

**NOTARY COMMISSION**

**QUALIFICATION POLICIES**

**AND PROCEDURES**

**FOR THE**

**PARISH OF EAST BATON ROUGE,**

**STATE OF LOUISIANA**

Adopted August 17, 2004

19<sup>th</sup> Judicial District Court

Baton Rouge, Louisiana

**PREPARED AND SUBMITTED BY  
THE NINETEENTH JUDICIAL DISTRICT COURT  
ADVISORY COMMITTEE ON  
NOTARY EXAMINATION  
PURSUANT TO THE JUNE 30, 2003 ORDER OF THE  
NINETEENTH JUDICIAL DISTRICT COURT**

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**NOTARY COMMISSION QUALIFICATION POLICIES AND PROCEDURES**  
**PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA**

The 19th Judicial District Court for the Parish of East Baton Rouge recognizes that the authorized powers and required duties of the notary at civil law are vast and extensive. In Rochereau v. Jones, 29 La. Ann. 82, 86 (1877), Justice DeBlanc said:

High and important functions are intrusted to notaries; they are invested with grave and extensive duties; they are charged with the solemn preparation of the authentic evidence of our transactions, of last wills, of those titles which pass from one generation to another.

The East Baton Rouge Parish Notary Examining Committee provides this manual to all Applicants for a notary commission within the Parish of East Baton Rouge, State of Louisiana, for the purpose of providing information, guidelines, and procedures for notary commissions within the Parish of East Baton Rouge.

## PREFACE

### THE NOTARY'S ROLE IN LOUISIANA<sup>1</sup>

In Louisiana, the notary is given broad and far-reaching powers to draft and execute almost every type of legal document. This official is empowered to make inventories, appraisements, partitions, wills, protests, matrimonial contracts, conveyances, and generally, all contracts and instruments in writing. The notary is also empowered to execute authentic acts, receive acknowledgments of acts under private signature, and officiate at family and creditors' meetings.

*High and important functions are intrusted to notaries; they are invested with grave and extensive duties; they are charged with the solemn preparation of the authentic evidence of our transactions, of last wills, of those titles which pass from one generation to another.*

Rochereau v. Jones,  
29 La. Ann. 82, 86  
(1877).

Compare these powers to those of a Texas notary. His commission grants the power to: "take acknowledgments, proof of written instruments, protest instruments permitted by law to be protested, administer oaths, and take depositions."

While some of the powers granted notaries in Louisiana are generally accepted and recognized, some are less known. Consider the notary's power to "make appraisements." Many people question how a notary can be qualified to appraise immovable property. This is easily explained by remembering that in most civil law countries, the requirements for becoming a notary are more stringent than ours. There generally tend to be fewer notaries, and their ability to act is restricted to a limited geographical area. They are the professionals charged with the execution of all sales, exchanges, partitions, and mortgages of immovable property. Viewed in this light, a civil law notary is qualified to appraise property.

The power to conduct family meetings and meetings of creditors, and the power to make protests are also often not understood. These functions previously exercised by notaries are little used today. The concept of a "family meeting" originally referred to meetings of family members to decide certain questions, usually relating to the rearing of a minor child whose parents were deceased. Federal bankruptcy law has supplanted the use of creditors' meetings. The protest of dishonored negotiable instruments is generally no longer necessary.

Despite the practical elimination of some of these powers, they underscore the extent to which the notary has been an integral part of the civil law in Louisiana. Much more than the "official witness" of other states, our notary has been and is a professional. Very few documents or transactions can be given full legal efficacy without his imprimatur. The Louisiana notary's responsibility is great, and his underlying duty is to always act with integrity.

*The office of Notary Public under our law is one of honor, trust, and responsibility.*

H. H. White, *White's Louisiana Notarial Guide*, Introduction to First Edition

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<sup>1</sup>From article by Gregory DeKeyzer, Notaire et Avocat, in *Louisiana Notary*, July 1987 (c) 1987, 2004 The Golden Bough, Ltd. Used with permission.

## **CHAPTER 1: DEFINITIONS.**

The following defined terms as used throughout this manual shall have the following meanings:

### **§ 1001: Terms Used in the Manual.**

<b>Applicant</b>	A person applying for a notary commission within the Parish of East Baton Rouge, State of Louisiana.
<b>Application</b>	The Application to Qualify for Appointment as Notary Public, attached hereto as Appendix A.
<b>Certificate of Competency</b>	A finding by the Court that the Applicant is “competent and possessed of the necessary qualifications” to be appointed a notary public.
<b>Chair</b>	The Chair of the East Baton Rouge Parish Notary Examining Committee.
<b>Chief Judge</b>	The Chief Judge for the 19th Judicial District Court for the Parish of East Baton Rouge.
<b>Committee</b>	The East Baton Parish Notary Examining Committee.
<b>Court</b>	The 19th Judicial District Court for the Parish of East Baton Rouge.
<b>Dual Commission</b>	A second and concurrent commission issued to a notary who is commissioned in and residing in another parish, based on his having an office in a second parish.
<b>He, him, himself, his</b>	Pronouns used in their gender-neutral sense to refer to both males and females.
<b>Hearing</b>	An informal meeting between the Hearing Committee and the Applicant for the purpose of hearing an appeal.
<b>Hearing Committee</b>	A three-member panel appointed by the Chair composed of three persons--an attorney notary and two non-attorney notaries--residing in the Parish of East Baton Rouge, who are not members of the Committee.
<b>Notary Exam</b>	A test given to the Applicant to ascertain his academic competency.
<b>Parish</b>	The Parish of East Baton Rouge.
<b>State</b>	The State of Louisiana.

