

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

Objections of: BEATRICE SUMLIN)	
)	
)	
To the Nomination)	No.: 07-EB-ALD-174
Papers of: VAN B. NEWELL, JR.)	
)	
Candidate for the office of)	
Alderman of the 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 BEATRICE SUMLIN (“Objector”) to the nomination papers (“Nomination Papers”) of VAN B. NEWELL, JR., candidate for the office of Alderman of the 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 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 January 2, 2007 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board 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, BEATRICE SUMLIN, by counsel, Anthony Bass; and the Candidate, VAN B. NEWELL, JR., pro se.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by its 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 Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate or his duly authorized representative was present during the examination of the registration records at all times.

10. The Objector and/or her duly authorized representatives were present during the examination of the registration records at all times.

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 was made available to the parties.

12. The Electoral Board has reviewed the applicable law and has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The Electoral Board finds that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 273.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 412.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 158.

D. The remaining number of signatures deemed valid as a result of the records examination total 254.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is less than the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the Eighth Ward of the City of Chicago.

15. The Hearing Examiner conducted hearings for the purpose of allowing the Candidate and the Objector to present additional evidence regarding the validity of signatures invalidated during the records examination.

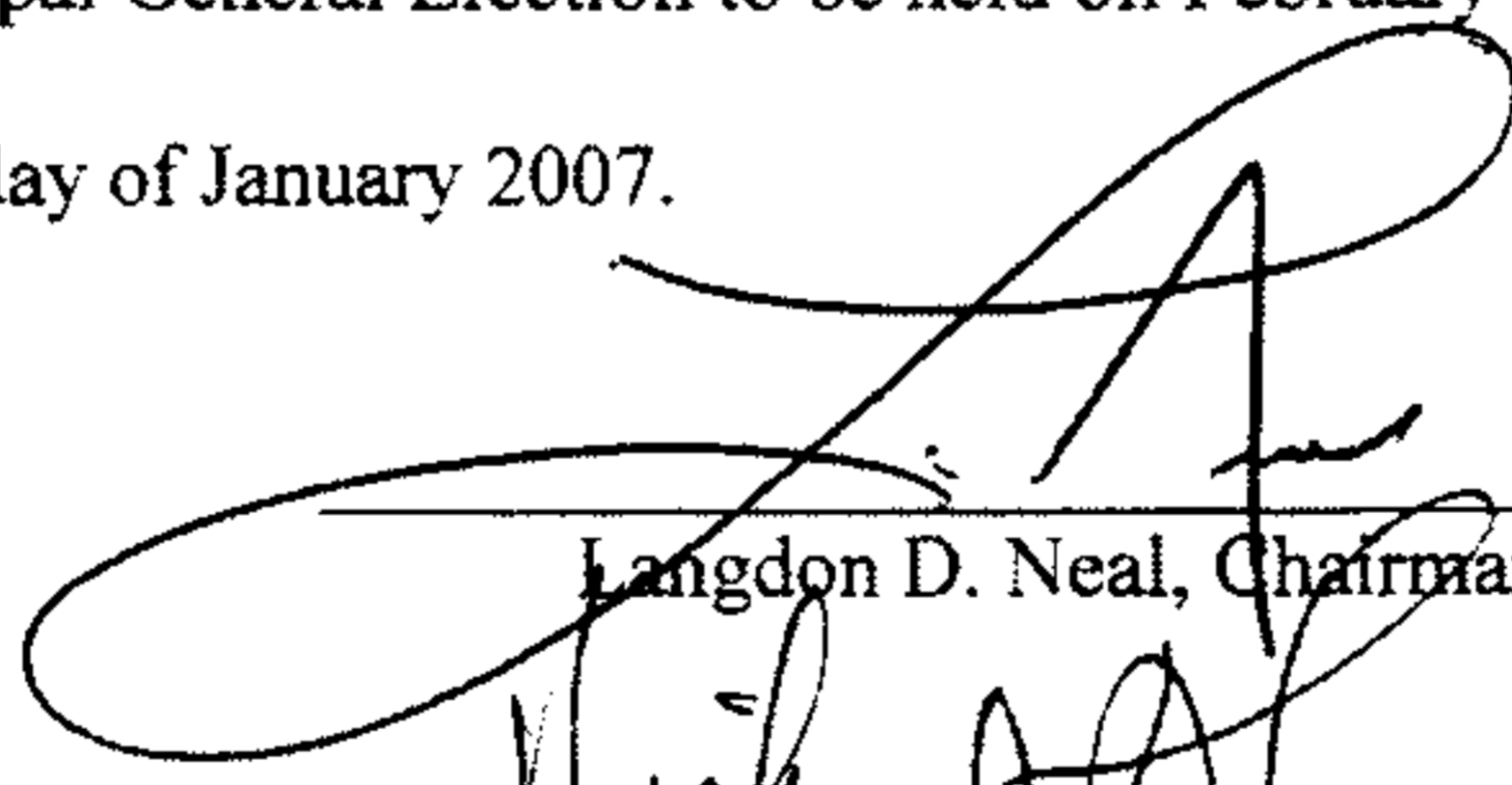
16. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be found valid.

17. 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 Recommendation is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

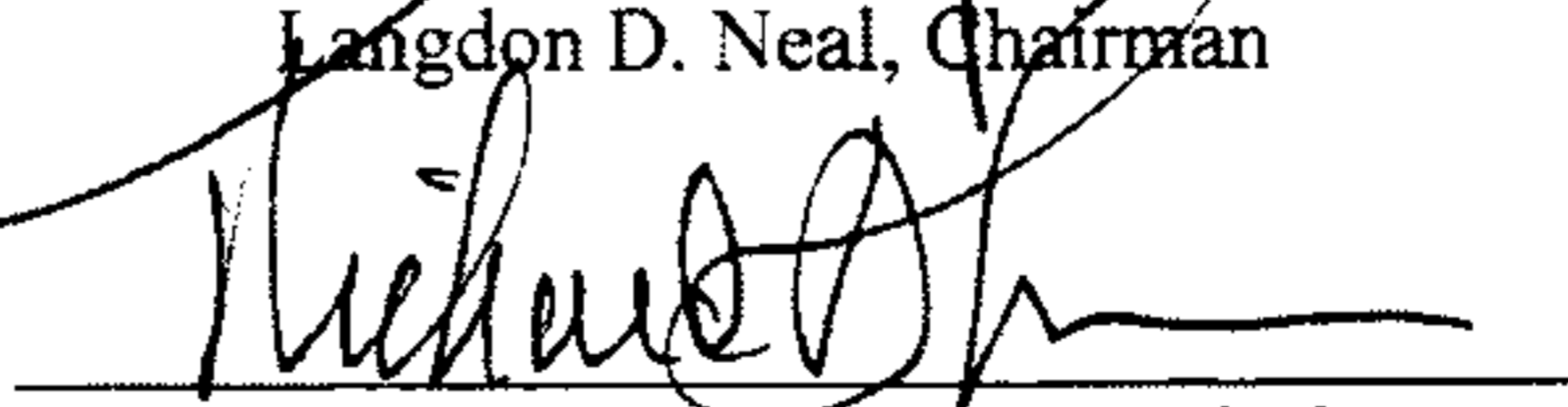
18. For the reasons stated above, the Electoral Board overrules the Objections and finds that the Nomination Papers of VAN B. NEWELL, JR. are valid.

IT IS THEREFORE ORDERED that the Objections of BEATRICE SUMLIN to the Nomination Papers of VAN B. NEWELL, JR., candidate for election to the office of Alderman of the Eighth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of VAN B. NEWELL, JR., candidate for election to the office of Alderman of the Eighth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 29th 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 DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF ALDERMAN OF THE CITY OF CHICAGO

BEATRICE SUMLIN)
Petitioner-Objector,)
)
v.) 07-EB-ALD-174
) (8TH WARD)
VAN B. NEWELL, JR.)
Respondent-Candidate.)

2007 JAN 26 A 8:17

**REPORT AND RECOMMENDATION
OF HEARING EXAMINER TERENCE E. FLYNN**

I.) Procedural History

This matter was initially called on 1/2/07. Candidate appeared pro se; objector appeared by her attorney, Anthony Bass. Both parties agreed that a Rule 6 Records Examination was in order. Candidate requested leave to file a motion to strike, and that was filed on 1/3/07. The matter was set over to 1/10/07.

As of the hearing on 1/10/07 the Rule 6 Examination had not commenced. The case was set over to 1/16/07.

At the hearing on 1/16/07, after arguments, the motion to strike was denied. The candidate argued that the objection was "shotgun" in nature. However, a review showed that the objection was sufficiently specific. Thus the motion was denied.

On 1/16/07 the Rule 6 Records Examination results were available. The results showed the following:

Number of Signatures on Petitions:	412
Number of Objections Overruled:	36
Number of Objections Sustained:	158
Number of Valid Signatures:	254
Minimum Signatures Required:	273

Thus the Candidate was 19 signatures below the minimum requirement. Candidate timely filed a petition under Rule 7. However, it was more properly a Rule 8 motion and was treated as such.

