

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 SOS 04270

<p>Brandon Matthew Rogers Petitioner,</p> <p>v.</p> <p>North Carolina Department of the Secretary of State Respondent.</p>	<p>FINAL DECISION</p>
--	------------------------------

This matter was heard before Administrative Law Judge David F. Sutton, on Wednesday, February 23, 2022, in Lexington, North Carolina.

APPEARANCES

For Petitioner: Brandon Matthew Rogers, Pro se
3575 Bridge Rd., Ste. 8 PMB#260
Suffolk, VA 23435

For Respondent: Jeremy D. Lindsley
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27609

ISSUE

Whether Respondent acted erroneously, acted arbitrarily or capriciously, or substantially prejudiced Petitioner's rights by denying Petitioner's request for authentication/apostille under N.C. Gen. Stat. § 66-274.

APPLICABLE STATUTES

N.C. Gen. Stat. §§ 150B-22, *et seq.*
N.C. Gen. Stat. §§ 10B-1, *et seq.*
N.C. Gen. Stat. §§ 66-270 through 66-274

EXHIBITS

For Petitioner: Petitioner did not move to enter any exhibits into evidence.

For Respondent: Exhibit A: Document entitled “Affidavit Proof of Identity, Allegiance and Domicile”
Exhibit B: Letter dated September 28, 2021

WITNESSES

For Petitioner: Brandon Matthew Rogers

For Respondent: Cheri Myers, Director, Business Registration Division,
North Carolina Department of the Secretary of State

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. In the absence of a transcript, the Undersigned has relied upon his notes to refresh his recollection.

FINDINGS OF FACT

1. Respondent, North Carolina Department of the Secretary of State, administers Article 34, Chapter 66 of the North Carolina General Statutes (N.C. Gen. Stat. §§ 66-270-275) which grants Respondent the authority to issue certificates of authentication for documents executed or issued in this State so that said document can be recognized in a foreign jurisdiction. N.C. Gen. Stat. § 66-270.

2. N.C. Gen. Stat. § 66-274(a) provides:

The Secretary shall not issue a certificate of authentication for a document if the secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which certification is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy . . .

3. Respondent also administers the North Carolina Notary Public Act (N.C. Gen. Stat. §§10B-1, et seq.).

4. Among other things, a notarial act is one in which a notary certifies that the signature of a person signing a document is genuine. N.C. Gen. Stat. § 10B-3(1).

5. Respondent's witness, Cheri Myers, is the Director of Respondent's Business Registration Division (the Division). She has served as the Division's Director since 2005 and manages the Authentication Unit within the Division.

6. The Authentication Unit receives documents that have been notarized and documents from other domestic governmental agencies and examines them to determine if Respondent can issue a certificate of authentication for the submitted document as provided by law. Specifically, under N.C. Gen. Stat. § 66-274, Respondent cannot issue a certificate of authentication for a document if there is reason to believe that the certificate is sought for an unlawful or improper purpose or that certificate will not serve the interests of justice and would be contrary to public policy.

7. There are three types of authentications: apostilles, certificates of authentication, and certificates of authority. An apostille is a type of authentication for any type of document that is intended for submission to and use by foreign countries that are members of a Hague Convention abolishing certain formalities in the authentication process.

8. It is the practice of the Authentication Unit to deny certificates of authentication under N.C. Gen. Stat. § 66-274(a) for documents that are vague, ambiguous, confusing, do not have a clear purpose for use by a foreign jurisdiction, appear to renounce United States citizenship, or that do not comply with the State's notary laws.

9. Ms. Myers supervises three document examiners within the Authentication Unit each with more than 10 years' experience examining documents to determine eligibility for certificates of authentication.

10. The document examiners are knowledgeable of the requirements of the North Carolina Notary Public Act regarding the content of a proper notarial certificate and signature requirements. Ms. Myers is a former notary and is also familiar with the State's notary laws.

11. It is a violation of the Notary Public Act to notarize a document that was not signed by the person named in the document.

12. Ms. Myers is confident that the document examiners are competent and are independently able to correctly determine whether a submitted document is eligible to receive an authentication certificate.

13. On September 21, 2021, Respondent received Petitioner's request for an apostille certificate for a document included with the request entitled "Affidavit Proof of Identity, Allegiance, and Domicile" (R. Ex. A).

14. Petitioner's document identifies Petitioner as "Brandon Matthew 'of the family' Rogers" and states his nationality as "Iswā [misnomer: Catawba / Saponi-Iswā] American Indian" and lists his permanent residence and domicile as "89GT4 POX8W".

