

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Howard Jubrey, Windsor

File No. 2013-001

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Suzanne Moriarty, Barbara Alex and 1 Emerson Drive South Operations LLC d/b/a Kimberly Hall South, of the Town of Windsor, County of Hartford, State of Connecticut 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. The Complainant is the conservator for Guy Jubrey, his brother, a mentally and physically impaired individual who lives in the Kimberly Hall South assisted living facility in Windsor, which is owned and operated by the Respondent 1 Emerson Drive South Operations LLC dba Kimberly Hall South (“Kimberly Hall South”). He alleges that he found a letter to his brother from Leo Canty—a candidate in an October special election for the 5th District seat in the State House of Representatives—thanking Guy for casting a ballot in the special election.
2. The Complainant alleges that he was not aware that his brother was even registered to vote and he believes that his brother lacks the capacity to fill out a ballot himself. As such, he believes that based on the letter that he found that Mr. Canty may have committed voter fraud and filled out the ballot on his brother’s behalf.
3. Specifically, the Complainant alleges that, his brother, Guy Jubrey, is a “ward of the state” and resides at Kimberly Hall South Nursing Home in Windsor. He asserts that he is his conservator. He further asserts that Guy suffered traumatic brain injury nearly 20 years ago and along with being partially paralyzed, he has no short term memory, and he will “never improve according to his doctors” and that “Guy cannot remember anything that you tell him.” The Complainant goes on to assert that Guy Jubrey suffers from considerable physical ailments such that he would be incapable of signing a document or using his hands in such a way as to complete the necessary steps to fill out and send an absentee ballot unassisted.

4. The Complainant submitted evidence of a legal conservatorship over his brother in the form of court probate documents filed with the District 3 probate court, including but not limited to a physician's report establishing that Guy Jubrey maintains a chronic executive impairment that allows him to answer only simple questions. The physician's report indicates that Guy Jubrey requires "total care."
5. Guy Jubrey was interviewed by Commission staff in connection with the instant Complaint. He was able to provide his name and date of birth. He knew his party affiliation and he could identify that the President was Barack Obama. He stated he knew what voting was, but could not explain it. He was unable to remember if he had voted in the 2012 General Election (he had). While he was clearly suffering from mental and physical impairments, he was generally lucid and in no way vegetative or unresponsive.
6. General Statutes § 9-140 reads, in pertinent part:

*(a) . . . Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. . . . Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.*

...

(o) As used in this section, (1) "immediate family" has the same meaning as provided in subsection (a) of section 9-140b, and (2) "designee" has the same meaning as provided in subsection (b) of section 9-140b. (Emphasis added.)

7. General Statutes § 9-159q reads, in pertinent part:

(a) As used in this section:

(1) "Institution" means a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home,

rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and

(2) "Designee" means an elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

...

(f) On the date when the supervision of absentee balloting at any institution is to occur, the town clerk shall deliver to the registrars or their designees the absentee ballots and envelopes for all applicants who are electors of such clerk's town and patients at such institution. The ballot and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots.

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. *If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot.* When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope "rejected" and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret. . . . (Emphasis added.)

8. General Statutes § 9-159r reads, in pertinent part:

(a) *Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be*

*voted under the supervision of the registrars of voters or their designees* of the town in which the institution is located, in accordance with the provisions of this section. As used in this section, the term “institution” shall be construed as defined in section 9-159q.

(b) Application for an absentee ballot for any such patient shall be made to the clerk of the town in which such patient is eligible to vote. The application procedure set forth in section 9-140 shall apply, except that the clerk shall deliver the absentee voting set for any such application to the clerk of the town in which the institution is located, who shall deliver all such voting sets he receives to the registrars of such town, on the date when the supervision of absentee balloting is to occur. The ballots and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots. The registrars of the town in which an institution is located and the administrator of the institution shall mutually agree on a date and time for such supervision of absentee balloting, which shall be not later than the last business day before the election or primary.

(c) The supervision of absentee balloting under this section shall be carried out in accordance with the provisions of subsections (g), (h), (i) and (k) of section 9-159q. (Emphasis added.)