The matter was set over to 1/18/07 for commencement of the Rule 8 hearing. At that time Candidate submitted 24 affidavits and testimony was taken from two witnesses, Mr. Babbington (a notary) and the Candidate himself regarding the procedures utilized in obtaining the affidavits.

As discussed in more detail below, at the conclusion of that day's hearing, candidate has restored 19 signatures. The case was continued to the next day, 1/19/07 and Candidate offered three more affidavits, two of which were accepted. The case was set for final hearing on 1/22/07.

At the hearing of 1/22/07, Objector's case, objector presented the testimony of a handwriting expert, Ms. Ellen Schuetzner, on five of nine signatures she examined.

At that hearing, Candidate offered two more affidavits, one of which was accepted, and one of which was taken under advisement.

The matter was taken under advisement pending this Report and Recommendation.

II) The Issues

A) Whether the affidavits submitted by Candidate were sufficient?

B) Whether affidavits were rebutted by the testimony of Objector's handwriting expert.

III) Discussion

C) The Affidavits

The Candidate submitted three types of affidavits. Examples are attached to this report as Exhibits 1, 2 and 3. The affidavits are grouped in the file as Hearing Examiner Exhibits A, B, and C. (H.E.). Exhibit 1 to this report (H.E. Ex. A) is a type of affidavit that was rejected. It says nothing about the petition signature nor does it reflect anything relevant. Exhibit 2 to this report (H.E. Ex.B) is a short form that states the signer's address, that the signer is a registered voter in the 8th Ward, and states affirmatively that the affiant signed the candidate's petition sheet. Exhibit 3 to this report (H.E. Ex.C) is a longer form that states the affiant's address, the sheet and line number of the petition sheet in question and specifically adopts the signature on the petition sheet, whether cursive or printed.

Objector objected to the admission of all affidavits, short form (Exhibit 2) or long form (Exhibit 3).

D) The Specific Recommendations

i) The Long Form affidavits not otherwise objected to.

As stated above, objector's attorney objected to all affidavits, including the long-form (Exhibit 3 to this report; H.E. Ex. C). However, the Rules of the Board (specifically Rule 8) allow for the submission of affidavits by a party. Objector argues that there "could have been" more specificity in the long-form affidavit and that any affidavit "subject to interpretation" should be rejected. The Hearing Examiner notes that objector called no voter to testify in rebuttal to candidate's affidavits. The long-form affidavits pass muster to state a prima facie case. The following are the signatures recommended to be restored on the bases of a long-form affidavit that is not otherwise challenged:

- 1) Eckles, Sheet 26, Line 2:
- 2) Singleton, Sheet 26, Line 1
- 3) Pandey, Sheet 17, Line 15

- 4) Harris, Sheet 14, Line 14
- 5) Couch, Sheet 17, Line 14
- 6) Little, Sheet 10 Line 11
- 7) Jackson, Sheet 10, Line 12
- 8) Hayes, Sheet 14, Line 15
- 9) Daigre, Sheet 16, Line 5
- 10) R. Powell, Sheet 13, Line 13
- 11) Roberts, Sheet 16, Line 7
- 12) J. Davis, Sheet 14, Line 3
- 13) Burt, Sheet 21 Line 11
- 14) Ross, Sheet 19, Line 5

Therefore, if this recommendation is accepted, the candidate has 14 more signatures, $254 + 14 = 268$

ii) The Variation in Name Issue

The following signatures, which candidate requested be restored, were initially disallowed by the Hearing Examiner on the basis that the name on the petition was different from that in the voter registration records of the Board.

- A) Velma Washington-Curry signed her petition with that name, at Sheet 12, Line 16. The address was correct but the registration was under Velma Washington. An objection on the basis of “not signed in proper person” was sustained in the Rule 6 examination. An affidavit was submitted (long-form) that stated that they are one and the same people, still residing at the same address, but did not specifically explain the difference in names.
- B) Sheila Bundley, Sheet 18, Line 2. That person signed the petition (somewhat illegibly) as Sheila B. Kidd Johnson. An objection was sustained on the basis “not signed in proper person” at the Rule 6 Records Examination. An affidavit was submitted (long-form) stating that Ms. Bundley’s address was the same as her registration, stating her name as Sheila Bundley, but did

not give any reason for the variance in name, and further stated that she signed the candidate's petition at Sheet 18, Line 2.

C) Loretta Dobson (Marshall), Sheet 10, Line 2 was the same situation as those above.

The Hearing Examiner initially ruled for the objector on these three signatures. On rebuttal, Candidate submitted the long-form affidavit of Ms. Washington-Curry and the Hearing Examiner construed that as a motion for reconsideration and took it under advisement. Because the issues are the same, all three signatures will be discussed here.

On reconsideration, and further review of relevant statutes, I reverse my initial ruling.

As opposed to the mandatory nature of the address requirement on petitions that is embodied in 10 ILCS 5/3-1.2, the name requirement stands on different statutory and policy grounds. The statutory language regarding addresses is mandatory in nature.

In contrast, there is no similar mandatory statute regarding exact name. A recently amended statute (effective August 22, 2005), 10 ILCS 5/6-54 states in pertinent and additional part:

"If the voter whose name has changed still resides in the same precinct, the voter may vote after making the affidavit at the polling place regardless of when the change of name occurred. In that event, the affidavit shall not state that the voter is required to register; the affidavit shall be treated by the election authority as authorization to cancel the registration under the former name, and the election authority shall register the voter under his or her current name."

Even in a name change situation, no matter what the reason is for the change, eligibility to vote is triggered by residence in the same precinct. Here we have no residential change at all, so, naturally, each resides in the same precinct.

Further, in execution of the statute, the Chicago Board of Election has distributed official "Consolidated Voter's Affidavit".

That says, at No. 7:

Change of Name I am the same person now registered in this election precinct under the name _____ and that I still reside in said precinct.

No Supporting Affidavit Required”

Again, the name can change as long as the precinct remains the same without affecting the person’s ability to vote. Of course, what we are attempting to ensure is that qualified voters sign the petition sheets.

This matter would have been easier if the name change had been explained in the affidavit. It was not. However, the affidavits submitted by the candidate do state that the person signing is the person living at the address listed in the CBEC records, that she is the person who signed at the specific sheet and line number and adopts that signature. Thus, Loretta Dobson-Marshall states she is Loretta Dobson, Velma Washington-Curry states she is Velma Washington and Sheila Bundley states she is the person listed on the Board records under that name and the person who signed the petition. Again, no change of address is involved.

To give full effect to 10 ILCS 5/6-54, a registered voter, eligible to vote in the February 27, 2007 election, which concededly all three women are, should have all incidents of voting status including petition signing. Again, the situation is quite different from the mandatory address requirement of 10 ILCS 5/3-1.2.

Thus, on reconsideration, it is the recommendation of this Hearing Examiner that all 3 signatures be restored, and thus added to the Candidate’s total. Therefore, if this recommendation is accepted, three more signatures are added to the candidate’s total, now 271.

iii) Testimony By Handwriting Expert Schuetzner

Objector attacked 5 signatures that the Hearing Examiner initially allowed and requested deduction. (In this report, hopefully for clarity purposes, these 5 have not yet been added to Candidate's "running" total.)

Objector called Ms. Ellen Schuetzner to give evidence. There is no question that Ms. Schuetzner is an expert in the field of document examination and handwriting analysis. (Her C.V. is of record in the file.) The witness reviewed 9 signatures but testified only to 5. She testified that to give a fully considered opinion, the standards of her profession and her own procedure would optimally require 20 examples. Also, she testified that, generally, in these instances, she could only opine that "there is no evidence" that two samples were written by the same person, which, she acknowledged, is different from an opinion stating that "this is not the same person".

The signatures involved and the testimony are as follows:

1) Manson, Sheet 26, Line 9: (long-form affidavit) Ms. Schuetzner initially testified that there were dissimilarities between the petition, the affidavits, and the CBEC signature card. However, when she was reminded that this is a printed signature situation, she admitted a printed petition signature will, of course, vary from cursive. She also admitted that "there were more similarities between the affidavits and the signature card". Therefore, if anything, her testimony supported Candidate, or was at best neutral. The testimony did not rebut the affidavit.

2 &3) Monica Powell (Sheet 28, Line 1 – long-form affidavit) and
Aisha Powell (Sheet 28, Line 2 – long-form affidavit)

With regard to Aisha, the witness stated that she had no opinion on the signature card cursive versus the petition printed signature. Therefore, the evidence failed to rebut the affidavit. With regard to Monica Powell, the witness again stated that there was "no evidence to indicate" the petition and signature card were signed by the same writer, but again, failed to rebut the affidavit, as she

admitted that there would be variations and she had insufficient signatures to opine more definitively.

4) Lysa Davis, Sheet 29, Line 1 (short affidavit form).

