

**KEN BENNETT**  
**SECRETARY OF STATE**  
**STATE OF ARIZONA**



February 13, 2014

Kenneth McLeod  
McLeod Investigations  
2538 E Virgo Place  
Chandler AZ 85249

*Re: Notary Felix A Garcia; Complainant Kenneth A McLeod*

Dear Mr. McLeod:

Enclosed you will find the copy of the letter of determination mailed to the Notary.

This office's action on this complaint does not preclude you from taking any further legal action against the notary. Accordingly, you are advised to consult an attorney concerning any legal remedies you may have.

If you have any concerns regarding this issue, you may contact me directly at 602-542-6315.

Sincerely,

A handwritten signature in blue ink, appearing to read "Diana Ogaz".

Diana Ogaz  
Notary Complaint Coordinator,  
Business Services Division  
Secretary of State

Cc: Attorney General's Office  
Notary File



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February 13, 2014

**CERTIFIED MAIL**

Felix A Garcia  
Zoe Financial Services, LLC  
4205 N 7<sup>th</sup> Ave Suite 313  
Phoenix AZ 85013

*Re: Notary Felix A. Garcia, Complainant Invest Kenneth McLeod*

Dear Mr. Garcia:

Pursuant to A.R.S. § 41-331(A), the Attorney General's Office ("AGO") has investigated the complaint brought against Notary, Felix A. Garcia ("Notary"), by Kenneth McLeod ("Complainant"). The Complainant alleged that the Complainant mailed to the Notary five written demands for a copy of his June 10, 2013, journal entries and that the Notary has not responded to those demands as required by law.

*The Secretary of State ("Secretary") does not have the authority to assess whether any signature(s) on the document(s) were forged or to settle any legal disputes regarding the document(s). The Secretary only has authority to determine if under the notary statutes, the Notary fully and faithfully discharged the duties of a notary public, and properly notarized the document(s).*

**A. The Notary Failed to Comply With the Investigation.**

Notaries are required to respond to an AGO investigation about their notarial services. A.R.S. §§ 41-331(B) & 41-313(E)(4). They must also maintain a journal and produce a copy if the Attorney General or a member of the public requests it. A.R.S. § 41-313(E)(1), 41-319(A)&(F). Although the Notary responded in writing he failed to provide the journal pages requested failing to meet the standards of the law.

**B. The Notary Failed to Update His Contact Information**

Notaries are required to update their contact information with the Secretary of State's Office ("Secretary") within thirty (30) days of changing their address. A.R.S. § 41-323(A) If a notary does not update their contact information, he or she has failed to discharge fully and faithfully their duties and may be liable for civil penalties. ARS §41-330 (A)(4) & 41-323(C)

A certified letter was issued to the Notary at his mailing/home address on December 16, 2013. The U.S. Postal Service ("USPS") returned the letter, with the envelope Dec. 23, 2013) bearing the label "ATTEMPTED - NOT KNOWN UNABLE TO FORWARD." Consequently, it may be presumed that the Notary has failed to update his mailing contact information with the Secretary. Therefore, the Notary has failed to meet the standards of the

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law providing grounds for suspension or revocation, and will be responsible for payment of a \$25 civil penalty prior to renewing her commission. A.R.S. § 41-323(A), 41-323(C) & 41-330(A)(4).

**C. The Notary Failed to keep a Journal in Accordance to Statute.**

A notary's journal must contain the following: (1) the date of the notarial act; (2) the document description or type of notarial act; (3) the printed name of the signer as well as his or her address and signature; (4) the type of evidence for the signer's identity; (5) the specific identity information of the signer; and (6) the fee, if any, charged for the notarization. A.R.S. § 41-319.

The notarization date of each document is cited as June 10, 2013. The separate journal entry for each document may have been written after the respective notarization of each document (1) AGO requested journal copies for the dates of June 8 through 12, 2013, but the Notary provided only two entries dated "6-10-13." (2) The Notary does not state in either response message why he failed to provide a copy of the entire date range we requested. (3) Each page is not numbered, and each entry is at the top of the page. (4) Each entry is the only entry on the page, followed by three blank entries below it. Notarial acts must be kept in chronological order, it can be presumed that the notary does not keep notarial acts in chronological order since both notarizations were performed on June 10, 2013 and they are logged on two different pages.

Additionally each entry contains much of the requisite information but includes incorrect or incomplete information. Even though each notarization was an acknowledgment, in each entry the box "Other" is crossed rather than the box for "Acknowledgment." Therefore the Notary has failed to meet the standards of the law. A.R.S. § 41-319 41-330(A)(4)

**D. The Notary Failed to Take Satisfactory Evidence of ID.**

Before performing a notarization, a notary is required to collect "satisfactory evidence of identity" for the signer. *A.R.S. § 41-311(11)*. The signer may prove his or her identity by presenting an unexpired driver's license or unexpired passport issued by the United States; an unexpired ID card issued by any branch of the U.S. Armed Forces; or any other unexpired ID card issued by the United States or tribal government that contains the individual's picture, physical description, and signature. *Id.* Alternatively, the signer may prove his or her identity through the notary's "personal knowledge" or through "the oath or affirmation of a credible person who personally knows the individual and who provides satisfactory evidence of identity." *Arizona Notary Public Reference Manual ("Manual")*, pg 16 and 17).

