



AN CHÚIRT UACHTARACH
THE SUPREME COURT

Commissioner for Oaths

Declan Jordan - Donegal (16/20)

[2024] IESC 17

Ruling of Mr. Justice O'Donnell, Chief Justice delivered on the 7th of May 2024.

1. On 15 December, 2020 my predecessor Frank Clarke C.J. appointed Declan Jordan (the 'commissioner') as a commissioner to administer oaths in and for the County of Donegal established under the Courts (Establishment and Constitution) Act, 1961, pursuant to the power of the Chief Justice in that respect confirmed and transferred under the provisions of s. 10 of the Courts (Supplemental Provisions) Act, 1961 which provides that the power of appointing commissioners to administer oaths shall be exercisable by the Chief Justice.
2. The application to be appointed a commissioner for oaths was made on foot of a notice of motion and petition of 9 November, 2020. The petition recorded the petitioner's occupation and place of residence and stated that the petitioner was familiar with the requirements of the law and practice in regard to the administration of oaths, affirmations and declarations. It was supported by certificates of fitness signed by six local residents and business proprietors in the area, and a further certificate of fitness signed by six members of the legal profession. Each of these certificates certified that the applicant was a person who was well qualified by his skill and trustworthiness to fill the office of commissioner for oaths.
3. Subsequently, a complaint was received from a member of An Garda Síochána that the commissioner for oaths had, since his appointment been convicted of offences in the District Court including careless driving and failure to provide a blood or urine specimen and convictions were attached. Another offence arising

from the same incident was alleged, but no conviction in respect of this offence was attached to the complaint. The complaint further indicated that the commissioner had been practising as peace commissioner but was no longer doing so as a result of his conviction.

4. However, it is apparent from the date of the complaint and the attached District Court convictions and the date of appointment, that the convictions predated the date of appointment.
5. Practice Direction SC22 provides for complaints in writing in relation to and the instigation of inquiry in relation to a commissioner for oaths. This procedure was initiated, and proceedings listed for mention before me on 18 January, 2024. The Law Society of Ireland was invited to attend and make submissions.
6. Shortly in advance of the hearing the Registrar of the Supreme Court was informed that Mr Jordan proposed to, and did, resign as a commissioner for oaths. The solicitor that had acted for him on his appointment attended Court and indicated that they had no further instructions. While the Law Society of Ireland observed that the commissioner was not a solicitor, nevertheless they provided helpful submissions on the matter.
7. The function of a commissioner for oaths is a limited, but nevertheless important one. The warrant appointing an individual as commissioner is accompanied by a letter from the Supreme Court Office on the instructions of the Chief Justice, drawing the attention of the newly appointed commissioner and his or her solicitor to the importance of abiding by the rules and regulations governing the discharge of duties of a commissioner. This letter stresses that on every occasion that an affidavit is sworn it is the obligation of the commissioner to know the

deponent or that he or she has satisfactorily and properly identified the deponent and furthermore, a meaningful administration of the oath is given to the deponent. This in itself means that the office of commissioner is important. Furthermore, the fact of appointment by the Chief Justice and the grant of a warrant of appointment suggests that appointment as a commissioner is a matter of some significance.

8. In circumstances where the commissioner has resigned, it is not necessary to adjudicate upon the complaint. However, the complaint raised the more general issue of a commissioner's failure to disclose the conviction of a criminal offence in his application for appointment as a commissioner for oaths, which I consider necessary to comment on in order to clarify future practice in this regard.
9. It is apparent that the commissioner was convicted of a number of summary offences, and these offences predated his appointment as a commissioner. However, no reference was made to these convictions in the commissioner's application for appointment as a commissioner for oaths and they were not brought to the attention of the then Chief Justice. On the contrary, certificates by six local residents, and six members of the legal profession were submitted that the applicant was a suitable person to fill the office. The Supreme Court Office has been informed that the solicitors acting for the applicant were themselves unaware of the fact of the convictions at the time the application was brought.
10. It seems to me that so long as a formal application is necessary to be appointed a commissioner for oaths and that that is a function to be discharged by the Chief Justice, it is not satisfactory that an application should be treated as a formality.

In particular, it is, I consider desirable that the application to be appointed a commissioner should include a statement that the applicant is not aware of any other matter which might reflect on his or her capacity or suitability to be a commissioner for oaths, and provide that where there is any such matter that details should be provided, including a criminal conviction for any offence. Similarly, it is necessary that the certificate provided by members of the local business community and legal profession should contain a similar provision.

- 11.** In principle, I am satisfied that conviction of a serious offence would in itself disqualify a person from being an appropriate person to be a commissioner, and a conviction of a serious offence following his or her appointment would justify the Chief Justice in removing the commissioner from the list of persons entitled to act as a commissioner for oaths. In cases of less serious offences, it may be necessary to inquire into the circumstances of the offence. Failure to disclose a matter such as a recent conviction for any offence, may itself be a matter relevant to the appointment. All of this points to the importance of such information being disclosed and I will direct that in future all applications should include a statement by the applicant and any person supporting the application that the applicant (or the individual as the case may be) is not aware of any matter relating to his or her suitability to be appointed a commissioner for oaths, unless specified in the application.
- 12.** In circumstances where the individual in this case has resigned as a commissioner, it is not necessary to make any further order in respect of this complaint.