After going through some testimony about the petition, affidavit and signature card and differences she found, and admitting that variation in signatures are likely, the witness stated in answer to a question that she thought the signature card for Lysa Davis, was actually signed "Paris". This Hearing Examiner appreciated the candor of the witness. If the signature card, however, appears to the handwriting expert to be a completely different name from what is concededly the name of the a) voter and b) petition signor, then little weight can be given in this instance to that testimony and certainly not enough weight to overcome the affidavit.

5) Willard Fountian III, Sheet 6, Line 12. This was not a signature for which an affidavit was provided; the Rule 6 examination overruled the objections and ruled in favor of the candidate. Again, the testimony was along the same lines as above. Here, however, the Board's own handwriting expert signed off on the overrule and agreed with it, as shown by the Rule 6 worksheet . There is nothing to suggest that either expert was in a better position than the other to make such a determination. (Neither had 20 exemplars.) The testimony, taken in its totality, is insufficient to change the Rule 6 result, with the Board's handwriting expert in concurrence. Again, the testimonial formulation "there is no evidence to suggest" it's the same person is crucially different from, "it isn't the same person".

If this recommendation is followed, four signatures should be added to Candidate's total (the last, Mr. Fountian, was already in his total, as it was an overruled objection): 275.

iv) The Short Form Affidavit

As stated above, many of the affidavits were in multiple, with the candidate obtaining "better" affidavits from the same voters. There are only three

signatures that objector points to as having only short form (Exhibit 2: H.E. Ex. B):

Walter Lawson, Sheet 20, Line 8

Jesse Parks, Sheet 20, Line 9

Lysa Davis, Sheet 29, Line 2

The file reflects the same. That affidavit form, though scanty, does definitely state that the person affying is a person registered to vote in the 8th Ward at the address shown and did sign the Candidate's petition sheets. The sheet number and line number are not in the body of the affidavit. (They were added during the hearing for convenience, but were not part of the original affidavit.) Still, the purpose of the affidavit is clear: "I did sign for this Candidate and I am a registered voter who can do so; here's my address and here's my name." That is not "interpreting" an affidavit, as objector suggests is wrong; that is just paraphrase. The objection contains no allegations of fraud or pattern of fraud. This Hearing Examiner found the Candidate's testimony credible. The objector did not call to testify any voters to discredit the petitions. The vast majority of objections were to printed signatures, which are not "invalid per se". This form is enough for the prima facie showing and went unrebutted by objector. If this recommendation is accepted, two further signatures should be added to the Candidate's total – Ms. Davis having already been counted in Section iii above – for a total of 277.

v) Rulings in the Objector's Favor

a) 10 ILCS 5/3-1.2 – Bad Addresses

The following signatures, which candidate requested to be restored, were refused by the Hearing Examiner in the Rule 8 examination, under 10 ILCS 5/3-1.2:

- A) James Harrington, Sheet 5, Line 4: Mr. Harrington put down his business address rather than his home address on the petition sheet. Mr. Harrington's affidavit (long form) was submitted; there is no doubt he is a

resident of the 8th Ward. However, strict application of 10 ILCS 5/3-1.2, requires that the address of the petition signatory be the address of registration. The statute is mandatory and requires disallowance of the signature.

- B) Similarly, Jillian Thorpe signed the candidate's petition at Sheet 8, Line 15; however, the address on the petition was not the address of registration. An affidavit was submitted showing that the address on the petition was still within the 8th Ward and that Ms. Thorpe signed the petition. There is no doubt that Ms. Thorpe is a resident of the 8th Ward and signed candidate's petition. However, strict application of 10 ILCS 5/3-1.2 requires rejection.
- C) Terry Daniel, at Sheet 26, Line 8, had the same problem as Ms. Thorpe. Therefore, the Candidate's request to restore the signature was denied.
- D) Tracy Watkins, at Sheet 2, Line 3, had the same address problem as above, and thus Candidate's request was denied.

These were objections that were sustained on the Rule 6 Examination; and thus the refusal to restore them does not decrease the Candidate's total. Application of 10 ILCS 5/3-1.2 required that objections be sustained when there is a variance between the address on the petition and the address of registration. Here, there was such a variance.

b) A Faxed Copy of Affidavit

An objection to a printed signature, Edwin Garstkiewicz, at Sheet 27, Line 3, was sustained on the Rule 6 examination. In his attempt to restore, Candidate presented a faxed copy of a notarized affidavit (long form) with the date missing from the jurat. Objector's objection to admission of the faxed copy was sustained. However, since that was not in Candidate's total, there is no deduction.

