but may also be a circumstance that is kept secret. Therefore, the notary's professional integrity and honesty require him not to disclose this fact but to refrain from an act involving a person with whom he has a close relationship. As stated above, the prohibition on performing a notarial act involving the notary's spouse continues even after the dissolution of the marriage, so it has the character of a prohibition that is unlimited in time. Thus, the dissolution of the marriage by divorce does not terminate the prohibition in question.

IV. The prohibition of the action of the notary also applies to affinities in the direct line and affinities in the collateral line up to the third degree.

Affinity is a legal knot created by marriage that binds one spouse to the other spouse's relatives; affinity does not exist between the husband's and wife's relatives. Husband and wife are neither relatives nor affinities in relation to each other. Since affinity is a legal relationship that binds a spouse only to persons related to the other spouse, it does not extend to spouses of the spouse's relatives. In other words, the wife's brother (colloquially: brother-in-law) will be an affinity to her husband. Still, the wife of the wife's brother (the wife of the brother-in-law) will not be his affinity (because she is not a wife's relative); the sister-in-law will be an affinity only to the wife[5]. The affinity continues despite the termination of the marriage, regardless of the legal event that led to the termination of the marriage (death of a spouse, divorce)[6]. The

[5] See S. Szer, *Prawo rodzinne*, Warsaw 1966, p. 60.
[6] In view of the wording of Article 61[8] of the Civil Code, it is obvious that since the pronouncement of divorce does not affect the existence of the affinity bond, the more so the pronouncement of separation does not affect the cessation of the affinity bond; see A. Sylwestrzak, *Skutki prawne separacji małżonków*, Warsaw 2007, Lex 2020.



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provisions of the NCR do not explicitly regulate the issue of termination of the affinity in the case of annulment of the marriage. Against the background of the original regulation of Article 26 of the NCR, the jurists expressed the opinion that the relationship ceases in the case of annulment of the marriage[7]. In support of this position, it has been pointed out that a judgment annulling a marriage has a retroactive effect and nullifies all the effects of an invalid marriage, with the exception of those relating to children and matrimonial property (see Article 21 of the NCR). Thus, it also nullifies the creation of a relationship of affinity. This position has been confirmed by jurisprudence; the Supreme Administrative Court, in its judgment of September 16, 2009[8], clearly stated that affinity ceases – with ex tunc effect – after marriage annulment. Thus, depending on whether the marriage that is the source of the affinity has ended (divorce, death, recognition of the deceased spouse) or has been annulled, the situation of affinity will evolve differently, if only in terms of the permissibility of marriage between them. The obstacle of affinity to marriage with a relative of the spouse referred to in Article 14 § 1 of the Civil Code does not arise if the previous marriage (which was the source of the affinity) is annulled.

With regard to affinity, the legislator assumes the existence of lines and degrees of affinity, which are determined in the same way as lines and degrees of consanguinity. The lineal affinity is the affinity with the spouse's ascendants and descendants, and the lateral affinity is the affinity between the spouse and the spouse's relatives in the lateral line. The degree and type of affinity of the spouse with the spouse's relatives are the same as the type and degree of affinity of the spouse with his relatives. Thus, the mother-in-law and the daughter-in-law are related in the direct line in the 1st degree of affinity, and the wife's brother (brother-in-law) is related to her husband in the 2nd degree in the lateral line (he is related to his sister in the same

[7] Thus: S. Szer, *Prawo rodzinne*, op. cit., p. 60; S. Breyer, S. Grosz, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. B. Dobrzanski, J. Ignatowicz, Warsaw 1975, pp. 94-96; J. Winiarz, [in:] *System prawa rodzinnego i opiekuńczego*, ed. J. St. Piątowski, Wrocław 1985, p. 212; A. Wojdyła, *Ustanie i unieważnienie małżeństwa a powinowactwo*, „Nowe Prawo", No. 10-11, 1988, p. 87.

