

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mary Rydingsward, Bristol

File No. 2012-135

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Sharon Krawiecki, of the City of Bristol, 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. At all times relevant to the instant Complaint, Respondent Krawiecki and Complainant Rydingsward were, respectively, the Republican and Democratic Registrar of Voters in the City of Bristol.
2. On November 8, 2011 a municipal general election was held in the City of Bristol.
3. On April 24, 2012, a presidential preference primary was held in the City of Bristol to select presidential electors for the Republican Party.
4. On August 12, 2012 a party primary was held in the City of Bristol to select candidates of both the Republican and Democratic Parties for the November 6, 2012 general election.
5. The Complainant here brings six separate cognizable causes of action against the Respondent as follows:
 - a. COUNT ONE: Failure to Swear in Election Officials
 - b. COUNT TWO: Failure to Deliver Materials to Moderator Before 8PM on the Monday Before the August 24, 2012 Party Primary
 - c. COUNT THREE: Using Non-Certified Moderators
 - d. COUNT FOUR: Failure to Notify Town Clerk of Moderators and Alternative Moderators for April 2012 and August 2012 Primaries
 - e. COUNT FIVE: Failure to Appoint a Ballot Clerk
 - f. COUNT SIX: Failure to Submit Adequate Poll Worker Training Report to Town Clerk
6. For the reasons set forth within, the Commission dismisses Count One, takes no further action as to Count Two, and concludes that violations occurred in all or part of Counts Three through Six.

COUNT ONE: Failure to Swear in Election Officials

7. The Complainant alleges in Count One that Respondent “[d]isregards the administration of oath requirement of [m]oderators and [a]ssistant [r]egistrars.” She asserts that the Respondent failed to submit notice to the town clerk that the moderators and assistant registrars had been sworn in and that such failure constituted a violation of General Statutes § 9-193.
8. As an initial matter, the relevant statute that applies here is not General Statutes § 9-193, which requires that registrars, deputy registrars and assistant registrars be sworn in to their duties, but rather General Statutes § 9-231, a similar statute that applies this requirement to other elections officials. Section 9-231 provides:

All election officials shall be sworn to the faithful performance of their duties, and the several moderators and registrars may administer such oaths.
9. The Respondent generally denies that she failed to swear in election officials as alleged by the Complainant. Moreover, she asserts that she was not required to submit proof of such oaths to the town clerk.
10. Here, the Commission finds that the Respondent was solely responsible for swearing in election officials in the April 24, 2012 Republican presidential preference primary and the August 12, 2012 party primary. However, both registrars were jointly and severally responsible for swearing in election officials for the November 8, 2011 general election.
11. However, there is no requirement that registrars submit proof of such oaths to a town clerk.
12. In consideration of the aforesaid, Count One is dismissed.

COUNT TWO: Failure to Deliver Materials to Moderator Before 8PM on the Monday Before the August 24, 2012 Party Primary

13. The Complainant alleges in Count Two that Respondent failed comply with § 9-242a-5 of the Regulations of Connecticut State Agencies, by instructing Precinct 79-01 moderator Jeff Cedarfield to not show up to collect the moderator materials for that polling place.

14. Section 9-242a-5 of the Regulations of Connecticut State Agencies provides, in relevant part:

...

Not later than eight o'clock p.m. of the day before the election, the moderators shall appear in the office of the registrars of voters to receive checklists, the voting tabulator seal number as reported on the report of pre-election testing, and supplies necessary to conduct the election. In addition, the registrars of voters shall deliver ballots to the election officials as described in 9-242a-8 of the Regulations of Connecticut State Agencies.

15. Respondent does not deny that she instructed Mr. Cedarfield not to appear, but she asserts that there were moderators from both parties assigned the District 79-01 polling place on the August 12, 2012 party primary. Because of this, she asserts that she instructed him that it was unnecessary for Mr. Cedarfield, the Republican appointee, to appear, as Mary Lou Zimbouski, the Democratic appointee, collected all of the materials for the polling place prior to the 8pm deadline.
16. The Commission finds as an initial matter that the evidence in this matter, including but not limited to the lists of moderators assigned to the polling places for the relevant primary, support the Respondent's assertion that both Mr. Cedarfield and Ms. Zimbouski were assigned as moderator at the District 79-01 polling place, which was being shared for both party's primary on the date in question. However, based on the investigation, there appears to be no evidence that the District 79-01 polling place was lacking any of the equipment and/or materials necessary to conduct the primary.
17. As a general matter, the Commission concludes that § 9-242a-5 of the Regulations does not make an exception to the general rule that the moderators, all of them, should appear at the polling place to receive their materials.
18. However, where, as here, the polling place is divided up between two moderators and one of those moderators has collected all of the materials for both primaries, the effect of the second moderator's absence is not necessarily material to the underlying purpose of the regulation, which is to assure that the materials are delivered in a timely manner.
19. In consideration of the aforesaid, the Commission will take no further action as to Count Two.