**True copy**

A copy of a document that has been attested to by a notary public as an exact duplicate after both the original and copy have been presented to a notary public for comparison, or after the notary has prepared the copy from the original.

**Appendix A**

Application.

**Appendix B**

Policy of the Court—Character and Fitness Requirements.

**CHAPTER 2: EAST BATON ROUGE PARISH NOTARY EXAMINING COMMITTEE; QUALIFICATIONS, TERMS OF OFFICE.**

**§ 2001: East Baton Rouge Parish Notary Examining Committee; qualifications; terms of office.**

**A. Committee Composition.** The East Baton Rouge Parish Notary Examining Committee shall consist of three members appointed by the Chief Judge.

**B. Term.**

**1.** Appointees to the Committee shall be appointed to serve a term of two consecutive years.

**2.** No Committee member shall serve more than two consecutive terms. A Committee member shall be ineligible to serve on the Committee for two years following the end of his second consecutive term. Upon the second anniversary of the end of his second consecutive term, a former Committee member shall again be eligible for appointment to the Committee.

**C. Qualifications of Members.**

**1.** Members of the Committee shall be notaries commissioned in East Baton Rouge Parish. Two of the notaries shall be attorneys and one a notary public who is not an attorney. However, if no person within the parish who is a non-attorney notary will accept such appointment, the Chief Judge shall appoint an additional attorney to serve on the Committee.

**2.** Each attorney member shall have been duly admitted to practice law in this state for at least five years before the date of appointment.

**3.** Each non-attorney member shall have held a valid notary commission in this Parish for at least five years before the date of appointment.

**4.** No member of the Committee shall be engaged in the business of assisting prospective Applicants in applying for and taking the notary exam, including, but not limited to, notary-exam-preparation courses and compiling notary-exam-preparation manuals during the term of the member's service on the Committee.

**D. Vacancies.** A vacancy caused by any reason except the expiration of the term shall be filled by appointment by the Chief Judge for the remainder of the unexpired term.

**E. Removal.** The Chief Judge may remove any member of the Committee. If the Committee fails to schedule and give the exams as directed by law, the Committee shall automatically be discharged, and a new Committee shall be appointed to fulfill the unexpired terms in accordance with the provisions herein.

**§ 2002: Officers; quorum; meetings.**

**A. Chair.** The Chief Judge shall appoint a chair from the members of the Committee.

**B. Quorum.**

**1.** Two members of the Committee shall constitute a quorum for all business. The Committee shall act with the concurrence of a majority of those members who participate and vote, provided at least two members participate and vote.

**2.** The Committee shall meet quarterly or more often if necessary. If two members of the Committee request additional meetings, additional meetings shall be called.

**§ 2003: Domicile.** The Committee shall be domiciled in the Parish of East Baton Rouge.

**§ 2004: Powers of the Committee.**

**A. Notary Exam.** The Committee shall have the full power and authority to administer a written exam to any resident citizen or resident alien of the State, eighteen years of age or older, seeking to be appointed a notary public in and for the Parish. Exams shall be given on the second Monday in July and the second Monday in December of each calendar year, and may be given at such other times as the Committee shall determine.

**B. Application.** The Committee shall require each Applicant to submit to the Court an Application to be appointed a notary public, together with a certificate establishing the Applicant's age, residence, location of the office if the Applicant seeks to be appointed a notary based on such office, location of the office that was the basis for a current appointment as a notary in another parish, if any, and a statement as to the Applicant's good moral character, integrity, competency, and sober habits, sworn to and subscribed by two reputable citizens of the Parish.

**CHAPTER 3: PROCEDURE TO APPLY TO QUALIFY FOR APPOINTMENT AS NOTARY PUBLIC IN AND FOR THE PARISH OF EAST BATON ROUGE PURSUANT TO LA. R.S. 35:191.**

**§ 3001: Qualifications of Applicant.**

**A. Statutory qualifications for appointment as Notary Public.**

1. Residence: domicile in the Parish of East Baton Rouge (or office in this Parish, but only if Application is for a Dual Commission).
2. Age eighteen or older.
3. Registered voter (if a U.S. citizen) in the parish of residence.
4. A valid commission in the parish of residence if Application is for a Dual Commission.

