

**BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO  
AS A DULY CONSTITUTED ELECTORAL BOARD**

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Objections of: Melanie Fialkowski )  
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To the Nomination ) No.: 16-EB-WC-66  
Papers of: Roisin Dohl )  
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Candidate for the office of Republican Party )  
Ward Committeeman of the 45th Ward, City of )  
Chicago )

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Melanie Fialkowski (“Objector”) to the nomination papers (“Nominating Papers”) of Roisin Dohl, candidate for the office of Republican Party Ward Committeeman for the 45th Ward of the City of Chicago (“Candidate”) at the General Primary Election to be held on March 15, 2016, having convened on December 14, 2015, at 9:00 A.M., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing was held on these Objections commencing on December 14, 2015 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Terence Flynn for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Melanie Fialkowski, by her attorney, Sharee S. Langenstein; and the Candidate, Roisin Dohl, by his attorney, Scott B. Erdman.

7. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or her duly authorized representative were present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination

conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 296.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 753.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 406.

D. The remaining number of signatures deemed valid as a result of the records examination total 347.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Republican Party Ward Committeeman for the 45th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Objector an opportunity to present evidence in support of her Rule 8 motion objecting to the Board's clerk's findings during the records examination.

15. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 347 valid signatures, which exceeds the minimum

number of valid signatures required by law to be placed upon the ballot as a candidate for the office of Republican Party Ward Committeeman for the 45th Ward of the City of Chicago, and recommends that the Candidate's Nomination Papers be found valid.

16. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Roisin Dohl are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Melanie Fialkowski to the Nomination Papers of Roisin Dohl, candidate for the office of Republican Party Ward Committeeman for the 45th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Roisin Dohl, candidate for the office of Republican Party Ward Committeeman for the 45th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Primary Election to be held on March 15, 2016.

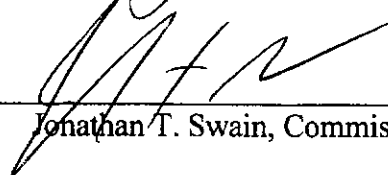
Dated: Chicago, Illinois, on January 12, 2016.



Mansel A. Hernandez, Chairman



William J. Kresse, Commissioner



Jonathan T. Swain, Commissioner

**NOTICE:** Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPUBLICAN WARD COMMITTEEMAN FOR THE 45TH WARD, IN THE CITY OF CHICAGO, STATE OF ILLINOIS**

<b>Melanie Fialkowski,</b>	)	
Petitioner – Objector	)	16-EB-WC-66
	)	
v.	)	Summary:
	)	1) Minimum signature req.: 296
<b>Roisin Dohl,</b>	)	2) Valid sigs. at end of Rule 6: 347 (above by 51)
Respondent – Candidate	)	3) Signatures put in issue by
	)	objector at Rule 8: 58

**Report and Recommendation of Hearing Officer Terence E. Flynn**

- 1) The objection in this matter appeared to be timely filed.
- 2) The matter was assigned to Terence Flynn as hearing officer for further proceedings.
- 3) The matter had an initial hearing (12/14/15) and then 3 interim hearings (12/17, 12/22, and 12/28/15) until the Rule 6 examination had been completed (on 12/27/15 at 8:07 a.m.). At that last hearing, both sides having filed timely Rule 8 motions, a cut-off of January 3, 2016 at noon was set for exchanging witness lists and any affidavits to be presented. A hearing date of January 6, 2016 was set for the evidentiary hearing on the Rule 8 motions.
- 4) As noted in the Final Petition Summary, at the conclusion of the Rule 6 exam, candidate was 51 signatures above the minimum signature requirement of 296.
- 5) As of the January 3, 2016 cut-off, neither party had submitted any affidavits and neither party attempted to enter any affidavits or exhibits (other than the petitions and the Final Summary Report) into evidence at the January 6, 2016 hearing.
- 6) The first issue considered at the 1/6/16 hearing was objector's argument regarding cross-party circulation. If objector was correct, 38 otherwise non-objected-to signatures would have been

deducted from candidate's total. The essence of the argument was that a circulator for candidate also circulated a petition(s) for John Arena, an Alderman of the Democratic party and a candidate for Democratic Committeeman for the 45<sup>th</sup> Ward. The essence of objector's argument was that §10-4 should control, which would ban such cross-party circulation. The essence of candidate's argument was that §7 should control, which contains no such cross-party circulation prohibition.