Recommendation

By this Hearing Examiner's count, the following summary is accurate:

Rule 6 signatures: 254

Long-Form Affidavits
not otherwise challenged: 14

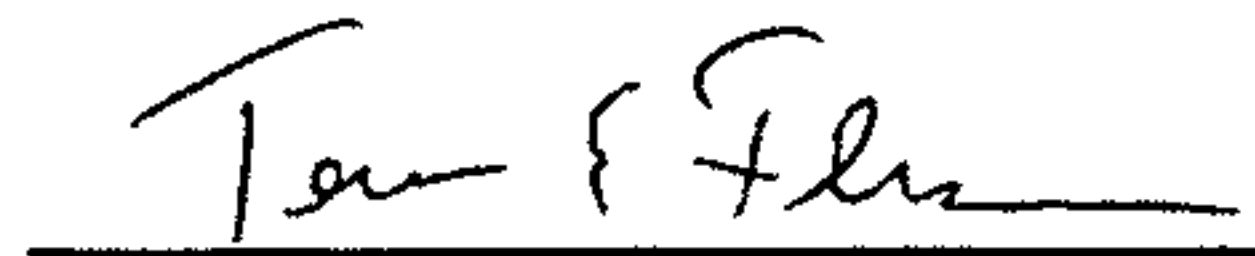
Added name issue: 3

Rejection of Objector's
handwriting expert: 4

Short-Form Affidavits: 2

Total: 277, four above the minimum requirement

Thus it is the recommendation of this Hearing Examiner that the name Van B. Newell, Jr. should appear on the ballot for the office of 8th Ward Alderman in the February 27, 2007 election.



Terence E. Flynn

Hearing Examiner

January 26, 2007

AFFIDAVIT

STATE OF ILLINOIS)

COUNTY OF COOK)

I Carrie L. Manson do swear that the following statement is true.

1) I reside at 8929 S. Drexel Ave

In the city of CHICAGO in the county of COOK and a registered voter in the 8th ward.

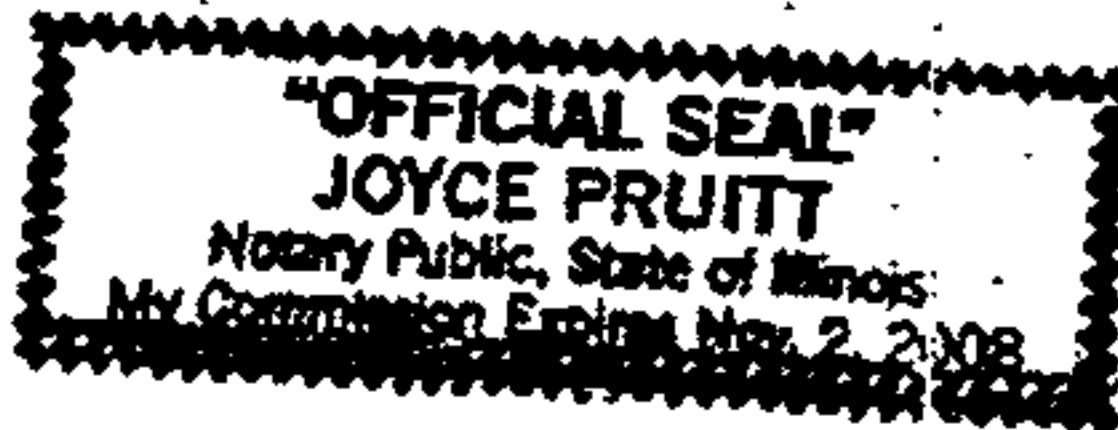
#

I declare that the above statement is true and correct.

Carrie L. Manson

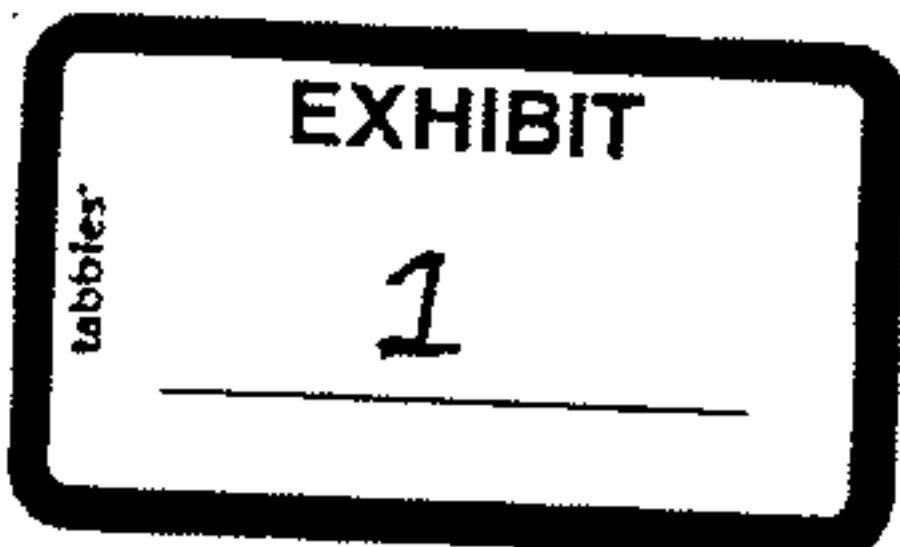
Sworn to before me by Carrie L. Manson On Jan 14, 2007

