

STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14SOS07416

MARVIN RAY SPARROW, PETITIONER,  V.  SECRETARY OF STATE , RESPONDENT.	<b>FINAL DECISION</b>
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This contested case came on for hearing before the Honorable Selina M. Brooks, Administrative Law Judge, on April 6, 2015 in Courtroom 3 of the Rutherford County Courthouse, 229 North Main Street, Rutherfordton, NC 28139.

**APPEARANCES**

Marvin Ray Sparrow, Esq., *pro se*  
175 North Main Street  
Rutherfordton, NC 28139

Lareena J. Phillips, Esq.  
Assistant Attorney General  
North Carolina Department of Justice  
PO Box 629  
Raleigh, NC 27602

**WITNESSES**

For Petitioner:           Petitioner  
                                  Christine Head

For Respondent:        Ozie Stallworth

**EXHIBITS**

During the hearing, Petitioner offered no documents for consideration and Respondent's Exhibits 1 through 12 ("R. Ex. \_") were entered into evidence without objections, as follows:

1. N.C. Gen. Stat. §10B-60
2. N.C. Gen. Stat. §10B-3
3. 18 NCAC 07B.0901

4. Marvin Ray Sparrow Application for Reappointment as a NC Notary Public
5. Shirley Louise Moellentine Complaint
6. Motion for Partial Summary Judgment and Affidavit of Lawrence Flood
7. November 25, 2013 Letter to Marvin Sparrow
8. November 27, 2013 Letter from Marvin Sparrow to Notary Enforcement Section
9. January 16, 2013 Order of Suspension of Christine B. Head
10. July 30, 2014 Letter to Marvin Sparrow and Order of Suspension
11. Notary Public Guidebook, Tenth Edition 2006, page 23
12. N.C. Gen. Stat. §10B-40

### **ISSUE**

Whether Respondent properly suspended Petitioner's North Carolina Notary Public commission?

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted into evidence and the entire record in this proceeding, the Undersigned makes the following Findings of Fact.

### **FINDINGS OF FACT**

1. Petitioner is a citizen and resident of Rutherford County, North Carolina.
2. Respondent is the State agency in North Carolina responsible for enforcing the rules and regulations that govern individuals holding a Notary Public Commission in North Carolina.
3. Petitioner has been a licensed attorney in the State of North Carolina since 1983. (Testimony of Petitioner)
4. Ms. Head has been employed by Petitioner for eight years and has held her notarial commission since 2000. (Testimony of Head)
5. On January 16, 2013, Ms. Head's Notary Public Commission was suspended by Respondent pursuant to N.C. Gen. Stat. §10B-60(c)(1) for taking an acknowledgment or administering an oath or affirmation without the principal appearing in person before the notary. The suspension was for four (4) months, starting from the date of the Order of Suspension, and she was required to complete a Notary Public Course. (R. Ex. 9)
6. After holding a notarial commission himself for several years, Petitioner was recommissioned as a North Carolina Notary Public effective on December 29, 2010 with his commission set to expire on December 28, 2015. (R. Ex. 4)

7. In November of 2013, Respondent received a complaint from Shirley Louise Moellentine that Petitioner had solicited a North Carolina Notary Public to notarize an Affidavit without the personal appearance of the principal. (R. Ex. 5)

8. After an investigation, Respondent determined that Petitioner signed his client's name, Lawrence P. Flood, on the Affidavit of Mr. Flood, and then solicited the assistance of a notary public employed by Petitioner, Christine Head, to notarize the document outside of the presence of the principal/client. (Testimony of Stallworth; R. Ex. 7)

9. By letter, dated July 30, 2014, Respondent notified Petitioner that his Notary Public Commission was suspended on the grounds that Petitioner solicited Ms. Head to commit official misconduct by notarizing an Affidavit without the personal appearance of the principal, which is a violation of N.C. Gen. Stat. §10B-60(j) and 18 North Carolina Administrative Code 07B.0901(13). The suspension was for four (4) months starting from the date of the Order of Suspension and Petitioner was ordered to complete a Notary Public Course. (R. Ex. 10)

10. On September 29, 2014, Petitioner filed a petition with the Office of Administrative Hearings appealing Respondent's decision.

