

**"The Latin Civil-law Notary: Florida's Competitive Advantage in
Alternative Dispute Resolution with Latin America"**

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**The Latin Civil-law Notary: Florida's Competitive Advantage in
Alternative Dispute Resolution with Latin America**

Introduction

The modern Latin or civil-law notary is a: i. private legal professional, ii. an advisor and drafter of legal documents for private parties, iii. permanent record-keeper of a transaction, and iv. semi-official with the power to authenticate delegated from the state.¹

Additionally, a document such as a will or deed sealed by a civil-law notary carries a high presumption of authenticity and correctness in most Latin American and other civil-law jurisdiction.²

In the U.S., Puerto Rico maintains a Latin notary system.³ In Latin America, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Paraguay, Peru, and Uruguay all practice the Latin civil-law notary.⁴ The implications for use of the civil-law notary by U.S. parties in the future is obvious. The U.S. is a party to the North American Free Trade Agreement (NAFTA) with Mexico.⁵ The U.S. is also a party to the Central American Free Trade Agreement (CAFTA) with El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic.⁶

Additionally, the U.S. has trade agreements with other Latin American countries like Chile and Peru, as well as, increasing economic activity with Brazil.

Civil-law notaries are expected to act as honest brokers and to stand behind their determinations of the enforceability of contracts and legality of corporations.⁷ This characteristic positions the civil-law notary as a unique actor in the effort to not only set up transactions but also resolving disputes that may arise after the transaction commences. A Florida civil-law notary by definition has a foot in both the common and civil law worlds and has the ability to serve as a alternative dispute resolution service provider. Many trade agreement, such as the NAFTA and the CAFTA, have arbitration provisions so that parties can submit their disputes to a tribunal which is not a court of either party's home country. However, even the formal arbitration process can be time consuming and costly. What is needed is a more efficient process for settling smaller disputes between foreign parties. The Florida civil-law notary program could be used as a private tribunal program especially for smaller disputes between parties in Florida and Latin America.⁸

This note will explain the traditional role of the notary within the civil law system. Next, I will look at the new

civil-law notary program in Florida and its benefits for Florida citizens and practicing attorneys. Finally, I will examine the potential benefits of the civil-law notary program in Florida and the potential for these new notaries to be used in the international alternative dispute resolution context.

I. Role of the Notary in the Civil Law System

a. History

The civil-law notary traces its history back to Ancient Rome.⁹ Private professionals in Ancient Rome, known as tabelliones, wrote and kept legal documents (such as wills), gave legal advice, and were closely regulated by the states.¹⁰ However, these professionals lacked the power to authenticate.¹¹

That power to authenticate would come as the roots of Roman law spread throughout Europe. Continental European law continued the tradition of the Roman tabelliones.¹² During the Middle Ages, notaries were vital to the conduct of trading and business in the city-states of Italy and France.¹³ In 1862, the Spanish Notarial Law required a notary have a specified post-secondary education or be a lawyer.¹⁴ The Spanish law also created a new hierarchy based on seniority and merit as well as labeled the notary as a "public functionary" for the first

time.¹⁵

The development of the civil-law notary continued as Spain embarked for the Americas. Conquistadores brought civil notaries with them to the Americas.¹⁶ In the colonies, Spain continued to carefully screen and test candidates for the office of *notario publico*.¹⁷

b. Functions of the Notary in Latin America

The description of the characteristics of the modern civil notary can be found in the Spanish Notarial Law of 1862 which is substantially still in effect to this day.¹⁸ The law states that a notary is a private professional with a legal education or apprenticeship or both who has passed an examination before appointment.¹⁹

The notary is not a public employee but is essentially a public official in that he or she is authorized to hold this private office by the state.²⁰ However, the Latin notary is more than a licensed professional. The notary is a combination of counselor, authenticator, and keeper of records who has attained a position of enormous relevance in the context of civil and commercial transactions.²¹ The Latin notary can exercise the *publica fides* by delegation from the state.²² The

publica fides is the governmental power to authenticate or certify.²³ One commentator analogizes the *publica fides* as something akin to public good faith or even the full faith and credit concept found in the U.S. Constitution.²⁴ This notarial power means that a Latin notary always gives faith for the contents of the document subscribed before him or her when certifying or attesting to it.²⁵ This giving of faith to an instrument imparts upon it a strong presumption of authenticity.²⁶ In contrast to a notary public, a document duly certified by a Latin notary is endowed with the strongest possible presumption of truth, and the party attempting to rebut this presumption bears a heavy burden in court.²⁷

"In Mexico, a notarial document has the strongest possible evidentiary value, subject to none of the exceptions normally applicable to document interpretation. Even when a notarial intervention is not required for an agreement to be valid, the notarial document 'reinforces, with a presumption of validity, the juridical act performed'...the facts included in the notarial document are presumed to be true."²⁸

