

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Dominic Pane, et al, Newington

File No. 2018-099

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Linda Cultrera and Marie Fox, of the Town of Newington, 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. The Complainants, Dominic Pane, the Newington Republican Town Committee (“NRTC”) Chair and Sarah Jorgenson-Bucchi, a petitioning candidate for Registrar of Voters, alleged that the Newington Registrars of Voters failed to give them adequate notice of machine testing for the November 6, 2018 General Election at least one day prior to the scheduled date, in violation of General Statutes § 9-244.
2. General Statutes § 9-244 reads, in pertinent part:
 - (a) *Such registrars of voters shall give written notice to the chairpersons of the town committees of the political parties of the day and place a registrar or registrars will begin the preparation, test voting and sealing of the tabulators for the election, including any additional tabulators required under section 9-238. Such notice shall be given at least one day before the work on the preparation of such tabulators begins.*
 - (b) Each such chairperson and any candidate for an office appearing on the ballot may be present, or may designate a watcher who may be present, during the preparation of such tabulators, but such chairpersons, candidates and watchers shall not interfere with, or assist in, the preparation of the tabulators.
 - (c) After the registrar or registrars have prepared the tabulators, the registrars of voters, or their designees, shall test and seal such tabulators

for use in the election. The chairpersons of the town committees of the political parties and any candidate for an office appearing on the ballot may also be present, or may designate a watcher who may be present, during the testing and sealing, but such chairpersons, candidates and watchers shall not interfere with the testing or sealing. All such persons who are present for the testing and sealing of the tabulators shall file a written report, as provided in section 9-245, certifying (1) to the numbers of the tabulators, (2) as to whether all the candidate and question counters are set at zero (000), (3) as to the numbers registered on the protective counters, if provided, and the numbers on the seals, (4) that the ballot is properly prepared, and (5) that the tabulators have been test-voted and found to be working properly. (Emphasis added.) (Emphasis added.)

Background and Allegation

3. The Respondents Linda Cultrera and Marie Fox were at all times relevant to the instant complaint the Republican and Democratic Registrars of Voters for the Town of Newington.
4. The Complainants alleged that the Respondent Newington Registrars failed to send the required one-day notice to the Complainant NRTC Chair regarding the tabulator testing that began on or about October 29, 2018 ahead of the November 6, 2018 General Election.
5. Specifically, the Complainants alleged that the RTC Chair received a short email from Republican Registrar Linda Cultrera late in the morning on October 29, 2018 saying that tabulator testing would occur that day but failing to specify a time.

Investigation

6. The investigation in the matter was straightforward as Commission investigators obtained the email referenced in the Complaint.
7. The initial email came from Linda Cultrera to the Complainant RTC Chair's email account and was date-stamped for 10:29am on October 29, 2018. Respondent Cultrera stated "Dom, We are testing ballots today if you would pass the word. Thank you, Linda."

8. Mr. Pane responded approximately 45 minutes later as follows: “Hard to pass on when you informed last minute and you don’t provide me with the time.”
9. The Respondents do not deny that the above exchange represents the totality of communication with Mr. Pane regarding notice to him of the testing per General Statutes § 9-244.
10. The Respondents assert that at the time they believed that they had met their responsibilities under General Statutes § 9-244 as the machine testing was not only done on October 29, 2018, but continued through November 2, 2018.

Analysis

11. As an initial matter, the Commission notes that even though Respondent Cultrera gave the notice in this instance, both registrars were responsible if such notice was inadequate.
12. For most duties required of registrars of voters, the law does not specify which registrar needs to perform the duty, merely that such duty must be performed. However, importantly, if such duty is performed incorrectly in violation of the law, both registrars are liable. See, e.g., In the Matter of a Referral by the Preston Democratic Registrar of Voters, File No. 2018-054 (one registrar was not present for a referendum, but was still potentially liable for any failures by his counterpart to perform necessary duties) and In the Matter of a Referral by the Secretary of the State, File No. 2014-156 (Hartford registrars split their duties, which is permissible, but were each jointly and severally liable to perform any one duty, no matter which registrar was tasked to perform it).
13. Turning to the primary question, liability here is straightforward insofar as General Statutes § 9-244 requires that “[s]uch notice shall be given at least one day before the work on the preparation of such tabulators begins.” (Emphasis added.)
14. Here, there is no dispute that the work on the preparation of the tabulators began on October 29, 2018.
15. As such, the Respondents’ understanding that they had met their responsibilities because the tabulator testing continued through November 2, 2018 is incorrect as the notice was required no later than October 28, 2018.
16. Accordingly, the Commission concludes that the Respondent Registrars did not meet their responsibilities under General Statutes § 9-244 to notice the Complainant NRTC Chair of the tabulator testing one day before it began

Resolution

17. General Statutes § 9-7b (a) (2) (A) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145 of the General Statutes. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, 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.
18. As specified in section 9-242a-5 of the Regulations of Connecticut State Agencies, “the purpose of the test is to ensure that (1) ballots are printed properly, (2) timing, diagnostic and card identification marks are correctly located on the ballot, (3) memory cards are programmed with accurate information, and (4) the voting tabulators tally ballots correctly.”
19. According to the aforementioned regulation, all persons legally present to observe the test (chairs, candidates, etc.) must certify afterward that such machines are in proper working order.
20. The importance of informing the parties about machine testing is so that such chairs will distribute that information to their candidates, who have a right under General Statutes § 9-244 (b) to observe the testing of the machines.
21. This system is in place to ensure that the machines have been set up transparently and that no tampering was involved.
22. Failure to notice the testing inhibits this policy and could cast some unnecessary doubt on the good working order of such machines, and, in turn on the integrity of the results produced by these machines.
23. However, the Commission also notes that the evidence discovered during the investigation did not reveal any specific facts that these Respondents have any prior similar history in this

area or that would support a finding that the Respondents acted in bad faith with any intent to exclude the RTC Chair from the proceedings.

24. Moreover, the Commission notes that this is the first matter involving an untimely notice—that is, a notice that was given, but later than the one-day requirement.
25. Cases involving General Statutes § 9-244 are fairly uncommon, but those matters in which the Commission found violations usually involved registrars who totally failed to inform. However this matter is analogous to such prior matters.
26. Such matters generally involved either mistake and/or registrars who had no prior history of failing to send notice and universally ended with a Consent Agreement and a Henceforth Order and no further such issues were reported to the Commission regarding such registrars.¹
27. Considering the aforesaid, and consistent with prior matters in this area, in lieu of a civil penalty here the Respondents agree to henceforth strictly comply with the requirements of General Statutes § 9-244 in the future.
28. The Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
29. The Respondents waive:
 - 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.

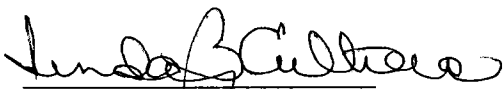
¹ See, e.g., In the Matter of a Complaint by Ronna Stoller, New London, File No. 2015-164 (registrars informed the two major party Chairs, but failed to send the notice to the Chair of the local town committee of Green Party); In the Matter of a Complaint by Yolanda Castillo, Hartford, File No. 2002-138 (registrars failed to inform town committee chair of tabulator testing for upcoming primary); In the Matter of a Complaint by Catherine Foley, et al, New London, File No. 2002-137 (registrars failed to inform town committee chair of tabulator testing for upcoming primary).

30. 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.
31. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

That the Respondent will henceforth strictly comply with General Statutes § 9-244.

The Respondents:



Linda Cultrera
Newington, CT

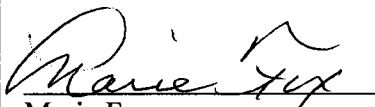
For the State of Connecticut:

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: 10-17-19

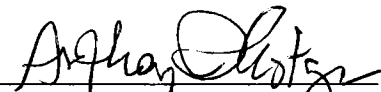
Dated: 11/1/19



Marie Fox
Newington, CT

Dated: 10-17-19

Adopted this 6 day of ^{November} ~~October~~ of 2019 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission