

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

---

Objections of: SUSANNE J. HENNING and	)	
ALBERT L. LEWIS,	)	
	)	
To the Nomination	)	No.: 07-EB-ALD-050
Papers of: CHRISTOPHER PERSONS	)	
	)	
Candidate for the office of	)	
Alderman of the Forty-eighth Ward,	)	
City of Chicago	)	

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of SUSANNE J. HENNING and ALBERT L. LEWIS ("Objector(s)") to the nomination papers ("Nomination Papers") of CHRISTOPHER PERSONS, candidate for the office of Alderman of the Forty-eighth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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(s) and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Mario Correa for further hearings and proceedings.

6. The Objector(s) and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector(s), SUSANNE J. HENNING and ALBERT L. LEWIS, by counsel, James P. Nally PC; and the Candidate, CHRISTOPHER PERSONS, *pro se*.

7. The Objector alleges that the Candidate failed to file a Statement of Economic Interest with the Cook County Clerk and the receipt therefor with the Board of Election Commissioners. Objector contends that this failure invalidates the Candidate's Nomination Papers.

8. The Objector alleges that the clerk for the Board of Election Commissioners by checking "Yes" in the box next to the Receipt for Statement of Economic Interests estops the Board from being able to remove the Candidate from the ballot.

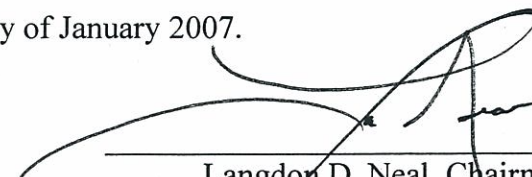
9. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

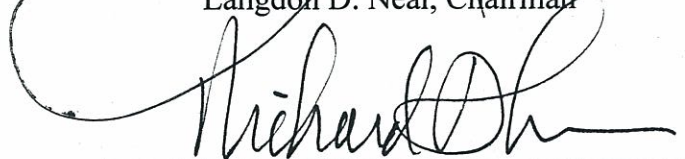
10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. 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.

11. For the reasons stated above, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of SUSANNE J. HENNING and ALBERT L. LEWIS to the Nomination Papers of CHRISTOPHER PERSONS, candidate for election to the office of Alderman of the Forty-eighth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CHRISTOPHER PERSONS, candidate for election to the office of Alderman of the Forty-eighth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 16<sup>th</sup> day of January 2007.

  
\_\_\_\_\_  
Langdon D. Neal, Chairman

  
\_\_\_\_\_  
Richard A. Cowen, 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 10 days after the decision of the Electoral Board.



BEFORE THE BOARD OF ELECTION COMMISSIONERS  
FOR THE CITY OF CHICAGO

In Matter of )  
 )  
 CHRISTOPHER PERSONS )  
 Candidate, )  
 )  
 and ) No. 07-EB-ALD-050  
 )  
 SUSANNE J. HENNING, )  
 ALBERT L. LEWIS )  
 Objector. )

2007 JAN 11 P 12:42

**HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION**

I, hearing examiner, Mario Correa ("Examiner") hereby state and recommend that the Board of Election enters a decision removing the candidate CHRISTOPHER PERSONS (the "Candidate") from the ballot for the following reasons and based on the following evidence:

1. This case involves the Candidate's failure to file a Statement of Economic Interest. The two issues raised in the case are as follows:

Issue 1: Whether the Candidate's failure to file a Statement of Economic Interest is sufficient bases to not list the Candidate on the ballot.

Issue 2: Whether a clerk for the Chicago Board of Election checking the "yes" in the box next to Receipt for Statement of Economic Interests estoppes the Board from being able to remove the candidate from the ballot.

2. It is undisputed that the Candidate was required to file his statement of economic interest with the Cook County Clerk as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101, et. seq.] and that he was further required to file a receipt of such filing pursuant to section 10-5 of the Election Code (10 ILCS 5/10-5).

