

Relieving the Judiciary

Did you know?

Notaries sometimes even act as judges in litigation. For instance, the Constitutional Court of Bavaria regularly counts one or two notaries among its judges⁸² and the German Federal Court of Justice comprises notaries at the side of full-time judges in lawsuits against notaries for professional misconduct.⁸³

Notaries relieve the judiciary. The first way of doing so is to avoid litigation *ex post* by relying on authentication *ex ante*.⁸⁴ At least four dimensions can be distinguished in this context. First, the authentication procedure optimizes contracts, leaving little room for ambiguity.⁸⁵ Second, it provides evidence, allowing to predict and thereby avoid court decisions.⁸⁶ This evidence dimension also concerns the occurrence of facts.⁸⁷ Indeed, courts sometimes outsource parts of their evidence proceedings to notaries.⁸⁸ Third, authentic acts serve as anticipated judgments,⁸⁹ making it superfluous to sue to obtain a title for foreclosure. Fourth, even if a dispute has arisen, notaries still prevent litigation since some civil law countries require parties to seek mediation at a notarial office before they are allowed to file a lawsuit.⁹⁰

The second way of relieving the judiciary concerns court proceedings in non-contentious matters. Sometimes, notaries entirely replace judges. For instance, in some civil law countries, notaries can perform marriages and pronounce divorces, provided that everyone agrees.⁹¹ Sometimes, they make judicial proceedings such as the nomination of a custodian superfluous because notarial general powers of attorney allow for sufficient representation.⁹² Sometimes, they leave the judicial decision in place but prepare it in significant ways, e.g. by drafting the application for an adoption, a recognition of paternity, or a certificate of inheritance.⁹³

Key takeaways: Notaries relieve the judiciary by avoiding litigation and non-contentious court proceedings.