9. General Statutes § 9-159s reads, in pertinent part:

*(a) The administrator of an institution, as defined in subsection (a) of section 9-159q, a residential facility for persons with intellectual disability licensed pursuant to section 17a-227, or a community residence, as defined in section 19a-507a, shall use his or her best efforts to provide written notice pursuant to subsection (b) of this section to any conservator or guardian appointed to manage the affairs of a resident of such institution, facility or residence . . . at least seven days prior to the date any voter registration or voting opportunity is presented to the resident with respect to a primary, referendum or election. As used in this section, “voter registration” or “voting opportunity” includes, but is not limited to, the solicitation or completion of: (1) An application for admission as an elector; or (2) an absentee ballot, regardless of whether supervised*

absentee ballot voting will take place at such institution. The administrator of such institution, facility or residence shall also use his or her best efforts to provide written notice to any such conservator or guardian at least seven days prior to the date when the resident may be brought to a polling place to vote in person. The notification provisions of this section shall not apply when a member of the resident's immediate family provides the resident with an absentee ballot application or brings the resident to a polling place to vote. . . .

(Emphasis added.)

10. The Connecticut Voter Registration System indicates that Guy Jubrey has been a registered voter since 1999. Since 2004, he is recorded as having cast a ballot in 19 different elections and primaries, including two legislative primaries in 2012 involving Mr. Canty.
11. The investigation revealed that Kimberly Hall South is a designated mandatory absentee balloting site under General Statutes § 9-159r as it is an "institution" under General Statutes § 9-159q that has more than 20 patients who are electors.
12. For the primaries that are at issue in this matter, Respondents Moriarty and Alex ("The Respondent Officials") were the Democratic and Republican Assistant Registrars, respectively, who were the authorized designees conducting supervised absentee balloting at the Kimberly Hall South nursing home.
13. The Respondent Officials submitted detailed statements indicating that it was the practice of the Registrar of Voters' Office in Windsor to work in conjunction with the Town Clerk to make two visits to each supervised absentee balloting site: first to deliver absentee ballot applications (and help fill them out, when asked) and second to conduct the supervised absentee balloting.
14. The Respondent Officials assert that it is their practice to visit the nursing homes on the appointed day, and meet with the patients. They let each patient know who they are, where the electors are from, and why they are there. After the patient electors have indicated that they want to vote, they fill out the request for the absentee ballot. If an elector is unable to see, or unable to hold the pen and write their names, the Respondent Officials ask the elector if such elector wants help. If the elector indicates that such elector needs help, the Respondent Officials fill out the absentee ballot application and initial beside the elector's signature line to indicate that they filled out the application. The Respondent Officials then take the completed absentee ballot applications back to the Town Clerk's office. On the scheduled day for supervised voting in the nursing homes, the Respondent Officials pick up the ballots at the town hall, go to the nursing homes, and follow the procedures enumerated

in General Statutes §§ 9-159q and 9-159r. The Respondent Officials assert that if, at any time, the elector decides against voting or if the elector is totally unresponsive, the Respondent Officials void the ballot (if they have already opened it) and leave with the ballot which they take back to the town hall.

15. Both Respondent Officials specifically recalled assisting Guy Jubrey with his application and ballot during the 2012 cycle. They recalled that in past years, Guy was able to sign his own name and even fill in ovals on the ballots, but that recently he has needed their assistance in filling out the ballot. They stated that Guy verbally indicates which candidates he wants and they then fill in ovals on his behalf. There was no indication from either Respondent that Guy Jubrey's selections were in any way unclear to them.
16. Commission staff reviewed the absentee ballot applications on Guy Jubrey's behalf, including applications relevant to the instant matter. Each application is filled out by the Respondent Officials and signed on his behalf. The Respondent Officials applied their initials beside each signature, but did not fill out or sign the "Declaration of person providing assistance" section. When interviewed by Commission staff and asked why they followed this procedure, the Respondent Officials stated that they did not believe that they were required to fill out this section as they were elections officials who had already initialed in the signature box for the elector.
17. In its response, Respondent Kimberly Hall South readily admits that it was not specifically aware of the requirement to make "best efforts" to inform conservators of voter registrations or voting opportunities.
18. However, it outlined in detail its procedures regarding the voting of its residents, as follows:
  - a. Upon admission, annually and with a change in condition a resident is asked if they are registered to vote, how they vote (absentee ballot or at the polls) and if they are interested in voting.
  - b. The Deputy Town Clerk of Windsor, Connecticut sends a letter to Kimberly Hall South to notify the institution of any and all elections and registration opportunities. In this letter, they inform Kimberly Hall South of the date and time that the Registrars' designees will be at the facility to fill out absentee ballot applications. They also include the date and time the Registrars' designees will return to help assist the residents with their ballots. When the Registrars' designees are at the facility, they also provide forms for residents who wish to register to vote.
  - c. Additionally, the recreation department at Kimberly Hall South puts the dates and times that the Registrars' designees will be at the facility on the monthly activity calendars. The institution announces in all its structured group programs the week the Registrars' designees are due to come in. The information is announced over the

intercom the day of the Registrars' designees. This information is also put on the Daily Chronicle, the daily activities sheet handed out to residents who are able to read it and read to residents who are able to understand but are unable to read it. The Daily Activity sheet is posted on every unit and at the main entrance. This information is also reviewed during Resident Council if it is known prior to the meeting.

