

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 SOS 06198

<p>Linda Verdi Rice Petitioner,</p> <p>v.</p> <p>NC Department of the Secretary of State Respondent.</p>	<p>FINAL DECISION</p>
--	------------------------------

On March 11, 2020, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Bolivia, North Carolina, pursuant to Petitioner's petition appealing Respondent's Order to permanently revoke Petitioner's notary public commission.

APPEARANCES

For Petitioner: Linda Verdi Rice, *Pro Se*

For Respondent: Jeremy Lindsley, Assistant Attorney General
N.C. Department of Justice

ISSUE

Whether Respondent properly revoked Petitioner's North Carolina Notary Public Commission?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 - 4

For Respondent: A - D

WITNESSES

For Petitioner: Petitioner

For Respondent: Special Agent Ronald McLeod, Director Ozie Stallworth

FINDINGS OF FACT

Parties

1. Petitioner has held a notary public commission issued by Respondent since 1993. She was last recommissioned to act as a notary public on August 2, 2018.
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.

Complaint Investigation

3. On or about February 5, 2019, Respondent received a complaint from an Asheville, North Carolina attorney who had noticed discrepancies regarding the validity of the service, the signatures and the notarization of signatures on two documents in a civil case for one of the attorney's clients.

4. On February 5, 2019, Respondent's Special Agent Ronald McLeod was assigned to and began investigating such complaint. Agent McLeod received a copy of the notarized documents in question, identified as "Affidavit of Service." (Resp. Ex. C) On the Affidavit of Service, P. Penland indicated that he personally served documents on Joel Berkowitz on December 3, 2018. A signature of "P. Penland" dated 12/5/18 appeared above the typed P Penland. Petitioner's signature, Notary Public seal and Jurat certification, and the expiration date of Petitioner's commission appeared adjacent to the signature of P. Penland, also dated December 5, 2018. (Resp. Ex. C)

5. After Agent McLeod received a copy of the notarized document in question (Resp. Ex. C), he interviewed the complainant attorney by telephone on February 27, 2019. The attorney informed Agent McLeod that he questioned the validity of the signature of P. Penland on the Affidavit of Service, the notarization of such signature without Mr. Penland personally appearing before the notary, and the actual service of the documents listed as served.

6. On March 5, 2019, Agent McLeod personally interviewed Patrick Penland. On December 2018, Penland was employed as a process server for Tonya Maggio of Atlantic Legal Services, Inc of Wilmington, North Carolina. Mr. Penland claimed the P. Penland signature on the Affidavit of Service (Resp. Ex. C) was not his signature and that he did not appear before Petitioner when she notarized the P. Penland signature. (Pet. Ex. 3)

7. On March 11, 2019, Agent McLeod personally interviewed Petitioner regarding the notarization of the P. Penland signature on the Affidavit of Service (Resp. Ex. C). Petitioner worked part-time for Tonya Maggio of Atlantic Legal Services, Inc. Atlantic Legal Services, Inc., a home-based business, in December 2018. At that time, Petitioner had worked for Maggio for approximately four or five months. Petitioner verified

that she had notarized the P. Penland signature and signed the Affidavit of Service. According to Agent McLeod's testimony and his typed notes of Petitioner's interview, Petitioner acknowledged that the common operating procedure at her employer was for Tonya Maggio to hand Petitioner stacks of papers to Petitioner, who was sitting beside Maggio, and Petitioner would notarize the documents. Petitioner admitted that when Maggio handed the Affidavit of Service to her, Mr. Penland's name was already signed, and she notarized it.

8. Petitioner acknowledged that Mr. Penland did not appear before her during the signature and notarization, but that Maggio told Petitioner that Maggio had a Power of Attorney for Penland and that it was "perfectly fine" for Petitioner to notarize his name and her signature. (Pet. Ex. 3)

9. Petitioner believed Ms. Maggio had signed Mr. Penland's name on the Affidavit of Service (Resp. Ex. C) and on another form. Petitioner did not notarize the other form, and the other form is not at issue in this case.

