

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In Re Referral of the Secretary of the State

File No. 2013-152

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Derek Buckley, of the Town of Easton, County of Fairfield, 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:

ALLEGATION

1. The Secretary here asserts that during the 2013 municipal election, the Office of the Easton Town Clerk, headed by Town Clerk Derek Buckley at the time, failed to timely forward two nominating petition pages to the Secretary's office within the two-week deadline required by General Statutes § 9-453n.
2. Specifically, the Secretary referred two nominating petition pages, one for Board of Education candidate Shaun Malay and one for Treasurer candidate Randy Shapiro. Each candidate was petitioning under the "Easton Coalition" party designation and each page was submitted by circulator Valerie Buckley, who is Respondent Derek Buckley's spouse.
3. The Secretary points out that the date stamps from the Office of the Town Clerk indicate that the petition pages were received on August 6 and 7, 2013, which created a deadline to file them with the Secretary by August 20 & 21, 2013, respectively, per General Statutes § 9-453n.
4. However, the time stamp for the Secretary's office indicates that the pages were not received until October 3, 2013. The Secretary also points out in her referral that the pages indicate that the checking of the names on the petition was delegated to the registrars under General Statutes § 9-453l and that the Office of the Registrars of Voters certified that the names were checked by the registrars and returned to the Office of the Town Clerk on the

same day that they were filed by the circulator. As such, the pages could have been forwarded to the Secretary as early as on the days that they were received (August 6 & 7), but were not returned until October 3.

LAW

5. General Statutes § 9-453n reads:

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. Any such town clerk who fails to so file such petition pages with the Secretary of the State by the time required shall pay a late filing fee of fifty dollars. (Emphasis added.)

6. General Statutes § 9-453k reads:

(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.¹

RESPONSES

7. Mr. Buckley provided a timely response to the matter. He asserted as follows:

Please be advised that I recused myself with regard to the November 5, 2013 election because both I and my wife, Valerie Buckley, were candidates in said election. I concluded it would be a conflict of interest to be a candidate and also discharge my duties as Town Clerk in the election process.

Because of this conflict on June 25, 2013, I formally recused myself from discharging my duties including filing the certified Nominating Petition required by CGS §9-453m and assigned my obligations and duties as Town Clerk to my Assistant Town Clerk, Joan Kirk.

¹ See also, General Statutes § 453l, which reads:

Any town clerk may delegate his duty to check the names of signers with names of electors on the registry list pursuant to section 9-453k to the registrars of voters in his town, if the registrars consent, and the registrars shall complete the required certifications with respect thereto on the petition, provided the registrars shall execute a receipt for such pages upon receipt thereof stating the number of pages and provided such checking of names by the registrars shall take place in the office of the town clerk or in the office of the registrars of voters if they have an office. After making the required certifications, the registrars shall deliver the petition pages to the town clerk.

Attached please find the statement from Ms. Kirk dated December 5, 2013 confirming the above facts.

8. Mr. Buckley also provided a document on Town of Easton letter head, apparently signed by Assistant Town Clerks Kirk and Szegadi and dated 12/5/2013, which read as follows, in pertinent part:

Recusal of Town Clerk
November 2013 Municipal Election

- On June 25, 2013 the incumbent Town Clerk, W. Derek Buckley became a candidate for Town Clerk for The Easton Coalition.
- Because of potential conflict of interest he recused himself from the town clerk's function in the election
- These activities were delegated to Joan Kirk, Assistant Town Clerk; Debbie Szegedi, Assistant Town Clerk; Krista Kat, Republican Registrar of Voters and Ron Kowalski, Democrat Registrar of voters.

...

9. Assistant Clerks Kirk and Szegadi, through Counsel for the Town of Easton responded and acknowledged their receipt of the petitions and also acknowledged signing the 12/5/13 recusal letter that Mr. Buckley provided.
10. However, the assistant clerks assert that while Mr. Buckley would recuse himself from certain tasks throughout the 2013 election, his recusal was not total and that they never understood themselves to have been "acting" town clerks. They assert that "Mr. Buckley did not have a written plan for how he wished to stay out of affairs involving [Mrs. Buckley's] candidacy. Instead, he would ask one of them to sign something or deal with an issue as it arose in the spur of the moment." Within that case-by-case arrangement, they assert that Mr. Buckley never made them responsible for forwarding the petitions at issue in this case.
11. In support of their denial, the assistant clerks provided approximately 25 pages of documents related to the 2013 election in which Mr. Buckley fully assumed the role of town clerk, all signed by Mr. Buckley or bearing evidence of his involvement,. Examples of some of the documents include are as follows: a certification of candidates under § 9-451 filed

with Secretary of the state on or about October 1, 2013; affidavits of receipt of absentee ballots dated November 5, 2013 (2 days prior to the election); internal e-mails between Mr. Buckley and the Easton registrar(s) regarding election business within a month of the election; numerous memoranda from Mr. Buckley to the registrar(s) regarding election business within the month of the election; an October 24, 2013 warning of election and notice of the polling place location; receipts for the purchase of the statutorily required legal notices in the newspaper.

12. When pressed on the question of why they would sign the 12/5/15 document provided by Mr. Buckley, these respondents asserted that they had little memory of signing it, but that they would not have signed it if they knew that it would have retroactively bound them to the legal responsibility for filing the petitions with the secretary.

ANALYSIS AND CONCLUSION

13. As an initial matter, the Commission concludes that the question as to whether there was a failure to timely return the 2 petition pages is not in dispute. No one involved in the matter denies that this occurred. The only pressing question in this case is who was ultimately responsible: Mr. Buckley, the town clerk, or either/both Ms. Kirk and/or Ms. Szegadi, the assistants.
14. The overriding principle to consider in this matter is that the town clerk is the person who is responsible by default for performing the duties of the office. In past matters the Commission has held the clerk legally responsible for the omissions of subordinates in the office, no matter whether the clerk was specifically the individual who failed to perform the duty. See, e.g., *Complaint of Mary-Ellen Vollemans*, Bridgeport File No. 2012-142 (Town clerk held responsible for error of an employee in sending absentee ballot to incorrect address).
15. However, the claims of Mr. Buckley here present a potentially different question and one that appears to be of a first impression for the Commission. Here, there is a claim by Mr. Buckley, the town clerk at the time, that he had recused himself from the functions of the office and that his subordinates were ultimately legally responsible for the omission. Essentially he argues that they were acting town clerks and had assumed all of the powers and duties of the office, including but not limited to the liabilities under the law for failing to perform any of those duties.

16. There is not a specific statute that dictates what town clerks must do in order to recuse themselves. General Statutes § 7-19 establishes the office of Assistant Town Clerk and generally gives assistant town clerks the ability to perform the functions of the town clerk “in the absence or inability of the town clerk,” as follows:

Each town clerk may, unless otherwise provided by charter or ordinance, appoint assistant town clerks, who, having taken the oath provided for town clerks, shall, in the absence or inability of the town clerk, have all the powers and perform all the duties of the town clerk. Within ten days after a town clerk appoints an assistant town clerk, the town clerk shall file a notice of such appointment with the Secretary of the State, indicating the name and address of the person appointed, the date and method of such appointment and the law under which the appointment was made. Within ten days after a vacancy occurs in the office of assistant town clerk, the town clerk shall notify the Secretary of the State of such vacancy.

17. General Statutes § 7-20 (entitled “acting town clerk”), implies that when a vacancy in the office of town clerk occurs, the assistant town clerk becomes the acting town clerk. It reads, as follows:

When any town clerk is *unable to discharge the duties of his office* and has omitted or is unable to appoint an assistant town clerk, the selectmen may appoint one, who, having been sworn, shall act as town clerk during such inability or until the next town election. (Emphasis added.)

18. However, unlike with registrars (in which the deputy assumes the role by operation of law), within a short period of time, vacancies in the office of town clerk must either be filled by the board of selectmen, in the case of an appointed town clerk, or by special election, in the case of an elected town clerk. See, General Statutes §§ 7-16a and 9-220.²

² General Statutes § 7-16a reads, as follows:

If a town clerk is appointed under a special law or a town charter, the appointing authority or, if none, the chief executive official of the town, shall, within ten days after such an appointment is made, file a notice of such appointment with the Secretary of the State, indicating the name and address of the person appointed, the date and method of such appointment and the law under which the appointment was made. Within ten days after a vacancy occurs in the appointed office of town clerk, the first selectman or chief executive official of the town shall notify the Secretary of the State of such vacancy.

General Statutes § 9-220 reads, as follows:

19. All of the above provides the Commission with *some* guidance here. General Statutes § 7-19 appears to be a statute whose purpose is to allow the office of the town clerk to function and perform its duties without having to require that the actual town clerk perform each function. However, it does not necessarily turn over the keys to the office, as it were, nor provide any guidance as to how that should look. General Statutes § 7-20, if read in concert with § 7-19, is the most relevant statute here. Section 7-20 makes the assistant clerk the acting town clerk when the town clerk is *unable* to perform the functions of the office.
20. With the above in mind, the question for the Commission then becomes a narrower one: was Mr. Buckley *unable* to perform the functions of town clerk such that either Ms. Kirk or Ms. Szegadi became the acting town clerk (and assumed all the duties and liabilities of the office)?
21. On one hand, there is the 12/3/13 letter that Mr. Buckley provided. On the other hand, there is a significant amount of evidence showing that Mr. Buckley actively participated in the role of town clerk throughout the process. Moreover, upon closer examination of the 12/3/13 letter, it clearly does not function as a general recusal. Indeed, it does not even provide any specific and/or meaningful guidance as to how and when Mr. Buckley would recuse himself.
22. Finally, it is important to consider that the words of § 7-20 state that the town clerk must be “unable” to perform his duties in order for the responsibilities to transfer over to the assistant town clerk(s). Here, even if the Commission were to assume all of the facts in Mr. Buckley’s favor, his attempt at recusal was, at best, voluntary and not related to any actual *inability* to perform the job. There is no evidence of a medical and/or practical inability to perform the duties of the office. There is also no evidence of any legal restrictions on Mr. Buckley performing the duties of the office, even though both he and his wife, Valerie Buckley, were candidates in the 2013 general election.
23. Considering the available evidence, the Commission concludes that Mr. Buckley’s attempt at recusal did not reach the standard of being “unable” to perform the functions of the office. As such, while the duty to perform the tasks in question here may have been delegated, the ultimate responsibility for performing the tasks had not.

If any town office in any town is vacant from any cause, such town, if such office is elective, shall, except as otherwise provided by law, fill the vacancy at the next town election or at a special election called for such purpose in accordance with the provisions of section 9-164, but, until such vacancy is so filled, it shall be filled by the selectmen. The selectmen shall fill all vacancies in offices to which they have the power of appointment.

24. Accordingly, the Commission concludes that Mr. Buckley was ultimately responsible for seeing that the petitions timely made their way to the Secretary of the State's Office, whether or not he was the person who specifically performed the task, and that the failure to do so accrued to him by virtue of his status as town clerk at the time.
25. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining whether a civil penalty will be assessed, and if so, the amount of such 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.
26. This is a matter of first impression, although it was ultimately a relatively minor issue. There were only two pages in question. The failure to timely file the pages with the Secretary did not affect the ballot status of any of the candidates. The issue was corrected before the election.
27. Moreover, while Mr. Buckley should have taken greater care in how he attempted to effectuate his recusal, the facts in this matter show that it was more likely than not it was this very good faith attempt that caused the confusion that led to the late filing.
28. There is no evidence that he intentionally failed to file the pages. Indeed, it was his wife, Valerie Buckley, who was the circulator for the pages.
29. Mr. Buckley has no prior history of similar acts or omissions before the Commission.

AGREEMENT

30. Considering the aforementioned aggravating and mitigating circumstances in this matter, the Commission concludes that as this is an issue of first impression and the matter a relatively minor one, a civil penalty is unnecessary here. Provided that Mr. Buckley pays the (2) non-waivable \$50 filing fees to the Secretary of State under General Statutes § 9-453n, one for each petition page, the Commission will seek no further action in this matter.

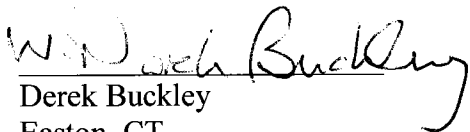
31. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
32. 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.
33. 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.
34. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to these matters and this Respondent.

ORDER


IT IS ORDERED THAT that Respondent Derek Buckley will remit two (2) \$50 fee payments under General Statutes § 9-453n to the Secretary of the State within 30 days of the Commission's ratification of this Agreement.

IT IS FURTHER ORDERED THAT that Respondent Derek Buckley will henceforth strictly comply with the requirements of General Statutes § 9-453n should he ever become a town clerk again.

The Respondent:


Derek Buckley
Easton, CT

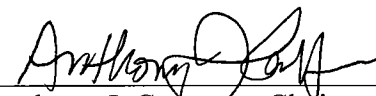
For the State of Connecticut:

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

Dated: 1/5/16

Dated: 1/7/16

Adopted this 13 day of JAN of 20 16 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

JAN 07 2015

**ENFORCEMENT
COMMISSION**