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STATE OF COLORADO  
SECRETARY OF STATE  
Administrative Hearing Office  
1700 Broadway, Suite 550  
Denver, CO 80290

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Case number:

2025 AHO 01 (Notary)

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THE SECRETARY OF STATE OF THE STATE OF COLORADO,

Petitioner,

vs.

PATRICIA HOBDY, NOTARY PUBLIC, ID NO. 20024023185,

Respondent

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#### ORDER DENYING MOTION TO STAY PROCEEDINGS

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1. On March 24, 2025, counsel for Respondent filed an unopposed Motion to Stay the proceedings. The Motion to Stay asserts that “these administrative proceedings overlap with the criminal proceedings” and that if no stay is granted, Respondent Notary “might have to waive her fundamental right against self-incrimination under the Fifth Amendment of the U.S. Constitution during these administrative proceedings.” Motion, p.

1.

2. The Motion cited a single Colorado case, *People v. Shifrin*, 342 P.3d 506, 513 (Colo. App. 2014) for the proposition that staying a civil case until the conclusion of a criminal case is “an extraordinary remedy.” *Ibid*. The factors that other courts have considered in determining whether or not to grant this “extraordinary remedy” were not set forth.

3. In civil cases, the trier of fact, including an administrative tribunal, is entitled to draw a negative inference if a party invokes a Fifth Amendment right not to answer

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questions during the civil case. The rule was summarized by the Court of Appeals in *Romero v. Colo. Dep't of Human Servs.*, 2018 COA 2, ¶ 38, 417 P.3d 914, 922-23.

The adverse inference rule is defined as follows: "Failure of a party . . . to answer questions based on the privilege against self-incrimination raises a strong inference that the answers would have been unfavorable and damaging to him, and comment to that effect is proper." *Asplin*, 687 P.2d at 1332. Whether to apply this inference is discretionary and is not mandatory. *Chaffin, Inc.*, 689 P.2d at 689 ("[T]he finder of fact in a civil case should be permitted to draw an adverse inference against a party who claims the Fifth Amendment privilege . . .") (emphasis added). However, although the fact finder may draw the adverse inference, a penalty cannot automatically be [\*\*923] imposed solely because the accused remained silent and exercised his or her Fifth Amendment rights. E.g., *Lefkowitz v. Cunningham*, 431 U.S. 801, 806-07, 97 S. Ct. 2132, 53 L. Ed. 2d 1 (1977).

*Id.*

4. So how is a tribunal to determine when to stay a civil case under the circumstances here? When exercising its discretion, some courts have considered the following factors: 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the interests of the plaintiffs in proceeding expeditiously and the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest. *AIG Life Ins. Co. v. Phillips*, Civil Action No. 07-cv-00500-PSF-MEH, 2007 U.S. Dist. LEXIS 52692, at \*7 (D. Colo. July 20, 2007).

5. Respondent has not provided information on any of these factors that are helpful in order for me to engage in "balancing the interests" as Respondent invites me to do. I have to know what those interests are in order to weigh them, and why there would arise a circumstance which "might," Motion at 2, cause Respondent to assert her Fifth Amendment right to decline to answer questions.

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6. On the overlapping interests, Respondent says only that the civil and criminal cases arise “from facts and circumstances” without saying what they are and then alludes to allegations of forgery made by someone.

7. While forgery is mentioned several times in the Statement of Facts in the Charge, whether documents were forged or not is not an element of the charges against Respondent in the administrative case. There is no description of how the elements of the charge or testimony in the criminal case “overlap” sufficiently with those in the administrative case that Respondent will be forced to make a Hobson’s choice without the stay.

- a. Count 1 of the charge alleges a violation of §24-21-506, C.R.S.<sup>1</sup>—Personal appearance required, entitling the Secretary to revoke the notary commission under §24-21-523(1)(a).
- b. Count 2 alleges a violation of §24-21-519(1) and (4), C.R.S.—Failure to maintain a journal record of all notary transactions in a secure location. But Respondent has admitted the facts that underpin Count 2, including the fact and photo showing “that 49 pages [have] been physically cut out of the bound journal.” Charge and Answer, ¶¶22-23.
- c. Count 3 alleges a violation of §24-21-531(1), C.R.S.— Official misconduct.

8. It goes without saying that none of the charges have anything to do with forgery or forged documents. The remedy sought by the Secretary for each of these Counts is the revocation of the notary commission pursuant to § 24-21-523(1)(a), C.R.S.

9. Respondent has not shown how her potential testimony in defense of these charges puts her in the “the quandary of choosing between waiving [her] Fifth Amendment rights or effectively forfeiting the civil case.” [Internal quotes and citations omitted.] *AIG Life Ins. Co. v. Phillips*, Civil Action No. 07-cv-00500-PSF-MEH, 2007 U.S. Dist. LEXIS 52692, at \*7 (D. Colo. July 20, 2007).

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<sup>1</sup> Count 1 charges a failure to notarize documents in the personal presence of signatory and then lists §12-55-506, C.R.S. as the basis of the charge. There is no such section of the C.R.S., however. Rather it is §24-21-506, C.R.S. that sets forth the requirement of personal presence of the signatory.

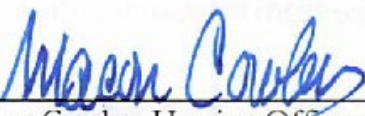
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10. Respondent provides no information about the status of the criminal case and any dates set for preliminary hearing, motions and trial. The criminal case may be in the rear view mirror by the time the administrative case goes to trial—currently set for June 9, 2025.

11. While the Motion asserts that without a stay Respondent “might have to waive her fundamental right against self-incrimination,” she might not have to do that. Without more facts that enable me to test the plausibility of that assertion or otherwise balance the interests, I cannot grant the extraordinary remedy of staying this case. *People v. Shifrin*, 2014 COA 14, ¶ 25, 342 P.3d 506, 513.

The Motion to Stay is DENIED.

**SO ORDERED** this 26<sup>th</sup> day of March 2025.

  
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Macon Cowles, Hearing Officer

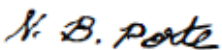
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Order Staying Proceedings was sent via email on March 27<sup>th</sup>, 2025 to the following:

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*Counsel for Respondent*



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Nathan Borochoff-Porte, Administrative Court Clerk