10. Agent McLeod issued a criminal citation to Petitioner for the misdemeanor violation of N.C. Gen. Stat. § 10B-60(c)(1) of taking an acknowledgment or administering an oath or affirmation without the principal, Mr. Penland, appearing in person before Petitioner. McLeod only charged Petitioner with a misdemeanor citation. McLeod also criminally charged Tonya Maggio with a felony violation of N.C. Gen. Stat. § 10B-60(d)(1).

11. On July 18, 2019, the New Hanover District Attorney voluntarily dismissed the misdemeanor criminal charge against Petitioner (Pet. Ex. 4) and dismissed the felony criminal charge against Ms. Maggio.

Revocation Determination

12. On September 19, 2019, Ozie Stallworth, Director of Respondent's Electronic Notarization and Notary Enforcement Section, issued an Order of Permanent Revocation of Petitioner's notary public commission. Director Stallworth based his Order upon the determination that Petitioner had notarized a document with a forged signature of and without the personal appearance of the principal [Patrick Penland] in violation of North Carolina General Statute Chapter [§§] 10B-60(c)(1), 10B-60(d)(1) and 10B-22(a), and 18 NCAC 07B.0901(1),(2),(3), 18 NCAC 07B .0903(3)(4) and 18 NCAC 07B.0904(b)(7). (Resp. Ex. A)

13. By letter dated September 19, 2019, Director Stallworth notified Petitioner of Respondent's investigation results and its Order to revoke her notary public commission for violating the above-cited statutes and administrative regulations by notarizing a document with a forged signature and without the personal appearance of the principal. (Resp. Ex. B)

Contested Case Hearing

14. Director Stallworth's duty is to enforce the Notary Public Act, investigate complaints, determine if notary violations have occurred, and administer sanctions for those violations. The Notary Public Act requires the person whose signature is being notarized to personally appear before the notary.

15. A notary may perform a notarial act by "acknowledgment" or by administering an "oath" or "affirmation." An acknowledgment occurs wherein an individual personally appears before the notary with a document and acknowledges either: (1) that the signature on a previously signed document was that individual's signature or (2) the individual signs the document while in the physical presence of the notary and the notary personally observes such individual sign the document. An oath or affirmation occurs when the notary administers an oath or affirmation to an individual who appears before the notary and the individual swears or affirms that statements in the document presented to the notary are true and correct. Under an oath or affirmation, the individual must sign the document in the notary's presence.

16. In this case, Respondent received a complaint that a document was notarized without a personal appearance before the notary. Director Stallworth reviewed the investigation into the notary public complaint at issue and examined the Affidavit of Service at issue. The "jurat" certification above Petitioner's notary signature and stamp on the Affidavit stated: "Subscribed and sworn to before me by the affiant who is personally known to me."

17. At hearing, Director Stallworth opined that the subject Affidavit of Service required an "oath" or "affirmation" notarial act for several reasons. First, the language of the jurat certification above Petitioner's signature required: (1) the personal presence of the principal signing the document, (2) that Petitioner administer an oath or affirmation and (3) that the principal sign the document in front of the notary. Second, the statement above P. Penland's signature stated "I, P Penland, being duly sworn, depose and say . . ." Third, the Affidavit of Service itself is typically associated with an "oath or affirmation."

18. Stallworth explained, and the undersigned finds as fact, that a notary is a public official appointed by Respondent who is trusted to witness the execution of documents. If a notary does not require personal appearance of the principal, there is a danger someone other than the principal might sign the document notarized (i.e. forgery). The value of the notarization of a document is that it allows a court or others to rely on the document. If you can't trust the notarization of documents, then the entire notarial process is undermined.

19. Director Stallworth further opined that a notary is allowed in some instances to notarize the signature of a person who holds a Power of Attorney for another. For example, an individual who appears before a notary as an Attorney in Fact would potentially sign another person's name as "John Doe, as signed by Billy Johnson, Attorney in Fact." Billy Johnson's signature carries the weight of John Doe's signature.