COUNT THREE: Using Non-Certified Moderators

20. The Complainant alleges that the Respondent utilized non-certified moderators in both the April 24, 2012 Republican presidential preference primary and the August 12, 2012 party primary.
21. Specifically, the Complainant alleges that Alice Helming and Mary Alford were not certified for the April 24, 2012 Republican presidential preference primary and that Edith Schirmer, Alice Helming, Jeff Cedarfield, Vern Koch and Mary Alford were not certified for the August 12, 2012 party primary.
22. General Statutes § 9-229 provides, in relevant part:

(a) The registrars of voters in the several towns and, in towns where there are different registrars for different voting districts, the registrars of voters in such districts shall appoint the moderators of regular and special state and municipal elections in their respective towns or districts. For the purpose of providing a reserve group of persons who may serve as moderators, the registrars shall designate alternate moderators from among those persons chosen as official checkers, or tabulator tenders, in the following minimum numbers: In towns with one or more but not exceeding three voting districts, one alternate moderator; in towns with four or more but not exceeding eight voting districts, two alternate moderators; in towns with more than eight voting districts, a number of alternate moderators equal to one-fourth of the number of voting districts rounded off to the nearest multiple of four. In case the registrars fail to agree in the choice of a moderator or alternate moderator, the choice shall be determined between such registrars by lot. In the case of a primary, the registrar, as defined in section 9-372, shall so appoint such moderators and alternate moderators. Moderators and alternate moderators shall be appointed at least twenty days before the election or primary. *The registrars shall submit a list of the names of such moderators and alternate moderators to the municipal clerk, which list shall be made available for public inspection by such clerk.* Each person appointed to serve as moderator or alternate moderator shall be certified by the Secretary of the State in accordance with the provisions of subsection (c) of this section, except as provided in subsection (d) of this section or section 9-436.

...

(c) The Secretary shall conduct certification sessions for moderators and alternate moderators each year at times and places to be determined by said Secretary, provided at least eight such sessions shall be held each calendar year and at least one such session shall be conducted prior to every primary. The Secretary shall certify each person who successfully completes an instructional session conducted in accordance with the provisions of subsection (b) of this section and an examination administered by the Secretary, as eligible to serve as moderator or alternate moderator at any election or primary held during the time such certification is effective. Any such certification made on or after October 1, 2011, shall be effective for two years from the date of such certification. Only those persons who attend and are thereby certified at such session shall be eligible to serve as moderators on election or primary day, except as provided in subsection (d) of this section or section 9-436. The Secretary of the State may adopt regulations, in accordance with the provisions of chapter 54, as the Secretary deems necessary to implement the certification process under this section.

(d) If the person designated as moderator is unable to serve for any reason, a certified alternate moderator shall serve as moderator. If such certified alternate moderator is not called upon to serve as moderator, he shall serve in another capacity as an election official on election or primary day. If any town or voting district lacks a moderator due to the death, disability or withdrawal of a certified moderator or alternate moderator, or due to the disqualification of a moderator for any reason, including failure to attend an instructional session as required by this section, the registrars of voters shall appoint a new moderator for such town or voting district in the manner provided in this section. Such new moderator shall attend an instructional session and a certification session conducted in accordance with the provisions of this section. If all such sessions have been conducted at the time of appointment of the new moderator, the new moderator shall receive instruction from the registrars who appointed the new moderator. (Emphasis added.)

23. Concerning the April 24, 2012 Republican presidential preference primary, the Respondent asserts that Alice Helming and Mary Alford were trained by her under the provisions of General Statutes § 9-229 (d) and were qualified to serve. She asserts that she attempted to hire existing certified moderators, including Democratic moderators, but that an insufficient

number were available to fill all 9 open positions. As such, she asserts that she was compelled to utilize the emergency provisions in subsection (d) of § 9-229.

