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**ENFORCEMENT
COMMISSION**

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Stephanie Marazzi, West Haven

File No. 2008-095

**AGREEMENT CONTAINING CONSENT ORDER
FOR VIOLATIONS OF § 9-140, GENERAL STATUTES**

This agreement by and between Deborah M. Collins of the City of West Haven, County of New Haven, State of Connecticut, hereinafter referred to as Respondent, and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Respondent is the City Clerk of the City of West Haven. On August 12, 2008 the City of West Haven conducted a Democratic primary for the Registrar of Voters.
2. Complainant alleged that:
 - (1) On July 18, 2008, at the West Haven City Clerk's office, absentee ballot applications for the August 12, 2008, Democratic primary were unnumbered and were not identified with the city's name;
 - (2) The absentee ballot applications had been issued without being recorded in the absentee ballot log;
 - (3) On July 21, 2008, Complainant returned to the City Clerk's office, and the aforementioned absentee ballot applications were numbered and an absentee ballot log had been created;
 - (4) That 22 of the 31 ballot applications had not been completed with all information and data fields completed;
 - (5) That three absentee ballot applications had been numbered with the same numbers as absentee ballot applications previously issued and returned to the City Clerk's office; and,
 - (6) A man in the City Clerk's office processing absentee ballots was not authorized to do so.

3. On July 21, Respondent was on vacation and out of the office. Assistant Town Clerk Sharon Recchia was on duty, and provided photocopies of the absentee ballot log to the Complainant, as requested.
4. The West Haven City Clerk's office maintained an "Absentee Ballot Delivery Log" for the August 12, 2008 Democratic primary, which consisted of three pages. The log indicates that from May 23, 2008 through August 4, 2008 absentee ballot applications were not issued consistently in a sequential manner, and that gaps in the sequences of unreported numbered applications occurred.
5. Further, the log indicates entries for issuance of applications on July 18 and July 21, the days which the Complainant visited the City Clerk's office, and indicate that fourteen of the applications provided by Complainant to the Commission were issued on July 11 and six were issued on July 18. Three complained of applications are not included on the log sheets provided by Respondent, and in 20 instances, where the applications bear the mark of the City of West Haven indicating their place of issuance, addresses of individuals who received applications were not recorded on the log.
6. General Statutes § 9-140, provides in pertinent part:
 - (a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. ... The municipal clerk shall not invalidate the application solely because it does not contain the name of the person who assisted the applicant in the completion of the application. ... ***The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. ...***
 - ...
 - (k) (1) ***A person shall register with the town clerk before distributing five or more absentee ballot applications for an election***, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant.
[Emphasis added.]

7. The law in the absentee ballot area changed significantly due to the passage of Public Act 05-188. This is a case of first impression for the Commission concerning the new responsibilities imposed upon Town Clerks by General Statutes § 9-140, as amended by Public Act 05-188.
8. While Respondent provided evidence that 101 absentee ballot applications were logged as returned to City Clerk's Office on August 12, 2008, they do not include the applications of 24 applicants evidenced by Complainant.
9. The Commission concludes that Respondent's office failed to issue absentee ballot applications with consecutive serial numbers and maintain an accurate log book regarding to those individuals issued absentee ballot applications as required by § 9-140(a).
10. Respondent concedes that her office misinterpreted § 9-140, General Statutes regarding its requirement that less than five absentee ballot applications, when issued to a single individual, should be entered in the absentee ballot log, and confused it with the requirement that each individual register with her office to distribute more than five absentee ballot applications. The Commission acknowledges that the Respondent self-reported her confusion regarding this matter by letter prior to the filing of this complaint.
11. The absentee ballot log, if complete, can serve as the registration for those distributing more than five, but does not relieve the Town Clerk from accounting for all applications issued by her office, including single applications.
12. The Commission finds that two applications received and processed by the City Clerk's office did not have a number and stamp or mark identifying West Haven as the City of issuance as required by General Statutes § 9-140(a). One application appears to have been completed in-person and issued by the City Clerk's office, and signed by the Respondent as assister, the other bears no indication of its origins.
13. The Commission concludes that Respondent's office failed to stamp or mark an absentee ballot application identifying the City of West Haven as its origin, also required by § 9-140(a), General Statutes.
14. Respondent denies and disputes the allegation that either absentee ballot applications or log sheets were amended after Complainant allegedly called her office's attention to missing numbers on July 18 and her return to the office on July 21, but rather maintain that her office continued to process such applications throughout this period.