- d. Prior to a voting event, the Deputy Town Clerk mails out a list of residents who are registered and eligible to vote in Windsor, Connecticut. The day the Registrars' designees are at the institution, the recreation staff does their best to gather as many residents into the recreation room so they can be assisted by the Registrars' designees. If residents are unable to make it into the recreation room, the recreation staff then takes Registrars' designees to that resident's room and the Registrars' designees assist the resident with voting.
19. Respondent Kimberly Hall South asserts that its staff realizes the importance of allowing all residents with a desire to vote the means by which to do so and do their best to assist the Registrars' designees in this process. However, staff does not actually assist the individual residents in registering to vote or in casting votes, but rather facilitates the process so that the Registrars' designees can assist the residents who need it.
  20. As an initial matter, the Commission finds that after investigation, there was no evidence linking Mr. Canty to any personal contact with Guy Jubrey. Mr. Jubrey voted using the supervised absentee ballot process enumerated in General Statutes §§ 9-159r, through 9-159s. Capacity to vote is up to a probate judge to decide and there was no evidence that Guy Jubrey's right to vote had been compromised.
  21. As concerns allowing Mr. Jubrey to vote in the first place, there is no discretion for the supervised absentee ballot designees to make a determination of the elector's fitness to vote. If s/he is a registered voter who has made a request for an absentee ballot and the registrars (or their designees) are able to determine how the elector desires to vote the ballot, the elector may execute the ballot (or have it executed on his/her behalf). Here, Guy Jubrey was registered to vote, he did request an absentee ballot and he was able to convey his basic choices to these Respondents.
  22. Moreover, by the Complainant's own allegations, Guy appears to be a person with severe limitations, both physically and mentally. However, the evidence is sufficient to find that providing assistance to Guy was necessary and appropriate to enable him to vote his ballot.
  23. However, while Respondent Officials appear to have genuinely believed that they were correctly following the requirements of General Statutes § 9-140, they fell short of fully

complying with the prescriptions concerning assisting electors in filling out their absentee ballot applications.

24. As a general rule, § 9-140 requires that “[a]ny person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number.” Here, these Respondents mistakenly believed that they were not required to comply with this section because they were acting as the agent for the voter, and also because they were election officials. However, “Declaration of person providing assistance” is not so narrowly tailored and requires “any person” who provides assistance to fill in this section.
25. Moreover, the Respondent Officials fell short in complying with the requirements of agents who fill out and sign on a voter’s behalf. Their standard practice was to sign the voter’s name and then initial their own names. What they should have been doing is writing the voter’s name, including the word “by” and signing with their full signatures.
26. Considering the aforesaid, the Commission concludes that these Respondent Officials violated General Statutes § 9-140 (a) in failing to fill out the assistor section of Mr. Jubrey’s absentee ballot application and for failing to fully meet the requirements of acknowledging their signing on Mr. Jubrey’s behalf.
27. Regarding Respondent Kimberly Hall South, as an initial matter, it is clear from the record that this Respondent was specifically unaware of the requirements to make “best efforts” to inform conservators of voting and registration events. However, there is also evidence on the record that the administrators of the Kimberly Hall South facility do make efforts to keep their residents informed of registration and/or voting opportunities, including but not limited to announcements in the facility newspaper and postings throughout the facility which would be readily accessible to conservators and guardians.
28. However, while it appears that Respondent Kimberly Hall South does not take the voting rights of its residents lightly, they fell short of meeting the requirements of their responsibilities under General Statutes § 9-159s. While the statute does give the Commission some discretion to determine what qualifies as “best efforts,” there was no evidence of attempts to independently inform conservators and/or guardians.
29. Considering the aforesaid, the Commission concludes that Respondent Kimberly Hall South violated General Statutes § 9-159s.
30. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may, *inter alia*, levy a civil penalty not to exceed (A) two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter



146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o or (B)two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147. Pursuant to Regulations of Connecticut State Agencies §9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

- (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.