Common transaction where use of a notary is mandatory include: nonholographic wills, emancipation of minor children by public document, real and movable property mortgages, pre-

nuptial agreements, inter vivos gifts, property sales agreements that require registration, powers of attorney, contracts for transfer of receivables, partnership agreements, adoptions, and acknowledgements of natural children.²⁹

A notarial seal certifies truth, legality, and good faith.³⁰ A Latin notary must be an expert in the law applicable to the juridical act over which he or she officiates.³¹ The Latin notary must give the parties the correct legal advice and the proper warnings regarding legal consequences, but he or she is not obliged to judge the fairness of the agreement.³² The Latin notary represents no client but only the *public fides*.³³ The parties consulting with a Latin notary rely on the legality and fairness of the documents produced by him or her.³⁴

II. Florida's New Notary

a. Background

Florida has over 366,000 persons appointed as notaries public which equates to nearly one for every 42 Florida citizens.³⁵ However, as stated previously the traditional common law notary public is limited in its functions. A need was identified in Florida for a new kind of notary that could help facilitate legal transactions between Floridians and

international parties, especially in Latin America.³⁶ In 1997, Florida passed a law creating a civil or international notary.³⁷ Florida's International Notary was the first of its kind for a common law jurisdiction in the United States.³⁸ "The law was intended to bridge the divide between the common- and civil-law countries and thereby facilitate international commerce."³⁹ Proponents of the new notary pointed to Florida's close connection to Latin American countries as an impetus for facilitating international trade through the newly-created international notary.⁴⁰

b. Powers of the Florida civil-law notary

According to Florida Statutes § 118.10, a civil-law notary is authorized to issue authentic acts and thereby may authenticate or certify any document, transaction, event, condition, or occurrence.⁴¹ An authentic act is defined in the statute as an instrument which includes the particulars and capacities to act of any transacting parties, a confirmation of the full text of any necessary instrument, the signatures or their legal equivalent of any transacting parties, the signature and seal of a civil-law notary, and such other information prescribed by the Florida Secretary of State.⁴² Furthermore, the

law states that the contents of an authentic act and matters incorporated therein shall *be presumed correct*⁴³ (emphasis added).

c. Method for Appointment and Professional Obligations

A civil-law notary is appointed by the Florida Secretary of State.⁴⁴ A candidate must be a member in good standing of The Florida Bar, who has practiced law for at least five years.⁴⁵ A civil-law notary must also complete the Florida civil-law notary examination with a satisfactory score of 70%.⁴⁶ An appointment as a Florida civil-law notary continues in force for so long as the applicant is a member in good standing of the Florida Bar.⁴⁷

In addition to having the power to issue authentic acts, civil-law notaries may also administer oaths, take acknowledgements of deeds and other instruments of writing for record, and solemnize the rites of marriage.⁴⁸

One of the crucial functions of the Civil-law notary is record-keeping. A Civil-law notary shall record in a protocol all authentic acts, oaths and acknowledgments, and solemnizations.⁴⁹ A Civil-law notary is to keep an original copy of any document pertinent to authentic acts, oaths, etc.⁵⁰ It is the requirement of keeping a protocol coupled with the

power to authenticate delegated by the state that makes the Civil-law notary different from a notary public and attorney.

III. Benefits of the Civil-law Notary for Florida

a. Practical Implications on Law Practice

Like a notary public, a civil-law notary is authorized to witness signatures and take oaths as a means of authenticating documents.⁵¹ However, a civil-law notary is authorized further to verify and confirm the truth of statements made within documents.⁵² This power of factual verification has dramatic implications for a variety of practice areas and cross-border transactions.⁵³ One commentator listed several practical examples of the use of a civil-law notary's power of factual verification.⁵⁴ These include: determining heirship in a real-estate context, proper execution of a power of attorney in connection with the sale of real property in a civil-law jurisdiction, and the establishment of identity, maternity, paternity, or other relations in connection with litigation.⁵⁵

i. Probate

One area of international legal practice that will undoubtedly be aided by use of Florida's civil-law notary is probate. Questions of proof of lineal descendants can cause difficulties and delays in probate litigation involving foreign citizens. An authentic act by a civil-law notary attached to other documents like birth certificates, death certificates, and passports can establish heirship in a manner acceptable to a civil-law jurisdiction.⁵⁶ Since a civil-law notary's authentic act is presumed correct, an authentic act stating that a U.S. citizen is indeed who he says he is (and also the heir-at-law of the foreign decedent) can expedite the probate process immensely. Civil-law jurisdictions probably do not know about the probate process in Florida and certainly do not trust the attestation of a notary public who is only empowered to attest to signatures and identities. Conversely, the civil-law notary can attest to not only identity and signature but also the factual context surrounding such items (e.g. a civil-law notary can vouch for the fact that not is John Doe who he says he is but also that he is the son of Richard Doe).

ii. Real Property Transactions

Another area of practice where the Florida civil-law notary can positively effect is the real property transactions. Either in the context of probate⁵⁷ or powers of attorney,⁵⁸ a civil-law notary can increase efficiency and reliability. In the probate context, the issue may commonly arise in regard to a Florida decedent who owns property in a civil-law jurisdiction.⁵⁹ While a Florida probate court may establish heirship, the difficulty comes about when the civil-law authority (with jurisdiction over the real property) cannot accept at face value an order from Florida circuit court judge.⁶⁰ An accompanying document drafted by a Florida Civil-law notary that can confirm that the order from the probate court is not only authentic but controlling authority can expedite the process.

Powers of attorney can also be enhanced by a Florida civil-law notary. An example would include a Florida resident who authorizes a foreign agent to sell property owned in a civil-law jurisdiction on their behalf.⁶¹ A power of attorney signed in Florida but executed by a civil-law notary has the dual benefit of being validly executed according to Florida law and authentication of the identity and power granted to the agent by the principal for use in a civil-law jurisdiction.⁶²

After the bill of exchange and the bill of lading, the power of attorney is the most frequently used instrument in international business.⁶³ A valid power of attorney provides three major benefits: i). a division of labor within an enterprise, such as a corporation or partnership; ii). a means to facilitate transnational transactions; and iii). a method that allows lawyers to act on behalf of clients in litigation matters.⁶⁴

iii. Other Applications for use of the

Florida Civil-law Notary

There are many more practical applications for the use of Florida civil-law notarial powers in Latin America and other civil-law jurisdictions.⁶⁵ Some additional areas include:

i.) certifying transaction relating to negotiable instruments and bills of exchange;

ii.) incorporating, modifying, and dissolving corporations;

iii.) proving representations made in business contracts;

iv.) drafting wills and other testamentary documents and certifying documents for overseas estate claims;

v.) drafting formal papers relating to the carriage of cargo and international trade;

vi.) proving identity and relationship for spousal or family pension and survivorship benefits;

vii.) authenticating school transcripts and work records; or

viii.) authenticating certified copies of U.S. federal and state court judgments for domestication in civil-law jurisdictions.⁶⁶ A Florida civil-law notary may even solemnize marriages outside of the territorial limits of the state of Florida.⁶⁷

b. Other Benefits for Florida

i. Cross-border practice for Florida Lawyers

While difficulties will undoubtedly remain between common- and civil-law jurisdictions in the practice of law, the Florida civil-law notary is truly a unique vehicle for members of the Florida Bar to overcome those cross-border difficulties.⁶⁸ The Florida civil-law notary (who is also a practicing Florida attorney) can provide an increased level of comfort for foreign parties in that they will be receiving documentation from the other side of the transaction in the U.S. from an official in

whom they can have great confidence.⁶⁹ Furthermore, the forms or documents a foreign party would receive from Florida would be readily recognizable to them and would usable in their own domestic legal systems.⁷⁰

Alabama was the second state to pass legislation creating the civil-law notary.⁷¹ According to the Alabama enabling statute, a civil-law notary that certifies an authentic act in a commercial transaction is legally liable for the value of the entire transaction if it is determined that his factual findings are wrong or inaccurate.⁷² However, one who seeks to dispute the facts certified by a civil-law notary in an authentic act must produce clear and convincing evidence to rebut the presumption of accuracy or correctness granted by the Alabama statute.⁷³

Like in Florida, the Alabama civil-law notary owes a duty to the transaction and not the parties.⁷⁴ The civil-law notary provides a service to interest parties not clients.⁷⁵

ii. NAFTA, GOMSA and beyond

Mexican courts will not accept powers of attorney unless the power granted by the foreign corporation explicitly demonstrates compliance with the laws of the state of incorporations.⁷⁶

Mexican courts may be unwilling to accept certifications by common-law notaries.⁷⁷

Shortly after the passage of the North American Free Trade Agreement (NAFTA), a new organization was created to further its goals. The Gulf of Mexico States Accord (GOMSA) was signed in the City of Campeche, Mexico, on May 13 1995.⁷⁸ GOMSA is a joint agreement among the states of Mexico and the U.S. with coastline on the Gulf of Mexico meant to facilitate and encourage trade, transportation, tourism, and environmental protection among other areas.⁷⁹ To better achieve its goals, the GOMSA Legal Issues Subcommittee proposed the following proposals for member states to consider:

- 1). education of Mexican states about the existence of the civil-law notary in the U.S. (including Florida, Alabama⁸⁰, and Louisiana⁸¹);

- 2). recognition by GOMSA of the heightened presumption of legality and accuracy of the representations and promises made in agreements executed between or among contracting parties in two or more GOMSA member states authenticated by a civil-law notary; and

- 3). the possible creation of an alternative dispute resolution mechanism for agreements entered into among parties

in the GOMSA member states in which mediators or arbitrators would be comprised of civil-law notaries or panels of civil-law notaries from the GOMSA member states.⁸²

