

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12SOS11648

<p>BETHANY THOMPSON Petitioner,</p> <p>v.</p> <p>NC DEPARTMENT OF THE SECRETARY OF STATE Respondent.</p>	<p>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</p>
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THIS MATTER is before J. Randall May, the undersigned Administrative Law Judge on Respondent's Motion for Summary Judgment and the Administrative Law Judge, having considered the motion, the legal memorandum filed by counsel, the arguments of counsel, and the whole record, hereby finds that Respondent's Motion for Summary Judgment should be granted.

APPEARANCES

Petitioner: Charles M. Lineberry
The Lineberry Law Firm
3602 Wrightsville Ave.
Wilmington, NC 28403
Attorney for Petitioner

Respondent: Brandon L. Truman
Lareena J. Phillips
Assistant Attorneys General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602
Attorneys for Respondent

UNDISPUTED FACTS OF RECORD

1. On or about September 18, 2012, Petitioner submitted an application to Respondent for commission as a North Carolina Notary Public. Petitioner answered "Yes" to question 15 of the application, which asks, "Have you ever been convicted by any court of a felony or misdemeanor?"

2. Petitioner provided information to Respondent that on or about September 23, 2009, she was found guilty of the misdemeanor offense of Level 2 Driving While Impaired. Petitioner was sentenced to twenty-four (24) months of probation. Petitioner was released from probation on or about September 23, 2010.

3. Respondent denied Petitioner's application under N.C. Gen. Stat. §10B-5(d)(2) and 18 N.C.A.C. 07B.0201(b).

4. N.C. Gen. Stat. § 10B-5(d)(2) states:

(d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:

(2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. **In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.** (Emphasis added)

5. Petitioner argued that under N.C. Gen. Stat. § 10B-5(d)(2), the provision – “In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later” – only applies if the applicant's probation or parole was related to a conviction of a felony or a crime involving dishonesty or moral turpitude. Petitioner further argued that because Petitioner's conviction for driving while impaired is not a misdemeanor involving dishonesty or moral turpitude, Petitioner is not barred from receiving a Notary Public Commission under the statutory provision, “In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.”

6. Respondent argued that that under the plain language of N.C. Gen. Stat. § 10B-5(d)(2), the provision – “In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later” – applies as an absolute bar to the issuance of a Notary Public Commission regardless of the nature of the underlying offense and regardless of whether the conviction was for a felony or a crime involving dishonesty or moral turpitude. Respondent argued that the provision – “In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later” – applies to a conviction for *any* crime for which an applicant was released from probation less than 10 years before applying for a Notary Public Commission.

BASED ON the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction of the subject matter and the parties herein under the General Statutes of North Carolina, Chapters 150B and 10B.

2. There are no genuine issues of material fact in dispute.

3. As a matter of law, Respondent properly denied Petitioner's application for a North Carolina Notary Public Commission under N.C. Gen. Stat. §10B-5(d)(2) based on Petitioner being released from probation within 10 years of her application for a North Carolina Notary Public Commission.

4. Based on the foregoing, it appears that summary judgment should be granted in favor of Respondent.

FINAL DECISION

BASED UPON the foregoing undisputed facts of record and conclusions of law, the undersigned hereby orders and decrees as follows:

1. Respondent's Motion for Summary Judgment is GRANTED.

2. Respondent's denial of Petitioner's application for a North Carolina Notary Public Commission is AFFIRMED.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on 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.

This the 2nd day of May, 2013.

J. Randall May
Administrative Law Judge