

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint of Beth Denton, West Haven

File No. 2009-087

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges that Respondent Eric Murillo violated General Statutes § 9-140b by delivering absentee ballot envelopes to the West Haven town hall during the September 15, 2009 primary in the City of West Haven without statutory authorization to do so. After the investigation, the Commission makes the following findings and conclusions:

1. On September 15, 2009 a Democratic primary was held in the City of West Haven.
2. The foregoing facts are not in dispute. The Complainant here, a candidate for at large for the Board of Education in West Haven, delivered to the West Haven City Hall sealed absentee ballot envelopes containing absentee ballots for electors Diana and Luis Eduardo Murillo.
3. According to Diana and Luis Eduardo Murillo, they were out of town for all the hours of voting on September 15, 2009. There is no allegation here, or evidence presented, that they were not otherwise eligible to vote by absentee ballot for this reason.
4. The electors assert that they marked their absentee ballots, put them in their envelopes and gave them to their parents at their parents' house with instructions to deliver them on or before September 15, 2009.
5. Luis Murillo, the electors' father, asserts that he took the absentee ballot envelopes with him to his dry cleaning business around 7am on September 14, 2009. His original intent was to put them in the mail, but he became concerned that they would not be delivered on time. Mr. Murillo asserts that his brother, Eric Murillo, the Respondent here and the electors' uncle, owns a dental lab business about two blocks away from his dry cleaning business and stopped by in the morning. According to Mr. Luis Murillo, he asked Eric if he could do him a favor and drop off the two envelopes at the Town Clerk's office. The Respondent agreed and took the envelopes into his possession.
6. The Respondent asserts that he showed up at City Hall the morning of the primary and delivered the envelopes containing the ballots without incident.
7. General Statutes § 9-140b provides, in relevant part::
 - (a) An absentee ballot shall be cast at a primary, election or referendum only if: . . . (3) it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by a member of the

immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; . . . A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. *As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual.*

(b) As used in this section and section 9-150c, "designee" means (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such designation, or (3) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.

(c) For purposes of this section "mailed" means sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State.

(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.)

8. The Respondent admits that his niece and nephew are not dependent relatives of his, that they do they reside with him and that they were not suffering from any illness or physical disability such that he could be named a "designee" under § 9-140b (b)
9. Considering the aforesaid, the Commission concludes that Respondent Eric Murillo violated General Statutes § 9-140b (d) by possessing the ballot envelopes containing

the executed absentee ballots of his niece and nephew, without the authority to do so by any provision of the general statutes.

10. The Respondent admits the facts alleged in the Complaint and asserts he was unaware that his actions were in violation of § 9-140b. He asserts that he is very close with his brother's family, including his niece and nephew, the electors here, and did not realize that he was violating the law by delivering their ballots to City Hall.
11. Prior cases involving General Statutes § 9-140b (d) have largely involved far more extensive conduct than is alleged here, with most of the matters addressing other violations in addition to § 9-140b (d). See, e.g., *Complaint by Kevin Boyle, Bridgeport*, File No. 2002-235 (Campaign volunteer who was an official assister for 79 absentee applicants in an elderly housing complex in Bridgeport violated both General Statutes § 9-140b (d) and (e) when she, an agent of the candidate, was "present and assisted at least six individuals with their absentee ballots, and took possession of and mailed no less than ten ballots." \$5,000 civil penalty); *In Re: Absentee Ballot Irregularities in Connection with September 13, 1994 Democratic Primary, State Representative, 4th Assembly District*, Hartford, File No. 1994-228 (Respondent, a campaign volunteer, mailed three envelopes containing executed absentee ballots for three unrelated individuals in an elderly housing complex in Hartford. \$1,000 civil penalty).
12. However, the present matter is more akin to *Complaint of Michael Waller and Barbara Rowe, Middlefield*, File No. 1989-241 in which the respondent was asked by an elector, who was a close friend and who was very ill, to turn her absentee ballot in for her. While it is permissible for an ill person to designate a non-relative to deliver an executed absentee ballot, such designee must be someone who is "caring for the applicant because of the applicant's illness or disability." The respondent was ordered to henceforth comply with § 9-140b, but no civil penalty was levied because the Commission concluded that:
 11. Although [the respondent] had a close relationship with [the voter], it is concluded that he was not "caring for the applicant because of the illness or disability."
 12. It is concluded that [the respondent] committed a technical violation of [General Statutes § 140b (d)]."
 13. It is further concluded that [the respondent] believed in good faith that he was eligible to act as a designee and this violation was committed unintentionally and unknowingly.
13. The Commission finds that no evidence has been shown here of bad faith on the part of Respondent Murillo or that his actions were part of some larger effort to "stuff the ballot box." Moreover, no evidence has been shown that he had any direct contact with his niece and/or nephew when they were either applying for the absentee ballots or when they were executing the absentee ballots. The statements by the Murillo family were that the ballots were handed to him by the applicants' father, who, out of a desire to assure that his children's votes were counted, gave them over to a close

family member who he trusted to get them to City Hall on time. Finally, while Respondent Murillo did not technically qualify as the applicant's "immediate family" under § 9-140b, he is a closely-related uncle in what appears to be a tight-knit extended family unit.

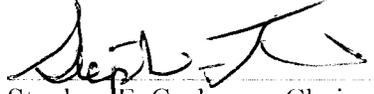
14. The Respondent must, in the future, strictly comply with the requirements of General Statutes §9-140b. However, considering the aforesaid, the Commission will take no further action in this matter.

ORDER

The following Order is recommended on the basis of the aforementioned finding:

That no further action be taken.

Adopted this 24th day of August of 2011 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission