Clarification and Dilemma of Notarization Practice Area

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Abstract
The current laws of our country have few and unclear provisions on the notarization practice area, so there are many problems in practice, such as the deviation of understanding of the notarization practice area, the notarizing dilemma caused by the unclear provisions on the notary practice area, and the dispute over the validity of the notarial certificate issued by the notary organization in violation of the notarizing practice area. Through the discussion of the connotation of the notarization practice area, the existing problems, the solutions, and the validity of the notarial certificate violating the practice area, this paper aims at refine the notarization practice area and make it more reasonable and operational by improving the laws and regulations.

Keywords
notarization practice area; notary organization; notarial certificate effect; dilemma

1.Introduction

As an integral part of the law, notarization law should not only pay attention to the entity but also the procedure. However, in the practice of notarization, the notarization practice area, as an important part of the notarization procedure, has not received due attention but has a trend of dilution. Therefore, it is necessary to clarify the meaning of the notary practice area, the shortcomings of the current law on the notary practice area, and the validity of the notarial certificate issued in violation of the law. To achieve the purpose of paying equal attention to both entity and procedure in the practice of notarization.

2. The meaning of the notarization practice area

Article 13 of the Rules of Notarization Procedure stipulates the meaning of the notarization practice area, which refers to "the judicial administrative organs of provinces, autonomous regions, and municipalities directly under the Central Government shall, by the provisions of Article 15 of the Notarization Law and Article 10 of the Measures for the Administration of Notarization Institutions, as well as the establishment plan of local notarization institutions, delimit the geographical scope of notarization n institutions to accept notarization business".Therefore, the notarization practice area is the plane and horizontal division of the geographical scope of the notarization business accepted by the judicial administrative organs.

2.1 The notarization practice area is not the notary's practice area.

In the world, there are two legislative modes of notarization: institution standard and notary standard. Insti-

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tutional standard means that the credibility of notarial certificates is guaranteed by notarial institutions, notaries practice in notarial institutions, and notary institutions bear the first responsibility. Article 2 of the Notarization Law and Article 4 of the Measures for the Administration of the Practice of Notarization Institutions are the legislative mode of notarization institutions. That is to say, the acceptance, handling, and issuance of notarial certificates in notarization business are all in the name of notarization institutions, which are separated from the whole of notarization institutions, and notaries engaged in notarization activities in the name of individuals have no legal effect. Notaries are only the "owners" and"workers" of notarization institutions.

Article 23 of the Notarization Law stipulates that notaries shall not practice in more than two notarization institutions at the same time, so the scope of practice is limited by the practice area of their notarization institutions. Notaries can only accept notarization business within a certain area. Article 15 of the Measures for the Administration of the Practice of Notaries stipulates how to change the practice institution of a notary: "It shall be approved by the notary institution to which it belongs and recommended by the notary institution that intends to appoint the notary, and shall be reported to the judicial administrative organ of the province, autonomous region or municipality directly under the Central Government for approval after being approved by the local judicial administrative organ.".If a notary changes his practice institution across provinces, autonomous regions, or municipalities directly under the Central Government, the judicial administrative organ of the province, autonomous region, or municipality directly under the Central Government where the notary is to be appointed shall go through the formalities for the approval of the change after the approval of the judicial organ of the province, autonomous region or municipality directly under Although notaries can practice within the territory of the People's Republic of China through the performance of relevant procedures, they are still dependent on notary institutions. Therefore, the practice area of notarization in China only refers to the practice area of notarization institutions.

2.2 Notarization institutions shall only be restricted by the area of notarization practice when accepting applications.

Notarization institutions are only restricted by the practice area when accepting applications, which means that notarization institutions are not restricted by the practice area in the process of handling notarization business. For example, in the process of handling the notarization business, notaries go to places outside the practice area for verification, to relevant units to understand the situation, collect material evidence, documentary evidence, etc. Therefore, the notarization practice area is a restriction on the notarization institutions when accepting notarization applications.

