

STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 SOS 03468

Donna Stroud Petitioner,  v.  Department of the Secretary of State NC Notary Enforcement Section Respondent.	<b>FINAL DECISION AND ORDER</b>
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THIS CONTESTED CASE, was heard on August 5, 2016 by David F. Sutton, Administrative Law Judge presiding, in Catawba County, North Carolina. The Petitioner appeared *pro se*. The Respondent was represented by Jeremy D. Lindsley, Assistant Attorney General, North Carolina Department of Justice.

**APPEARANCES OF COUNSEL**

For Petitioner:	<i>Pro Se</i>
For Respondent DHHS/DMA:	Jeremy D. Lindsley Assistant Attorney General N.C. Dept. of Justice 9001 Mail Service Center Raleigh, NC 27699

**ISSUE**

Whether Respondent Department of the Secretary of State, Notary Enforcement Section, erred, exceeded its authority or jurisdiction, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it made the decision to revoke Petitioner's Notary Public commission.

**APPLICABLE STATUTES, RULES AND POLICIES**

N.C. Gen. Stat. § 10B-5  
N.C. Gen. Stat. § 10B-60  
N.C. General Statute 150B-22 *et seq.*;  
18 N.C.A.C. 07B.0201;  
18 N.C.A.C. 07B.0901;

### **EXHIBITS**

For Petitioner: N/A  
For Respondent: Exhibits 1, 2, and 3 were admitted

### **WITNESSES**

For Petitioner: Petitioner  
For Respondent: Mr. Ozie Stallworth

**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. Petitioner is a citizen and resident of Davie County, North Carolina. Respondent is an agency and Department of the State of North Carolina.
2. Respondent issued a renewal of Petitioner's Notary Public Commission on July 28, 2014, pursuant to N.C. Gen. Stat. §10B-1 *et seq.*
3. The purpose of the Notary Public Act, N.C. Gen. Stat. §10B-1 *et seq.*, is to promote, serve, and protect the public interests and to prevent fraud and forgery.
4. On February 25, 2015, Petitioner voluntarily entered into a deferred prosecution agreement with the State in relation to four (4) charges of felony embezzlement filed in Davie County criminal file numbers 13 CRS 0031 through 13 CRS 0034.
5. The deferred prosecution agreement imposed upon the Petitioner a term of supervised probation of 24 months from which she is eligible for release no sooner than February 25, 2017.

6. Petitioner is currently serving the probationary term and has not been released therefrom.

7. The criminal charges against the Petitioner are pending and Petitioner has not been convicted of said charges.

8. Respondent revoked Petitioner's Notary Commission on February 2, 2016, pursuant, in part, to N.C. Gen. Stat. §10B-5(d)(2) and N.C. Gen. Stat. §10B-60(a).

9. N.C. Gen. Stat. §10B-5(d)(2) states, in part:

(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).

10. N.C. Gen. Stat. §10B-60(a) states, in part:

(a) The Secretary may . . . 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.** (emphasis added).

11. Ten (10) years from the date upon which the Petitioner becomes eligible for release from the probation imposed by the deferred prosecution agreement is February 25, 2027.

### **CONCLUSIONS OF LAW**

1. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law contain Findings of Fact, they should be so considered without regard to the given labels.

2. The Office of Administrative Hearings has jurisdiction of the subject matter and parties herein pursuant to N.C. Gen. Stat. §§150B, *et seq.* and 10B, *et seq.*

3. N.C. Gen. Stat. §10B-5(d)(2) *requires* the Department of the Secretary of State to deny a notarial commission to any applicant who has been released from probation fewer than ten (10) years prior to her application.

4. N.C. Gen. Stat. §10B-60(a) empowers the Department to suspend or revoke a current notarial commission for any reason that an application for commission may be denied.

5. Under the provisions of N.C. Gen. Stat. §10B-5(d)(2), Petitioner is ineligible to receive an initial notarial commission because she is currently serving an unexpired term of probation and, therefore, has not been free from probation for the required ten (10) year period.

6. Because Petitioner is ineligible to receive an initial notarial commission, N.C. Gen. Stat. §10B-60(a) renders Petitioner ineligible to hold a notarial commission previously granted as well.

7. Respondent Department of the Secretary of State, Notary Enforcement Section, did not err, exceed its authority or jurisdiction, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule when it made the decision to revoke Petitioner's Notary Public commission.

8. Respondent correctly revoked Petitioner's notarial commission pursuant to N.C. Gen. Stat. §§10B-5(d)(2) and 10B-60(a).

### **DECISION**

Respondent's revocation of the Petitioner's notarial 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 Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing 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 copy of the Administrative Law Judge's Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. **This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.**

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 23rd day of August, 2016.

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David F Sutton  
Administrative Law Judge