3. On the hearing held on January 5, 2007, the Candidate acknowledged that he only filed the Statement of Economic Interest with the Chicago Board of Election and that he failed to file said statement with the Cook County Clerk's office.

4. The Illinois appellate court addressed the implications of failing to file a statement of economic interest in Kellogg v. Cook County Illinois Officers Electoral Board, 347 Ill.App.3d 666 (1<sup>st</sup> Dist., 2004). In that case the court held that the requirements to filing a statement of economic interest in the appropriate office as well as filing a receipt of such filing with the electoral board in question are mandatory and that a Candidates failure to do so is grounds for exclusion from the ballot. *Also see Powell v. East St. Louis Electoral Board*, 337 Ill.App.3d 334 (2003) *for same conclusion*.

5. The Candidate attempts to distinguish Kellogg using an estoppel argument. The Candidate' argues that Board should be estopped from withholding his name from the ballot due to an error by the clerk for the Board.

6. On January 5, 2007, an evidentiary hearing was held which revealed the following pertinent facts. Sophie Bara is employed by the Chicago Board of Election as a clerk whose duties included receiving nomination papers. Stephanie Lane on behalf of the Candidate handed Ms. Bara a document entitled "City of Chicago 2006 Statement of Financial Interests" and Ms. Bara accepted said document. Ms. Bara then filled out the form entitled Receipt of Nominating Papers that was issued by the Board and identified said receipt with ticket number 1008 (the "Board Receipt"). In filing out the Board Receipt, Ms. Bara checked a box indicating "yes" as to receiving a document item called "Receipt for Statement of Economic Interests" and tendered Ms Lane a copy of the Board

Receipt. The Board Receipt and the yellow stub listing ticket number 1008 can be found in Board Group Exhibit A.

7. The Candidate argues that Ms. Bara erroneously checked the box indicated receipt of the statement of financial interests and that he relied on Ms. Bara's error. He reasons that the Board, through its employee Ms. Bara's error, mislead him into believing that he had properly followed the procedures for filing the statement of economic interest and therefore the Board should be barred from omitting him from the ballot.

8. In support of his argument, the Candidate cites Preuter v. State Officers Electoral Board, 334 Ill.App.3d 979 (1<sup>st</sup> Dist., 2002). The Preuter case involved the requirements imposed on a new political parties for obtaining and retaining status of an "established political party" under section 10-2 of the Election Code. *Id* at 988. The political party in that case had polled 5% in the year 2000 election and therefore became an established political party in the 39<sup>th</sup> Representative District. However, in 2001 the Illinois legislative map was redistricted, placing parts of the former 39<sup>th</sup> Representative District in the new 41<sup>st</sup>, 42<sup>nd</sup>, 47<sup>th</sup>, 48<sup>th</sup> and 95<sup>th</sup> Representative Districts. The problem was that section 10-2 defined an "established political party" as one that receives "5% of the entire vote cast in such *territorial area* or political subdivision." *Emphasis added*. A guide published by the electoral board implicitly interpreted "territorial area" to mean the geographic area that had been the old 39<sup>th</sup> Representative District when it expressly stated in the guide that the political party in question was an established party in all of the new districts that sat inside the old 39<sup>th</sup> district. Thus, prior to the election, the electoral board had anticipated the issue and resolved it. The political party slated candidates in the new districts. The objector's filed their objection on the grounds that "territorial area or



subdivision” referred to the old 39<sup>th</sup> district which no longer existed and therefore the political party was not an “established political party” within the meaning of section 10-2. The election board decided not to follow the conclusion set forth in its published guide and instead ruled in favor of the objector. The court found that the electoral board was bound by the interpretation set forth in the guide and therefore was estopped from sustaining objector’s petition.

9. The Preuter case is distinguishable from this case on two central points. First, Preuter involved an ambiguity in the statute. The court in Preuter found that either the political party’s interpretation or the objector’s interpretation of the law was reasonable. Therefore, forcing the electoral board to adopt its originally published interpretation did not force the board to adopt a clear violation of the law.

10. Here, unlike in the statute in Preuter, the rules governing the correct procedure for filing a statement of economic interests are clear. To force the Board to accept the Candidate’s papers as properly filed would be forcing the Board to be in clear violation of section 10-5 of the Election Code.

11. Second, the court in Prueter indicated that “to invoke equitable estoppel against a public body, there generally must be an affirmative act on the part of the public body itself such as legislative enactment, rather than unauthorized acts of ministerial officer or a ministerial misinterpretation.” 334 Ill.App.3d at 990 – 991.

12. Preuter involved a guide that was allegedly issued pursuant to the Board’s authority. A guide prepared by an election boards general counsel and presumably reviewed by its staff comes much closer to an act by the electoral body itself, than does the ministerial act of a clerk filling out a receipt.

13. Here while Ms. Bara was an agent of the Board, she was not acting in the capacity of the entire Board. She simply did not have the authority nor did she appear to have the authority to bind the entire Board. Ms. Bara testified that she does not review the documents presented to her.

14. Another issue addressed by the Preuter court was whether the party's reliance on the guide was reasonable. *Id* at 990. Here, the Candidates reliance on the Ms. Bane was unreasonable. The Candidate is required to make an independent determination as to whether he proper filed his nominating papers. He should not look to a clerk or the work product of a clerk in interpreting rules governing his nomination of candidacy.


15. Another factor that weighs against the client is that he never filed the Statement of Economic Interests with the Cook County Clerk's office. The Candidate states that the Board Receipt led him to believe that he did not need to file anywhere else. However, the Receipt does not indicate that the Board is the exclusive place to file. Therefore, even assuming *arguendo*, that the Candidates reliance on the Board Receipt was reasonable for purposes of satisfying section 10-5 of the Election Code (i.e., the requirement to file a receipt from the Cook County Clerk's office), it would not waive the Candidate's independent requirement of filing the Statement of Economic Interests with the Cook County Clerk. The Candidates admission to not filing the Statement of Economic Interests with the Cook County Clerk raises independent grounds for not allowing him on the ballot. *See generally O'Donaghue v. Cook County Officers Electoral Board*, 295 Ill.App.3d 493 *where a candidate's filing the wrong form in the wrong office was grounds for removal from the ballot.*



16. Another matter to consider is the Candidate does not have clean hands in this matter. The Candidate reasons that he was not a participant in the Board Receipt erroneously indicating that a "Receipt of Statement of Economic Interests" was received because neither he nor Ms. Lane said a word to Ms. Bane. However, the Candidate did tender a document to Ms. Bara entitled Statement of Economic Interests. Therefore, by handing a document entitled Statement of Economic Interests to Ms. Bara, the Candidate was at least partially responsible for the error on the Board Receipt.

17. The Candidate raises a second defense in his reply of substantial compliance. While the issue was raised for the first time in the reply, and therefore was technically outside the appropriate scope of a reply, the objector elected not to contest it so it will be addressed here. The court in Powell v. East St. Louis Electoral Board, 337 Ill.App.3d 334 (2003), a case also involving a candidates failure to file a receipt for statement of economic interests, addressed the argument of substantial compliance. That court found that the argument of substantial compliance was specifically rejected by the Illinois Supreme Court. *Id* at 338. Said court held that the candidate was properly excluded from the ballot due to his failure to file a receipt of statement of economic interest even though it agreed with the candidate that he "substantially and in good faith complied with the applicable election laws." *Id*. The same conclusion is mandated here. As a result of the foregoing, the Examiner recommends that the Board remove Christopher Persons from the ballot.

Respectfully Submitted,

  
\_\_\_\_\_  
Mario Correa, Esq.  
Hearing Examiner