This scenario routinely occurs as a notarial “acknowledgment” because the Attorney in Fact is authorized to sign a document for someone else. However, the notary must note in the notary certificate that the Attorney in Fact personally appeared before the notary. He further noted that Powers of Attorney are not useful in an oath or affirmation because the person holding the Power of Attorney cannot swear to the truthfulness of the document for another person.

20. In Stallworth’s opinion, Respondent’s investigation revealed that the principal (P. Penland) never appeared before and never took an oath or affirmation before the notary, and therefore, the signature of “P. Penland” isn’t Mr. Penland’s signature.

21. Revocation of a notary public is the most severe administrative sanction Respondent can impose. Stallworth opined that revocation of Petitioner’s notary public commission was warranted in this case because Petitioner notarized (1) a forged signature (2) without the personal appearance of the principal (Mr. Penland). In addition, the two bases for revocation tend to be the more egregious penalties for notary misconduct as they “strike at the heart and core of why you need a notary” to be trusted. That is, a notary violates the trust of her notary public commission when she notarizes a false document or notarizes a document when she knows a document is false or fraudulent.

22. Director Stallworth considered the factors in 18 NCAC 07B.0901 (1), (2), (3), and (13) in determining the appropriate sanction in this case. He determined that revocation, and not a lesser sanction such as suspension, was the appropriate sanction because the facts showed that Mr. Penland’s signature was forged on the Affidavit of Service, the Affidavit of Service was presented and relied upon in legal civil proceedings, and Petitioner told Agent McLeod that this method of notarization was the normal course of business for Tonya Maggio’s business.

23. The Director opined that Petitioner clearly violated 18 NCAC 07B.0903(3) forgery and (4) fraud and 18 NCAC 07B.0904(b)(7) because she failed to require a personal appearance before she notarized the Affidavit of Service. He also considered that Petitioner told the investigator this [the way she notarized the Affidavit of Service] was something done in the normal course of business for them, which indicated to Stallworth that the manner of notarizing documents was not just a one [-time] incident.

24. Stallworth considered that Petitioner had no prior violations and she had been a notary for 30 years as mitigating factors in deciding the sanction to be imposed in this case.

25. Director Stallworth believed the criminal charges against Petitioner were dismissed, but he didn’t know who was charged with the felony criminal charge. [Petitioner or Tonya Maggio] (Emphasis added.)

26. At hearing, Petitioner admitted that she notarized Penland’s signature on the Affidavit of Service without Mr. Penland personally appearing before her and without

administering an oath or affirmation to him. (Resp. Ex. C).

27. The preponderance of the evidence established that Tonya Maggio owned a process served business called Atlantic Legal Services, Inc, with civil process servers located throughout North Carolina. Ms. Maggio held Powers of Attorney for all the civil process servers employed by Atlantic Legal Services, Inc. The process servers, like Penland, signed into a program called ServeManager and documented when they had served summons and complaints on individuals. (Pet. Ex. 1) The process servers were the only ones who could enter their names in the program. After the process server documented service, Ms. Maggio would print the Affidavit of Service, sign the process server's name, and hand the Affidavit of Service to Petitioner who would notarize the signature. Maggio and Petitioner's desks were located right beside each other.

28. In this case, the case file (Pet. Ex. 1) showed that on December 3, 2018, P. Penland made an entry that he had personally served certain documents on Joel Berkowitz. However, Petitioner learned later, and it is found as fact, that Mr. Penland did not actually serve Berkowitz on December 3, 2018. (Pet. Ex. 1; Resp. Ex. C) Therefore, the undersigned finds that Mr. Penland's entire statement to Agent McLeod lacked credibility. (Pet. Ex. 3)

29. The preponderance of evidence showed that on December 5, 2018, Ms. Maggio printed the Affidavit of Service, signed "P. Penland" and handed the Affidavit to Petitioner who notarized the Affidavit.

