

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In re Complaint by Michael Barry

RESPONDENT:
Minnie Gonzalez
97 Amity St.
Hartford, CT 06106

File No. 2006-286

December 16, 2009

Final Decision

The State Elections Enforcement Commission designated the undersigned to serve as Hearing Officer in this matter at the Commission's October 10, 2007 regular meeting. The undersigned hearing officer heard this matter as a contested case on three dates – June 10, 2009, July 9, 2009, and July 17, 2009 – pursuant to Chapter 54 of the Connecticut General Statutes, §9-7b of the Connecticut General Statutes, and §9-7b-35 of the Regulations of Connecticut State Agencies. Attorneys Marc Crayton and Kevin Ahern appeared on behalf of the State of Connecticut; Attorney Thomas J. WeiHING represented the Respondent Minnie Gonzalez, who was also present at the hearing. The parties stipulated to certain facts and then presented evidence consisting of testimony and documentary evidence.

This Report of the Hearing Officer, which contains Findings of Fact and Conclusions of Law, was prepared by the Hearing Officer after a careful consideration of all of the evidence presented at hearing. It is being submitted to the Commission, after notice to the parties, for consideration for adoption by the Commission at a Commission meeting.

After consideration of the entire record, the following facts are found and conclusions of law are made:

1. The parties stipulated that Respondent Minnie Gonzalez was a candidate for election to the office of State Representative in the Nov. 7, 2006 election and that she faced no opposition in the election.
2. The issues in this case center on alleged violations of two portions of Connecticut's election laws governing the execution and handling of absentee ballots, namely Gen. Stat. § 9-140b (d) and (e), which state in relevant 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;

(e) No (1) candidate or (2) agent of a candidate, political party or committee, as defined in section 9-601, shall knowingly be present when an absentee ballot applicant executes an absentee ballot, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present or (B) when the absentee ballot is executed in the office of the municipal clerk and the municipal clerk or an employee of the municipal clerk is a candidate or agent.

Gen. Stat. § 9-140b (d) and (e) (2009).

3. Section 9-140b (d) prohibits persons other than absentee voters who have received an absentee ballot from having executed ballots or ballot envelopes in their possession. Respondent faces an allegation that she possessed a ballot executed by Raul Rivera, who applied for an absentee ballot in the Hartford City & Town Clerk's office on Oct. 30, 2006 with Respondent's assistance.
4. Section 9-140b (e) bans a candidate from knowingly being present when an absentee ballot applicant executes an absentee ballot. Respondent faces five charges of violating § 9-140b (e) for allegedly being present when Raul Rivera, Jenny Rivera, Jose Echevarria, Maria Echevarria, and the complainant, Michael Barry, executed their absentee ballots in the Hartford City & Town Clerk's office on Oct. 30, 2006.
5. Among the most persuasive evidence in the record are a written statement from the Respondent and her live testimony delivered at the hearing. The Hearing Officer assigns great weight to this written statement drafted on Nov. 27, 2006 and the live testimony she gave at the July 17 hearing.
6. In a Nov. 27, 2006 letter to Attorney Marc Crayton with the State Elections Enforcement Commission, Respondent discussed the allegations that formed the basis of the complaint filed with the Commission on Nov. 1, 2006. *State's Exhibit 18*. Respondent testified on July 17, 2009, about the allegations in the Nov. 1, 2006 complaint and acknowledged that she had written the Nov. 27, 2006 letter introduced as State's Exhibit 18.
7. In the Nov. 27, 2006 letter, Respondent stated that she assisted applicant Raul Rivera with his absentee ballot application, a fact also supported by Rivera's application for an absentee ballot on which Respondent filled out the portion of the form noting that she acted as an assister to Rivera as he completed the absentee ballot application. *State's Exhibit 18* and *State's Exhibit 6*.¹ According to Respondent's testimony as

¹ On the Spanish version of the Application for Absentee Ballot, ED-3, above the assister's signature line, appears the following text: "Firmo esta solicitud bajo pena de declaración falsa en relación al voto ausente." The

well as similar applications for absentee ballots completed by two other individuals – Jose Echevarria and Maria Echevarria – Respondent also assisted those applicants with their absentee ballot applications. *State's Exhibit 7* and *State's Exhibit 8*.