The proposal regarding use of civil-law notaries in alternative dispute resolution was attractive to U.S. and Mexican companies alike.⁸³ U.S. companies are concerned about the potential for corruption encountered in Mexican courts.⁸⁴ Likewise, Mexican companies are concerned about the prospect of being dragged into an expensive and time-consuming litigation in a U.S. court if there were a dispute.

iii. Florida cements claim as capital of Latin America

The impetus for the new civil-law notary program was the acknowledgement that there is need for such an official in cross-border and international legal transactions for everything from domestic relations to all manner of commercial transactions.⁸⁵ Business between Florida and Latin America can only benefit from the use of civil-law notaries due to the increased level of comfort that Latin American parties will have when receiving documentation from the other side of the transaction in Florida.⁸⁶ The Latin American party will be assured that they are receiving documents from an official in

whom they have great confidence and in forms that they readily recognize which can be easily used within the format of their own Latin American legal system.⁸⁷

iv. A New Role for the Civil-law Notary

The fundamental qualities that a civil-law notary must exhibit include professional competence in the law, neutrality as to the type of transaction or agreement reached by the parties (so long as they comply with applicable laws), and impartiality as to each of the parties. The impartiality requirement is typically foreign to common law attorneys and their duty of zealous advocacy on behalf of their clients. While civil-law notaries in Latin America may indeed be counsel for the situation, Florida attorneys would probably find that role a bit odd.

It is probably advisable for Florida attorneys who serve as civil-law notaries to strive to be a counsel for the situation or transaction by not representing either party. However, the legal skills of an attorney coupled with the duty to serve the transaction or a situation and not a party presents an intriguing professional scenario for members of the Florida Bar.

Florida may indeed be the capital of Latin America in terms

of commerce, real estate investment and development, banking and finance, international trade, arts, and cultural exchange. Efforts such as the Free Trade Area of the Americas and the accompanied push by the state to make Miami the home to its proposed headquarters would further deepen Florida's numerous ties to Latin America.

The figure of the Florida civil-law notary will also play a vital role in this area for years to come. The enacting statute and legal commentary already lay out a variety of ways in which this new type of notary can facilitate international transactions and investment between Florida and Latin America. But is this new type of notary confined to merely helping create or execute a transaction? Does a Florida civil-law notary have a role to play later on in the relationship between the parties to a situation?

I would suggest that the Florida civil-law notary should not be confined to authentic acts and legal counsel for agreements and transactions when they are being put together by cross-border parties. I would suggest that the civil-law notary can serve to dissolve relationships or resolve disputes in an efficient and amicable way. As noted in an article concerning the Alabama civil-law notary, the Latin or civil-law notary is

"a model of impartial, multi-party counseling."⁸⁸ The Florida civil-law notary like all civil-law notaries is supposed to remain neutral and impartial while maintaining ethical dealings with legal competence.

Parties to an agreement or joint venture may be even more hesitant to enter another jurisdiction than their own when in dispute than when in formation or negotiation at the outset. Questions of efficiency, fairness, and competence are raised when a Florida party wants to bring suit against a party in Mexico, for example. One might think that any agreements between the parties probably contained a choice of law and venue clause, but what if it does not. Will the parties be able to agree on arbitration or litigation forum? What about arbitration clauses in trade agreements between the U.S. and many Latin American countries? Will the parties have the time and resources to pursue these avenues.

The Florida civil-law notary is unique. It is the first notary of its kind in a U.S. common law jurisdiction. The civil-law notary is a trusted advisor in most Latin American jurisdictions. The Florida civil-law notary is also a practicing attorney in Florida. I would suggest that the Florida civil-law notary is perhaps the only figure on the stage

that can garner the trust of both Florida or U.S. parties and Latin American parties. "The adoption of [the civil-law notary] system...in Alabama and Florida not only will promote better cross-cultural understanding and efficiency on the international business level, but may also serve as a new paradigm for neutral and less costly business and contract counseling."⁸⁹ Latin American parties are most likely well-aware of the role of civil-law notaries in their own countries. Likewise, Florida parties would feel comfortable with the fact that a Florida civil-law notary is a member of the Florida Bar who has training and experience with the state's common law heritage.

The value of alternative dispute resolution is gaining acceptance within the sphere of private international law. Vehicles like mediation and arbitration save time and money for all types of commercial actors. Furthermore, commercial parties feel a greater sense of control over the process since they often choose the individual mediators or arbitrators they will use to resolve a dispute. The expense and uncertainty of litigation (especially for a foreigner) are quickly losing favor with multinational commercial actors.

However, smaller actors such as modest real estate investors or joint ventures probably don't have to resources or the time

available for even formal mediation or arbitration proceedings. What is more likely needed by these more modest parties is a figure that evaluate a point of law or fact quickly and impartially and facilitate corrective action soon thereafter.