15. The body of Petitioner's document contains the following language: ". . . as a Foreign National, Non-Citizen Oath of Allegiance to my Country of Citizenship; Republic of Panama . . ."

16. The body of the document concludes by stating ". . . I state and depose for the specific purpose of establishing my valid claim of Indigenous Standing as a matter of law."

17. The document does not otherwise contain a clearly stated purpose or any statement regarding its intended use by a foreign jurisdiction.

18. The document contains numerous references to laws, declarations, conventions, and proclamations without any explanation as to how they relate to the document.

19. Although the document contains a notarial certificate affirming that the document was subscribed before the notary on September 18, 2021 by Brandon Matthew, Petitioner's signature does not appear on the document.

20. During the hearing, Petitioner admitted that he did not sign the document.

21. Petitioner admitted during the hearing that he was born and raised in Forsyth County, North Carolina.

22. After examining Petitioner's document, an examiner determined that a certificate of authentication for the document should be denied pursuant to N.C. Gen. Stat. § 66-274.

23. In a letter dated September 28, 2021, Petitioner was informed of the denial of the authentication of his document "per North Carolina General Statutes § 66-274, as the Department shall not issue a certificate of authentication for a document that the Department has cause to believe to be desired for an unlawful or improper purpose or is contrary to public policy" (R. Ex. B).

24. The September 28, 2021 letter also contained information regarding how to appeal Respondent's denial.

25. The original copy of Petitioner's document was returned to Petitioner with the September 28, 2021 letter, and a refund request for the filing fee of \$10 was processed.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing.

3. N.C.G.S. § 66-274(a) prohibits Respondent from issuing a certificate of authentication for a document if the Respondent has cause to believe that the certificate is desired for an unlawful or improper purpose or if the issuance of a certificate will not serve the interests of justice and is not contrary to public policy.

4. Under the North Carolina Notary Public Act, a notary is not authorized to complete a notarial certificate affirming that the signor signed the document in the notary's presence when the document was not actually signed in the notary's presence. N.C. Gen. Stat. 10B-20(c)(1).

5. A document examiner could reasonably conclude that a certificate of authentication for a document is intended for an unlawful or improper purpose, or that the issuance of a certificate would not be in the interests of justice and against public policy where the document is silent or unclear in its purpose, uses obscure language and phrasing, references various international and domestic laws, treatises, proclamations, and other asserted authorities, that appears to deny or renounce citizenship in the United States of America, and claim membership in a sovereign Native American Nation without supporting evidence.

6. The interests of justice would not be advanced, and it would be inconsistent with good public policy to grant certificates of authentication for documents that do not contain a proper and valid notarial certificate as required by the North Carolina Notary Public Act.

7. Respondent could not issue a certificate of authentication for the document Petitioner submitted because of the defective notarial certificate indicating that Petitioner signed the document in the notary's presence when, in fact, Petitioner had not signed the document at all.

8. In a contested case brought under N.C. Gen. Stat. § 150B-23, the Petitioner has the burden of proving the facts alleged in the petition by a preponderance of the evidence. N.C. Gen. Stat. § 150B-25.1(a).

9. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a).

10. A preponderance of evidence refers to the convincing force of the evidence being such evidence that satisfies the fact finder that a fact alleged is true. *Don's Plumbing Co. v. Union Supply Co.*, 11 N.C. App. 662, 665, 182 S.E.2d 219, 222 (1971).

11. Petitioner did not introduce any evidence tending to show that Respondent acted erroneously, acted arbitrarily or capriciously, or otherwise substantially prejudiced his rights by denying his request for a certificate of apostille.

12. Petitioner failed to meet his burden of proof to show that Respondent acted erroneously, acted arbitrarily or capriciously, or substantially prejudiced his rights as alleged in the petition.

13. Petitioner otherwise failed to show by a preponderance of the evidence that Respondent deprived him of property, exceeded its authority or jurisdiction, failed to use proper procedure, or failed to act as required by law or rule.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to deny Petitioner's request for authentication/apostille is AFFIRMED.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 27th day of April, 2022.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Brandon Matthew Rogers
bmrogers200@gmail.com
Petitioner

Daniel Snipes Johnson
Special Deputy Attorney General, NC Department of Justice
djohnson@ncdoj.gov
Attorney for Respondent

Jeremy D Lindsley
Assistant Attorney General, NC Department of Justice
jlindsley@ncdoj.gov
Attorney for Respondent

This the 27th day of April, 2022.



Viktoriya Tsuprenko
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850