

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Notary
Public Commission Application
of Melissa Edmond f/k/a
Melissa Boehlke

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Richard C. Luis for hearing on July 10, 2008, at 9:30 a.m., at the Office of Administrative Hearings, 600 North Robert Street, Saint Paul, Minnesota 55101. The OAH record closed at the conclusion of the hearing that day.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce (the Department).

Terry Duggins. Duggins Law Firm LLC, 350 Saint Peter Street, Saint Paul, MN 55102, appeared on behalf of Melissa Edmond (Applicant or Respondent).

STATEMENT OF ISSUES

The issue in this case is whether the Department's denial of the Respondent's application for a commission as a notary public should be affirmed for the following reasons:

1. Respondent pleaded guilty or was convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, and otherwise engaged in acts or practices that demonstrate she is untrustworthy, financially irresponsible, or otherwise unqualified to act as a notary public within the meaning of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 359.12 (2006).

2. Respondent provided false, misleading, or incomplete information on her notary public commission application in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 359.01, subd. 4, and 359.12 (2006).

3. Minnesota Statutes Chapter 364 (2006) does not preclude disqualification from licensure as a notary public because her conviction was based on underlying misconduct that is grounds to censure, suspend, or revoke

a notary public commission under Minn. Stat. §§ 45.027, subd. 7 and 359.12 (2006).

The Administrative Law Judge concludes that, while the Respondent's conviction is directly related to the duties of a notary public, the Respondent has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a notary public within the meaning of Minn. Stat. §§ 45.07, subd. 7, and 364.03, subd. 3. The Administrative Law Judge recommends that the denial of the application be reversed and that a Notary Public Commission be issued to the Respondent.

Based on the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In 2000, Respondent was charged with felony financial card fraud.¹ Respondent charged \$1,433.96 on her mother's credit card, without permission. Respondent was placed in a diversionary program that afforded the opportunity to have the charge dismissed on meeting the program's conditions. The charge was dismissed on March 5, 2003, with the Respondent having made restitution on the amount that she owed.²

2. On February 15, 2001, Respondent was charged in a criminal complaint with felony theft. Respondent had stolen \$12,280.97 from her employer in Woodbury, Minnesota. The total amount consisted of cash and checks. Respondent made no effort to present the checks for payment. According to the criminal complaint, Respondent admitted that she stole her employer's deposits. and spent the cash on bills and illegal drugs.³

3. Respondent entered a guilty plea to felony theft and was sentenced to thirty days in jail, with ten years of probation and a requirement that she make restitution for the full amount stolen from her employer.⁴

4. After serving the jail term, Respondent was placed on unsupervised probation. Subsequently, Respondent was arrested for driving after having consumed alcohol. Respondent's probation was not revoked for her drinking. Abstaining from alcohol was removed as a condition for Respondent's continued probation.⁵

5. While meeting the requirements of the diversionary program, Respondent began volunteering for Lifetrack Resources at the Frogtown Family

¹ Exhibit 6.

² Testimony of Melissa Edmond.

³ Exhibit 1; Testimony of Edmond.

⁴ Testimony of Bruce Duncan.

⁵ Testimony of Edmond. See Memorandum and Footnote 22.

Center. Respondent continued to perform volunteer work at that facility, on a seasonal basis. This work included directing the work of other volunteers.⁶

6. Respondent is married, with a child. She also cares for two other dependent relatives.⁷

7. Respondent resumed her education and began paralegal training from the Minnesota School of Business Globe University. The Legal Coordinator of that program, an attorney, wrote a letter of recommendation for Respondent that praised her work skills and noted her fitness as a paralegal.⁸ Respondent has shown academic excellence while in school.⁹

8. Respondent has been working as a paralegal for the Duggins Law Firm since January 2006, with time off for maternity leave. Her job duties include the handling of bank deposits. Respondent completed her coursework for a bachelor's degree in paralegal studies at Globe University in March 2008. Respondent has been accepted as a first year law student at Hamline University School of Law.¹⁰

9. On January 30, 2008 and February 19, 2008, Respondent had probation violation hearings regarding the status of her restitution payments.¹¹

10. On April 4, 2008, Respondent submitted an application for a notary public commission to the Department. Included in the application is the question: "Have you ever been charged with, or convicted of, or been indicted for, or entered a plea to, any criminal offense (felony, gross misdemeanor or misdemeanor), in any State or Federal Court?" Respondent answered affirmative to this question. The application then calls for the Applicant to "attach an explanation including the specific dates, charges, resolution, attach copies of legal documentation and complete the BCA form".¹²

11. Respondent attached a copy of the Complaint and the Report of Disposition of the felony theft conviction in 2001. Respondent did not mention the dismissed charge from 2000. Respondent attached an explanation of her situation which states, in its entirety:

In 2001 I was convicted of Felony Theft. The incident happened in early 2000. I made a plea agreement to pay restitution, do 30 days

⁶ Exhibit 10; Testimony of Edmond.

⁷ Testimony of Edmond.

⁸ Exhibit 11.

⁹ Exhibits 14 and 15.

¹⁰ Testimony of Edmond.

¹¹ Exhibit 4.

¹² Exhibit 1.

of STS and a \$50 fine. I am still paying restitution and am current on restitution payments.¹³

12. On April 4, 2008, the Department notified the Respondent that her application was being denied due to the 2001 conviction and the lack of documentation on the status of her probation. The letter notifying the Respondent of the denial also noted that the decision could be appealed.¹⁴

13. On April 29, 2008, the Respondent submitted her request to appeal the denial of her application. Accompanying the request was the only documentation that the Respondent had received regarding the status of her probation, which was a notice for a single orientation session.¹⁵

14. On May 28, 2008, the Department issued the Notice and Order for Hearing that initiated this contested case proceeding.