"[F]or the purposes of real estate conveyance or financing proof of identity may be evidenced by one of the following: (i) A valid unexpired passport that is issued by the United States government. (ii) A valid unexpired passport that is issued by a national government other than the United States government and that is accompanied by a valid unexpired visa or

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other documentation that is issued by the United States government and that is necessary to establish an individual's legal presence in the United States" (A.R.S. § 41-311(b)); 2012 Manual, pg 16 insert "For the purposes of real estate conveyance and financing").

The Manual (2012) cites another instance of valid passport identity (pg 16 "Exception to the ID Rule"): "Passports without visas from qualified individuals who are visiting from countries participating in the Visa Waiver Program." It states about that usage, "Visit [www.state.gov](http://www.state.gov) for a list of such countries."

The Web site referenced indicates South Africa is not a participant in the Visa Waiver Program. In failing to prove he accepted satisfactory evidence of identity by accepting a passport that does not meet the requirements, Therefore, since the notary failed to prove he took satisfactory evidence of identify nor did he provide a copy of the document, "personal knowledge" cannot be claimed. In failing to fully and faithfully discharge the duties of a notary public the Notary provides grounds for suspension or revocation. A.R.S. §§ 41-313(B)(1), 41-319, 41-330(A)(4), 41-330(A)(10).

**E. The Notary Failed to Provide a Copy of a Public Records Request.**

Anyone can request a notary's journal records if the journal records are public records. The person making the request to view or have a record copied shall provide the request in writing and include: month and year of the notarial act; name of the person whose signature was notarized; and the type of document or transaction. A.R.S. §§ 41-319(A) and (F).

In this case the Notary should have provided the requester with a copy of the requested record since the request met the requirements. The Notary states about the Complainant's demand letters: "The reason I hadn't responded to the detective requesting the documents is because I don't release information to someone I don't know is a reliable source" (Jan. 23, 2014, 7:22 PM e-mail message). In failing to reply to the request, the Notary has failed to meet the standards of the law providing grounds for suspension or revocation. A.R.S. §§ 41-319(A) and (F)

**F. Conclusion**

The Secretary possesses special knowledge and expertise in interpreting the notary statutes and believes that the definitions, requirements (i.e. oath & bond) and duties outlined in A.R.S. § 41-311 through A.R.S. § 41-332 are standards with which each notary must comply.

The Secretary believes that in addition to the specific offenses outlined by the Arizona legislature which would warrant action against a notary's commission, in cases where there is substantial evidence that the notary's actions fail to meet the standards described in the notary statutes, the Secretary has grounds to refuse, revoke or suspend a notary's commission for "failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public." A.R.S. § 41-330(A)(4)

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Therefore, the Secretary of State has determined to revoke the Notary's commission effective immediately. The revocation of the Notary's commission is based on the following violations of Arizona notary law:


1. The Notary failed to directly address the allegations when responding to the AGO investigation. A.R.S. §§ 41-313(B)(4) & 41-331(B).
2. The Notary failed to update his/her contact information. A.R.S. §§ 41-323(A)(C).
3. The Notary failed to keep a journal in accordance with A.R.S § 41-319 as required by A.R.S. § 41-313(E)(1).
4. The Notary failed to retain a paper or electronic copy of the notarized document in lieu of recording the notarial act in his or her journal if they had personal knowledge of the Signer. A.R.S. §§ 41-319(B) and 41-317(B).
5. The Notary failed to document satisfactory evidence of identity in their journal as required by A.R.S. 41-313(E)(1), 41-319(A)(4),(5) & 41-330(A)(4).
6. The Notary failed to furnish a certified copy of any public record in the Notary's journal as required by law. A.R.S. §§ 41-319(A) and (F).
7. Failure to discharge fully and faithfully the duties of a notary public. A.R.S. § 41-330(A)(4).

The Notary is required to deliver his or her notary seal, notarial journal(s) and notarial records to our office. All correspondence and surrendered items should be sent by certified mail or other means providing a receipt. Items are required to be sent within three months of a notary's revocation or the notary shall forfeit not less than \$50 or more than \$500 to the state. A.R.S. § 41-317.

The Notary has a right to request an evidentiary hearing pursuant to A.R.S. § 41-1092.03 by filing a written notice of appeal with the Office of the Arizona Secretary of State within thirty (30) days of receipt of this notice. If the Notary request an evidentiary hearing as referenced above, **he or she may also request an informal settlement conference pursuant to A.R.S. § 41-1092.06. Information regarding procedures, practice pointers, or the online filing of motions is available through The Office of Administrative Hearings website at [www.azoah.com](http://www.azoah.com).** If a hearing is not requested within the time provided by the statute, the decision will stand.

If you have any concerns regarding this issue, you may contact me directly at 602-542-6315.

Sincerely,



Diana Ogaz  
Notary Complaint Coordinator  
Business Services Division  
Secretary of State

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