8. Respondent wrote in her Nov. 27, 2006 letter:

This letter is in response to your letter of November 15, 2006 regarding complaint file No. 2006-286 filed by a Michael Barry. This complaint alleges that on October 30, 2006 Mr. Barry observed me assisting voters in filling out absentee ballots. That accusation is totally unfounded.

On the date in question I brought four elderly Hispanic voters to the Town Clerk's office because they had not received the absentee ballots they had earlier requested. The staff in the Town Clerk's Office said they had never received Mr. Rivera's application and gave him a new application to fill out. The staff said two of the remaining three ballots in question had been mailed out but never received by the voters, and those two people were given green forms to fill out. The Town Clerk's staff eventually produced an actual absentee ballot for the fourth person I had brought in.

I assisted Mr. Rivera with his application only. I also assisted the two people who were filling out the green forms, but no ballots were present for those two people while I was assisting them. After Mr. Rivera submitted his application and the Town Clerk's staff completed processing it, they gave him an absentee ballot to fill out. When Mr. Rivera asked me for assistance with his ballot, I told him (in Spanish) that I could not help him with the actual ballot. I then requested the staff in the Town Clerk's Office to help Mr. Rivera, but they refused to do so.

Mr. Rivera became somewhat aggravated because he didn't understand why I could help the other two people but not him. At one point, he grabbed my arm and insisted that I should help him. I told hem [*sic*] very briefly that there were lines for Democratic candidates, for Republican candidates and lower down on the page for Independents and other parties. I then reiterated that I could not help him fill out the ballot, and I again asked for the Town Clerk's staff to help Mr. Rivera. Again, they refused. I then asked one of the other three senior citizens who seemed to have a better understanding of the process to assist Mr. Rivera.

That was the total extent of my involvement with any of the absentee ballots. Mr. Rivera had not yet begun to fill out his ballot when he tried to enlist my help. Nothing was filled in on his ballot while I was talking to him. The only things I handed to the Town Clerk's staff were the green forms of the other two senior citizens present at the time.

9. At the hearing, Respondent sought to amend several statements in her Nov. 27, 2006 letter. Respondent said that she had brought the four individuals into the Town & City Clerk's office on October 30, 2006 and that she had helped three of them to complete

English language form states at the same place: "I sign this application under penalties of false statement in absentee balloting."

absentee ballot applications. But she said that she had never seen any absentee ballots that day. Respondent stated that the disagreement with Mr. Rivera that she described in her Nov. 27 letter actually was over whether she would help him with his absentee ballot application. Respondent confirmed, however, that she helped Mr. Rivera complete his absentee ballot application, that she had signed as an assister on the application, and that helping him complete the application was permitted under state law.

10. The State introduced the Applications for Absentee Ballots of five voters time stamped by the Hartford City & Town Clerk's Office as received on October 30, 2006, between 1:24 and 1:45 p.m.: Jennie Rivera – issued ballot with outer envelop serial number 64689 on October 30, 2006 at 1:24 p.m. (*State's Exhibit 5*); Raul Rivera – issued ballot with outer envelop serial number 64690 on October 30, 2006 at 1:25 p.m. (*State's Exhibit 6*); Jose Echevarria – issued ballot with outer envelop serial number 64691 on October 30, 2006 at 1:40 p.m. (*State's Exhibit 7*), Maria Echevarria – issued ballot with outer envelop serial number October 30, 2006 at 1:40 p.m. (*State's Exhibit 8*), and Michael Barry – October 30 2006 at 1:45 p.m. (*State's Exhibit 9*).
11. Complainant Michael Barry testified that he was in the City & Town Clerk's office and recognized Respondent Minnie Gonzalez in the office at that time. According to Mr. Barry, Respondent was standing adjacent to a conference table that, according to testimony delivered by Town & City Clerk Dan Carey and members of his staff, absentee voters regularly used to complete their ballots before leaving the office. *State's Exhibits 10 and 11.*
12. Complainant Barry also testified that four other individuals were seated at the table when he sat down at the table to await his absentee ballot and that those individuals were completing orange sheets that appeared to be absentee ballots. At some point, according to Mr. Barry, the two individuals sitting across from him – one of whom he recognized as Raul Rivera – no longer had their ballots.
13. The State also introduced five documents from the Town & City Clerk's office that show when the office received an absentee ballot by hand-delivery. The document captioned "Absentee Ballot Delivered by Hand to Town and City Clerk" reflects the name and signature of the absentee voter, the date and time that the voter delivered the ballot, the serial number of the ballot, the form of identification and identification number that the voter offered when dropping off the ballot.
14. According to exhibits admitted into the hearing record, Raul Rivera delivered his ballot with serial number 64689 to the clerk's office at 1:47 p.m. on October 30, 2006. *State's Exhibit 13.* Jenny Rivera delivered her ballot with serial number 64689 to the clerk's office at 1:47 p.m. on October 30, 2006. *State's Exhibit 14.* Jose Echeverria delivered his ballot with serial number 64691 to the clerk's office at 1:57 p.m. on October 30, 2006. *State's Exhibit 15.* Maria Echeverria delivered her ballot with serial number 64692 to the clerk's office at 2:01 p.m. on October 30, 2006. *State's*

Exhibit 16. Michael Barry delivered his ballot with serial number 64693 to the clerk's office at 2:07 p.m. on October 30, 2006. **State's Exhibit 17.**

15. Organizing the time stamps on the absentee ballot applications and the time recorded on each ballot returned to the Town & City clerk chronologically renders the following timeline:

1:20		
	1:24 p.m.	Jenny Rivera applies for absentee ballot
1:25	1:25 p.m.	Raul Rivera applies for absentee ballot
1:30		
1:35		
1:40	1:40 p.m.	Jose Echevarria and Maria Echevarria apply for absentee ballots
1:45	1:45 p.m.	Michael Barry applies for absentee ballot
	1:47 p.m.	Raul Rivera and Jenny Rivera return absentee ballots to clerk
1:50		
1:55		
	1:57 p.m.	Jose Echevarria returns absentee ballot to clerk
2:00	2:01 p.m.	Maria Echevarria returns absentee ballot to clerk
2:05		
	2:07 p.m.	Michael Barry returns absentee ballot to clerk
2:10		

16. Respondent accurately highlighted the fact that the ballot return receipt for Raul Rivera and Jenny Rivera both bear the same serial number – 64689. **State's Exhibit 12** and **State's Exhibit 13**. Also noteworthy is the fact that Raul Rivera's absentee ballot receipt does not show that he provided any identification when he returned his absentee ballot to the Town & City Clerk, even though staff testified that when an absentee voter returns an absentee ballot set to the office, the voter must show identification before the clerk's office will accept the absentee ballot. **State's Exhibit 13**.

17. Respondent also presented evidence from the Office of the Democratic Registrar of Voters in Hartford indicating that Raul Rivera "did not cast votes in the city of Hartford" in any election between 2003 and 2007. **Respondent's Exhibit A**.

18. Olga Vasquez, the current Democratic Registrar of Voters in Hartford, testified that the records she consulted would not reflect whether a voter had executed an absentee ballot that subsequently was not counted, making it appear that the individual had not voted.
19. Counsel for Respondent, however, argues that Raul Rivera never voted in the 2006 election. In her Nov. 27, 2006 letter to the State Elections Enforcement Commission, Respondent, however, acknowledged that she helped Raul Rivera fill out his application for an absentee ballot. She also stated in her letter that staff in the Hartford Town & City Clerk's office provided Raul Rivera with a ballot and that Mr. Rivera became frustrated with Respondent when she refused to help him complete the ballot. Her letter states that Mr. Rivera had at least a blank ballot on October 30, 2006.
20. Respondent's written admissions indicate she witnessed Mr. Rivera with a ballot that he was in the process of executing on October 30, 2006.
21. Respondent's statements in her Nov. 27, 2006 letter coupled with other record evidence support the conclusion that Respondent was in the Hartford City & Town Clerk's office on Oct. 30, 2006, when Raul Rivera, Jennie Rivera, Jose Echevarria, and Maria Echevarria received their ballots for the November 7, 2006 election.
22. Respondent presented live testimony of Maria Echevarria, who testified as to Respondent's actions on October 30, 2006. The Hearing Officer finds Ms. Echevarria's testimony not credible and assigns it no weight in this case.
23. To violate Gen. Stat. § 9-140b (e) a candidate must "knowingly be present" when an absentee ballot applicant executes an absentee ballot.
24. Respondent's written letter of Nov. 27, 2006, states that she brought four individuals to the "Town Clerk's office because they had not received the absentee ballots they had earlier requested." The letter also refers to ballots for each of the four individuals she brought to the clerk's office at several places in the letter designated as *State's Exhibit 18* (emphasis added):
 - "The Town Clerk's staff eventually produced an actual absentee ballot for the fourth person I had brought in."
 - "I also assisted the two people who were filling out the green forms, but no ballots were present for those two people while I was assisting them."
 - "After Mr. Rivera submitted his application and the Town Clerk's staff completed processing it, they gave him an absentee ballot to fill out."
 - "That was the total extent of my involvement with any of the absentee ballots. Mr. Rivera had not yet begun to fill out his ballot when he tried to enlist my help. Nothing was filled in on his ballot while I was talking to him."