[8] Judgment of the Supreme Administrative Court of 16.09.2009, II FSK/08, LEX No. 596453.



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degree in the lateral line)[9].

While the identification of the notary's spouse is not a problem, the identification of the person who executes the deed in the notary's office and who is his further affinity, for example, in the 3rd degree of consanguinity, may not be so obvious. It may be the case in particular if the notary's spouse does not maintain family contact with his relatives and the notary does not know that the person performing the activity is his affinity in such a line and to such an extent that it obliges him to refuse to perform the activity based on the prohibition in Article 84 of the LN.

IV. The provision of Article 84 of the LN uses an indefinite phrase, indicating that a notary may not perform any notarial act that „concerns" his spouse or his relatives in the direct line and relatives in the collateral line up to the third degree. According to the prevailing view in the literature, the term „concerns" should be interpreted broadly[10]. Thus, a broad interpretation implies that a notary should not perform an act with a spouse or relatives (even after the marriage has ended) if these persons are personally involved in the act, have a direct or indirect interest in the act performed or are likely to benefit in any way from the act performed. It also applies to the situation in which such persons, although not personally involved in the action, are represented by a lawyer or legal representative.

There are some doubts about the situation in which a notarial act performed by a notary involves a legal entity in whose collegial bodies the notary's spouse or his relatives are members and about the situation in which these persons are members of corporate legal entities. This problem should be considered by analogy with the prohibition of notarial acts when they concern the notary himself.

Legal scholars point out that a notary is not allowed to perform notarial acts concerning

[9] See: Justification of the judgment of the WSA in Bialystok dated March 14, 2019, II SA/Bk 620/18, LEX No. 2639623; „The affinity line is a faithful representation of the kinship line. The degree of affinity, like the degree of consanguinity, is determined according to the number of births and corresponds to the degree of consanguinity of the affiant spouse. Thus, degree one affinity always corresponds to degree one kinship, so that children of the spouse who are not common children of the spouses (i.e., stepchildren and stepchildren) are first-degree affinities in the direct line to the other spouse".
[10] See A. Oleszko, op. cit., p. 400.



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legal entities in which he is a management, control or supervisory body member [11]. It is also argued that a notary is not allowed to perform acts concerning legal entities of the corporate type operating *for-profit*, in which the notary is a partner, due to the partner's personal interest in such legal entity's effective and profitable operation. The same unequivocal prohibition should be applied to the spouse of a notary who performs such functions or is a partner in *a for-profit* legal entity[12].

However, in the case of legal entities of the *not-for-profit* corporate type, of which a notary is a member, it is argued that the non-existence of the prohibition of article 84 of the LN is due to the inability of a notary to benefit financially from membership of such a legal entity since it does not seek a profit that can be distributed to its members. It seems that this principle should also apply to the spouse or relative of a notary who is a member of such a legal entity.

Again, however, attention must be paid to the issue already signalled above, i.e. the notary's knowledge that the act performed by a legal person „may concern" his spouse, his affinity or a person in a close relationship with the notary. And just as, in the case of an act performed by a natural person, the notary's knowledge that he has a marital relationship with that person is obvious, it is less obvious when it comes to his relatives, with whom he may not have a close relationship.

The situation becomes even more problematic when a notary performs a notarial act with a legal entity whose management, control or supervisory bodies are represented by his close or distant relatives. In this case, due diligence on the part of the notary requires that the persons holding positions in such bodies of the legal person should be verified in accordance with the entries in the National Court Register. However, such verification of the data of the persons entered in the National Court Register will not always lead to a positive or negative verification and, consequently, to the notary's refraining from performing an act concerning the legal entity. It may be the case, in particular, when the notary does not maintain relations with his close or distant relatives, and the personal data (name and pesel number) published in the

[11] See M. Malecki, *Komentarz do art. 84 Prawa o notariacie*, [in:] *Prawo o notariacie. Komentarz. Wzory aktów notarialnych i poświadczeń*, ed. W. Gonert, Lex 2022.
[12] Cf. H. Nawara-Barcz, op. cit., pp. 101-103.



