

STATE OF NORTH CAROLINA  
COUNTY OF MONTGOMERY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13SOS12528

John Claude Barden, Petitioner,  v.  NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE, Respondent.	<b>FINAL DECISION GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT</b>
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THIS MATTER is before Beecher R. Gray, 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, and the whole record, hereby finds that Respondent's Motion for Summary Judgment should be granted.

**UNDISPUTED FACTS OF RECORD**

1. On December 3, 2012, Respondent received Petitioner's Application for Initial Appointment as a North Carolina Notary Public. Petitioner answered "Yes" to question 15 which asks "Have you ever been convicted by any court of a felony or misdemeanor?"
2. Petitioner provided information that he was found guilty of reckless driving. Petitioner was sentenced to twelve (12) months of probation. On October 18, 2012, Petitioner was placed on non-reporting status. Petitioner's probation was scheduled to end on July 12, 2013.
3. Respondent denied Petitioner's application for appointment as a North Carolina Notary Public because Petitioner was released from probation within 10 years of his application.
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.

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 03.0102, 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 3rd day of October, 2013.

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Beecher R. Gray  
Administrative Law Judge