A Florida civil-law notary is arguably a master of both the civil and common law systems. The civil-law notary occupies a position of trust in both systems by its very nature. It also must remain as neutral and impartial as possible when advising parties. These attributes appear to overlap with the sought-after attributes of a quality mediator or arbitrator.

Parties may begin including clauses in the agreements that all disputes will be first referred to a Florida civil-law notary before proceeding to arbitration or litigation. This may serve as a reality check on parties from both sides of a border who may feel that their position in a dispute is stronger than it actually is depending on their respective jurisdictions.

v. Seller and Buyer Beware

Florida's civil-law notary system is new. Trying new things often leads to mistakes. One potential pitfall for members of the Florida Bar are violations of the ethical rules governing the Florida Bar.⁹⁰ There are several rules relating to conflicts

of interest and scope of representation that Florida attorneys must adhere to. Perhaps the most applicable Florida Bar rule concerning civil-law notaries is the one relating to third-party neutrals.⁹¹ Like civil-law notaries, mediators have an obligation to maintain the integrity of the mediation process. Mediators must also be impartial towards each party and neutral towards the outcome of the mediation.

civil-law notaries do have a professional obligation to the transaction itself, but cannot side with party to the detriment of the other. Rule 4-1.12 of the Florida Bar Rules governing lawyers states in part that "a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing." A Florida civil-law notary, who by definition is also a member of the Florida Bar, must ensure that they maintain the integrity of the civil notary process.

Another potential pitfall of the civil-law notary concerns the public at large. Uniquely susceptible to predatory notaries are immigrants or visitors to Florida from Latin America. The

problem has been most acute along the U.S.-Mexican border in states like Texas. The issue arises when a *notario publico* holds himself out to a Spanish-speaking population. *Notario publico* may appear to English speakers as easily translated into notary public. However, a notary public in a common-law jurisdiction exercises few of the powers of a *notario publico* in civil-law countries. Unwitting immigrants may visit a notary public in a state like Texas thinking that the official has the same powers as in his or her home country. The Texas Secretary of State had issued warnings to those new to the state and its common-law system.⁹² Despite sharing a common linguistic derivation, the titles of notary public and *notario publico* convey vastly different responsibilities upon their respective officeholders. The differences between these titles are profound.⁹³ According to Texas law, the "literal translation of the phrase 'Notary Public' into Spanish is prohibited."⁹⁴ The stated intent of the Texas law is to prevent Spanish speakers from confusing the roles of the Mexican *notario publico* with the limited services offered by the Texas notary public.⁹⁵

Like Florida's notary public, virtually anyone can qualify and become a notary public in Texas.⁹⁶ Texas' population of approximately 22.5 million people is served by approximately

360,000 registered notaries.⁹⁷ In comparison, the nine million residents of Mexico City are served by only 243 *notario publicos*.⁹⁸ It is clear that Mexican *notario publico* positions are extremely sought after due to the limited number of positions and the high earning potential that accompanies the office.⁹⁹ Even if a Mexican candidate has met the required qualifications, a position is far from guaranteed as new positions are available only when there is a vacancy.¹⁰⁰

"In Mexico, the incorporation of every company, the buying and selling of all types of real estate, the establishment of deeds and wills, the creation of mortgages, among other transactions, must be protocolized by a *Notario Publico*."¹⁰¹ As one Mexico City notary noted, "It is the *Notario Publico's* responsibility to labor over the document and make sure it is in conformance with the law."¹⁰²

The traditional common-law notary public systems in Texas and Florida are quite distinct. A notary public's primary duty is to verify a signer's identity and signature, and attest that the signer personally appeared before the Notary at the time the notarization was taken.¹⁰³ A notary public is not verifying the truth of the statements in the document.¹⁰⁴ A notary public is merely responsible for the truth of the statements in the

notarial certificate that the notary completes, which says the person appeared before the Notary and that such person signed or acknowledged his signature on the document on a specified date.¹⁰⁵

The table below is illustrative of the distinctions between a common-law notary public (such as in Texas or Florida) and a Mexican *notario publico*:

Qualifications

Notary Public	Notario Publico
<ul style="list-style-type: none"> • fill out an application • be at least 18 years of age • be a legal resident of the State of Texas • be a legal resident of the United States or a permanent resident alien • pay applicable fees and post a \$2,500.00 bond 	<ul style="list-style-type: none"> • be Mexican by birth • be older than 25 but younger than 60 • be in good health • have a good reputation • not be the leader of a church • not have a criminal record • have studied under a notary for at least 6 months prior • take a written exam • be a legal professional with the title of lawyer.