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National Court Register do not allow him to determine whether these persons fall within the catalogue referred to in Article 84 of the LN[13].

With regard to the membership of persons related to the notary by marriage or affinity in legal entities of the corporate *for-profit* type, while the spouse, by definition, should have such knowledge with regard to his or her spouse, it is difficult to require the notary to have such information with regard to his or her relatives in the direct or collateral line[14].

V. In order to prohibit a notary from performing acts involving persons with whom he has a close relationship, a few words are necessary. Legal scholars indicate that the circle of persons close to the notary should be understood broadly, including persons with whom the notary has a relationship with strong emotional ties[15]. Among such persons are indicated a fiancé, cohabitant, partner, unmarried foster child, and persons without a special emotional bond with the notary, such as an employee of the notary's office[16]. Concerning these persons, the prohibition of the notary to perform acts does not arise from a specific legal and family relationship created by marriage, the establishment of guardianship or custody, or the performance of an adoption but from the fact that the notary has a close relationship with such a person. These relationships, by their very nature as close relationships, maybe a factor that undermines the full impartiality of the notary when performing a notarial act concerning such a person, which a notary, as a person of public trust, cannot afford.

VI. A few words are needed to discuss the prohibition of a notary from performing acts

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[13] See: Order of the Olsztyn SO of October 17, 2018, IX Cz 726/18, LEX No. 2574819, in which the court dismissed a complaint of refusal to perform a notarial act, in a situation where the notary refused to perform an act with the participation of a company in which one of the members of the board of directors was an affinity of the notary in a lateral line in the third degree.

[14] See M. Malecki, Commentary to Article 84 of the Notary Law, [in:] Notary Law. Commentary. Specimens of notarial acts and certifications, ed. W. Gonert. Lex 2022.

[15] See: H. Nawara-Barcz, op. cit., p. 92; A. Oleszko, op. cit., p. 403.

[16] Differently, E. Gniewek (*Zakres podmiotowy wyłączenia notariusza podczas dokonywania czynności z „osobami bliskimi"*, „Monitor Prawniczy", No. 19, 2013. p. 1062), who believes that the relationship of proximity referred to in Article 84 of LN should arise only from close emotional ties based on social relations similar to family relations; so also M. Małecki, Commentary to Article 84 of the Notary Law, op. cit. Such a position, however, seems questionable to limit the circle of persons in „close relations" with the notary only to fiancées, cohabitants, partners, and exclude from this catalog, for example, employees of the notary's office.



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involving persons with whom he has a close relationship.

Pursuant to Article 71h of the LN, which deals with the exclusion from being a selection committee member during the preliminary examination of the notary's application. Pursuant to this provision, a member of the selection committee shall be excluded from the work of the selection committee for the duration of the preliminary examination if the candidate qualified for the preliminary examination:

1) his spouse;

2) a person related to him by:

  a) consanguinity or affinity to the second degree,

  b) adoption;

3) a person in common life with him;

4) a person who has any other personal relationship with the applicant that might cast doubt on the impartiality of a selection committee member.

Also, in this case, to ensure the complete impartiality of the selection committee member, the legislator provides for exclusions based on the existence of a specific family or factual relationship with the candidate. As in the case of inclusion under Article 84 of the LN, the grounds for exclusion remain in force despite the cessation of marriage or adoption. In addition, the members of the selection committee must declare in writing, before the beginning of the preliminary examination, that they do not have any relationship with any of the candidates qualified for the preliminary examination, as referred to in Article 71h of the LN, and untruthfulness or concealment of the truth in the declaration will result in criminal liability under Article 233 § of the Criminal Code.