**B. Statutory requirements for Applications to be filed with the court.**

1. Application to be appointed notary submitted to the Court.
2. Application to take competency exam filed with the Court.
3. The Application process strictly follows the statutory requirements (and practical necessity) for a proper application for all prospective notaries, even those for whom the exam may be waived, i.e., attorneys and notaries who hold, or who have held, commissions in another parish.

**C. Finding of Competency.**

1. The issuance of any notary commission requires an Applicant to be "found competent and possessed of the necessary qualifications" by the Court, evidenced by a Certificate of Competency to that effect signed by a judge of the Court. La. R.S. 35:191C(2)(d).

2. The Certificate of Competency is in all respects a finding by the Court that the Applicant is "competent and possessed of the necessary qualifications" to be appointed a notary public; its issuance requires the Court to receive evidence, weigh the evidence appropriately, and make credibility determinations in reaching the decision of the Court whether the Applicant meets the competency requirements of the statute.

3. Because of the authority granted under a notary commission in Louisiana, the Court requires evidence of a level of character and fitness similar to the level required of attorneys licensed in this State before finding an Applicant competent to serve as a notary public. While the statutory exam measures academic competency, it is through the submission of a Character and Fitness questionnaire within the Application, and a supplemental report of

investigation of character and fitness, that the Court determines whether an Applicant is otherwise competent to serve as a notary in and for the Parish.

4. The Applicant, when submitting an Application, must consent to the Committee reviewing an independent investigation of the Applicant's character, pay any fees required to obtain the independent investigator's report, and fulfill any requirements the Committee may impose regarding the report.

**D. Administrative Policy.**

1. The Committee or its designees will examine each Application for accuracy and completeness and will determine whether the Applicant meets the statutory requirements for appointment.

2. If the Applicant does not meet the statutory requirements, the Committee will notify the Applicant to that effect and refund the fees paid pursuant to § 6001C.

3. If the Applicant meets the statutory requirements, the Committee will proceed to process the Application and examine any qualified Applicant required to take the exam, or recommend an application for waiver of exam, except in the case of an attorney licensed to practice law in this state or a notary who has held a valid Louisiana notary commission for more than five years, both of which for whom it is the policy of the Court to dispense with the exam.

4. The Committee will review the Character and Fitness section of the Application and the independent investigative report and will recommend to the Court whether the Applicant, based on the information provided, should be considered competent to serve as a notary public. The final determination in all cases shall rest with the Court.

**§ 3002: The Application to Qualify for Appointment as Notary Public.**

The Application form annexed hereto as Appendix A must be used when applying for a notary commission in East Baton Rouge Parish. When complete, the Applicant shall file the Application with the Clerk of Court and Recorder of Mortgages for the Parish of East Baton Rouge. The Applicant or his representative must acquire the Application either by appearing at the Clerk of Court's office or by electronically accessing the Clerk of Court's web site ([www.ebrclerkofcourt.org](http://www.ebrclerkofcourt.org)). The Clerk of Court will not mail or fax the Application.

**A. Section One: Application to the 19<sup>th</sup> Judicial District Court to Qualify for Appointment as a Notary in and for the Parish of East Baton Rouge.**

1. Every Applicant must complete Section 1A. Basic information collected in this section is that which is necessary to establish the Applicant's minimum qualifications required by law. This information defines the Applicant's specific situation, which will determine the certification to be signed by the Applicant, and the further information to be assembled in specific subsections.

2. Every Applicant must obtain the statutorily required affidavits of two residents of the Parish attesting to his good moral character, integrity, competency, and sober habits. The forms for these affidavits are located in Section 1B.

**B. Section Two: Character and Fitness Questionnaire.**

1. Section Two is designed to collect information to establish whether the Applicant meets requirements established by the Court to determine whether the Applicant is competent and possessed of the necessary qualifications to become a notary public commissioned in and for the Parish of East Baton Rouge.

2. All Applicants must complete Section Two. Attorneys who are licensed to practice law in this State are not required to disclose any information in this section that was disclosed in their licensing application or character and fitness report to the Louisiana State Bar Association. However, any information not disclosed at that time, or which has occurred since the date of that application and report, shall be disclosed.

3. Section Two, Part C, contains the consent of the Applicant to the Committee's obtaining a report of an independent investigative reporting agency on the accuracy and completeness of the information disclosed in this section.

4. The Application shall not be deemed complete until the Court has received the detailed report of an independent investigative reporting agency referred to in § 3002B(3).

5. Nothing herein may be construed to limit the Court in seeking additional evidence regarding the competency or qualifications of any Applicant when the Court deems it advisable to do so.

6. Section Two, Part B, shall be part of the Application. However, Section Two, Part B, and the Independent Investigative Report shall be treated as sealed records of the Court. These records shall be retained for five years by the Clerk of Court, after which the Clerk of Court or his designee shall destroy them.

**C. Section Three: Exam waiver requests.**

Under the following situations, Applicants can request exam waivers by certifying their status in Section Three of the Application:

1. Section Three, Part A, requests waiver of the exam in accordance with La. R.S. 35:191C(2)(e) by an Applicant who is an attorney admitted to the practice of law in the State.

2. Section Three, Part B, requests waiver of the exam in accordance with La. R.S. 35:191C(2)(e) by an Applicant who is a notary who currently holds a valid Louisiana notary commission. It is the Court's policy to deny a waiver of the exam under this section.

3. Section Three, Part C, asserts that the Applicant is entitled to waiver of the exam under La. R. S. 35:191E because he has been validly commissioned as a Louisiana notary for at least five years and has relocated his residence.

**D. Section Four: Application to take Parish notary exam.**

1. Section Four, Part A, is a formal request to take the exam.

2. Section Four, Part B, contains additional questions to obtain full disclosure of any possible conflicts of interest between the examiners and the Applicant.

**E. Section Five: Applicant's Affidavit.** Section Five is the Applicant's affidavit and certification of the accuracy of the Application and is sworn to in the presence of a notary public.

**F. Section Six: Explanations of "Yes" answers given in Sections One and Two.** Section Six provides additional space to explain answers given in Sections One and Two of the Application, other than information included on specific forms.

**G. Section Seven: Attachments as required.**

1. Certificate of Qualified Elector in East Baton Rouge Parish or parish of residence;

2. True Copy of front and back of United States Citizenship and Immigration Services Form I-551, commonly known as "Green Card," as proof of immigration status as a lawful resident alien;

3. Certificate of Good Standing from the Supreme Court as proof of status as licensed attorney; and

4. Forms as specified in Section Two.

**H. Section Eight: For Court Use Only.** This Application becomes a permanent record of the 19th Judicial District Court. The Applicant is not to make any entries in Section Eight. It will contain the following court-entered information:

1. Date received;

2. Fees received;

3. Approvals;

4. Orders;

5. Additional Requirements;

6. Denial review hearing scheduled; and

7. Final Disposition.



## CHAPTER 4: TESTING OF APPLICANTS.

### § 4001: Manner and Procedure for Testing.

**A. Dates of exam.** The exam shall be given on the second Monday in July and the second Monday in December of each calendar year, and may be given at such other times as the Committee shall determine or the law may dictate.

**B. Location.** The exam shall be given at a location to be announced by the Committee. At least seven calendar days before the date of the exam, approved Applicants will be notified by mail of the date of the exam, the times of the exam, and the location of the exam.

**C. Checking in and identification.** Each Applicant is required to present an appropriate picture identification to the proctor upon entering the exam room and before receiving any exam packets.

**D. Items allowed in examining room.** At the time of the exam, the Applicant is responsible for bringing his own pens and highlighters. No books, notes, cell phones, electronic devices, or other materials are allowed in the exam room, except as noted or required by the Committee.

**E. Duration and length of exam.** The exam will begin at 9:00 a.m. and will last until 1:00 p.m. Applicants are expected to report promptly at the appointed time. An applicant will not be allowed additional time to complete the exam if he arrives after 9:00 a.m.

**F. Testing format of the exam.** The testing format may include, but is not limited to, the following:

**Definitions.** The Applicant shall answer multiple-choice questions or questions requiring short written answers.

**Notarial Acts.** Acts are to be drafted according to a presented scenario. These acts may include, but are not limited to, those set forth in Section § 4001G below.

**Situational Ethics:** Applicants shall give appropriate responses to scenarios presented.

**Essay questions:** Applicants shall give appropriate responses to scenarios presented.

**Research Portion:** To examine proficiency of ability to use the Louisiana Civil Code, a research section of the exam may be administered in the final hour of the exam. It will be a separate part of the exam administered only after the Applicant's exam materials have been returned to the proctor. During this part of the exam, Applicants will be required to demonstrate their ability to locate information in the current edition of West's Louisiana Civil Code.

**G. Content of exam.** At the Committee's discretion, the content of the exam may include, but is not limited to, the following:

**Adoptions:** notarial adoptions and legitimations.

**Appearance clauses:** for individuals or corporations; notarial acts by a curator.

**Authentic Acts and Acknowledgments:** their requirements and effects.

**Compromises, settlements and releases:** including those on behalf of minors and interdicts.

**Corporations:** formation; basic principles; corporate documents that can be prepared by a notary.

**Domicile:** principles for establishing and changing domicile.

**Donations:** of movable and immovable property; manual; interspousal; lesion beyond moiety; *inter vivos* and *mortis causa*; kinds; requirements of form; witness requirements; capacity; disposable portions; forced heirship; reduction of donations; collation; prohibited donations; testaments for impaired testators.

**Emancipations:** notarial; by marriage; judicial.

**Interdiction:** general principles; appearance of interdict; capacity.

**Leases:** oral and written lease requirements; lessor's privilege.

**Mortgages:** creation; types; form requirements; requirements for executory process; chattel mortgages; subordination of security instruments; UCC 1; recording requirements; ranking; collateral mortgages.

**Motor vehicle registrations:** transfers, liens on titled movables.

**Obligations and Contracts:** basic principles and terms.

**Partitions:** types; notarial partition.

**Partnerships:** creation; naming; types; participation of partners; ownership of immovable property; termination; liability of partners.

**Power of Attorney:** kinds; forms; powers; obligations; appearances; termination; revocation.

**Powers of notary:** duties; requirements; administration of oaths; statewide powers; parishes of power.

**Privileges, Liens, Pledges:** creation; termination; perfection.

**Promissory Notes:** types; use; legal requirements; paraphing.

**Property:** classifications and presumptions of classifications.

**Property descriptions:** metes and bounds; surveys; government survey system; description by sections and quarters, using 640-square-acre measurements.

**Property regimes:** community; separate; contractual; legal requirements.

**Public officials:** oath of office; malfeasance; misfeasance.

**Recordation:** of mortgages, sales, other notarial acts, and acts under private signature; recording requirements; effects; place of recordation.

**Sales:** rescission of sales; function of notary; acts to accomplish sale of immovable property.

**Servitudes:** types; creation; transferability; termination.

**Sources of law:** reported cases; revised statutes; Louisiana Civil Code and ancillaries; attorney general opinions.

**Subrogation:** principles; effect by operation of law.

**Successions:** general principles; terms common to successions; rights of parties; heirs; spouses; descendants; effect of testate and intestate successions; degrees of relationship; disinheritance; capacity; collation.

**Trusts:** types; creation; terms; capacities; revocation.

**Tutorship:** principles; appearance; duties of tutor and notary.

**Usufruct:** principles; creation; rights of usufructuary and naked owner; surviving spouse usufruct under La. C. C. art. 890; termination of usufruct.

**Wills and Testaments:** *see Donations.*

**H. Grading of exam.** All exams are graded by up to three graders, who shall be the Committee members or their designees.

**I. Notification of Results and Scores.** A score of at least 75% is necessary to pass the exam. The Applicant shall be notified by United States Postal Service of the results of the exam within forty-five days following the exam.

**J. Review of Applicant's Original Exam after Testing.** Within ten days of the mailing of the results of the exam, an Applicant may call the Clerk of Court to schedule an appointment to review his exam. Within five days after reviewing the exam at the Clerk of Court's office, an Applicant may request an informal meeting with a member of the Committee to discuss the exam.

**K. Disposition of Applicants' Original Exam after Testing.** After the certificate of competency has been issued and the oath has been administered, all exams will be destroyed by the Committee members or their designees. This provision applies to those Applicants who appeal pursuant to Chapter 5 hereof only after that appeal is voluntarily dismissed or determined by the Court after submission.

**L. Cheating, Deception, Fraud.** Fundamental qualifications for receiving a commission as a notary public are that the person be of the highest moral character, integrity, competency and sober habits. Accordingly, Applicants are expected to exhibit those qualities.

**1.** The proctor shall have the absolute right to disqualify any Applicant if the proctor determines the Applicant has cheated. Anyone caught cheating will be required to leave the exam room immediately. Cheating is defined as engaging in any of the following forms of conduct:

a. Soliciting or receiving any aid during the exam from any Applicant, other person, or source;

b. Giving aid to any Applicant during the exam;

c. Bringing into the exam room or using any notes or materials not provided for the Applicant's use by the proctor; and

d. Any other course of conduct that, in the proctor's opinion, constitutes dishonesty or cheating on the part of the Applicant.

2. In the event that the proctor disqualifies an Applicant, the Applicant may appeal in accordance with Chapter 5 hereof.

3. An applicant shall not be qualified to apply for a notary commission in the Parish at any future time if (1) he is disqualified for cheating and does not appeal pursuant to Chapter 5 hereof; or (2) he appeals, and the appeal is decided in favor of the Committee.

**M. Miscellaneous.**

1. **Legibility.** The Applicant's answer must be legible. If an answer is not legible, the answer will be disqualified.

2. **Disposition of Test Materials.** Upon completion of the exam, the Applicant is required to submit the exam, answer sheets and all scrap papers to the proctor.

3. **Postponements.** An Applicant may apply for and receive only one notary exam postponement due to medical or personal emergencies.

a. A written request outlining the reasons must be made prior to the exam qualification deadline date.

b. All postponement requests must be accepted and approved by the Committee.

4. **Availability of Copies of Exam.** No copies of the exam, answer sheet, or answer key shall be made available to anyone other than for use in testing, grading, or reviewing.

**§ 4002: Retesting of Applicant.**

**A. Application.** Should an Applicant (1) not sit for a scheduled exam or (2) fail an exam, the Applicant may file a second Application in the same manner as he filed the previous Application (as set out in Chapter 3 hereinabove) and pay the same nonrefundable application and examination fees. The Application shall be processed as if the Applicant were filing his first Application. Filing a second Application does not preclude an Applicant, in the event of failure of an exam, from appealing pursuant to the provisions of Chapter 5.