Powers and Duties

Notary Public	Notario Publico
<ul style="list-style-type: none"> • take acknowledgements • protest instruments 	<ul style="list-style-type: none"> • be an arbitrator • be a mediator

- administer oaths
- take depositions
- certify copies of documents not recordable in the public records
- show that a disinterested party duly notifies the validity of a document
- show that the signer is indeed who s/he says s/he is and that his/her reasons for signing are genuine

- issue judicial opinions
- intervene in judicial proceedings
- ensure that documents such as bylaws of companies, wills, deeds, powers of attorney, real estate purchases and establishments of trusts do not include any legal inconsistencies
- ensure payment of taxes
- protocolize public deeds

Fees

Notary Public	Notario Publico
<ul style="list-style-type: none"> • a fixed fee for their services established by the state • never exceeding \$6 dollars in Texas 	<ul style="list-style-type: none"> • Percentages range from .015% to 1.12%, of the cost of the transaction. In many cases fees reach thousands of U.S. dollars.¹⁰⁶

IV. Conclusion

"The concept of the civil-law notary represents nothing less than a major philosophical shift in our common-law adversarial way of doing business in the United States."¹⁰⁷ The implications reach far beyond Latin America.¹⁰⁸ The move away from the adversarial approach may seem odd to Florida lawyers (and even their clients). However, having the capability to be both a

common lawyers and a civil-law notary can only add to an attorney's range of legal services available to his or her clients. Furthermore, many Americans appear to be more attracted to owning property or investing outside the borders of the United States. Clients will look for an attorney in Orlando who can handle the purchase or sale of their vacation home in Cancún. There are many other applications for the notary's use.

Florida has established itself as a leader in cross-border practice of law by creating this new type of notary. The implications for the future are great as Florida further entrenches itself as a link between the United States and Latin America. Not only is there potential for Florida civil-law notaries to be used as a kind of cross-border mediator or arbitrator, but Florida may one day become the jurisdiction of choice for parties doing business with Latin America.

1 Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, A Historical Comparative Model*, 19 HASTINGS INT'L & COMP. L. REV. 389, 404-05 (1996).

2 J. Brock McClane & Michael A. Tessitore, *The Florida Civil-Law: A Practical New Tool For Doing Business With Latin America*, 32

STETSON L. REV. 727, 748 (2003).

3 Malavet, *supra* note 1, at 451. The Canadian province of Quebec also follows the Latin notariat based on the French model.

4 *Id.*

5 Office of the United States Trade Representative (hereinafter USTR), Trade Agreements, http://www.ustr.gov/Trade_Agreements/Section_Index.html (last visited Mar. 29, 2009).

6 USTR, CAFTA-DR, http://www.ustr.gov/Trade_Agreements/Regional/CAFTA/Section_Index.html (last visited March 29, 2009).

7 Elliot R. Lewis, *Selecting and Working With Foreign Counsel*, Am. BAR ASS'N CTR. FOR CONTINUING LEGAL EDUC. J-11, J-14 (1998).

8 The potential for use beyond Latin America is apparent when

considering that most of the world's legal systems utilize a
civil-law notary in one form or another.

9 Malavet, *supra* note 1, at 408.

10 *Id.* at 410-11.

11 *Id.* at 411.

12 *Id.* at 415.

13 *Id.* at 419-23.

14 *Id.* at 424.

15 *Id.*

16 *Id.* at 428.

17 *Id.* at 428.

18 *Id.* at 429.

19 *Id.* at 430.

20 *Id.* at 435.

21 Armando J. Tirado, *Notarial and Other Registration Systems*, 11
FLA. J. INT'L L. 171, 172 (1996).

22 Malavet, *supra* note 1, at 436.

23 *Id.* at 440.

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.* at 441.

28 *Id.* at 444.

29 *Id.* at 456.

30 *Id.* at 483.

31 *Id.*

32 *Id.* at 485.

33 *Id.* at 486.

34 Tirado, *supra* note 21, at 172.

35 *Notary History*, ST. PETERSBURG TIMES, Feb. 7, 2000, at 9E.

36 The new Florida civil-law notary can exercise all of the powers of a traditional notary public. See FLA. ADMIN. CODE ANN. r. 1C-18.001 (2009).

37 Katherine Harris, *Florida's Role As Part of the Americas*, 13 FLA. J. INT'L L. 4, 9 (2000).

38 McClane & Tessitore, *supra* note 2, at 730; Florida's civil-law notary legislation was initially sponsored by then-Senator Katherine Harris in the Florida Senate.

39 *Id.*

40 *Id.* A chief lobbyist for the law stated that Miami is often referred to as the capital of Latin America. Alabama has also passed a modern civil-law notary statute. See McClane & Tessitore, *supra* note 2, at 748.

