

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

In the Matter of a Complaint by Dorothy A. Mrowka  
And Dianna N. Giles, Colchester Registrars Voters

File No. 2014-070

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Bette J. Nicotera (hereinafter "Respondent"), of the Town of Colchester, County of New London, 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. Complainants, the Registrars of Voters in the Town of Colchester, filed this complaint alleging alleged that Bette J. Nicotera voted twice at a May 29, 2014 budget referendum in the Town of Colchester. Respondent has no prior history with the Commission.
2. By way of background, the Complainants as the Colchester Registrars of Voters, filed this complaint against Respondent after learning on May 29, 2014 that potential violations may have occurred after Respondent presented herself to vote at the checkers' table during the budget referendum and was issued two ballots along with the required privacy sleeve.
3. Complainants concede that the ballot clerk, because ballots "stick together," may have "given two ballots unintentionally" to Respondent after she was checked off at the checkers' table. Further, Complainants concede that on May 29, 2014 they "...had this happen three times before and all the voters returned the extra ballots except this time."
4. General Statutes § 9-7b (a), provides that that the Commission shall have the following duties and powers:

...

(2) To 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 to 9-19k, inclusive, 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, (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, **(C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum,** and (ii) not been legally qualified to vote in such election, primary or referendum,... The commission may levy a civil penalty against any person under subparagraph (A), (B), (C) or (D) of this subdivision only after giving the person an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive. ... Any civil penalties paid, collected or recovered under subparagraph (D) of this subdivision for a violation of any provision of chapter 155 applying to the office of the Treasurer shall be deposited on a pro rata basis in any trust funds, as defined in section 3-13c, affected by such violation. [Emphasis added.]

5. General Statutes § 9-360, provides:

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, **fraudulently votes more than once at the same meeting, primary, election or referendum, shall be fined not less than three hundred dollars or more than five hundred dollars** and shall be imprisoned not less than one year or more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised. [Emphasis added.]

6. Upon investigation, Respondent admitted that she voted two ballots, but claims that she did so “accidentally.” Further, Respondent admitted in the course of this complaint and investigation that she “jiggled” the ballots to get them both in to the tabulator prior to being told to “stop” and approached by the moderator.
7. The Commission notes that while Respondent admits to having voted twice, she denies doing so fraudulently or with an intent to vote more than once, and claims that she executed both ballots because that is what she had received from the ballot clerk.

8. Upon investigation, the Commission finds that the official moderator's diary from May 29, 2014 indicates that the incident that is subject of this investigation and complaint was recorded at the time and that when asked by the moderator whether she had voted twice Respondent according to the record answered "*Yes – they gave me two ballots.*" The Commission further finds that Respondent's claims of mistake or accident are not credible in that there is ample evidence that her actions to insert both ballots into the tabulator at the May 29, 2014 budget referendum in Colchester were deliberate.
9. The Commission has authority pursuant to § 9-7b (a) (2) (C) to assess \$2,000 per offense against any person the commission finds to have "...(i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum."
10. Additionally, while the Commission has authority to refer violations of General Statutes § 9-360 to the Chief State's Attorney, it nevertheless declines to do so in that it has determined, under these narrow and specific circumstances that such a referral would be unwarranted.
11. Moreover, the Commission believes that the levying by the Commission and payment by Respondent of a civil penalty in the amount of \$500.00 and Respondent's agreement to henceforth strictly comply with § 9-360 serves as a substantial and sufficient deterrent in this instance.
12. The Commission has no prior cases directly on point regarding double voting in a *referendum*, and therefore this case is a case of first impression, it nevertheless has had a case where a civil penalty was imposed against an individual who registered to vote and voted in both Bethel and Ridgefield, thus double voting at an *election*. See *Complaint of Cynthia Bruno*, Registrar, Ridgefield, File No. 2006-138.
13. The Commission that Respondent by "jiggling" two ballots to successfully feed them into the tabulator and her admission of "voting twice" to the polling place moderator at the May 29, 2014 referendum in Colchester was prohibited by General Statutes § 9-360. The Commission concludes therefore that pursuant to § 9-7b (a) (2) (C) (i) Respondent "improperly voted" in a referendum and thereby violated § 9-360.
14. While not excusing the Respondent's conduct in this matter, the Commission notes that it likely that Colchester elections officials may have contributed to the risks of and potential for improper voting at May 29, 2014 budget referendum in that there was evidence after investigation that the ballot clerk or another official at the checkers' table issued Respondent *two* ballots with her privacy sleeve when she presented herself to vote.

15. Therefore, while the Commission commends the Registrars for bringing this complaint and for their diligence in raising the issue of a voting violation with the Commission, it also encourages the Registrars to prospectively apprise individuals serving as Colchester election officials to be aware of the potential for ballots to stick together when they are issued to an elector and to implement adequate instructions, protocols and precautions to minimize the risk of issuing of multiple ballots in the future.
16. 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.
17. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission by either party in any subsequent hearing, if the same becomes necessary.
18. 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.
19. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

**ORDER**

IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of five hundred dollars (\$500.00) for her violation of General Statutes § 9-360.

IT IS FURTHER ORDERED THAT Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-360.

**The Respondent:**

By:   
Bette J. Nicotera  
107 Bull Hill Road  
Colchester, CT

**For the State of Connecticut:**

BY:   
Michael J. Brandt, Esq.  
Executive Director and General Counsel  
And Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

Dated: 10-8-15

Dated: 10/13/15

Adopted this 20<sup>th</sup> day of October of 2015 at Hartford, Connecticut

  
Anthony J. Castagno, Chairman  
By Order of the Commission

**RECEIVED**  
**STATE ELECTIONS**

**OCT 13 2015**

**ENFORCEMENT DIVISION**