This issue has been settled law in this Electoral Board since at least 2008. In that election cycle at least 3 cases (one involving this hearing officer) decided that §7 controlled the petition conduct of candidates for ward committeemen, not §10-4, and therefore there was no prohibition against circulating for candidates for more than one established political party. See, e.g., *Hernandez v. Berrios*, 08-EB-WC-07; *Strnad v. Foss*, 08-EB-WC-05; *Strnad v. Reboyras*, 08-EB-WC-06. This Board has not ruled otherwise since 2008, nor is there appellate precedent to the contrary. Therefore, there is certainly no basis to question, much less deviate from, the settled law of this Board. As a result, candidate did not lose 38 signatures, but stayed the same: 51 signatures above the minimum.

- 7) The evidentiary hearing was not the typical attempt at rehabilitation of signatures or rebuttal of Rule 6 findings by one or both parties through the use of live testimony, affidavits or exhibits: as said above, no affidavits were presented by either side. Rather, objector called to testify one witness, Christopher Cleveland, a participant for objector at “most” of the Rule 6 exam, Republican Ward Committeeman for the 43<sup>rd</sup> Ward and Chair of the Republican Party of Chicago. A summary of his testimony shows the following:
- a) he was outraged (Tr. 96, L 11-13)<sup>1</sup> at the “incompetence” (Tr. 35, L 14-18; 90 L 13-16) of the

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<sup>1</sup> “Tr.” is a citation to transcript pages and lines from the Rule 8 Evidentiary Hearing of 1/6/16, filed with this Board on 1/8/16

Board employee who was the Rule 6 examiner;

b) despite that outrage at incompetence, he never requested a supervisor to intervene (Tr. 28, L1-9) nor did he request the intervention of Mr. Charles Holiday of the Board (Tr. 28, L1-9), because he is “rebuffed” and creates “hostility” when he does so (Tr. *Ibid*), “so I have learned not to do that” (Tr. 28, L 9) , even though he made such a request in another case that very day (Tr. 28, L4-6); nor, the Record shows, did he or objector's attorney request intervention of this hearing officer until the testimony of 1/6/16 (the Rule 6 exam was completed on 12/27/15, some 10 calendar days earlier and there had been a hearing on 12/28, the next day);

c) another volunteer for objector was present for part of the Rule 6 exam but she was not called to testify;

d) the errors alleged in the testimony can be separated into three categories: i) on an “invalid signature” objection, if there were multiple voters at the address, the Rule 6 examiner would not perform a signature comparison between petition sheet and signature clip (Tr. 23, L 20 to 24, L 19); ii) on an “incomplete address” objection, the Rule 6 examiner would interpret an address and if she found it, and found registered voters there, would not further compare the petition sheet signature to signature clips unless there was also an invalid signature objection (Tr. 37 L 25 to 38 L22); and iii) on a non-registered objection, once again would not compare signatures if she found any registered voter at the address unless there was also an invalid signature objection. (Tr. 49, L9-17);

e) the number of signatures put into issue by this Rule 8 testimony was 58 in total: 18 on (i) above, “wouldn't look past multiple voters” on invalid signatures; 28 on (ii) above, no signature comparison on incomplete address issues; and 12 on (iii) above, regarding not comparing signatures without an “invalid signature” objection on non-registration. (Tr. 98, L25 to 99, L 8);

f) Mr. Cleveland also testified that he was responsible, the “captain of the ship”, regarding



giving instructions to his volunteers on how to construct an appendix-recapitulation sheet in this, and other, challenges (Tr. 65, L 6-16) and that he instructed them to pick only one category of objection (Tr. 65, L 18-66, L 6) because multiple objections were logically inconsistent (Tr. 65, L 18 to 66, L 25) and because he did not want to be accused of “shotgun” objections.