41 FLA. STAT. ANN. § 118.10(3) (2009).

42 FLA. STAT. ANN. § 118.10(1)(a) (2009); FLA. ADMIN. CODE ANN. r.

1C-18.001 (6)(a) (2009) states the form and content of authentic acts:

(b) Each authentic act shall contain:

1. The handwritten signature and original seal of the Florida Civil-law Notary.

2. The signature and seal may be incorporated into public key certificate which complies with the requirements of [Rule 1-10.001, F.A.C.](#) When serving as part of an authentication instrument, the public key certificate of a Florida Civil-law Notary must clearly show the Florida Civil-law Notary's signature and seal are registered with the Department of State.

3. The typewritten full name of the Florida Civil-law Notary in the form in which the notary's application for appointment was originally submitted to the Department of State and the words "Florida Civil-law Notary" typewritten in the English language.

4. The current business address and telephone number of the

Florida Civil-law Notary typewritten in the English language.

5. A statement typewritten in the English language that "Under the laws of the State of Florida, [section 118.10, Florida Statutes](#), this authentic act is legally equivalent to the authentic acts of civil-law notaries in all jurisdictions outside the geographic borders of the United States and is issued on the authority of the Florida Secretary of State.

6. The date on which the authentic act was signed and sealed by the Florida Civil-law Notary and the signatures of the parties to the transaction.

7. All words or statements required to appear in the English language may also appear in any other language.

8. An authentic act may also contain such other information or material as may be required to satisfy any legal requirements, or to satisfy ethical or legal concerns, or the business needs of the parties to the transaction or of the Florida Civil-law Notary including statements attesting to the signatures on accompanying documents if executed in the Florida Civil-law

Notary's presence, and any witnessing signatures; a statement confirming the legality of the transaction and the contents of any documents and any limitations thereon; any facts contained in the documents or relied on by any interested party and any limitations thereon.

43 FLA. STAT. ANN. § 118.10(3) (2009).

44 FLA. STAT. ANN. § 118.10(2) (2009).

45 FLA. STAT. ANN. § 118.10(1)(b) (2009).

46 FLA. ADMIN. CODE ANN. r. 1C-18.001(3) (2009).

47 FLA. ADMIN. CODE ANN. r. 1C-18.001(4)(c) (2009).

48 FLA. STAT., *supra* note 43.

49 FLA. STAT. ANN. § 118.10(4) (2009).

50 FLA. ADMIN. CODE ANN. r. 1C-18.001(8) (2009), The Florida Civil-law Notary's Protocol:

(a) A Florida Civil-law Notary's protocol shall be maintained in a secure, fireproof location at the Florida Civil-law Notary's principal place of business;

(b) The protocol shall contain an original copy or photocopy of each of the Florida Civil-law Notary's authentic acts in date sequence, and an original photocopy of any supporting or related documents, which shall be permanently archived in the protocol. The protocol shall also contain, in date sequence, a photocopy or original copy of any document containing, incorporating or depending upon, an acknowledgment, oath or solemnization executed by the civil-law notary, which shall include a copy of any certificate made by the civil-law notary.

(c) The protocol shall contain or be accompanied by an index to its contents in date order. In addition to the date on which act, oath, acknowledgment, or solemnization was executed, each entry in the index shall identify the party or parties who paid the notary's fee.

(d) The protocol shall be available for inspection by the Department of State during reasonable business hours and copies of any documents contained in the protocol shall be furnished to the Department upon request. The contents of the protocol shall otherwise be considered confidential and shall be made available only to persons who have a legal interest in a particular transaction.

(e) A Florida Civil-law Notary who takes custody of the protocol of another Florida Civil-law Notary's protocol because of suspension or incapacitation shall maintain the protocol until the suspension period expires or the incapacitation is relieved. When a Florida Civil-law Notary takes custody of another Florida Civil-law Notary's protocol because of revocation or death the custodial Florida Civil-law Notary shall permanently maintain the protocol in accordance with this rule.

⁵¹ McClane & Tessitore, *supra* note 2, at 735.

⁵² *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.* at 742.

57 *Id.* at 735.

58 *Id.* at 739.

59 *Id.* at 736.

60 *Id.* at 735.

61 *Id.* at 740.

62 *Id.* at 741.

63 Mark D. Becker, *A Uniform NAFTA Power of Attorney Between Canada, Mexico, and the U.S.*, 5 *TRANSNAT'L LAW.* 341, 344 (1992).

64 *Id.*

65 McClane & Tessitore, *supra* note 2, at 745.

66 *Id.*

67 *Id.*

68 A Florida civil-law notary is not authorized to issue authentic act for use in a jurisdiction if the U.S. Department of State has determined that the jurisdiction does not have diplomatic relations with the U.S. or is a terrorist country, or if trade with the jurisdiction is prohibited under the Trading With the Enemy Act of 1917. See Susan L. Thomas, *Florida International Notaries*, 1 *FLA. JUR 2d ACKNOWLEDGEMENTS* § 45 (Aug. 2008) (citing

Fla. Stat. § 118.10(3), referring to 50 U.S.C.A. §§ 1 et seq.)