2.3 The provincial judicial administrative organ has the right to determine the notarization practice area.

The main body of the notarization practice area is the provincial judicial administrative organ. There are three situations when the notarization practice area are determined: one situation is that the practice area of a newly established notarization institution is determined at the time of examination and approval of its establishment; the other situation is that two or more notarization institutions is merged into one notary institution or one notary institution is divided into two or more notary institutions. In this case, the practice area of a notary institution is determined at the time of examination and approval of a merger or division. The

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third situation is that the judicial administrative organs of provinces, autonomous regions, and municipalities directly under the Central Government take the initiative to adjust the notarization practice areas. For example, recently, to facilitate the people and enterprises, the Anhui Provincial Department of Justice has adjusted the practice area of the notary office to the whole province, and other notarization matters except real estate are handled by the whole province.

2.4 Notarization practice areas are not necessarily divided according to administrative divisions.

Article 7 of the Notarization Law stipulates that "by the principle of overall planning and rational distribution, notarial institutions may be established in counties, cities not divided into districts, cities divided into districts, municipalities directly under the Central Government or municipal districts; one or more notarial institutions may be established in cities divided into districts and municipalities directly under the Central Government".Since the establishment of notarization institutions does not correspond to administrative divisions, it is impossible to divide the notarization practice areas completely according to administrative divisions. If only one notarization institution is set up in a city with districts, its practice area is the whole urban area, not a district.

2.5 The same notary office handles the case of the mainland or the mainland, The practice area of notarization matters is different from that of notarization matters involving Hong Kong, Macao, Taiwan, and foreign affairs.

Because of the strict requirements for Hong Kong, Macao, Taiwan, and foreign-related certification matters, once problems arise, the impact is greater, especially for Taiwan-related notarization matters, so some notarization institutions can handle notarization matters in the mainland or the hinterland, but not necessarily in Hong Kong, Macao, Taiwan, and foreign-related notary matters. As a result, the practice are as of some notarization institutions in handling notarization matter in the mainland or the mainland are inconsistent with those in handling notarization matters involving Hong Kong, Macao, Taiwan, and foreign affairs. For example, some county-level notary institutions do not have the qualifications to handle notary matters involving Hong Kong, Macao, Taiwan, and foreign affairs; Some notarizat institutions handle notarization matters in the mainland or the mainland in a smaller area than those in Hong Kong, Macao, Taiwan and foreign-related notarization matters, such as some district-level notary institutions, if the county-level notary institutions under the jurisdiction of the city do not have the qualifications to handle notarizat ion matters involving Hong Kong, Macao, Taiwan and foreign-related matters, they may not have the qualifications to do so. Then the practice is a of the local municipal notarization institutions for notarization matters in the mainland or the mainland may be smaller than the practice area for notarization matters involving Hong Kong, Macao, Taiwan, and foreign affairs; in addition, the practice areas of some notary institutions for notarial matters in the mainland or the mainland are equal to the practice areas for notarial matters involving Hong Kong, Macao, Taiwan and foreign affairs.

3. Current Dilemma of Notarization Practice Area

Although Article 25 of the Notarization Law, Articles 14, 15, and 16 of the Rules of Notarization Procedure, and Article 10 of the Measures for the Administration of Notarization Institutions has made provisions on

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the notarization practice area, the provisions on the notarization practice area are not very clear, so confusion is inevitable in practice.

3.1 The notarization business is not within its practice area.

Notarization institutions find that the notarization matters accepted are not within their practice areas, or that interested persons raise objections to the practice areas. After verification, the notary institution also considers that the notarization matters are not within its practice area, how to deal with them at this time? Do not handle? Article 31 of the Notarization Law and Article 48 of the Rules of Notarization Procedure list nine cases of non-notarization, but they do not include the case that the notarization business accepted by the notary institution is not within the scope of the notary institution's practice area.

Termination of notarization? Article 50 of the Rules of Notarization Procedure also lists the circumstances that should be terminated, but it does not list the above circumstances.

There is no explicit provision for the above situation, whether it is not handled or terminated. In addition, how to notify the applicant of notarization matters? Is it an oral notice a written notice, or both, and there is no explicit provision; after notifying the applicant of the notarization matters, how to deal with the materials provided by the applicant to the notary office, is it returned to the applicant by the notary office or transferred directly to the notary organization that has the right to accept the notarization matters?