25. Respondent knew that the four individuals she had brought to the Hartford Town & City Clerk's office accompanied her to the office to apply for absentee ballots. She knew that the individuals had all received absentee ballots while in the clerk's office. And she was close enough to the individuals who were completing their ballots to know who "seemed to have a better understanding of the process" such that she could ask them to help Mr. Rivera's whose ballot was not "filled in . . . while [she] was talking to him."
26. The General Statutes establishes what shall be included in an "absentee ballot set" at Gen. Stat. § 9-140 (d), requiring that an absentee ballot set consist of "an absentee ballot, inner and outer envelopes for its return, instructions for its use, and if applicable, explanatory texts concerning ballot questions . . ." Gen. Stat. § 9-140 (d) (2009).
27. Chapter 145 does not define "knowingly," "present," or "execute" as those terms are used in § 9-140b (e). When the legislature does not define a term, "it is appropriate to look to the common understanding expressed in the law and in dictionaries." *Conn. Natural Gas Corp. v. Dep't of Consumer Protection*, 43 Conn. App. 196, 200 (1996) (internal citations omitted).
28. Black's Law Dictionary (1990) defines "knowingly" as:

Knowingly. With knowledge; *consciously*; intelligently; willfully; intentionally. An individual acts 'knowingly' when he acts with *awareness of the nature of his conduct*. . . . Act is done 'knowingly' or 'purposely' if it is willed, is product of conscious design, intent or plan that it be done, and is done with awareness of probably consequences. . . . A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result. (Emphasis added).

29. Black's Law Dictionary (1990) defines "presence" as:

Presence. Act, fact, or state of *being in a certain place and not elsewhere, or within sight or call, at hand*, or in some place that is being thought of. The existence of a person in a particular place at a given time particularly with reference to some act done there and then. (Emphasis added).

30. Black's Law Dictionary (1990) defines "execute" as:

Execute. To complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfill the command or purpose of. *To perform all necessary formalities*, as to make and sign a contract, or sign and deliver a note. (Emphasis added).

31. Applying these definitions to Respondent's conduct supports the conclusion that Respondent was present, at hand, and conscious that four individuals were completing the formalities necessary to finalize their absentee ballot sets. The substantial evidence in the record supports the conclusion that Respondent violated Gen. Stat. § 9-140b(e) by knowingly being present as four individuals – Jenny Rivera, Raul Rivera, Jose Echevarria, and Maria Echevarria – executed their absentee ballots in the Town & City Clerk's office on October 30, 2006.
32. The same cannot be said of her presence in the Town & City Clerk's office while Complainant Barry executed his absentee ballot set. Complainant testified that Respondent was standing next to the table while he waited for his absentee ballot application to be processed. When the clerk called his name and handed him his absentee ballot, however, Complainant said he did not know where Respondent was. In addition, he testified that he had no reason to believe that she would have known that he was executing an absentee ballot in the clerk's office at that time.
33. The case against Respondent for a violation of Gen. Stat. § 9-140b (e) in relation to Michael Barry fails because there is inadequate evidence in the record to support the conclusion that Respondent knowingly was present when he executed his absentee ballot.
34. The State's evidence relating to the allegation that Respondent violated Gen. Stat. § 9-140b (d) revolves around the testimony of Complainant Barry who testified that at one point Raul Rivera had a ballot in front of him and when Barry next looked at Mr. Rivera, the ballot was gone. Complainant testified additionally that he saw Respondent walking to the counter in the clerk's office with white envelopes that could have been ballot envelopes.
35. There is insufficient evidence in the record to support a finding that Minnie Gonzalez had in her possession an absentee ballot issued to Raul Rivera that was used in the 2006 general election.
36. The Commission has the authority under Gen. Stat. § 9-7b (a)(2)(A) to impose civil penalties of up to \$2,000 for each violation of any statutory provision included in Chapter 145, including Gen. Stat. § 9-140b (d). The State seeks a civil penalty of \$2,000 for each violation of Gen. Stat. § 9-140b (d).
37. The Commission's regulations allow the Commission to reduce a civil penalty based on mitigating factors. *See* Reg. of State Agencies § 9-7b-48 (2009). (allowing Commission to determine the amount of the civil penalty to be imposed and requiring it "to consider, among other mitigating or aggravating circumstances, (1) the gravity of the act or omission; (2) the amount necessary to insure immediate and continued compliance; (3) the previous history of similar acts or omissions; and (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.")