15. The Commission concludes that the evidence is inconclusive and insufficient to support Complainant's allegation pertaining to the amendment of absentee ballot applications and logs in the City Clerk's office between July 18 and July 21, 2008.
16. General Statutes § 9-140b, provides in pertinent part:
 - (d) No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or referendum except the applicant to whom it was issued, the Secretary of the State or his or her authorized agents, any official printer of absentee ballot forms and his designated carriers, the United States Postal Service, any other carrier, courier or messenger service recognized and approved by the Secretary of the State, *any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk*, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope.
[Emphasis added.]
17. Prior to the August 12, 2008 Democratic primary, an individual, in exchange for the City Clerk's use of absentee ballots processing software, was provided an opportunity to observe the actual use of the program, and assisted the office in administering absentee ballots. The exchange between this individual and the City Clerk's office was in effect commercial, not political.
18. The Commission concludes that the individual referenced above in paragraph 17 was authorized by the City Clerk to handle absentee ballot applications, which was permissible pursuant to General Statutes § 9-140b(d), and therefore no violation occurred pertaining to this allegation.
19. The Commission finds insufficient and inconclusive evidence that that any absentee ballot applications were issued twice by the City Clerk's office.
20. The Commission finds that there is ample evidence that incomplete absentee ballot applications were returned to the City of West Haven Clerk's office and that which absentee ballots were issued based upon such incomplete application.
21. The statutes specifically delineate that an application should *not* be invalidated for specific missing information such as a signature by the individual assisting an applicant (General Statutes § 9-140(a)).

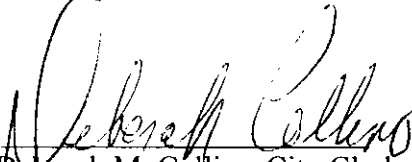
22. General Statutes § 9-140, also provides that as it provides: "The municipal clerk *shall not invalidate the application solely* because it does not contain the name of the person who assisted the applicant in the completion of the application." This implicitly provides that a clerk *could* reject an absentee ballot application for reasons other than where an absentee ballot application is missing the name of the individual who assisted another in completing such application.
23. The Commission finds that the Respondent's office received and relied on advice from an Elections Officer at the Secretary of the State pertaining to four incomplete applications where electors failed to check the "Statement of Applicant" data field, indicating the reason for voting absentee.
24. The Commission concludes that the City Clerk's office reasonably relied on the advice of the Secretary of the State's office in issuing absentee ballots to four applicants who had not indicated the reason for their eligibility on their applications, and while the Commission disagrees with the advice provided, declines to pursue this allegation further due to Respondent's reasonable reliance on such advice.
25. The Commission's position is that the entire statutory scheme of absentee ballots requires the data field to be complete, and that Respondent should have rejected such applications. The Secretary of the State does not have a written opinion on the issue, but the Commission concludes that where an application is submitted under penalty of false statement, requiring an elector to attest to a reason he or she cannot be at the polling place such application is incomplete without a reason delineated and should be rejected.
26. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
27. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
28. Respondent admits all jurisdictional facts and waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.

29. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.


ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth comply with the requirements of § 9-140, General Statutes.

For the Respondent:

By: 
Deborah M. Collins, City Clerk
City of West Haven
355 Main Street
P.O. Box 526
West Haven, Connecticut

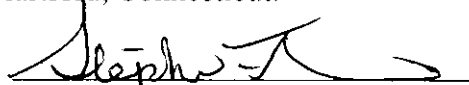
For the State Elections Enforcement Commission:

By: 
Joan M. Andrews, Esq.
Director of Legal Affairs &
Enforcement and Authorized
Representative of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 12/8/08

Dated: 12/10/08

Adopted this 16th day of December of 2008 at Hartford, Connecticut.


Stephen F. Cashman
Chairman
By Order of the Commission