30. Before December 2018, Maggio showed the Powers of Attorney she held for her process servers to Petitioner after Maggio asked Petitioner to notarize a document, not the document at issue here, that Maggio had signed the process server's name. Maggio told Petitioner, and Petitioner believed Maggio, that the Secretary of State's office had cleared her to use a Power of Attorney to sign an Affidavit of Service after a process server had completed a job. Petitioner had no reason to challenge or not believe her employer. In addition, Petitioner had never dealt with a Power of Attorney before in using her notary public commission and did only as Maggio instructed her.

31. There is no evidence that Petitioner acted out of any motive, other than her employment relationship with Tonya Maggio, when she notarized the Affidavit of Service at issue in this case.

32. There was no evidence presented at hearing proving that Petitioner herself forged the "P. Penland" signature or conspired with Ms. Maggio to commit forgery. Neither was there any evidence that Petitioner notarized the "P. Penland" signature with the intent to defraud any person or firm.

33. Similarly, there was no evidence that Petitioner engaged in any dishonest actions or made dishonest statements before or during Respondent's investigation. To the contrary, Petitioner was completely honest and forthright, from the beginning of the investigation through her testimony at hearing, in acknowledging the facts and

circumstances surrounding her notarization of "P. Penland" signature on the Affidavit of Service at issue. 18 NCAC 07B .0901(2),(6).

34. The preponderance of evidence proved that Petitioner notarized a signature of the person (Maggio) who personally appeared before her. Maggio was sitting right beside Petitioner and handed Petitioner the signed Affidavit of Service. At hearing, Petitioner explained, and the undersigned finds as fact, that Maggio should have signed the Affidavit of Service as "Tonya Maggio as the Power of Attorney for P. Penland."

35. The notarial error was that the jurat certificate was incorrect given Maggio's status as Power of Attorney for P. Penland and the language above the P. Penland signature was incorrect; such language was an oath, not an acknowledgment. Petitioner also failed to review how Maggio signed the Affidavit of Service as the personal representative of P. Penland before she notarized the Affidavit of Service. However, Respondent did not administratively discipline Petitioner for these mistakes in the Order for Permanent Revocation.

CONCLUSIONS OF LAW

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

2. 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. N.C. Gen. Stat. § 10B-2.

3. N.C. Gen. Stat. § 10B-60(a) provides that Respondent may issue a warning to a notary or restrict, suspend, or revoke a notarial commission on any ground for which an application for a commission may be denied under N.C. Gen. Stat. § 10B-5(d). N.C. Gen. Stat. § 10B-5(d)(5) provides that Respondent may deny an application for a commission if the applicant has engaged in "official misconduct" within the meaning of N.C. Gen. Stat. § 10B-3(15). Therefore, pursuant to N.C. Gen. Stat. §§ 10B-60(a) and 10B-5(d)(5), Respondent may revoke Petitioner's North Carolina notary public commission for acts of official misconduct.

4. N.C. Gen. Stat. § 10B-3(15)(a) and (b) defines "official misconduct" as either of the following:

- a. 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.
- b. 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(c) states:

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.

6. N.C. Gen. Stat. § 10B-60(d) states:

A notary shall be guilty of a Class I felony if the notary does any of the following: (1) Takes an acknowledgment or a verification or a proof, or administers an oath or affirmation if the notary knows it is false or fraudulent.

7. N.C. Gen. Stat. § 10B-22(a) states, "A notary shall not execute a notarial certificate containing information known or believed by the notary to be false."

8. 18 NCAC 07B .0903 EXECUTED DOCUMENT VIOLATIONS states:

The Director shall revoke the commission of a notary who performs a notarial act knowing that the document or information contained in it is false or fraudulent, or that the intent of the executed document is dishonest. Acts of fraud or dishonesty include: . . .

- (3) Forgery;
- (4) Fraud;

9. 18 NCAC 07B .0904 COMPLETE AND LAWFUL NOTARIAL ACT VIOLATIONS provides:

- (a) The Director may take disciplinary action against a notary for an offense relating to failure to meet the statutory requirements for a notarial act.
- (b) Offenses relating to failure to meet the statutory requirements for a complete and lawful notarial act include:

. . .