In this case, the author believes that we can draw lessons from the provisions of article 36 of civil procedure Law on the transfer of jurisdiction and the designation of jurisdiction. The notary office that accepts the notarization business shall directly transfer the materials submitted by the applicant to the notary office that has the right to accept the notarization business and notify the applicant in writing of the above situation, and the notary office to which the transfer is made shall not transfer them again. If the transferred notary institution also considers that it has no right to accept the transferred notarization matter, it shall be designated by the common superior judicial administrative organ of the transferred notary institution, and the notary institution that considers that it has the right to accept the notarization matter.

3.2 Notarization matters in which the applicant has more than two immovable properties and is not in the same notarization institution's practice area

Article 25, paragraph 2, of the Notarization Law and Article 14, paragraph 2, of the Rules of Notarization Procedure both stipulate that notarization matters involving real estate shall be accepted by the notary office in the place where the real estate is located. Notarization matters involving real estate mainly refer to the transfer of real estate, which includes the transfer of ownership and use rights of real estate, such as sale, gift, lease, exchange, inheritance, etc.

Notarization matters involve two or more real estate and are not in the same notarization institution's practice area. When the applicant handles the inheritance of the above-mentioned real estate, he needs to go to different notarization institutions, which will cause many inconveniences to the parties: wasting the time of the parties and increasing the economic costs the parties.

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The notarization of real estate inheritance involving multiple places and not in the same notarization institution's practice area shall be handled by one of the notarization institutions in the place where the real estate is located. According to the provisions of the current Notarization Law and the Notarization Procedure Rules, the answer is no. However, the author believes that it is more reasonable for any notarization institution in the place where the real estate is located to handle the above situation. First, it can save the time and cost of the parties. At present, the pace of people's lives is getting faster and faster. If the parties are required to go to the notary office where all the real estate is located for notarization regardless of the objective reality, it will inevitably take a lot of time for the parties. If any notary office in the place where the real estate is located is allowed to handle the notarization business of the real estate involved, the parties will choose the notary office in the place where the real estate is located close to them to handle it, thus greatly saving the time of the parties. Second, it can reduce the cost of the parties to travel to and from many places. The cost of applying for notarization in different places is bound to be more than the cost of one-time processing in the same notarization institution. Thirdly, this is indeed inconsistent with Article 25 of the Notarization Law, which is also unreasonable in the legal provisions, so this article needs to be amended.

Notary institutions should draw lessons from the provisions of consolidated jurisdiction in the theory of civil procedure law. The author thinks that the following conditions must be met for the merger of notarization matters that should be accepted by different notarization institutions and handled by one notarization institution: first, the notarized applicants are the same; second, the notarized matters are the same; if the three subject matters are all real estate, any notarization institution in the place where the real estate is located can handle them, but with the acceptable time as the boundary point, the first acceptance notary institution shall handle them; If the subject matter is movable property and immovable property, the notary office in the place where the immovable property is owned shall be merged.

3.3 Notarization matters that a notary cannot apply for in the notary office where he works.

The notarization matters that a notary needs to handle can only be handled by the notary office where he works, but the notary office where he works cannot handle them. The second paragraph of Article 11 of the Rules of Notarization Procedure stipulates that "notaries and other staff members of notarization institutions shall not apply for notarization on behalf of the parties concerned in their notary institutions".This article does not prohibit a staff member of a notary office from applying for notarization in the notary office where he works as a party if the provisions of this article are taken literally. However, from the legal point of view, this article should be interpreted in an expanded way, that is, the staff of the notary institution can not apply for notarization on behalf of the parties in the notary institution, nor can they apply for notarization in the notary institutions where they work as the parties; to establish this article, the staff of a notarial institution may not apply for notarization matters as an applicant in the notarial institution where they work, because if this is allowed, it will "affect the image of the notarial institution."If the notarization matters applied for by notaries and other staff members of notary institutions can only be handled by the notary institutions where the notaries are located, such as the inheritance of real estate, there will be a conflict between Article 11, paragraph 2, of the Rules of Notarization Procedure and Article 14 of the Rules of Notarization Procedure.