24. Concerning the August 12, 2012 party primary, the Respondent asserts that Edith Schirmer and Alice Helming served as assistant registrars, not moderators, on that day.
25. She further asserts that Jeff Cedarfield and Mary Alford were trained by her under the provisions of General Statutes § 9-229 (d) and were qualified to serve. She asserts that it was again difficult to recruit moderators and get them to attend standard moderator certification classes under the primary provisions of the statute. As such, she asserts that she was again justified in utilizing the provisions in subsection (d) of § 9-229 to train those two moderators herself.
26. Additionally, after this occurred and after the Complainant questioned her use of the emergency provision, she submitted an e-mail question to staff counsel of the Secretary of the State's Office as follows: "Will you please confirm that for primaries it is OK for me to train a moderator and for that moderator to not be certified?" Staff counsel responded "that is correct" and included the entirety of subsection (d) of § 9-229 below his answer.
27. Concerning the August 12, 2012 party primary, the Commission finds as an initial matter, that the evidence is insufficient to establish that either Edith Schirmer or Alice Helming served as moderators for the August 12, 2012 party primary as alleged, but rather the evidence supports a finding that they served as assistant registrars on that day as asserted by the Respondent.
28. As concerns Vern Koch, the Respondent asserts that he was a veteran moderator but admits that his certification had lapsed in June 2012 and he was unable to attend any of the re-certification classes offered by ROVAC prior to the August party primary. He was eventually re-certified in September 2012, a month after the primary.
29. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-229 by utilizing Mr. Koch, an uncertified moderator.
30. Under the facts in this case, it is unclear that the evidence supports the Respondent's assertion of the necessity to look to fill her positions using General Statutes § 9-229 (d). Subsection (d) is a contingency provision, one that should only be utilized when the default options in the other subsections have been exhausted. The moderator plays a key role at the polling place. A registrar cannot default to this provision without first attempting to fill moderator positions with individuals who are trained and certified.

31. However, as only a small portion of her moderators were trained under this provision, there does not appear to be a pattern of abuse.
32. Moreover, the Commission concludes that the evidence is sufficient to establish that SOTS counsel's short e-mail supports the Respondent's assertion that it was her understanding that she could appoint moderators in this fashion, on occasion, as she did here.
33. In consideration of the aforesaid, Commission dismisses Count Three as to those moderators trained under subsection (d) of § 9-229.

COUNT FOUR: Failure to Notify Town Clerk of Moderators and Alternative Moderators for April 2012 and August 2012 Primaries

34. The Complainant alleges that the Respondent failed to timely submit a list of moderators and alternate moderators to the town clerk under General Statutes § 9-229 (a), above.
35. After investigation, the Commission finds that the evidence shows that the Respondent submitted two lists of moderators, one for the presidential preference primary and one for the party primary, both date/time stamped by the Bristol town clerk. The list for the April 24, 2012 presidential preference primary was date/time-stamped April 3, 2012. The list for the August 14, 2012 party primary is date/time-stamped August 23, 2012.
36. Considering the aforesaid, the Commission concludes that the Respondent met her burden as concerning the April 24, 2012 presidential preference primary, but violated General Statutes § 9-229 (a) for the August 14, 2012 party primary.

COUNT FIVE: Failure to Appoint a Ballot Clerk

37. Here, the Complainant alleges that the Respondent failed to appoint a ballot clerk for District 79-03 for the August 14, 2012 party primary.
38. General Statutes § 9-436 reads, in pertinent part:
 - (c) The registrar shall appoint from among the enrolled party members in the state, to serve in each polling place, the primary polling place officials, who shall consist of one moderator, at least one, but not more than two official checkers, not more than two challengers if the registrar deems it necessary, and at least one and not more than two ballot clerks and at least one but not more than two voting tabulator tenders for each tabulator in use at such primary and, in towns with

two or more voting districts at least one and not more than two assistant registrars, . . .

39. Specifically, the Complainant alleges that the Respondent appointed a ballot clerk, but only for half of the day.
40. The Respondent does not deny that she only hired a ballot clerk for half the day of the primary, but asserts that it was her understanding that General Statutes § 9-436 did not require her to hire a ballot clerk at all.
41. The Respondent included in her defense a newsletter from the Secretary of the State's Office, dated July 6, 2010, in which the SOTS enumerates the necessary officials in a primary pursuant to General Statutes § 9-436. Not included in this list is a ballot clerk. After investigation, this SOTS newsletter appears to be the last one in which a ballot clerk is mentioned.
42. After investigation, the Commission finds as an initial matter that at the time of the July 6, 2010 newsletter, General Statutes § 9-436 *did not* enumerate ballot clerks in the list of necessary polling place officials.
43. However, ballot clerks were added to the enumerated list of required primary polling place officials in Sec. 27 of Public Act 11-20 of the 2011 Public Acts. The effective date was May 24, 2011 and applied to all subsequent primaries.
44. The Commission also found during the investigation that a "Legislative Update" was sent by the Secretary of the State's Office to all Registrars of Voters and Town Clerks on July 29, 2011, in which the change to General Statutes § 9-436 was addressed.
45. Here, while the Respondent did make an appointment of a ballot clerk, it was not a full day appointment and as such did not meet the requirement of "at least one . . . ballot clerks" in § 9-436.
46. Considering the aforesaid, the Commission finds that the Respondent violated General Statutes § 9-436 by failing to appoint at least one ballot clerk at the August 14, 2012 primary.