**B. Retesting of Applicants.** An Applicant can file successive applications upon paying the nonrefundable application and examination fees. However, if an Applicant has two consecutive failures, he will not be permitted to retake the exam for twelve months. For example, if the exams are given in July and December of any calendar year, and an Applicant schedules an exam for July but fails, he can seek to be retested in December. If he should fail that December exam as well, the Applicant may not take an exam until the following December.

## **CHAPTER 5: APPEAL PROCEDURES.**

### **§ 5001: Authority to Resolve Appeals.**

**A. Right to Appeal.** An Applicant may appeal by letter to the Committee if he is aggrieved (1) in connection with the denial of an application to take a notary exam, (2) in connection with a failure to pass the notary exam, or (3) in connection with being disqualified during the taking of an exam. Appeals should be submitted in writing to the Committee within ten days from the date of denial of the application, within ten days from the date of disqualification, or within thirty days from the date of mailing of the notification of failure to pass the exam. A written appeal shall be a request for an informal hearing.

**B. Authority to Resolve Appeals.** The Chair shall have the authority to appoint the Hearing Committee to conduct a Hearing and to settle and resolve an Applicant's appeal.

**C. Notice of Hearing.** The Chair shall send a written notice to the Applicant to commence a Hearing, which shall include:

1. A statement of the time, place, and nature of the Hearing; and
2. A short and plain statement of the matters asserted to be heard at the Hearing.

The notice shall be served by the United States Postal Service, unless time or other factors render service by mail impractical. In that case, the Chair may effect service by any other means reasonably calculated to communicate the written notice to the Applicant.

### **D. Conduct of Hearing.**

**1. Hearing Committee Chair.** The Hearing Committee shall elect from its members a Hearing Committee Chair who will act on the Hearing Committee's behalf and issue the decision of the panel.

#### **2. Hearing.**

a. An opportunity shall be afforded the Applicant to respond to and to present evidence on all issues of fact involved, to argue all issues involved, and to cross-exam witnesses as may be required for a full and true disclosure of the facts. The Applicant may choose to represent himself or to have an attorney appear on his behalf.

b. The Hearing Committee may, in its discretion, request written views from the Committee and give such weight to the submission as the facts and law require. A copy of such written submission shall be provided to the Applicant participating in the Hearing.

c. The Hearing Committee may dispose of any appeal by stipulation, agreed settlement, or consent order. If the Applicant fails to attend the Hearing, the Hearing Committee may dismiss the appeal.

### **3. Record.**

a. The record shall contain all pleadings, motions, and intermediate rulings; all evidence received or considered or a summary thereof if not transcribed; a statement of matters officially noticed; offers of proof, objections, and rulings thereon; proposed findings and exceptions; and any decision, opinion, or report by the Hearing Committee.

b. The Hearing Committee shall have all proceedings before it recorded electronically and may in its discretion, upon written request of an Applicant, cause to be made a full transcript of proceedings. The Committee shall pay the cost of a transcript when the Hearing Committee elects to have the proceedings transcribed. If the Applicant requests a copy of the transcript, he shall be given a copy after he pays the cost thereof.

c. Findings of fact made by the Hearing Committee shall be based exclusively on the evidence and on matters officially noticed at the Hearing.

d. The Clerk of Court of East Baton Rouge Parish shall retain the record of the proceedings before the Hearing Committee for five years, after which the Clerk or his designee may destroy the record.

### **4. Rules of Evidence.**

a. The Hearing Committee Chair may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonable, prudent persons in the conduct of their affairs. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a Hearing will be expedited and the interests of the Applicant will not be prejudiced substantially, any part of the evidence may be received in written form.

b. All evidence, including records and documents in the possession of the Committee of which the Hearing Committee desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. Materials that are incorporated by reference shall be available for examination by the Applicant before being received in evidence.

c. The Hearing Committee shall have authority to raise issues not otherwise raised by the Applicant at the Hearing where those issues are pertinent to a proper disposition of the matter.

**5. Oaths and Affirmations.** The Hearing Committee Chair shall have the power to administer oaths and affirmations, regulate the course of the Hearing, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the Applicant to appear and confer to consider the simplification of the issues.

**6. Subpoenas.** The Hearing Committee Chair shall have power to sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of

books, papers, and other documentary evidence. No subpoena shall be issued until the Applicant who wishes to subpoena the witness first deposits money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to La. R. S. 13:3661 and 13:3671. Whenever any person summoned neglects or refuses to obey the summons; or to produce books, papers, records, or other data; or to give testimony, as required, the Hearing Committee may apply to the judge of the district court for the district within which the person so summoned resides or is found for an attachment against him for contempt.

**7. Depositions and Discovery.** The Applicant may take the depositions of witnesses in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the record of the Hearing. The admission of these depositions may be objected to at the time of the Hearing and may be received in evidence or excluded from the evidence by the Hearing Committee Chair.

**E. Confidential and Privileged Information.** Records and documents in the possession of the Committee and the Hearing Committee, including conclusions drawn therefrom, shall be confidential, shall not be made available to the public, and shall not be subject to subpoena by any person other than the Applicant.