(Tr. 85 L 10-11) On cross-examination, it was pointed out that there were a number of appendix-recap lines with multiple objections to which he replied that volunteers do not always follow instructions. (Tr. 91, L 6-10);

g) It was admitted that he was not at the Rule 6 examination the entire time (Tr. 17 L 24 to 18 L 2), that he made no (or presented no) contemporaneous documents or notes of the Rule 6 exam, and that he could not remember with specificity each and every call of the examiner but he testified that the pattern of the three categories of “incompetence” (Tr. 90 L, 13-16) that he observed was true and accurate and that each of the 58 petition signatures challenged at the Rule 8 hearing was part and parcel of this observed pattern of “incompetence” about which he was “outraged”. (Tr. 89, L 20 to 90 L, 16)

8) As stated above, the other volunteer for objector was not called as a witness. The Rule 6 examiner was not called as a witness. No Board documents, voter records such as signature clips or registration forms were requested of the Board. No party subpoenaed anyone. Candidate did not call any witnesses. No exhibits were entered into the Record beyond use of the Final Petition Summary on Rule 6 and the Petition Sheets of Candidate during the testimony of Mr. Cleveland.

9) No party commented or argued at any time regarding the role of the Board's handwriting expert in this matter and what role he did or did not play, except to the extent that his notations are of Record on the Final Petition Summary of 12/27/15.

10) Weight to be accorded evidence: This hearing officer has no doubt as to the sincerity of Mr.

Cleveland beliefs and opinions regarding his perceptions of "incompetence". However, the weight those beliefs and opinions should be given is an open question. First, he was not proffered as an expert and disclaimed that status (Tr. 31, L 11). Second, he was not present at all times. With regard to the stress Mr. Cleveland put on the "logical inconsistency" of multiple objections to the same sheet and line number, he seems to have a crabbed understanding from prior counsel and concern about "shotgun" objections. When asked "isn't it true that you could have a not registered objection and yet believe the signature is fraudulent and those would be two separate bases to make an objection?" His answer was "Let me think about this." (Tr. 84, L 23 to 85, L 2) This came up as Mr. Cleveland complained that the Rule 6 examiner would not look at "obviously fraudulent" signatures, but objector had not so objected in the Appendix-Recap. It was explained that an objector may not amend. (Tr. 66,L 13-24) The "single-objection" procedure of this Appendix-Recap, I believe, led to some confusion on the part of objector's watcher, Mr. Cleveland, as to the process. Another example: when testifying about the Rule 6 examiner's procedures, he testified about her use of "not in system". When asked: "Well, Mr. Cleveland, do you yourself have an understanding of what the statement 'not in system' means?" The witness answered "I can't say that I do and I don't think that the records examiner had a clear idea of it either." (Tr. 27, L 20-24) A similar problem arose at (Tr. 59-60) where the witness admitted that in a registration issue "it's possible" she found a registered voter: "I can't say", and objector's attorney withdrew that challenge. This hearing officer stated: "it's that possibility that worries me about the quality of the evidence". (Tr. 60, L 8-10)

The objector did not provide the hearing officer (or this Record) with signature clips or other documents to attempt to determine whether the examiner was right or wrong. Neither objector nor candidate argued the involvement of the handwriting expert who must have done some level of comparisons, the alleged absence of which is central to objector's case.

11) Waiver: As detailed above, there is an admission that no supervisor was asked to intervene, albeit with an alleged explanation of fruitlessness. There is an admission that Mr. Holiday was not apprised of the situation, without separate explanation. There is no issue that the first time these grievances were aired was at the Rule 8 hearing, 10 calendar days after completion of the examination, with one intervening hearing, and no motion made to this hearing officer or the Board in the interim. These are, of course, expedited hearings and “sitting on one's rights” cannot be tolerated.

