

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

Objections of: PROCO 'JOE' MORENO)
)
)
)
)
To the Nomination) No. 08-EB-SS-01
Papers of: WILLIAM 'WILLIE'
DELGADO)
)
)
Candidate for the office of State Senator,)
2nd District, State of Illinois, Democratic)
Party)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, 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 PROCO 'JOE' MORENO ("Objector") to the nomination papers ("Nomination Papers") of WILLIAM 'WILLIE' DELGADO, candidate for nomination of the Democratic Party to the office of State Senator for the 2nd District, State of Illinois ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8th Floor Conference Room, 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 held on these Objections commenced on November 20, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner William P. Jones for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, PROCO 'JOE' MORENO, appearing by counsel, Richard K. Means; and the Candidate, WILLIAM 'WILLIE' DELGADO, appearing by counsel, James D. Adducci and Michael C. Dorf. An additional appearance for the Candidate was subsequently filed by Courtney Nottage on December 10, 2007. Mr. Dorf and his firm later withdrew as counsel for the Candidate, citing firm conflicts of interest, on December 12, 2007.

7. The Candidate filed a motion to strike and dismiss certain objections alleging that the notarization of certain petition sheets by the wife of the Candidate, Nilda I. Delgado, are invalid because of her personal interest in the case (§ 13 of the Objector's Petition), and that Mrs. Deldado's notarization of her husband's signature on his Statement of Candidacy should be invalidated for the same reason (§ 14, Objector's Petition).

8. The Hearing Examiner found that Mrs. Delgado notarized the circulator's affidavit on 37 of the Candidate's nominating petition sheets. He also found that she notarized her husband's signature on his Statement of Candidacy.

9. The Hearing Examiner further concluded that Section 6-104 of the Illinois Notary Act (5 ILCS 312/6-104), which lists the notarial acts that are prohibited, does not list the notarization by a wife of her husband's papers as a prohibited act. The Hearing Examiner cited *M. Clozen and T. Mulcahy*, 87 Ill. Bar J. 320, 322-3 (1999), "Attorney-Notaries," for the proposition that the Illinois law does not prohibit a notary from notarizing the signatures of immediate family members. Finally, the Hearing Examiner concluded that even if there was a violation of Section 6-104 of the Illinois Notary Act, such a violation would not invalidate the acknowledged instruments here.

10. The Hearing Examiner granted the Candidate's motion to strike and dismiss and found that the Candidate had enough valid signatures on his Nomination Papers.

11. The Objector filed a motion to address the Board pursuant to Rule 20 of the Electoral Board's Rules of Procedure, contending that the Hearing Examiner overlooked and failed to rule upon his other remaining objections.

12. After hearing from both the Objector and the Candidate, the Electoral Board agreed with the Hearing Examiner with regard to his conclusions of fact and law concerning the notarization by Mrs. Delgado of her husband's nominating petition sheets and Statement of Candidacy. The Objector did not seek to contest this finding and ruling. However, the Electoral Board agreed with the Objector that the Hearing Examiner had overlooked and failed to address certain other objections in the Objector's Petition. The

Electoral Board remanded the case to the Hearing Examiner for further proceedings on the remaining objections.

13. The Hearing Examiner resumed proceedings and conducted evidentiary hearings on the objection that certain circulators did not personally sign the circulator's affidavit on the Candidate's nominating petition sheets and that certain circulators did not sign their circulator's affidavit in the presence of a notary public.

14. The Hearing Examiner also ordered a series of examinations of the 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.

15. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

16. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

17. The Objector or his duly authorized representative(s) was present during the examination of the registration records.

18. The examinations of the registration records were 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 results of the registration records examinations is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

19. The results of the records examinations conducted in this matter indicate that:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 1,000;
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 4,963;
- C. The number of signatures deemed invalid because of objections sustained total 2,118;
- D. The remaining number of signatures deemed valid total 2,841.

20. After hearing the testimony of the witnesses and considering the evidence and argument of the parties, the Hearing Examiner concluded the hearings and made certain findings of fact and conclusions of law.

21. The Hearing Examiner has tendered to the Electoral Board his two reports containing his recommended findings of fact and conclusions of law. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled in part and sustained in part and that the Nomination Papers be found invalid.

22. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the reports 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 in both of his reports. Copies of the Hearing Examiner's reports and recommended decisions are attached hereto and are incorporated herein as part of the decision of the Electoral Board.

23. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition exceeds the minimum number of valid signatures

required by law to be placed upon the official ballot as a candidate for nomination of the Democratic Party to the office of State Senator for the 2nd District, State of Illinois.

24. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of PROCO 'JOE' MORENO to the Nomination papers of WILLIAM 'WILLIE' DELGADO, candidate for nomination of the Democratic Party, to the office of State Senator for the 2nd Legislative District, State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of WILLIAM 'WILLIE' DELGADO, candidate for nomination of the Democratic Party, to the office of State Senator for the 2nd Legislative District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 17th day of December, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. Hernandez, 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 CHICAGO BOARD OF
ELECTION COMMISSIONERS**

Hearing Examiner's Report

Proco "Joe" Moreno,)	
)	
Petitioner-Objector,)	
)	No. 08-EB-SS-01
vs.)	
)	
William "Willie" Delgado)	
)	
Candidate.)	

November 29 2 38 PM '07

EXAMINER'S FINDINGS AND RECOMMENDATIONS

1. The initial public hearing on petitioner's Objections commenced at 11:00 a.m. on Tuesday, November 20, 2007. At this time the Candidate's Papers were marked and admitted as Board Group Exhibit A. The Objector's Petition, not including its exhibits were marked and admitted as Board Group Exhibit B. The Sheriff's Returns of Service were marked and admitted as Board Group Exhibit C and the appearances of legal counsel were marked and admitted as Board Group Exhibit D. The Objector was present and was introduced upon the Record. Additionally, the legal counsel for both parties was present.

2. Upon a general discussion of the issues, counsel for the Candidate suggested that at least 722 signatures were uncontested. The minimum number of valid signatures for qualification to appear on the ballot is 1,000.

3. Upon further general discussion, the parties acknowledged that a Record Examination was not needed and that the sole issues to be addressed were legal issues.

4. A briefing schedule was set and provided that the Candidate would file his Motion To Strike/Dismiss by 5:00 p.m. on Wednesday, November 21, 2007; that Objector would

file his Response by 5:00 p.m. on Friday, November 23, 2007; and that the hearing on the pleadings would commence at 2:00 p.m. Wednesday, November 28, 2007.

5. This matter was called to hearing several times from 2:00 to 2:30 p.m. on Wednesday, November 28, 2007. Neither the Objector nor the Objector's attorney appeared. A look at the Board file reflected that Objector had not filed his Response to the Candidate's Motion. The attorney for the Candidate reported that he had neither received a Response nor any sort of communication from the Objector's attorney. At this point the hearing proceeded and counsel for the Candidate presented his position based upon his previously filed Motion To Dismiss.

6. The Objector's Petition, Paragraphs 1 through 10, allege deficiencies in individual signatures. Paragraphs 11 through 12 allege a pattern of fraud. Paragraph 13 alleges that the notarization of signature sheets by the wife of the Candidate, Nilda I. Delgado, are invalid because of her personal economic interest. Paragraph 14 alleges that notarization of the Statement of Candidacy by the wife of the Candidate is similarly invalid. Paragraph 15 alleges that as a result of the spousal notarization the entirety of the Statement of Candidacy and the Nomination Papers are invalid. Paragraph 16 states that because of the "above alleged deficiency in the language of the circulator's affidavit...the Nomination Papers are invalid in their entirety."¹ Paragraph 17 alleges there exists fewer than the 1,000 minimum valid signatures requirement.

7. During the November 28, 2007 hearing, counsel for the Candidate argued that the Illinois Notary Act, 5 ILCS 312/1-101 *et seq.*, specifically Section 6-104 ("Acts Prohibited") does not bar a wife from notarizing the Nomination Papers and Statement of Candidacy of her husband ("spousal notarization"). Hence, counsel argued, any such spousal notarization is valid

¹ The Hearing Examiner finds no such allegations "above."

and does not vitiate the Candidate's Papers. Counsel for Candidate referred to and relied upon his "Motion To Strike and Dismiss Objector's Petition and for Summary Judgment". The Hearing Examiner orally granted Candidate's Motion To Dismiss with written recommendation to follow.

8. Based upon the contents of Board Group Exhibits A and B, based upon the Motion To Dismiss and based upon the Illinois Notary Act, specifically 5 ILCS 312/6-104, and the interpretation of the Illinois Notary Act and based upon the following findings of fact and conclusions of law, Candidate's Motion To Dismiss, etc. is granted.

FINDINGS OF FACT

a. The Hearing Examiner examined the 242 sheets of the Candidate's Nomination Papers and examined Appendix A to the Verified Objectors' [sic] Petition. This examination resulted in a finding that there were 722 signatures that were not in contest. This particular figure is in agreement with the figure arrived at by the Candidate. (See, Exhibit 1, Hearing Examiner's calculation of uncontested signatures.)

b. Additionally, the Hearing Examiner finds that the 37 sheets notarized by the wife of the Candidate, Nilda I. Delgado, add an additional minimum of 280 signatures. The Hearing Examiner reviewed the Candidate's Sheet and finds that in fact 37 sheets were notarized by the wife of the Candidate. The Hearing Examiner finds that the Sheet Numbers listed and admitted by the Objector in Paragraph 13 of his Petition accurately states the sheet numbers of the spousal notarization sheets. This fact is admitted by the Objector by virtue of the verified nature of the Petition. (See attached, Exhibit 2)²

² In tandem with line objections based upon spousal notarizations (Column T) Objector's objected line-by-line based upon "Circulator did not appear before Notary" (Column M). However, on their face, each of the 242 Candidate Sheets contains a notarization of the circulator's signature. Additionally, Objector has defaulted and has failed to rebut by evidence this fact.

c. Additionally, the Hearing Examiner finds that the Statement of Candidacy was notarized by Nilda I. Delgado together with the Loyalty Oath.

CONCLUSIONS OF LAW

a. In clear and plain language, Section 6-104 of the Illinois Notary Act, 5 ILCS 312/6-104 provides and describes notarial acts that are prohibited. This Section does not bar spousal authorization and thus, for example, Section 6-104(b) does not apply. This sub-section provides that:

A notary public shall not acknowledge any instrument in which the notary's name appears as a party to the transaction.

The instruments in contest, Nomination Sheets, Statement Of Candidacy and Loyalty Oath do not contain the name of Nilda I. Delgado as a party to the transaction.

Although this matter appears to be a case of first impression before the Board, the intent of the legislature and the interpretation of the clear and plain statutory language do not reach spousal notarization of the contested instruments. See, for example, *M. Closen and T. Mulcahy*, 87 Ill. Bar. J. 320, 322-3 (1999) "Attorney-Notaries". Although this article focuses on attorneys acting as notaries, among other things, the authors conclude that the history of interpreting the Illinois Notary Act has been a history of limiting prohibitions upon notaries. The authors additionally conclude:

....The Illinois law, for instance, prohibits notaries from notarizing their own signatures but not from notarizing the signatures of immediate family (such as spouses, children, and parents) and close friends. The Illinois notary law does not even prohibit notaries from notarizing documents on which they have financial interests, unless the notaries are named herein. [footnotes omitted]

Therefore, the Hearing Examiner concludes that the Illinois Notary Act, specifically Section 6-104 does not apply to the facts of this case.

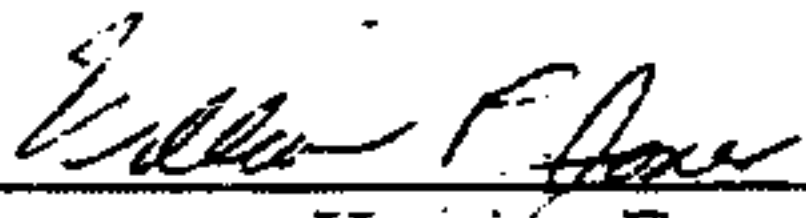
b. Alternatively, even if a conclusion that Section 6-104 applied and even if a conclusion that the Notary Act was violated, such a violative act would not invalidate the acknowledged instruments. *See, Hill v. Municipal Officers Electoral Board* (92 Co. 33, Cook County, 1992).

Additionally, consistent with the appropriate interpretation of the clear and plain language of Section 6-104, a bar to spousal notarization would discourage family members to assist and to engage in the participation of essential elements of the electoral process.

SUMMARY AND RECOMMENDATIONS

Based upon the foregoing, the Candidate's Motion To Dismiss Objector's Petition is granted. The Hearing Examiner finds that at least 1002 valid signatures are contained within the 242 Nomination Sheets. The Hearing Examiner therefore finds that Candidate has reached the 1,000 minimum valid signature amount and, thus, the Hearing Examiner recommends that the name of William "Willie" Delgado appear on the ballot for Nomination of the Democratic Party for the Office of State Senator in the General Assembly for the Second Legislative District of the State of Illinois.

Date: November 29, 2007



Hearing Examiner
William P. Jones

Mora - Under Investigation
Gualajara Miranda

Alay Garcia

Mora - Delgado

Circulars
A. Carrasullo

of Unranked Signatures per Appendix A
(K+Q)

# 1	23
# 2	17
# 3	14
# 4	7

J. Cruz
I. CRUZ
H. Santos

# 5	(K+Q)
# 6	(K+Q)
# 7	22
# 8	(K+Q)
# 9	

~~⊕~~ (No Appendix A sheet)

# 10	18
# 11	15
# 12	21
# 13	17
# 14	14
# 15	8
# 16	10
# 17	10

# 18	(m+T) (2)	
# 19	(m+T) (2)	
# 20	(m+T) (3)	
# 21	(m+T) (2)	
# 22	(m+T) (2)	6
# 23		0

# 24	(m+T) (2)	
# 25	(m+T)	
# 26	(m+T)	
# 27	(K, m, Q+T)	

J. Sanchez

11
(19)

Ethelinda H / Rudy Villal

~~(No Appendix A sheet)~~

# 29		
# 30		12
# 31		13

# 32	(m+T)	
# 33	(m+T)	
# 34		14

# 35	(m+T)	
# 36	(m+T)	
# 38	(m+T)	

# 39	(m+T)	
# 40	(m+T)	
# 41	(m+T)	

# 42	(m+T)	
# 43		
# 44		

261

Exhibit 1

	#45	(M+T)	
	#46	(M+T)	
	#47		19
J. Sanchez	#48	(K, M, O+T)	
	#49		15
	#50		14
	#51		18
	#52		17
	#53	(M+T)	
	#54	(M+T)	
	#55	(M+T)	
	#56	(M+T)	
	#57	(M+T)	
	#58	(M+T)	
D. Duvila	#59	(J, K, M, O+T)	
	#60	(M+T)	
	#61	(M+T)	
	#62	(M+T)	
	#63	(M+T)	
	#64	(M+T)	
	#65	(M+T)	
	#66	(M+T)	
	#67	(M+T)	
	#68	(M+T)	
	#69	(M+T)	
	#70		17
J. Sanchez	#71	(K, M, O+T)	
	#72	(M+T)	
	#73	(M+T)	
	#74		12
	#75		16
	#76	(M+T)	
	#77	(M+T)	
	#78	(M+T)	
	#79	(M+T)	
	#80	(M+T)	
	#81	(M+T)	
	#82	(M+T)	
	#83	(M+T)	
	#84	(M+T)	
	#85	(M+T)	
J. Sanchez	#86	(M+T)	
J. Sanchez	#87	(M+T, K, O)	
	#88		22
	#89	(M+T)	
	#90		13
	#91		7
	#92		8
	#93		21
	#94		0
	#95		0

189

189

#96		18
#97		9
#98		16
#99	(M+T)	
#100	(M+T)	
#101	"	
102	"	
103	"	
104	"	
105	"	
106	"	
107	"	
108	"	
109	(K, M, Q+T)	
110	(M+T)	
111	(M+T)	
112	"	
113	"	
114	"	
115	"	
116	"	
117	"	15
118		19
119		14
120		8
121		14
122		
123	(M+T)	
124	(M+T)	
125	"	
126	"	
127	"	
128	"	
129	"	
130	"	
131	"	
132	"	
133	"	
134	"	
135	"	
136	"	
137	"	
138	"	
139	"	
140	(K, M, Q+T)	
141	(M+T)	
142	(M+T)	
143		13
144		8
145		13
146		9
147		3
148	(M+T)	
149	(M+T)	
150	(M+T)	
151	(M+T)	

P. Ventura

J. Sanchez

~~159~~ 159

~~167~~

4

#152 (M+T)
 #153 (M+T)
 #154 (M+T)
 #155 (M+T)
 #156 (M+T)
 #157 (M+T)
 J. Sanchez #158 (K, M, O+T)
 #159 (M+T)
 #160 (M+T)
 #161 (M+T)
 #162 "
 #163 (M+T)
 #164 "
 #165 "
 #166 "
 #167 "
 #168 "
 #169 "
 #171 "
 172 "
 173 "
 174 (M, O+T)
 175 (M+T)
 176 (M+T)
 177 (M+T)
 178 (M+T)
 179 "
 180 "
 181 "
 182 "
 183 "
 184 "
 185 "
 186 "
 187 "
 188 "
 189 "
 190 "
 191 "
 J. Sanchez 192 (K, M, O+T)

12

193 (M+T)
 194 (M+T)
 195 "
 196 "
 197 "
 198 "
 199 "
 200 "
 J. Sanchez 201 (K, M, O+T)
 202 (M+T)
 203 (M+T)
 204 (M+T)
 205 (M+T)
 206 (M+T)

12

5

	208	(m+T)	
	209	"	
	210		
	211		3
J. Sanchez	212	(K, m+T)	3
	213		
H. Sanchez	214	(K+Q)	14
A. Fajal	215	(K+Q)	
A. Fajal	216	(K+Q)	
G. Rojas	217	(K+Q)	
G. Rojas	218	(K+Q)	
	219		18
	220		8
	221		5
	222		9
I. Barbagua	223	(K+Q)	
	224		
O. Rivera	225	(K+Q)	7
O. Rivera	226	(K+Q)	
A. Carrasquilla	227	(K+Q)	
J. Sanchez	228	(K, m+T)	
	229	(m+T)	
	230	"	
	231		9
	232		14
	233		8
J. Sanchez	234	(K, m+T)	
	235	(m+T)	
D. Velazquez	236	(K+Q)	
	237		3
	238	(m+T)	
G. Rojas	239	(K+Q)	
	240	(m+T)	
	241	(m+T)	
	242	(m+T)	

101

101

7

101

12

159

189

~~261~~

722

~~229~~

~~+19~~

~~248~~

1 sheet

~~to report~~

Appendix A Objects

~~(see Per signature)~~

Tullio P. Jove

Moreno v. Delgado SS-01

Petition Sheets Notarized by Nilda I. Delgado (37 Sheets)