15. The Respondent has satisfied the judgment against her awarded to her former employer's insurer.¹⁶ Respondent negotiated the final amount to be paid in restitution. Any payment not made by the time of the hearing is in escrow, awaiting payment.¹⁷ Ramsey County has informed Respondent that her probation will be terminated once the payment of the last restitution has been confirmed.¹⁸

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the Respondent's application under Minn. Stat. §§ 14.50, 45.011, 45.027, and 359.12.

2. The Department has complied with all procedural requirements.

3. Under Minn. Stat. § 359.01, the Governor commissions notaries public. The Minnesota Secretary of State receives applications for appointments and commissions and keeps a register of those persons appointed and commissioned as notaries public. The application provision provides:

Subd. 4. Application. The secretary of state shall prepare the application form for a commission. The form may request personal

¹³ Exhibit 1.

¹⁴ Exhibit 2.

¹⁵ Exhibit 3.

¹⁶ Exhibit 8.

¹⁷ Exhibit 9.

¹⁸ Testimony of Edmond.

information about the applicant, including, but not limited to, relevant civil litigation, occupational license history, and criminal background, if any. For the purposes of this section, "criminal background" includes, but is not limited to, criminal charges, arrests, indictments, pleas, and convictions.

4. The standards of conduct for notaries are set out in Minn. Stat. § 359.12, which provides:

Every notary who shall charge or receive a fee or reward for any act or service done or rendered as a notary greater than the amount allowed by law, or who dishonestly or unfaithfully discharges duties as notary, or who has pleaded guilty, with or without explicitly admitting guilt, plead nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, is subject to the penalties imposed pursuant to section 45.027, except that a notary may be removed from office only by the governor or the district court. The commissioner has all the powers provided by section 45.027 and shall proceed in the manner provided by that section in actions against notaries.

5. Under Minn. Stat. § 45.011, the Commissioner of Commerce is entrusted with administration of the applications for notary commissions. The process for that administration is set out in Minn. Stat. § 45.027, which states in pertinent part:

Subd. 7. Actions against licensees. (a) In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that: (1) the order is in the public interest; and (2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or (3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or (4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.¹⁹

¹⁹ Minn. Stat. § 45.027, subd. 7.

6. Respondent's conduct in 2000, resulting in a charge of felony financial card fraud, and in 2001, resulting in a felony theft conviction, are related to the standards of conduct for notarial acts, particularly regarding honesty and the faithful discharge of notarial duties.

7. Respondent's conduct, standing alone, is a sufficient basis to deny the application for a notary commission license under Minn. Stat. § 359.01. When considered in light of Respondent's subsequent conduct, she has demonstrated that she is fit to perform the duties of a notary public. The record in this matter does not demonstrate that the Respondent is "untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner."²⁰

8. Respondent failed to note the dismissed charge from 2000 on her application for a notary commission. This omission was due to a good faith belief that the dismissed charge was no longer on Respondent's record. Respondent did not omit the information to avoid consideration of that conduct in considering Respondent's application.

9. Under Minn. Stat. § 45.027, subd. 10, "Chapter 364 does not apply to an applicant for a license or to a licensee where the underlying conduct on which the conviction is based would be grounds for denial, censure, suspension, or revocation of the license"

10. A notary commission is not a "license" within the meaning of Minn. Stat. § 45.027, subd. 10.

11. Through her subsequent conduct, Respondent has demonstrated competent evidence of sufficient rehabilitation and present fitness to perform the duties of a notary public, within the meaning of Minn. Stat. § 364.03, subd. 3.

12. Issuing a notary commission to Respondent is in the public interest.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that Respondent's application for a notary commission be GRANTED.

Dated: August 6, 2008.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

²⁰ Minn. Stat. § 45.027, subd. 7.

Reported: Digitally Recorded, No Transcript Prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, Attn: Sue Jensen, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In this matter, such an outcome results in the application for a notary commission to be granted. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

The Department raised two issues regarding the information on Respondent's application. One issue was not mentioning the dismissed charge from 2000. The other issue was the status of Respondent's probation, including the existence of a judgment for restitution. The evidence presented at the hearing shows that Respondent did not attempt to mislead the Department about her background or her status.

Respondent committed two serious offenses demonstrating moral turpitude. Taken alone, such conduct supports denial of her application for a notary commission. The standard for issuance of a notary commission does not disqualify an applicant merely for a past offense. Under the relevant statute, Respondent must be shown to be "untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner."²¹ Respondent is entitled to demonstrate that she is now fit

²¹ Minn. Stat. § 45.027, subd. 7.

to carry out the authority granted under a notary commission, in spite of her earlier conduct.

Respondent's conduct since her conviction in 2001 has only one blemish. She engaged in driving while under the influence of alcohol. Respondent acknowledged her wrongful conduct. The DUI does not involve moral turpitude and does not have any bearing on fitness as a notary.²²

Respondent has presented compelling evidence regarding her subsequent education, employment, compliance with her probation, and overall moral improvement. This evidence is sufficient to meet her burden under Minn. Stat. § 45.027, subd. 7 to show that she is fit to perform the duties of a notary public. Similarly, Respondent has met her burden under Minn. Stat. § 364.03 to show "sufficient rehabilitation and present fitness to perform ... the occupation for which the license is sought." The Department attempted to dismiss Respondent's demonstration of current fitness and rehabilitation as merely taking steps toward that goal. The Department has not shown any reason why this evidence of rehabilitation should be disregarded in relation to Respondent's application for a notary commission. Respondent, having met her burden, has shown that she should be granted a notary commission.

R.C.L.

²² Respondent's probation was not revoked for this conduct, and the Court amended the probation conditions to clarify that only illegal drug use would constitute a probation violation. Testimony of Edmond.