38. Following those guidelines, it is found that violations of Chapter 145 represent serious violations of the state's election laws and that the Commission "has historically treated absentee ballot abuse very severely." Final Decision 2007-423 (July 10, 2008). The Hearing Officer takes notice of other violations involving Respondent, which have generally involved improper attribution on campaign materials or failure to report minor expenditures. Other than her Nov. 27, 2006 letter to the Commission, in which she admitted several allegations in the complaint against her, Respondent has taken no responsibility for being present when four of her constituents completed absentee ballots.
39. It is found that there exists no reason for mitigation of the proposed civil penalty based on the factors in Commission Regulations § 9-7b-48.
40. In her post-hearing brief, Respondent contended that the Commission failed to supply potentially exculpatory material to her by failing to provide a complete copy of its entire investigative file as requested by her husband, Raymond Arroyo, under the Freedom of Information Act by letter addressed to the Commission on October 30, 2007. *See* Respondent's Brief in Support, Appendix A-2. As the Respondent acknowledges in her post-hearing brief, the Commission qualifies as a law enforcement agency under the Freedom of Information Act, which means that its investigative files when that investigation could lead to potential criminal violation are exempt from the Freedom of Information Act and were properly denied to Respondent under the Freedom of Information Act. *See* Gen. Stat. § 1-210 (2009); Gen. Stat. § 9-7b (a)(15) (2009); *Narwold v. Garfield*, Final Decision Docket No. FC 87-218, Freedom of Information Comm. (Oct. 28, 1987) (concluding that SEEC qualifies as "law enforcement agency" when investigating violations that could lead to criminal sanctions). Furthermore, Respondent had access to the other absentee ballot applicants referenced in this case and sent a private investigator to meet with those applicants. She presented testimony from one of them. Respondent suffered no harm because the Commission's investigators rightly refused the request from Respondent's agent to provide the investigative file.
41. Also in her post-hearing brief, Respondent alleged that this Hearing Officer cannot render an impartial opinion in this case. The Commission's procedures in its handling of cases, especially those related to preliminary determinations, appointment of hearing officers, and administration of contested hearings, follow the Uniform Administrative Procedure Act (UAPA) codified in Chapter 54 of the Connecticut General Statutes as well as due process requirements guaranteed by the constitutions of the United States and the State of Connecticut. Prior to this hearing, Respondent's counsel moved to recuse the undersigned since, according to Respondent, the Hearing Officer had prejudged this matter by serving as a member of the Commission that found reason to believe that a violation had been committed in this case and subsequently set the matter for a contested hearing. The Hearing Officer denied that motion. Respondent has presented no new evidence from the hearing to support her allegation that the undersigned failed to act impartially in this matter. Following the

Commission's guidelines as well as those outlined in the UAPA, the Hearing Officer may hear this matter and render a fair opinion.

The following order is recommended on the basis of the preceding Findings and Conclusions:

ORDER

IT IS ORDERED:

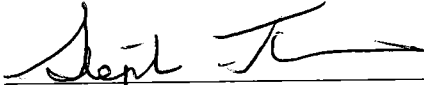
That the alleged violation of Gen. Stat. § 9-140b (d) be dismissed;

That the alleged violation of Gen. Stat. § 9-140b (e) related to the ballot of Michael Barry be dismissed;

That the Respondent be found guilty of four counts of violating Gen. Stat. § 9-140b (e) for knowingly being present while four absentee ballot applicants – Raul Rivera, Jenny Rivera, Jose Echevarria, and Maria Echevarria – executed their absentee ballots; and,

That Respondent shall pay a total fine of \$4,500 for the violations of Gen. Stat. § 9-140b (e).

Dated: 12/16/09



Stephen F. Cashman
Chairman, State Elections Enforcement Comm.
Hearing Officer