It should be noted that in the case of exclusion of a member of the selection committee on the grounds of affinity with the candidate, the prohibition applies to those related to the notary only up to the second degree of affinity (regardless of whether it is affinity in the direct line or the collateral line).

**Summary**



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The purpose of this expert opinion was to analyze the provisions of Polish law relating to the effects of a notary's marriage on the exercise of his profession, which is a profession of public trust. The prohibitions contained in the provisions of the law on the performance by a notary of activities concerning himself, his spouse, relatives and relatives by affinity, as well as persons related to the notary by adoption, guardianship, custody or who are in a close relationship with him, serve to maintain the impartiality of the notary in the performance of notarial activities and to strengthen public confidence in the institution of the notary. Undoubtedly, from the legislator's point of view, the legal relationships arising from marriage (i.e. the legal relationship of marriage itself and the relationship of affinity) are such strong legal ties that, even after the termination of the marriage, the prohibitions on performing notarial acts, which apply to the notary's spouse and his or her relatives in the direct line without limitation and in the collateral line up to the third degree of consanguinity, continue to apply even after the termination of the marriage. The absence of a legal bond in the form of marriage and, consequently, of a relationship of affinity with the spouse's relatives, and the fact that the notary continues to have a close but not formalized relationship with a particular person (e.g., cohabitation), no longer result in an indefinite prohibition on the notary performing notarial acts with such a person. The „proximity" relationship between a notary and, for example, his fiancée or concubine may cease to exist and disappear altogether, which excludes the prohibition of the notary from performing notarial acts that could involve such a person. However, in the case of marriage (as a result of which a relationship of affinity is created), this prohibition becomes indefinite and independent of the termination of the marriage.



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**Legal Acts:**

1. Constitution of the Republic of Poland of April 7, 1997 (Journal of Laws of 1997, No. 78., item 483).
2. Law of February 25, 1964 – Family and Guardianship Code (Journal of Laws of 2020, item 1359, as amended), hereinafter FGC.
3. Law of February 14, 1991 – Law on Notary Public (consolidated text OJ 2022, item 1799).

**Case law:**

1. Constitutional Court ruling of U. 8/2008.
2. Judgment of the Supreme Administrative Court of 16.09.2009, II FSK/08, LEX No. 596453.
3. Judgment of the WSA in Białystok dated March 14, 2019, II SA/Bk 620/18, LEX no. 2639623.
4. Order of the Olsztyn District Court dated October 17, 2018, IX Cz 726/18, LEX No. 2574819.

**Bibliography:**

1. Breyer S., Grosz S., [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. B. Dobrzanski, J. Ignatowicz, Warsaw, 1975.
2. Gniewek E., *Zakres podmiotowy wyłączenia notariusza podczas dokonywania czynności z „osobami bliskimi"*, „Monitor Prawniczy", No. 19, 2013.
3. Oleszko A., *Prawo o notariacie, Komentarz*, Part II, Vol. II, Warsaw 2011.
4. Małecki M., *Komentarz do art. 84 Prawa o notariacie*, [in:] *Prawo o notariacie. Komentarz. Wzory aktów notarialnych i poświadczeń*, ed. W. Gonert, Lex 2022.
5. Nawara-Barcz H., *Przesłanki wyłączenia notariusza na podstawie art. 84 prawa o notariacie*, „Rejent", No. 2, 2001.
6. Sylwestrzak A., *Skutki prawne separacji małżonków*, Warsaw 2007, Lex 2020.
7. Szer S., *Prawo o notariacie. Komentarz do czynności notarialnych*, Warsaw 1934.



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8. Szer S., *Prawo rodzinne*, Warsaw 1966.
9. Winiarz J., [in:] *System prawa rodzinnego i opiekuńczego*, ed. J. St. Piątowski, Wrocław 1985.
10. Wojdyła A., *Ustanie i unieważnienie małżeństwa a powinowactwo*, „Nowe Prawo", No. 10-11, 1988.

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