12) The Requested Remedies: At page 3 of objector's (written) closing argument, filed on 1/8/16, objector requests two alternative remedies. First, she states that this hearing should overturn (or so recommend) the calls of the Rule 6 examiner and find that the candidate has insufficient signatures. That is neither warranted nor possible given the state of the Record. No documentation was presented in the evidentiary hearing that these calls were per se incorrect; rather, that the process was “unfair”. It would double the unfairness to deprive candidate of ballot access because of alleged errors she was also powerless to correct. The alternative remedy requested is to send the matter back for a full, new Records exam. That remedy is equally inapposite. That would expand the 58 signatures put in issue at the Rule 8 hearing into a new hearing on all 510 objections lodged in the objector's petition. No good reason has been shown for that extraordinary relief. No other relief is requested, though a more obvious one than those would be a re-look at just the 58 signatures put into issue by objector at the Rule 8 hearing. However, that would potentially prejudice the candidate who rested at the Rule 8 hearing without attempting to rehabilitate any signatures: would a new Rule 8 come into at least partial play given a (new) partial Rule 6? The Board should not have to make these determinations at this juncture, which returns us to the waiver problem, as well as failure of

objector to make multiple objections in the first instance.

13) Burden of Proof: The candidate summarized the situation quite well at the last page of his written submission filed 1/8/16: “The objector chose to eschew the traditional forms of evidence such as affidavits, voter records or the testimony of a handwriting expert.... While the objector is free to take advantage of the evidentiary hearing as a venue for Mr. Cleveland's opinions, she is not freed from her burden of proof. Mr. Cleveland offered no direct evidence as to why any of the *individual* rulings made on a sheet and line basis by the clerk of the Board should be changed by the Hearing Officer” (emphasis added). While there was testimony of a “pattern of incompetence”, that testimony never demonstrated that an *individual* ruling was wrong, in part because no extrinsic evidence, such as affidavits, voter records, or handwriting expertise was offered at any time as to any *individual* ruling. Thus the *quality* of the evidence was lacking, as well as the *quantity*. (See also, lack of evidence summarized in ¶¶ 8-9 above.) Once again, this hearing officer does not doubt the sincerity of Mr. Cleveland's opinions, but does seriously question the proposed method of “proofs” and the quality and quantity of the evidence, essentially nothing more than that naked sincerity. In the 18 or so years this hearing officer has been privileged to assist this Board, a number of quite sincere citizens – candidates, objectors, watchers, petition signers – have leveled accusations of incompetence and worse against the process, almost always without extrinsic evidence supporting same. When confronted with that situation, the result is the rejection of that unsupported opinion. This hearing officer does not think that this particular witness's standing in an established political party, standing alone, makes for a difference in that uniform result. Coupled with the mistake of single-objection procedure, there was sincere frustration by objector and her representatives. However, the evidence necessary to remedy that frustration was lacking, all the more problematic because of 10 calendar days where no action was taken, as well as failure to

contemporaneously request supervision at the Rule 6 exam.

**Conclusion**

There was waiver by the objector in not requesting supervisory, hearing officer or Board intervention in the Rule 6 process in a timely manner. The burden of proof on the objector was not carried by the naked testimony of the one witness, admittedly not an expert (Tr. 31 L 11), and when there were no exhibits or other extrinsic evidence offered in support, both the quantity and the quality of the evidence failed to meet objector's burden of proof regarding any one individual ruling in the Rule 6 examination. After the Rule 8 hearing, candidate still is 51 signatures above the minimum signature requirement of 296.

**Recommendation**

This hearing officer recommends that the name Roisin Dohl be printed on the ballot for the office of Ward Committeeman for the Republican Party for the 45<sup>th</sup> Ward in the March 15, 2016 election.

Dated: January 9, 2016

s/ Terence E. Flynn  
Hearing Officer