69 Boyd F. Campbell & Ronald G. Neiwirth, *Civil Law Notaries: Something New in Alabama*, 64 ALA. LAW. 169, 170 (May 2003).

70 *Id.*

71 *Id.* at 169.

72 *Id.* at 170.

73 *Id.* at 169.

74 *Id.* at 170.

75 *Id.*

76 Becker, *supra* note 63, at 345.

77 *Id.* at 349.

78 Gulf of Mexico States Accord,

<http://www.gomsa.org/accord/goal.html> (last visited Mar. 28, 2009).

79 McClane & Tessitore, *supra* note 2, at 748; the signatories of the Accord include the Mexican states of Campeche, Quintana Roo, Tabasco, Tamaulipas, Veracruz, and Yucatan and the states of Alabama, Florida, Louisiana, Mississippi, and Texas. See Gulf of Mexico States Accord,

<http://gomsa.org/members/members.html> (last visited Mar. 29, 2009).

80 ALA. CODE § 36-20-51 (2009); Civil law notaries.

(a) The Secretary of State shall have the power to appoint civil law notaries and administer this article.

(b) A civil law notary is authorized to issue brevets, minutes, and notarial deeds and thereby may authenticate or certify any document, transaction, event, condition, or occurrence. A civil law notary may also administer oaths and

make certificates thereof when necessary for execution of any writing or document to be attested, protested, or published under the seal of a notary public. A civil law notary may also take acknowledgments of deeds and other instruments of writing for record.

(c) The authentic acts, and oaths and acknowledgments of a civil law notary shall be chronologically recorded in the civil law notary's protocol in a manner prescribed by the Secretary of State.

(d) The civil law notary may, without prejudice to his or her duty to ensure professional confidentiality, issue certified copies of authentic acts to individuals who, in his or her opinion, have a legitimate interest in the contents of an authentic act. Certified copies of authentic acts shall have the same legal force and effect as the original.

(e) A civil law notary is obligated to do the following:

(1) Draw up authentic acts in accordance with their knowledge and comprehension and such documents shall clearly

reflect the wishes of the contracting parties duly adopted to legal requirements necessary for the documents to have full legal force and effect.

(2) Represent the transaction itself in the creation of the authentic act. For this purpose, the civil law notary acts as an intermediary where there are multiple parties to a transaction.

(3) Use his or her best efforts to advise all parties to the transaction equally, accurately, fully, and impartially regarding the nature and legal consequences of the transaction.

(4) Refrain from representing any party in any matter arising from or related to the civil law notary's authentic act.

81 Notaries in Louisiana can issue authentic acts within each notary's assigned parish. See LA. REV. STAT. ANN. § 35:2 (2009).

82 McClane & Tessitore, *supra* note 2, at 749-50.

83 *Id.* at 750.

84 *Id.*

85 Campbell & Neiwirth, *supra* note 69, at 170.

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* at 171.

90 A list of the rules can be found at The Florida Bar website,

<http://www.floridabar.org/divexe/rtrfb.nsf/FV?Openview&Start=1&>

Expand=4#4 (last visited Apr. 11, 2009).

91 See *The Florida Bar Rules Governing Lawyers*, R. 4-1.12 (2006).

92 Jonathan A. Pikoff & Charles J. Crimmins, *Lost in Translation:*

Texas Notary Public v. Mexico Notario Publico, Texas Secretary
of State,

<http://www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml>

(last visited Apr. 12, 2009).

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.* These statistics are comparable to the state of Florida.

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 Campbell & Neiwirth, *supra* note 69, at 171.

108 The International Union of Latin Notariats (UINL) is formed by the Chambers of Notaries of the following countries:

Europe (35)

Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Georgia, Hungary, Italy, Latvia, Lithuania, United Kingdom, Luxembourg, Macedonia Republic, Malta, Moldava, Monaco, Netherlands, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Turkey, and the Vatican.

Americas (23)

Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Uruguay, Louisiana (USA) and Venezuela.

Africa(15)

Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Gabon, Guinea, Ivory Coast, Mali, Morocco, Niger, Senegal and Togo.

Asia (3)

China (People's Republic), Indonesia, and Japan.

The International Union of Notaries has privileged relations with professional jurists who fulfil "notarial" duties in various countries or federated States, or with the bodies that represent them and some of them have asked to join the Union: the Notaries Society England, the Law Society of Scotland, the Law Society of Ireland, Australia, Mauritius Islands, Kazakhstan, Mauritania, Ukraine, Alabama, Belarus, Bosnia-Herzegovina, Cambodia, British Columbia, Florida, Illinois, Indiana, Iran, Kyrgyzstan, Laos, Madagascar, New Zealand, the Philippines, Serbia, the Seychelles, South Korea, Texas, Tunisia and Vietnam. The International Union of Notaries, <http://www.uinl.org/presentacion.asp> idioma=ing&submenu=MEMBRES (last visited Apr. 11, 2009).