

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Robert H. Kalechman, Simsbury

File No. 2008-072

AGREEMENT CONTAINING HENCEFORTH ORDER

This agreement by and between Carolyn D. Keily, Town of Simsbury and County of Hartford, State of Connecticut, hereinafter referred to as Respondent, and the undersigned 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 Respondent Carolyn D. Keily is Town Clerk in the Town of Simsbury. Complainant is a petitioning candidate for State Representative for the 16th Assembly District.
2. Complainant alleged various violations of Chapter 153 of Title 9, General Statutes, pertaining to the Simsbury Town Clerk's office's processing of his nominating petitions. Complainant alleged that the Simsbury Assistant Town Clerk refused to certify him as the circulator of three nominating petitions pages. Complainant further alleged that the Assistant Town Clerk refused to give him, as circulator, a signed receipt indicating that she had received the petition pages.
3. Complainant, in addition, alleged that the Town Clerk's and Simsbury Registrar's offices were creating delay so that the petitions would not be timely filed with the Office of the Secretary of the State as required by General Statutes § 9-453n, and that the Registrar's rejection of ten signatures was in violation of General Statutes § 9-453m.
4. Complainant alleged violations of his rights under Connecticut's Constitution, which are beyond the scope of this Commission's jurisdiction and were therefore not part of the investigation of this complaint.
5. On June 2, 2008, Complainant went to the Simsbury Town Clerk's office on two occasions; waiting for a short while on the first visit, and then returning and being served by the staff on the second. The Town Clerk's office had many customers that day. Complainant submitted nominating petitions to the Assistant Town Clerk. Respondent was out of town, and not in her office on June 2, 2008. The Assistant Town Clerk who assisted the Complainant had not previously handled petitions, and contacted the Secretary of the State's office for advice.
6. The Elections Officer at the Secretary of the State's office incorrectly advised the Assistant Town Clerk that the petitions were the Registrars of Voters' responsibility, assuming the Complainant's petitions were primary petitions, not nominating petitions. The Complainant was referred to and received a receipt for the petitions from the Registrars of Voters on June 2, 2008.

7. General Statutes § 9-453k, provides in pertinent part:

(a) The town clerk or Secretary of the State shall not accept any page of a nominating petition unless the circulator thereof has signed before him or an appropriate person as provided in section 1-29, the statement as to the residency in this state and eligibility of the circulator and authenticity of the signatures thereon required by section 9-453j.

(b) The *town clerk* or Secretary of the State or an appropriate person as provided in section 1-29 shall certify on each such page that the circulator thereof signed such statement in his presence and that either he knows the circulator or that the circulator satisfactorily identified himself to the individual certifying.

(c) The *town clerk* or Secretary of the State *shall forthwith give to each circulator submitting a page or pages of a nominating petition a receipt* indicating the number of such pages so submitted and the date upon which such pages were submitted.

(d) *Such town clerk shall certify on each such page the date upon which it was submitted to the town clerk by the circulator or the Secretary of the State and the number of names of electors on such petition page, which names were on the registry list last-completed or are names of persons admitted as electors since the completion of such list. In the checking of signatures on such nominating petition pages, the town clerk shall reject any name if such name is not the name of an elector as specified above. Such rejection shall be indicated by placing a mark in a manner prescribed by the Secretary of the State before the name so rejected. The town clerk shall not reject any name for which the street address on the petition is different from the street address on the registry list, if (1) such person is eligible to vote for the candidate or candidates named in the petition, and (2) the person's date of birth, as shown on the petition page, is the same as the date of birth on the person's registration record. Such clerk may place a check mark before each name appearing on such registry list or each name of a person admitted as an elector since the completion of such list, but shall place no other mark on such page except as provided in this section.*

[Emphasis added.]

8. General Statutes § 9-453m, provides:

The use of titles, initials or customary abbreviations of given names by the signer of a nominating petition shall not invalidate such signature if the identity of the signer can be readily established by reference to the signature on the petition and the name of a person as it appears on the last-completed registry list at the address indicated or of a person who has been admitted as an elector since the completion of such list.

