

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 SOS 09334

<p>MICHAEL A PLACA PETITIONER,</p> <p>v.</p> <p>N C DEPARTMENT OF THE SECRETARY OF STATE RESPONDENT.</p>	<p>FINAL DECISION ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT</p>
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THIS MATTER is before J. Randall May, Administrative Law Judge, upon Respondent's Motion for Summary Judgment and the Judge, having considered the motion; the legal memorandum filed by Respondent's counsel; the Affidavit of Ozie Stallworth; and the Response to the Motion for Summary Judgment submitted by the Petitioner, hereby finds that the Respondent's Motion should be GRANTED.

UNDISPUTED FACTS OF RECORD

1. On June 24, 2015, Respondent received Petitioner's application for appointment as a North Carolina Notary Public. Petitioner answered "Yes" to the questions in application paragraph 14 which ask: "Have you ever been convicted by any court of a felony or misdemeanor?"

2. In his application, Petitioner admitted that on April 18, 2006, he was convicted of assault with a deadly weapon in Hoke County under file number 06 CR 050558; that he was sentenced, in part, to 18 months of supervised probation; and that he was released from this probationary term on October 18, 2007.

3. Petitioner also admitted in his application that on April 25, 2007 he was convicted of assault on a female in Hoke County under file number 06 CR 052676; that he was sentenced, in part, to 18 months supervised probation; and that he was released from this probation on October 25, 2008.

4. Respondent denied Petitioner's application pursuant to N.C. Gen. Stat. § 10B-5(d)(2) and 18 NCAC § 7B.0201.

5. 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.

6. North Carolina Administrative Code Title 18, Section 7B.0201 states:

- (b) Criminal Record. An applicant shall list on his or her application all misdemeanor and felony convictions related to crimes of dishonesty or moral turpitude. For purposes of this Chapter, those crimes include:

- (2) assault;

7. On October 9, 2015, Respondent sent a letter via certified mail, return receipt requested, to Petitioner informing Petitioner of the denial of his application and informing Petitioner of his right to appeal and how to file an appeal. Petitioner received the letter on October 13, 2015 as evidenced by his signature on the return postal receipt.

8. Ten years from the date of Petitioner's release from the probationary sentence in the Hoke County criminal matter 06 CR 050558 is October 18, 2017.

9. Petitioner submitted his June 24, 2015 application for a North Carolina Notary Public commission less than ten years from his release from the probationary sentence imposed in 06 CR 050558.

10. Ten years from the date of Petitioner's release from the probationary sentence in the Hoke County criminal matter 06 CR 052676 is October 25, 2018.

11. Petitioner submitted his June 24, 2015 application for a North Carolina Notary Public commission less than ten years from his release from the probationary sentence imposed in 06 CR 052676.

12. Respondent filed its Motion for Summary Judgment on April 8, 2016.

13. On July 11, 2016, the undersigned filed and served upon the parties a Request for Response to Motion in which Petitioner was ordered to respond to Respondent's Motion for Summary Judgment on or before July 21, 2016, if Petitioner desired objections to the motion to be considered before a ruling on the Motion.

14. Petitioner filed his Brief in Opposition to Respondent's Motion for Summary Judgment and Affidavit in Opposition to Respondent's Motion for Summary Judgment on July 21, 2016.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the subject matter and parties herein under N.C. Gen. Stat. §§ 150B and 10B.
2. There are no genuine issues of material fact in dispute.
3. N.C. Gen. Stat. § 10B-5(d)(2) *requires* the Secretary to deny a commission to an applicant who has been released from probation fewer than ten years from the date of his application.
4. N.C. Gen. Stat. § 10B-5(d)(2) does not permit the Secretary to impose any sanction other than a denial of an application for commission if the applicant has been released from probation fewer than ten years prior to its submission.
5. 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's release from probation fewer than ten years from his application for a commission.
6. N.C. Gen. Stat. § 10B-5(d)(2) provides Respondent discretionary powers to deny an application on the grounds that an applicant has been convicted of a crime involving dishonesty or moral turpitude as defined by 18 NCAC § 7B.0201(b)(2).
7. Respondent's denial of the commission based upon Petitioner's convictions for assault with a deadly weapon and assault on a female, which are defined as crimes of dishonesty or moral turpitude by 18 NCAC § 7B.0201(b)(2), was within its discretionary power pursuant to N.C. Gen. Stat § 10B-5(d)(2).
8. Based upon the foregoing, it appears that summary judgment should be granted in favor of Respondent.

FINAL DECISION

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

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 10th day of August, 2016.

J Randall May
Administrative Law Judge