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Notaries should be avoided. Article 23 of the Notarization Law stipulates: "A notary shall not commit any of the following acts: handling notarization for himself or his close relatives or handling notarization in which he or his close relatives have an interest.".Both the Rules of Notarization Procedure and the Measures for the Administration of Notary Practice have made explicit provisions for the avoidance of notaries. The situation that notaries should avoid mainly occurs in the county notary offices in the central and western regions. Because there are fewer notaries, especially notaries, in these notary offices, there are only two notaries in several notary institutions. If one of the notaries himself or his close relatives needs to handle notarization matters that must be handled by two notaries, such as notarization of real estate preservation evidence. The above situation cannot be handled by a notary institution with only two notaries, because one notary has to withdraw; in addition, according to the second paragraph of Article 14 of the Notarization Procedure Rules, due to the limitation of the practice area, other notary institutions cannot handle the above notarization matters, which will damage the right of notaries themselves or their close relatives to apply for notarization.

The above two situations involve the overall avoidance of notarization institutions. China's Notarization Law, Rules of Notarization Procedure, and Measures for the Administration of the Practice of Notarization Institutions have not stipulated the overall avoidance of notarization institutions. The idea of "overall avoidance of notarization institutions" is put forward subjectively in the hope that the notarization procedure will be more perfect in the system design, to eliminate the avoidance of notaries in some notarization matters. However, the notary undertaking this notarization matter communicates with the evading notary in private to form "formal avoidance" and some situations that do not conform to the existing laws, regulations, and rules may affect the legal principles of fairness and impartiality in essence; Because our country adopts the legislative mode of notary institution-based, notaries handle notarization matters on behalf of notary institutions, the parties question the fairness of notaries they question the fairness of notary institutions; the parties apply for withdrawal of notaries they apply for withdrawal of notarial institutions. If any of the above two situations occurs, the notary institution shall withdraw as a whole, and the matter may be accepted by the notary institution designated by the higher judicial administrative department.

3.4 Notarization matters are within the practice areas of multiple notary institutions, but they are not accepted.

Notarization matters are not accepted in the practice areas of many notarization institutions, which is less likely to occur, especially in the notarization institutions that are transformed from administrative units into self-supporting institutions. A low probability of occurrence does not mean that it will not occur. For the above situation, the Notarization Law and the Rules of the Notarization Procedure does not provide for the remedies of the parties. In this case, the rights and interests of the parties to apply for notarization according to law will be infringed. The author believes that in this case, the parties should be given the right to choose, and the chosen notary institution has no right to refuse.

4. The validity of the notarial certificate in violation of the notarization practice area

Wang Bin believes that the notarization documents issued for accepting notarization in violation of the pro-

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visions should not produce the legal consequences of invalidity of notarization; Jin Tao believes that the notarial certificate issued by the notary institution for accepting notarial matters in violation of the notarization practice area should be recognized as valid. For example, Jin Tao believes that notarial jurisdiction should be liberalized, but before breaking it, the notarial market must be unified

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In judicial practice, there are also differences in the determination of the validity of notarial certificates issued by notarization institutions in violation of notarization practice areas, such as Article 6 of the Guiding Opinions on the Examination and Recognition of Notarization Evidence in Intellectual Civil Litigation (Trial Implementation) issued by Zhejiang Higher People's Court, which stipulates that "Notarization evidence collection does not conform to the jurisdiction of notarization law."Generally, it does not affect the validity of evidence. Some are found to be invalid, such as the Judicial Proposal on Notarization Evidence of Network Infringement from the Hunan High Court to the Hunan Provincial Department of Justice, which holds that the agent ad litem of the copyright owner leads the notary of the notary institution in his domicile to the place where the defendant is located for the preservation of notarization evidence, thus resulting in the practice of notary institutions in different places. Because the notary institution violates the provisions of the Notarization Law and relevant laws and regulations, the notarization act is not legitimate, and the court refuses to accept the notarization evidence.