9. On Monday, June 9, Respondent hand delivered a receipt to Complainant for nominating petition pages that were originally submitted by Complainant to the Town Clerk's office on June 2, June 6, and June 9, 2008.

10. Respondent admits that the Town Clerk's office failed to provide Complainant upon submission a receipt for nominating petitions that he delivered to the office on June 2nd and 6th, as required by § 9-453k(c), General Statutes. The Commission concludes that although Complainant was provided a receipt days later, the receipt was not provided "forthwith" within the meaning of General Statutes § 9-453k(c), absent extenuating circumstances which generally means at the time of submission.

11. General Statutes § 9-453n, provides in pertinent part:

Any town clerk receiving any page of a nominating petition under sections 9-453a to 9-453s, inclusive, or section 9-216 shall complete such certifications as specified herein and *shall file each such nominating petition page with the Secretary of the State within two weeks after it was so submitted to him.*

[Emphasis added.]

12. On June 13, 2008, within two weeks after they were received by her office on June 2nd, Respondent mailed Complainant's processed petition pages to the Office of the Secretary of the State as required by General Statutes § 9-453n.

13. The Commission also takes administrative notice of the other legal responsibilities of a Town Clerk, including receiving and recording land records and licenses. There is no election law that provides that a member of the public availing himself of an elections service provided by a town clerk does not have to wait his turn. The allegation that there was an attempt to delay the processing of Complainant's nominating petitions is therefore dismissed.

14. General Statutes §9-3 provides in pertinent part:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, *instructions and opinions*, if in written form, *shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title*, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.
[Emphasis added.]

15. Form ED-304, "*Nominating Petition for Candidate for State Representative*", includes a rejection code at the bottom of the face sheet of the nominating petition, amongst the reasons for rejection: *A* - Not a Registered Elector; *B* - Name illegible; *C* - Voter signed petition twice; and *D* - Other.
16. In this instance, seven signatures were rejected by the Town Clerk's office, of which, five were coded "A" and two were coded "D" based on the Office of the Secretary of the State's instructions. The investigation revealed that an "A" was placed by the names of those individuals who were not registered to vote, while a "D" was placed by the names of those individuals whose information was incomplete or revealed a discrepancy.
17. The Town Clerk only rejected signatures where the identity of the signer could not be readily established, or their status as an elector confirmed. Such signatures were properly rejected pursuant to § 9-453k(d) and § 9-453m, General Statutes.
18. The Town Clerk rejected signatures in the manner prescribed by the Office of the Secretary of the State pursuant to General Statutes § 9-453k(d). The allegation that that signatures were improperly rejected is therefore dismissed.
19. The Town Clerk's office completed the circulator's acknowledgement on each petition page on the date of submittal. The allegation concerning the Town Clerk's alleged refusal to complete the circulator's acknowledgement is therefore dismissed. The Assistant Town Clerk responding to the complainant acted reasonably and appropriately in verifying what the documents were and contacting the Secretary of the State before signing a document that she was unfamiliar with, in the Town Clerk's absence.

20. The Respondent 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.

21. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.

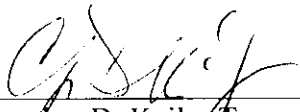
22. It is understood and agreed that this agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

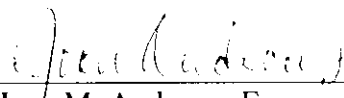
ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth comply with the requirements for issuing a receipt to each circulator submitting a page or pages of a nominating petition indicating the number of such pages so submitted and the date upon which such pages were submitted pursuant to General Statutes § 9-453k(c).

The Respondent:

For the State of Connecticut:



Carolyn D. Keily, Town Clerk
Town of Simsbury
933 Hopmeadow Street
P.O. Box 495
Simsbury, Connecticut


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

Dated: October 14, 2008

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Adopted this 15th day of October 2008 at Hartford, Connecticut by vote of the Commission.


Steven F. Cashman, Chairman
By Order of the Commission