

credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, 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.

FINDINGS OF FACT

1. Petitioner is a citizen and resident of Brunswick County. Respondent is an agency and Department of the State of 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. On November 10, 2011, Respondent received Petitioner's Application for Initial Appointment as a North Carolina Notary Public. (Respondent's Exhibit C) Question 15 of that application asked, "Have you ever been convicted by any court of a felony, a misdemeanor?" Petitioner answered "Yes" to question 15. Petitioner provided a letter stating that on September 11, 2007, he plead guilty to misdemeanor maintaining a vehicle to keep controlled substance and with possession of marijuana ½ ounce or less. Petitioner indicated that he was released from probation on August 19, 2008. (Respondent's Exhibit D).
4. Petitioner's Certified Criminal Record was admitted as Respondent's Exhibit E and indicated that Respondent had plead guilty to misdemeanor maintaining a vehicle to keep or sale controlled substance and with possession of marijuana > ½ ounce to 1 ½ ounce

on September 11, 2007. Exhibit E also indicated that Petitioner was placed on 12 months supervised probation, which ended in September 2008.

5. North Carolina General Statute Chapter 10B-5(d)(2) provides that the Secretary of State may deny an application if the applicant has been convicted of a felony or a crime involving dishonesty or moral turpitude. Section 10B-5(d)(2) further states that “in no case may a commission be issued to an applicant within ten (10) years after release from prison, probation, or parole, whichever is later.”

6. 18 NCAC 7B.0201(b)(11) provides as follow:

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

(11) Unlawful possession or sale of drugs;

7. Pursuant to N.C. Gen. Stat. Section 10B-5(d)(2), Respondent denied Petitioner’s application for appointment as a North Carolina Notary Public because Petitioner was found guilty of possession of marijuana > ½ to 1 ½ oz and maintaining a vehicle to keep or sale controlled substance and released from probation within 10 years of his application. (Respondent’s Exhibit F).

8. The undersigned finds as a fact pursuant to 18 NCAC 7B.0201(b)(11) and other relevant law that Petitioner was not convicted of a crime of moral turpitude. However, Petitioner’s application for appointment as a North Carolina Notary Public was submitted within 10 years of Petitioner’s release from probation for the felony convictions set forth herein.

BASED UPON 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 the parties herein pursuant to Article 3 of Chapter 150B and Chapter 10B of the North Carolina General Statutes.
2. Petitioner was convicted of misdemeanor maintaining a vehicle to keep or sale controlled substance and with possession of marijuana > ½ to 1 ½ oz on September 11, 2007.
3. Petitioner was placed on 12 months supervised probation on September 11, 2007, which ended in September 2008.
4. N.C. Gen. Stat. § 10B-5(d)(2) provides as follows:
 - (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.
5. *The undersigned finds as a matter of fact and law that Petitioner was not found guilty of a crime involving moral turpitude pursuant to 18 NCAC 7B.0201(b)(11) and other relevant law. Nevertheless, at the time of Petitioner's application, his felony convictions had occurred within 10 years of his release from probation. Therefore, Petitioner's denial was proper pursuant to Section 10(B)-5(d)(2) which states in relevant part, "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 properly denied Petitioner's Application for appointment as a North Carolina Notary Public.

7. In denying Petitioner's Application for Reappointment as a North Carolina Notary Public, Respondent did not deprive Petitioner of property; act arbitrarily, capriciously, erroneously or contrary to the law.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Respondent's denial of Petitioner's Application for Reappointment as a North Carolina Notary Public was justified under the law or facts as alleged and therefore 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 is the 10th day of July, 2012.

Joe L. Webster
Administrative Law Judge