**F. Decision.** If the appeal is not resolved by mutual agreement through an informal hearing process, the Hearing Committee shall, within fourteen days, issue a decision in writing that shall state the reasons for the action taken and inform the Applicant of his right to judicial review of the decision.

**G. Notice of Decision.** A copy of the decision under Subsection F above shall be sent by United States Postal Service, certified mail, return receipt requested, or otherwise furnished immediately to the Applicant.

**H. Finality of Decision.** A decision under Subsection F above shall be final unless the Applicant has filed a written petition for appeal to the 19th Judicial District Court requesting the Court to review the Hearing Committee's decision in accordance with § 5002 hereof within ten days of receipt of the decision.

#### **§ 5002: Appeal by an Applicant to the 19th Judicial District Court.**

**A. Venue.** The 19th Judicial District Court shall have exclusive venue over an Applicant's appeal.

**B. Scope of Review.** The Court shall conduct the review without a jury. The Court, upon request, may hear oral argument. Both the Applicant and the Committee may, but are not required to, file briefs with the Court. If briefs have not been filed, the Court may request briefs. The scope of judicial review shall be limited to the record of the proceedings before the Hearing Committee. However, in his brief the Applicant may raise the existence and discovery since the Hearing of new evidence important to the issues that he could not have with due diligence obtained before the Hearing. If the Court deems the assertions regarding the new evidence well founded, it may grant a hearing to consider the new evidence.

**C. Decision.** The Court shall decide the appeal within thirty days of submission. That decision shall be final. No rehearing, new trial, or appeal shall be allowed.

**D. Notice of Decision.** A copy of the decision under Subsection C of this § 5002 shall be sent by United States Postal Service or otherwise furnished to the Applicant.

**CHAPTER 6: MISCELLANEOUS.**

**§ 6001: Fee Schedule.**

Fees Payable to the East Baton Rouge Parish Notary Examining Committee:

Examination fee	 00
Administrative fee	25.00
Character and Fitness Investigation fee	25.00
Fee for appeal to Hearing Committee based on failure to pass notary exam or disqualification for cheating during the exam	25.00

Fees Payable to the Clerk of Court:

The East Baton Rouge Clerk of Court will charge additional filing fees.

Fee Payable to Independent Investigative Agency

An additional fee will be charged by the independent investigative agency for performing the character and fitness examination.

**A. Administrative, Examination, and Filing Fees**

The following fees are due when the Application is filed:

1. An examination fee of \$75.00 is payable to the East Baton Rouge Parish Notary Examining Committee.
2. A non-refundable administrative fee of \$25.00 is payable to the East Baton Rouge Parish Notary Examining Committee for processing the application. This fee applies to all applications to qualify for appointment as a notary public in and for East Baton Rouge Parish, including applications based on change of parish and applications for dual commissions.
3. A non-refundable administrative fee payable to the East Baton Rouge Parish Notary Examining Committee for processing the Character and Fitness Investigation Report
4. Non-refundable filing fees payable to the East Baton Rouge Parish Clerk of Court. These fees are based on the Clerk of Court's filing fee schedule. An Applicant may want to inquire directly of the Clerk of Court for this fee schedule.

All fees are required each time an Applicant files an Application to qualify for appointment as a notary public in and for East Baton Rouge Parish.

**B. Form of Payment of Fees.**

All fees payable to the East Baton Rouge Notary Examining Committee must be submitted in the form of a cashier's check, official bank check, or money order.

All fees payable to the East Baton Rouge Parish Clerk of Court must be submitted in the form of cash, cashier's check, official bank check, or money order.

**C. Refunds**

The filing fees paid to the Clerk of Court are non-refundable. Each Application accepted by the Clerk of Court's office is filed and indexed daily, and the fees are deposited daily.

After reviewing the Application, if the Committee determines by review of the Application and the independent investigative report that an Applicant is not qualified to take the exam, the Committee will refund the Applicant's examination fee of \$75.00. An order shall be prepared and signed directing the Clerk of Court's Office to release those funds to the Applicant from its Registry. The administrative fee of \$25.00 and the \$25.00 fee for processing the investigative report are non-refundable.

*Reference Materials:*

*Louisiana Revised Statutes, Title 35. Notaries Public and Commissioners, Chapter 4. Appointment, Qualifications, And Bonds of Notaries; specifically, Louisiana Revised Statute 35:191, Appointment; qualifications and bond; exam; examiners.*

*Act 1142 of the 2003 Legislature.*

APPENDIX A The application as adopted has been amended. A current application form is available from the EBR parish clerk of court's web site. Go to [http://www.ebrclerkofcourt.org/departments/training\\_notary.htm](http://www.ebrclerkofcourt.org/departments/training_notary.htm)

## APPENDIX B

### POLICY OF THE COURT--CHARACTER AND FITNESS REQUIREMENTS

#### A. Public Policy.

The primary purpose of character and fitness screening before granting a certificate of competency from the court is to ensure the protection of the public. The notary-commissioning process is incomplete if only testing for minimal academic legal competence is undertaken.