COUNT SIX: Failure to Submit Adequate Poll Worker Training Report to Town Clerk

47. The Complainant alleges that the poll worker training report submitted by the Respondent to the Town Clerk for the April 24, 2012 presidential preference primary and for the August 12, 2012 party primary did not meet the notice requirements of General Statutes § 9-249.

48. General Statutes § 9-249 reads, in pertinent part:

(a) Before each election, the registrars of voters, certified moderator and certified mechanic shall instruct the election officials. Any provision of the general statutes or of any special act to the contrary notwithstanding, election officials shall be appointed at least twenty days before the election except as provided in section 9-229. The registrars, certified moderator and certified mechanic shall instruct each election official who is to serve in a voting district in which a voting machine is to be used in the use of the machine and his duties in connection therewith, and for the purpose of giving such instruction, such instructors shall call such meeting or meetings of the election officials as are necessary. *Such instructors shall, without delay, file a report in the office of the municipal clerk and with the Secretary of the State, (1) stating that they have instructed the election officials named in the report and the time and place where such instruction was given, and (2) containing a signed statement from each such election official acknowledging that the official has received such instruction.* (Emphasis added.)

49. The Respondent was the “instructor” of the polling place workers for both primaries. She submitted poll worker training sign-in sheets to the town clerk. The sheets included: the position for which the training occurred, the name of the worker/trainee, and the signature of the worker/trainee.
50. For the April 24, 2012 presidential preference primary, the sheets also included the date on which the training occurred.
51. The sheets for the August 12, 2012 party primary were in substantially the same form, but did not include the dates.
52. Here, the Commission finds that evidence in this matter is sufficient to find that the Respondent was lax in collecting the correct information and/or presenting the information to the town clerk in the form required by General Statutes § 9-249. All of the forms submitted as evidence lacked the statement of instruction, the place of instruction, and the statement of acknowledgement by the election official. Additionally, the sheets submitted for the April 24, 2012 party primary lacked a date of training.
53. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-249 by submitting an incomplete report.

54. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of 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 § 9-7b-48 of the Regulations of Connecticut State Agencies, 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.

55. As concerns Count Three and the utilization of Mr. Koch as a moderator, the Commission finds that a civil penalty is unnecessary in this instance as Mr. Koch was an experienced moderator whose certification had only recently lapsed. The Respondent will agree to henceforth strictly comply with General Statutes § 9-229 and only utilize individuals approved under that statute.

56. As concerns Count Five, the Commission finds that a civil penalty is not necessary in this instance as this is the first such violation for the Respondent and the first state primary in which the legislative change to General Statutes § 9-436 in Public Act 11-20 of the 2011 Public Acts was applied. Moreover, the Respondent did not entirely disregard the spirit of the statute insofar as she appointed a ballot clerk for half of day at the August 12, 2012 primary. While the Respondent was on constructive notice of the change and specific notice per the Secretary's July 29, 2011 Legislative Update, there appears to be no bad faith in this instance. The Respondent will agree to henceforth strictly comply with General Statutes § 9-436 and utilize at least one ballot clerk at every primary.

57. As concerns Counts Four and Six, the Commission finds that a civil penalty is also unnecessary in this instance as it is the first such violation for the Respondent and there is no evidence of material harm due to her failure to timely and/or correctly submit the necessary paperwork under General Statutes §§ 9-229 & 9-249. The Respondent will agree to henceforth strictly comply with General Statutes §§ 9-229 & 9-249 and correctly and timely adhere to the filing requirements hereunder.

ORDER

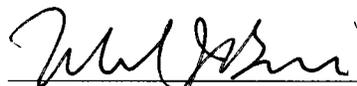
IT IS ORDERED THAT that the Respondent will henceforth strictly comply with the requirements of General Statutes §§ 9-229, 9-249 & 9-436 and § 9-242a-5 of the Regulations of Connecticut State Agencies.

The Respondent:



Sharon Krawiecki
Bristol, CT

For the State of Connecticut:

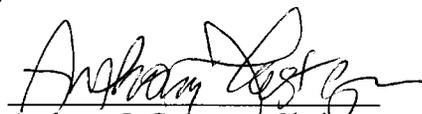
BY: 

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Dated: 6/14/2013

Dated: 6/14/13

Adopted this 19 day of June of 2013 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission