

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

In the Matter of a Referral by East Haddam Town Clerk Debra Denette

File No. 2018-103

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Stephen Fedus, of the Town of East Haddam, County of Middlesex, 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 Referring Official alleged that East Haddam voter Stephen Fedus submitted an application for an absentee ballot to her office and executed an absentee ballot on or about October 22, 2018 for the November 6, 2018 General Election claiming that he would be out of town during all hours of voting.
2. The Referring Official alleged that on Election Day, Respondent Fedus appeared at her office to file a Notice for Land Records/Appointment of Fiduciary probate document along with a check for the filing fee. The Referring Official included copies of the filed document, which bore on its face a date and time stamp of November 6, 2018, 11:38am.
3. The Referring Official asserted that she felt compelled to file a referral, as she knew Mr. Fedus and knew that he had voted by absentee ballot and had not withdrawn the ballot, as required by General Statutes § 9-159o. She does not allege that the Respondent didn't originally qualify for the ballot, only that he failed to withdraw it after his circumstances changed.
4. The default rule of voting in Connecticut is that an elector must vote in person at such elector's designated polling location or such elector's Election Day registration location. Absentee voting is a limited exception to that general rule, which is not only established in General Statutes § 9-135, but also in Section 7 of Article Sixth of the Constitution of the State of Connecticut.

5. General Statutes § 9-135 reads, in pertinent part::

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he or she is unable to appear at his or her polling place during the hours of voting for any of the following reasons: (1) His or her active service with the armed forces of the United States; (2) his or her absence from the town of his or her voting residence during all of the hours of voting; (3) his or her illness; (4) his or her physical disability; (5) the tenets of his or her religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his or her duties as a primary, election or referendum official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than his or her own during all of the hours of voting at such primary, election or referendum.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant. (Emphasis added.) (Emphasis added.)

6. If a voter initially qualifies for an absentee ballot under General Statutes § 9-135, but such qualifying condition no longer applies, such voter must follow the prescriptions in General Statutes § 9-159o for removing such voter's absentee ballot and voting in person.

7. General Statutes § 9-159o reads:

Any elector who has returned an absentee ballot to the clerk and who finds he is able to vote in person shall proceed before ten o'clock a.m. on election, primary or referendum day to the municipal clerk's office and request that his ballot be withdrawn. The municipal clerk shall remove the ballot from the sealed package and shall mark the serially-numbered outer envelope, which shall remain unopened, "rejected" and note the reasons for rejection. The elector shall also endorse the envelope. The rejected ballot shall then be returned to the sealed package until delivered on election, primary or referendum day to the registrars of voters in accordance with section 9-140c. The clerk shall then give the elector a signed statement directed to the moderator of the voting district in which the elector resides stating that the elector has withdrawn his absentee ballot and may vote in person. Upon delivery of the statement by the elector to the moderator, the moderator shall cause the absentee

indication next to the name of the elector to be stricken from the official checklist and the elector may then have his name checked and vote in person. In the case of central counting, the clerk shall make a similar notation on the duplicate checklist to be used by the absentee ballot counters. (Emphasis added.)

8. The investigation in the matter was straightforward as Commission investigators interviewed Respondent Fedus, who admitted that he was indeed in town on the day of the election. However, he asserted that he did not realize that he needed to withdraw the absentee ballot if his circumstances changed.
9. Respondent Fedus was very cooperative with the investigation. Mr. Fedus asserted that his wife sustained a serious injury during a vacation in Ireland prior to the election. He asserted that she had been hospitalized in Ireland and required two surgeries while there. Mr. Fedus provided evidence of this incident and surgical care in the form of medical records, including a letter from her orthopedic surgeon at University Hospital Kerry.
10. Mr. Fedus asserted that he did not believe in good faith that he would be able to appear at the polls to vote on the date in question and contacted the Referring Official to inquire as to his options. He asserted that he was told that he and his wife could utilize an Absentee Ballot under the circumstances, which they did upon their return to the United States.
11. Mr. Fedus asserted that originally he was the sole caregiver for his wife, whom he asserted required around the clock care. However, his circumstance changed when he was able to bring in a friend on November 5 & 6 to help with his wife's care so that he could leave and attend to business away from her bedside.
12. Mr. Fedus asserted that he did not realize that by entering town on the day of the Election, he no longer qualified for the ballot that he submitted. He apologized and asserted that he was not aware that such a rule existed.
13. Turning to the question here, the matter is fairly straightforward concerning liability. General Statutes § 9-159o requires that a voter who no longer qualifies for an absentee ballot must proceed to the Town Clerk's office prior to 10:00am and remove his ballot and only vote at the polling place. Accordingly, the Commission concludes that the Respondent violated General Statutes § 9-150o by failing to do so.
14. General Statutes § 9-7b (a) (2) (C) 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. 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.


15. A rarity in the United States, the Connecticut Constitution enumerates the only reasons for which a voter may cast a ballot in a manner other than at a polling place. These reasons are further codified in General Statutes § 9-135. The Commission takes the unauthorized use of absentee ballots seriously. The Commission's jurisprudence in this area is robust.
16. However, failing to withdraw a legitimate absentee ballot after a change of circumstances is a much rarer issue. The last (and only) cases in this area was in 2002. The most on-point case is probably *In the Matter of a Complaint of Kevin Boyle, Bridgeport*, File No. 2002-235. *Boyle* involved allegations against a number of municipal employees who voted by absentee ballot in the September 10, 2002 Democratic Party Primary for judge of probate. The respondent in *Boyle* was a Bridgeport Board of Education employee who asserted on his absentee ballot application that he would be out of town during all hours of voting. The Commission found that the respondent in *Boyle* applied for his absentee ballot in good faith, believing that he would be out of town all day to care for his brother, who was recovering from a Coma and was located out of town in Monroe. In fact, the respondent had an FMLA arrangement with his employer that he would generally be out of the office every Tuesday for this purpose. However, the respondent's circumstances changed and he reported to work on Primary Day. Due to the evidence of the respondent's lack of bad faith as well as a finding that there was no evidence that the respondent "was pressured, instructed, or threatened by a superior at work to vote by absentee ballot," the Commission settled the matter with the respondent by Consent Agreement and a Henceforth Order.
17. This Respondent has no prior history in this area and the evidence discovered during the investigation did not reveal any specific facts that would support a finding that he acted in bad faith with any intent to impermissibly utilize an absentee ballot
18. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent agrees, that a civil penalty is unnecessary here and that an agreement and henceforth order will suffice in this matter to achieve future compliance.

19. 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.
20. 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.
21. 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.
22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

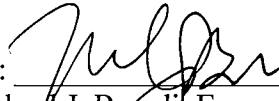
ORDER

That the Respondents will henceforth strictly comply with General Statutes § 9-150o.

**The Respondents:**

  
Stephen Fedus  
East Haddam, 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: 1/21/20

Dated: 1/23/20

Adopted this 5<sup>th</sup> day of February of 2020 at Hartford, Connecticut

  
~~Anthony J. Castagno, Chair~~  
By Order of the Commission  
*Stephen Penny*