11. Petitioner testified that he represented Lawrence Flood in a lawsuit filed by Lawrence Flood and his wife against Shirley Moellentine and her husband regarding a real estate transaction. During the course of the lawsuit, Petitioner prepared a Motion for Summary Judgment and supporting Affidavit of Lawrence Flood. Due to the need to quickly file the motion, Petitioner did not have sufficient time to mail the Affidavit for Lawrence Flood to sign and have notarized, and returned to him. (Testimony of Petitioner; R. Ex. 6)

12. Petitioner testified that Lawrence Flood did not sign the Affidavit of Lawrence Flood, that Lawrence Flood did not appear in person before the notary, Christine Head, and that he signed Lawrence Flood's name on the Affidavit of Lawrence Flood. (Testimony of Petitioner)

13. Petitioner and Ms. Head spoke to Lawrence Flood on the telephone, and Mr. Flood verified the accuracy of the statements in the Affidavit by telephone. (Testimony of Petitioner and Head)

14. Petitioner changed the statutory language of the notarial certificate, to wit:

I spoke personally on the telephone today with Lawrence Flood, who is known to me from previous encounters in person, and whose voice on the telephone is recognized by me. Lawrence Flood assured me that he has read and understood the foregoing document, that he affirms the statements made therein, and he authorized his signature to be affixed to it, this 24<sup>th</sup> day of July, 2012.

(Testimony of Petitioner; R. Ex. 6)

15. Lawrence Flood did not appear before Ms. Head to sign the Affidavit and Petitioner signed Mr. Flood's name to the Affidavit. (Testimony of Petitioner and Head)

16. Petitioner did not indicate anywhere on the face of the Affidavit that he was signing on behalf of Lawrence Flood in his capacity as Lawrence Flood's representative. (R. Ex. 6)

17. Petitioner did not sign his own name on the Affidavit nor did he indicate that he signed Lawrence Flood's name in his capacity as Mr. Flood's attorney. (R. Ex 6)

18. Petitioner erroneously believed that he was the principal and that pursuant to N.C. Gen. Stat. §10B-40, he was permitted to sign Lawrence Flood's name and have the Affidavit notarized without Lawrence Flood personally appearing before the notary. (Testimony of Petitioner)

19. At hearing, Ozie Stallworth, Electronic Notarization and Notary Enforcement Director at the North Carolina Department of the Secretary of State, testified that based on the North Carolina notary laws, it was not permissible for Petitioner to sign Lawrence Flood's name on the Affidavit without also listing Petitioner's name and indicating that he was signing the document in his capacity as Lawrence Flood's representative. (Testimony of Stallworth)

20. Petitioner was suspended and ordered to take a Notary Public Course as a result of Petitioner soliciting Christine Head to commit official misconduct by notarizing an Affidavit without the personal appearance of the principal, which is a violation of N.C. Gen. Stat. §10B-60(j) and 18 North Carolina Administrative Code 07B.0901(13). (R. Ex. 10)

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of the subject matter and parties herein pursuant to Article 3 of Chapter 150B and Chapter 10B of the North Carolina General Statutes.

2. Pursuant to N.C. Gen. Stat. §10B-60(a), "the Secretary may issue a warning to a notary or restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter."

3. Pursuant to N.C. Gen. Stat. §10B-60(c),

A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

(1) takes an acknowledgment or administers an oath or affirmation without the principal appearing in person before the notary.

(2) Takes a verification or proof without the subscribing witness appearing in person before the notary.

(3) Takes an acknowledgment or administers an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal.

4. Pursuant to N.C. Gen. Stat. §10B-3, official misconduct is either a notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law

in connection with notarization or a notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

5. N.C. Gen. Stat. §10B-60(j) states, "Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary."

6. Petitioner signed the name of his client, Lawrence Flood, on Lawrence Flood's Affidavit and solicited his employee, Christine Head, to commit official misconduct by having her notarize the Affidavit without the personal appearance of the principal, Lawrence Flood, as required by the North Carolina Notary Public Act.

7. Respondent properly determined that such action on the part of the Petitioner was an act of negligence within the meaning of 18 NCAC 07B.0901(13). 18 NCAC 07B.0901(13) states that "[w]hen determining whether to deny an application or take disciplinary action against a notary, the Director may consider a variety of factors including negligence."

8. Respondent properly suspended Petitioner's North Carolina Notary Public Commission and properly required that Petitioner complete a Notary Public Course.

9. In suspending Petitioner's North Carolina Notary Public Commission and requiring that Petitioner complete a Notary Public Course, Respondent did not deprive Petitioner of property in violation of the law, prejudice his rights, exceed its authority or jurisdiction, act erroneously, or fail to act as required by law or rule.

### **FINAL DECISION**

Respondent's finding that Petitioner, by negligence, solicited another North Carolina Notary Public to commit official misconduct in violation of North Carolina Notary Public laws and Respondent's suspension of Petitioner and order requiring Petitioner to attend a Notary Public Instruction Course was justified and therefore is **AFFIRMED**.

### **NOTICE**

**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 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 5th day of May, 2015.

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Selina M. Brooks  
Administrative Law Judge