The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the exercise of the duties and functions of a civil law notary public.

The public interest requires that the public be secure in its expectation that those who are commissioned notaries in Louisiana are worthy of the trust and confidence constituents may reasonably place in their notaries.

#### B. Good Moral Character and Fitness.

The term "**good moral character**" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, respect for the rights of other persons, and observance of fiduciary responsibility and of the laws of the State of Louisiana and of the United States of America. The term "**fitness**" includes, but is not limited to, the mental or emotional suitability of the Applicant to exercise the functions of a notary in this state.

In satisfying the requirements of good moral character and fitness, an Applicant should be a person whose record of conduct justifies the trust of constituents, courts, third parties, and others with respect to the official duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an Applicant may constitute a basis of a finding of lack of competency.

#### C. Good Moral Character and Fitness: Factors and Considerations.

While the Court may consider any factor or circumstance in determining whether to further investigate an Applicant's character and fitness, any of the following should be considered to be a basis for investigation and inquiry before recommending admission:

- Arrests or criminal charges, whether or not resulting in a conviction;
- Any unlawful conduct;
- Making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Application, or any amendment, or in any testimony, or any statement submitted to the Committee;
- Misconduct in employment;
- Acts involving dishonesty, fraud, deceit or misrepresentation;
- Commission of an act constituting the unauthorized practice of law;
- Violation of any academic honor code;

Membership in an organization that advocates that the United States government be overthrown by force, if the Applicant indicates a present intent that such be done;  
Litigation;  
Neglect of financial responsibilities;  
Violation of an order of a court;  
Military misconduct;  
Evidence of mental or emotional instability;  
Evidence of drug or alcohol misuse, abuse or dependency;  
Denial of application to the bar in any other jurisdiction on character or fitness grounds;  
Disciplinary action by any bar association or other professional licensing board or disciplinary body or agency of any jurisdiction;  
Conviction or a plea of guilty or "no contest" to any misdemeanor or felony, including juvenile proceedings; and  
Any other conduct that reflects adversely upon the character or fitness of the Applicant.

**D. Good Moral Character and Fitness: Past Conduct: Rehabilitation.**

The Court shall consider whether the past conduct of the Applicant is likely to be repeated in the future and whether the Applicant's past conduct shows he lacks the character and fitness to serve as a notary public in this State. If the Applicant is found to have engaged in conduct that at that time would have constituted grounds for an unfavorable recommendation, the Applicant must affirmatively show that his character has been rehabilitated and that such inclination or instability is unlikely to recur in the future. The mere fact that there has been no repeat of any such conduct or other conduct evidencing unfitness to serve as a notary in this state shall not in and of itself be sufficient to constitute rehabilitation or proof of good character.

While the Court is not limited to the factors it considers or weight it will give to prior incidents reflecting upon an Applicant's character or fitness, the following factors are deemed important by the Court in assigning the weight and significance given to prior conduct:

The Applicant's age at the time of the conduct;  
The amount of time which has elapsed since the occurrence of such conduct;  
The reliability of the information concerning the conduct;  
The seriousness of the conduct;  
The factors underlying the conduct;  
The cumulative effect of the conduct or information;  
The Applicant's positive social contributions since the conduct;  
The Applicant's candor and cooperation in the admissions process;  
The materiality of any omissions or misrepresentations; and  
The evidence of rehabilitation.

**E. Good Moral Character and Fitness: Burden of Proof.** No Applicant shall be recommended by the Examining Committee to the Court for a finding of competency and possession of the necessary qualifications to serve as a notary in this parish and state unless such Applicant first produces competent evidence to the Committee that he has good moral character and the fitness necessary to serve as a notary public in East Baton Rouge Parish and the State of Louisiana. The burden of proof shall be on the Applicant.

**F. Disqualification: Conduct.** Any conduct of a kind that has been considered by the Court as a ground for suspension or revocation of a notary commission may be considered by the Court as sufficient to deny an application. If an Applicant has at any time committed an act or offense that would have been grounds for disbarment of a practicing attorney, even though the act did not constitute a felony or misdemeanor, the Applicant shall be required to meet the same standards as a disbarred attorney would be required to meet for readmission to the bar. The burden of proof shall be on the Applicant, and the evidence submitted by the Applicant and reviewed by the Committee must clearly and convincingly establish that the Applicant has good moral character and the requisite fitness.

**G. Factors Not Considered.** In determining an Applicant's character and fitness to serve as a notary public in this state, the Court shall not consider factors that do not directly bear a reasonable relationship to service as a notary, including, but not limited to the age, sex, race, color, national origin, religion, or sexual orientation of the Applicant; or a physical disability of the Applicant that does not prevent the Applicant from performing the essential functions of a notary public.

(Source of Material: Committee on Bar Admissions for the Louisiana State Bar Association)