Joyce Pruitt
Notary



Object's
Ex 5

Exhibit N
Page 26
Line 9



AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF COOK)

I Brenda B. Daigre do swear that the following statement is true.

1) I reside at 1916 E. 92nd ST,

In the city of CHICAGO in the county of COOK and a registered voter in the 8th ward.

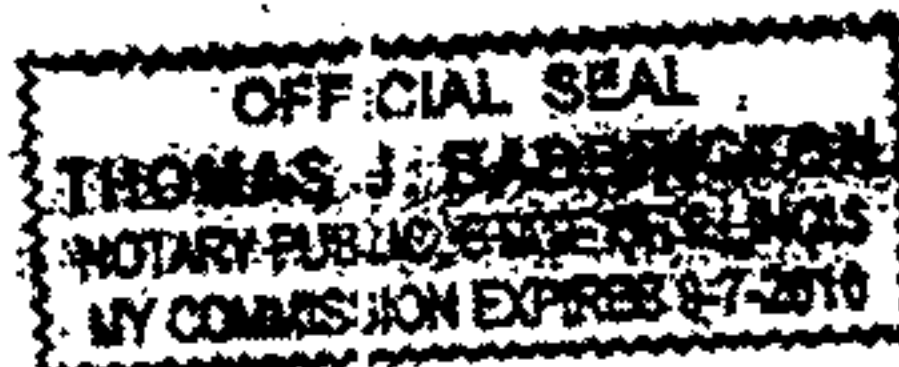
2) I signed the petition form for Van B. Newell Jr., candidate for the 8th ward Alderman.

I declare that the above statement is true and correct.

Brenda B. Daigre

Sworn to before me by BRENDA B DAIGRE On JAN 16, 2007

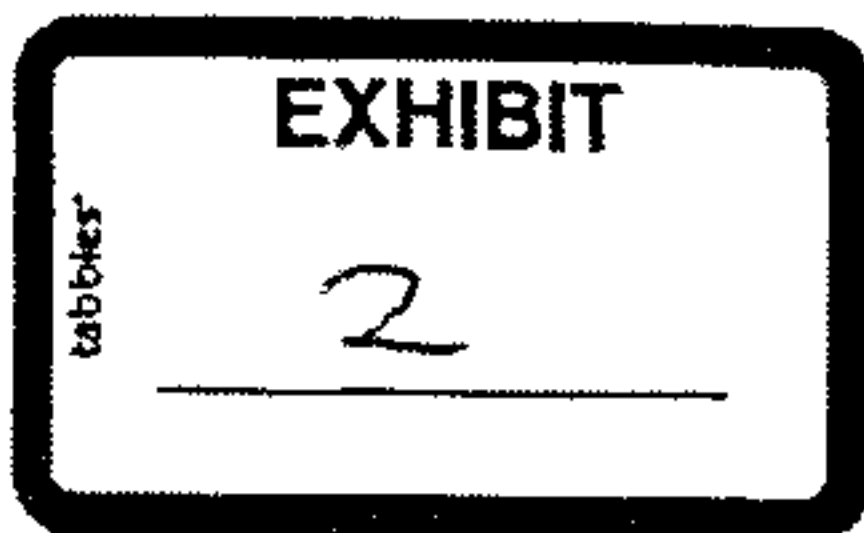
Thomas J. Saberski
Notary



Objection Ex. 8

Exhibit P

Pg. 16
Line 5



AFFIDAVIT

State of Illinois)
) SS
County of Cook)

I, Velma Washington-Curry being first duly sworn and placed under oath,

Hereby depose and state:

1. I am a resident and a registered voter in the 8th Ward of the City of Chicago.
2. At the time I signed the nomination petition for Van B. Newell Jr., I was a registered voter at 8959 S. Harper which is in the 8th Ward.
3. I am still a registered voter in the 8th Ward and I reside at 8959 S. Harper.
4. My signature appears on the nomination petitions of Van B. Newell Jr. Sheet 12, Line 14) as a candidate for election to the Office of Alderman Of the 8th Ward of the City of Chicago.
5. I signed the nomination petition of Van B. Newell Jr at the aforementioned sheet and line.
6. The signature below and contained on the election petition signed for the Candidate Van B. Newell Jr. (whether printed or in cursive) at the Aforementioned sheet and line are genuinely my own and affixed by me.