31. Here, the Respondent Officials failed to fully meet their responsibilities under General Statutes § 9-140 (a) as concerns assisting electors and filling out absentee ballots on their behalf. The Commission has consistently fined individuals for failing to acknowledge themselves as an assistor on an application. *See, e.g., Referral of Wilton Town Clerk and Registrars of Voters*, File No. 2012-168 (father fills out application for son and signs on his behalf); *Referral of Town Clerk Carolyn Soltis, Cheshire*, File No. 2008-142 (friend fills out application for another friend and signs on their behalf and fails to sign as an assister); *Complaint of Joyce P. Mascena*, File No. 2008-128 (father fills out applications for both wife and son and signs on their behalf and fails to sign as an assister); *Complaint of Aleeta Looker*, File No. 2008-125 (mother fills out application and signs on two sons' behalf); *Complaint of Andrew Garfunkel*, File No. 2003-252 (father, with authorization of son, fills out application and signs on son's behalf and fails to sign as an assister). Each of these cases ended in a \$200 civil penalty.
32. However, in each of the above matters, the Respondent left the absentee ballot applications totally blank as to acknowledging that assistance occurred. There was no way of knowing that the ballot was filled out or assisted by someone other than the voter. Here, the Respondents have made attempts to acknowledge their assistance while falling short in completely meeting the statutory requirement. In that respect, this is a matter of first impression for the Commission. On one hand, the statute requires that the assistor make a statement under the penalties of false statement, one that the Respondents have failed to make. On the other hand, the Respondent Officials here were very organized and the absentee balloting operation was open; the identity of the assistors would have been easily

discoverable through the records in the Windsor Town Clerk's and Registrars' offices. Moreover, these Respondents genuinely, though wrongly, believed that as elections officials, the specific requirements did not apply to them.

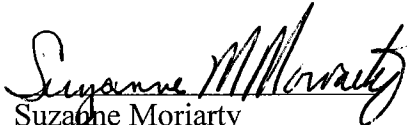
33. In consideration of the aforesaid, and in exchange for this Agreement by the Respondent Officials to henceforth comply with General Statutes § 9-140, the Commission will take no further action in this matter.
34. As concerns Respondent Kimberly Hall South's failure to act under General Statutes § 9-159s, this is a matter of first impression for the Commission. Based on the inquiries made by staff during the instant investigation, it appears that General Statutes § 9-159s is not widely known among the state institutions to which it applies. While §§ 9-159q and 9-159r have been law since as early as 1987, § 9-159s was added in 2002 after complaints by some conservators that their wards were registering to vote and/or voting without the requisite capacity and that conservators and guardians were unaware of the activity. However, staff was unable to find any evidence of periodic outreach by either the Registrar of Voters Association or the Secretary of the State to specifically inform institutions of this requirement. This Respondent appears to be a very responsible and organized operation that takes their rights and responsibilities very seriously. They were very responsive to the inquiries in this matter and have pledged that their procedures will be immediately updated in all of their Connecticut facilities to incorporate this statutory requirement.
35. In consideration of the aforesaid, and in exchange for this Agreement by Respondent Kimberly Hall South to henceforth comply with General Statutes § 9-159s, the Commission will take no further action in this matter.
36. The Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
37. The Respondents waive:
  - 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.

38. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondents in any subsequent hearing, if the same becomes necessary.
39. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

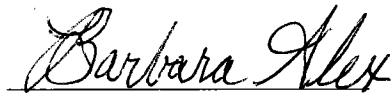
ORDER

IT IS ORDERED THAT that Respondents Suzanne Moriarty and Barbara Alex will henceforth strictly comply with the requirements of General Statutes § 9-140.

**The Respondent:**

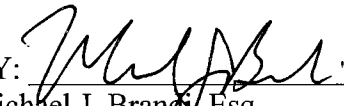
  
Suzanne Moriarty  
Windsor, CT

Dated: 1/30/2014

  
Barbara Alex  
Windsor, CT

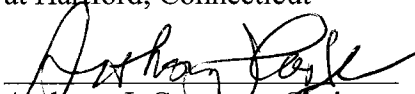
Dated: 1/30/2014

**For the State of Connecticut:**

BY:   
Michael J. Brand, Esq.  
Executive Director and General Counsel and  
Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St., Suite 101  
Hartford, CT

Dated: 2/6/14

Adopted this 19 day of FEB of 2014 at Hartford, Connecticut

  
Anthony J. Castagno, Chair  
By Order of the Commission

**RECEIVED  
STATE ELECTIONS**

**FEB 6 2014**

**ENFORCEMENT COMMISSION**