The author believes that the notarial certificate issued by the notary institution in violation of the notarization practice area should be denied the effect stipulated in Article 69 of the Civil Procedure Law of the People's Republic of China, since the notarial certificate should not have a legal effect, for the following reasons:

First of all, from the legal point of view, it is unreasonable to affirm the validity of the notarial certificate issued by the notarial institution in violation of the notarization practice area. Modern legal theory holds that the realization of justice refers not only to the justice of results but also to the justice of procedures[6]. Procedure is no longer a tool that only serves the entity, but has independent legal value. As an important part of the notarization procedure, the independence of the notarization practice area should be paid attention to and its legal value should be respected. The view that the notarization practice area is insignificant and the validity of the notarial certificate issued by the notary office that violates the notarization practice area is a rejection of the value of procedural justice and a manifestation of attaching importance to the entity rather than the procedure.

Secondly, from the provisions of existing laws and regulations, we should deny the legal effect of the notarial certificate issued by the notarial institution in violation of the notarization practice area. Article 69 of the Civil Procedure Law of the people's Republic of China stipulates that the People's court shall take the legal facts and documents notarized by legal procedures as the basis for ascertaining facts. However, unless there is evidence to the contrary sufficient to overturn the notarization. This legal provision affirms the importance of the legality of the notarization procedure, and at the same time conforms to the requirements of the exclusionary rule of illegal evidence. The reverse interpretation of the first sentence of Article 69 of the Civil Procedure Law results in that legal fact and documents that have not been notarized by legal procedures should not be used by the people's court as the basis for ascertaining facts.

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Article 29 of the Measures for the Administration of the Practice of Notary Institutions stipulates that "Notary institutions shall, by the provisions of Article 25 of the Notarization Law, accept notarization business within the practice areas approved by the judicial administrative organs of provinces, autonomous regions and municipalities directly under the Central Government".The second paragraph of article 36 stipulates that "if a notary institution violates the provisions of Article 25 of the Notarization Law and accepts notarization business across the practice area, it shall be stopped by the judicial administrative organ of the city where it is located or where it is divided into districts, and shall be ordered to make corrections".From the perspective of legislative intent, the legislator does not support act of violating the notarization practice area; on the other hand, if it is affirmed, it is suspected of encouraging notaries to do illegal things in a disguised way. This is inconsistent with the identity of notaries and the professional ethics of notaries.

Thirdly, in terms of enhancing the credibility of notarization, it is affirmed that the validity of the notarial certificate issued by the notarial institution in violation of the notarization practice area is contrary to good faith. The credibility of notarization is the basis for the survival, development, and growth of the notarization industry. The improvement of the credibility of notarization is restricted by multiple factors, and the quality of notarial certificates is one of the important factors affecting the credibility of notarization.In practice, because the acceptance standards of different notary offices for the same notarization matter are not the same, if there is no restriction on the notary institutions that accept notarization matters in violation of the notarization practice area, and then affirm the legal effect of the notatary certificates issued by the notary institutions in violation of the notarizat ion practice area, it will make the high-risk notarizat ion business flow to the loose standard. And then affect the credibility of notarization, and ultimately will not be conducive to the healthy development of the entire notarization industry.

5.Conclusions

This paper argues that the notarization practice area should be refined rather than diluted, and the validity of the notarial certificate issued by the notary organization in violation of the notarization practice area should be denied rather than affirmed. This paper proposes to amend the unreasonable areas of notarization practice in the existing laws and regulations, supplement the areas that are not detailed, and increase the areas that should be stipulated but not stipulated. Theoretically, it refines the connotation and extension of the notarization practice area on the original basis, puts forward corresponding improvement measures for the problems existing in the notarization practice area, and puts forward its views on the validity of the notarial certificate issued by the illegal notarization practice area, which is innovative in theory; The refinement and perfection of the notarization practice area in this paper can make the notary not only accurately grasp the notarization practice area, but also avoid the situation that the notarial certificate is not accepted by the user department because of the illegal practice area, which has certain reference value and guiding significance in the practice of notarization.

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