- (7) Failure to require personal appearance;

10. N.C. Gen. Stat. § 10B-3(8) defines "jurat" in the Notary Public Act as a "notary's certificate evidencing the administration of an oath or affirmation."

11. N.C. Gen. Stat. § 10B-3(16) defines "Personal appearance and appear in person before a notary" as:

An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange

records back and forth during the notarization process.

12. N.C. Gen. Stat. § 10B-3(18) defines “principal” as including:

a. In the case of an acknowledgment, the individual whose identity and due execution of a record is being certified by the notary.

...

c. In the case of an oath or affirmation, the individual who makes a vow of truthfulness on penalty of perjury.

13. Respondent issued an Order of Permanent Revocation of Petitioner’s notary public commission based upon a violation of N.C. Gen. Stat. §§ 10B-60(c)(1), 10B-60(d)(1), 10B-22(a) and 18 NCAC 07B.0903(3)(4) and 7B.0904(b)(7).

14. Neither the Notary Public Act nor its administrative regulations in 18 NCAC 07B .100 *et seq.* addressed notarization of a signature on a document by one who holds a Power of Attorney for another. The only evidence before the undersigned regarding that issue was Director Stallworth’s testimony at hearing.

15. The only issue before the undersigned is whether there was sufficient evidence in the record for Respondent to permanently revoke Petitioner’s notary public commission for the violations stated in its Order. There was insufficient evidence presented at hearing to prove that Petitioner violated N.C. Gen. Stat. § 10B-60(d)(1), § 10B-22(a), or 18 NCAC 07B .0903(3) and (4) by notarizing the “P. Penland” signature *knowing it was false or fraudulent.* (Emphasis added.) There was no evidence presented at hearing establishing that Petitioner knew the P. Penland signature was false or fraudulent. Instead, the evidence established that Petitioner relied upon her employer’s representation that Respondent had “cleared” Maggio to use the Power of Attorney for Maggio’s process servers. Petitioner had no reason to disbelieve her employer. There was no evidence that Petitioner acted out of any dishonest or fraudulent motive, other than her employment relationship with Tonya Maggio, when she notarized the Affidavit of Service at issue in this case. There was no evidence presented at hearing proving that Petitioner herself forged the “P. Penland” signature or conspired with Ms. Maggio to commit forgery.

16. There was insufficient evidence presented at hearing proving that Petitioner violated N.C. Gen. Stat. § 10B-60(c)(1) or 18 NCAC 07B.0904(b)(7). Petitioner’s employer signed the Affidavit of Service, was authorized to sign on behalf of P Penland with Penland’s Power of Attorney, and personally appeared before Petitioner before Petitioner notarized the Affidavit of Service.

17. Instead, the preponderance of the evidence in this case established that Petitioner notarized the signature of “P. Penland” on an Affidavit of Service on December

5, 2018, because her employer had a Power of Attorney on file for Mr. Penland allowing the employer to sign on Penland's behalf. The employer personally appeared before Petitioner and signed the Affidavit of Service with the P. Penland signature but failed to sign as Penland's Power of Attorney. The jurat certification also failed to indicate that Petitioner was notarizing the employer's signature signing as a Power of Attorney for P Penland. Both the oath above the "P Penland" signature and the jurat certification incorrectly indicated that Petitioner administered the oath to the person who signed P Penland.

18. Based on the foregoing, Respondent erred when it issued an Order to Permanently revoke Petitioner's notary public commission.

FINAL DECISION

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent's Order of Permanent Revocation of Petitioner's notary public commission is **REVERSED**.

NOTICE OF APPEAL

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 as indicated by 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 17th day of April, 2020.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Jeremy D Lindsley
Assistant Attorney General, NC Department of Justice
jlindsley@ncdoj.gov
Attorney For Respondent

Daniel Snipes Johnson
Special Deputy Attorney General, NC Department of Justice
djohnson@ncdoj.gov
Attorney For Respondent

Linda Verdi Rice
lindaverdirice@gmail.com
Petitioner

This the 17th day of April, 2020.



Jerrod Godwin
Administrative Law Judge Assistant
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000