FURTHER AFFIANT SAYETH NOT

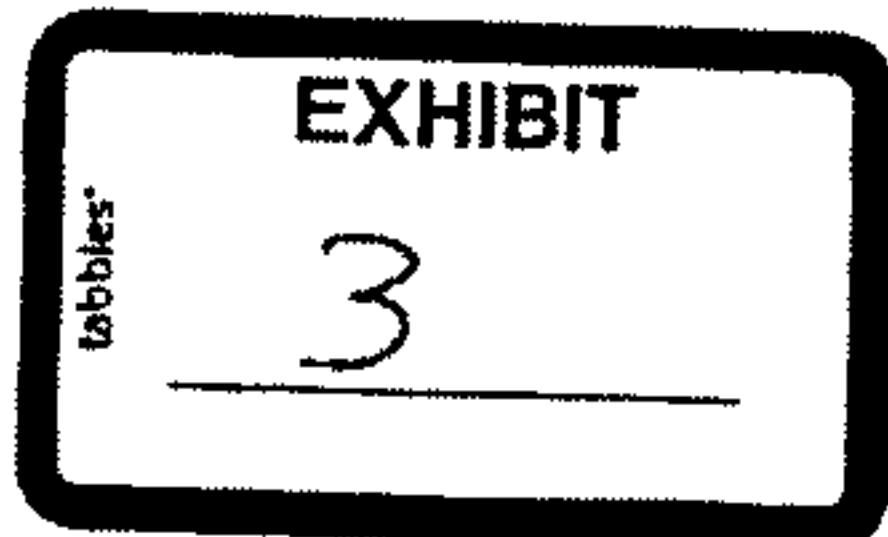
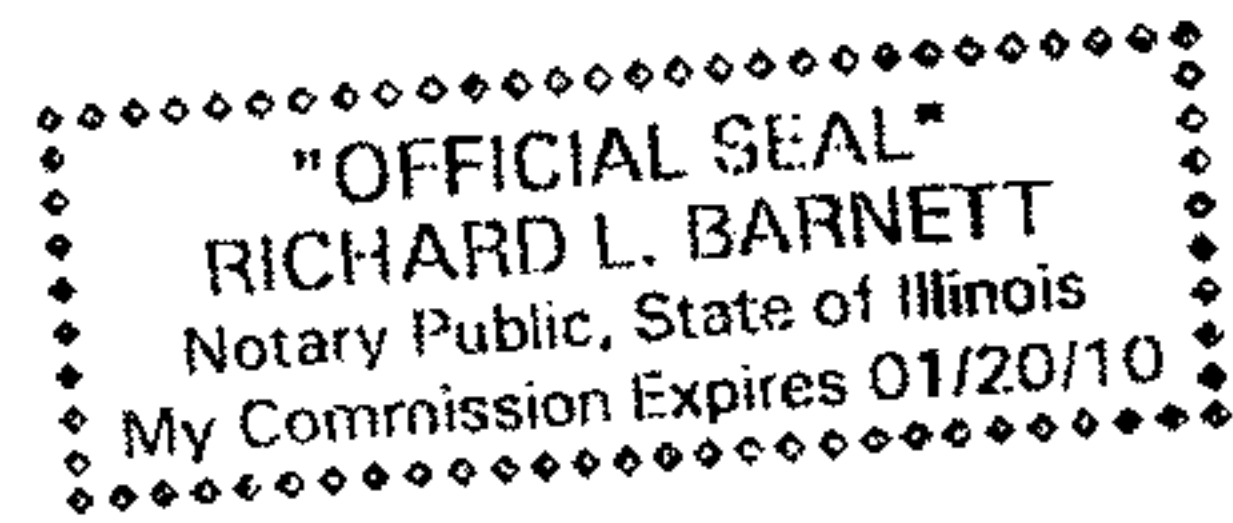
Velma Washington-Curry
Signature of Affiant

Subscribed and sworn to before me by

VELMA WASHINGTON-CURRY

On this 20 day of January, 2007

Richard L. Barnett
Notary



Credit;
9x.
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