<u>Sheet #</u>	<u># of Exclusive Spousal Objections</u>
72	3
73	3
77	5
78	2
79	1
80	5
81	11
82	6
83	3
84	7
85	5
86	1
89	4
123	4
124	18
125	8
126	17
127	16
128	13
129	20
130	<u>14</u>

166 signatures

Moreno v. Delgado SS-01

Petition Sheets Notarized by Nilda I. Delgado (37 Sheets)

<u>Sheet #</u>	<u># of Exclusive Spousal Objections</u>
131	17
132	7
133	12
134	11
135	8
136	8
137	0
138	0
139	16
141	6
142	9
189	3
190	10
191	7
235	0
240	<u>0</u>

114 signatures

Sheet A 166
Sheet B 114

280 (Additional) Signatures

**BEFORE THE CHICAGO BOARD OF
ELECTION COMMISSIONERS**

Hearing Examiner's Report II

Proco "Joe" Moreno,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 08-EB-SS-01
)	
William "Willie" Delgado,)	
)	
Candidate.)	

EXAMINER'S FINDING AND RECOMMENDATIONS

1. The earlier proceedings in this matter with findings of fact and conclusions of law are contained on the November 29, 2007 Examiner's Findings and Recommendations.
2. Pursuant to Objector's Rule 20 Motion and pursuant to a Rule 20 hearing, the Board remanded to the Hearing Examiner this matter for additional hearing. The remand order excluded re-visiting those issues contained in Paragraph 13, 14 and 15 which had been decided by the Hearing Examiner and which were affirmed by the Board (i.e., spousal notarization).
3. after remand, the first additional hearing commenced at approximately 1:30 p.m. on December 7, 2007. the agenda for the hearing was to include requests for subpoena and initiation of a Rule 6 Record Examination.
4. At the December 7, 2007 hearing, Objector's counsel presented "Objector's List Of Witnesses And Request For Subpoenas." After discussion and consideration, the Hearing Examiner issued eighteen (18) subpoenas, of

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which 16 subpoenas were to be served upon 16 circulators, one of which was upon Notary Nilda Delgado, and one of which was upon the Illinois Attorney General, the employer of Nilda Delgado, subpoena *duces tecum* for work sheets for dated 10/31/07 and 10/23/07.

5. Because counsel for the Candidate had not received prior notice of the subpoena/witness list, the matter was continued in the interim until 9:30 a.m. on December 10, 2007 for the purpose of the Candidate offering a subpoena/witness list responsive to Objector.
6. Also, on December 7, 2007, Candidate presented a one-page listing of 59 separate sheets that purported to contain no global objections. It was suggested, and the parties agree, to submit these 59 sheets for Record Examination. This partial Record Examination was commenced on Saturday, December 8, 2007 and was completed on Sunday, December 9, 2007.
7. Additionally, on December 7, 2007 this matter was continued until 1:00 p.m. on December 12, 2007 for full, final and complete evidentiary hearing.
8. This matter was called to hearing on December 10, 2007 in order to address Candidate's subpoenas/witnesses. The matter commenced at approximately 10:06 a.m. and adjourned at approximately 11:17 a.m.
9. Between December 7, 2007 and December 10, 2007, Candidate had filed and sent a Notice to Produce the "witness statements" that had been described in Paragraph 7 of Objector's Rule 20 Motion (12/2/07). At 8:05 a.m., December 10, 2007, Objector filed documents which included "Notes

Regarding Circulators Interviewed on 12-02-07 In Reference To Notary Nilda Delgado". Also, at 8:04 a.m., December 10, 2007 Objector filed a six (6) page document entitled "Objector's Additional List of Witnesses And Request For Subpoenas Respecting Objection Paragraph 9 Allegations".

10. During the December 10, 2007 hearing, based upon statements of counsel for Objector, good cause was shown for the issuance of a subpoena upon a Ms. Mendoza, pursuant to request of the Candidate. Additionally, for failure to establish good cause together with the fact that on December 7, 2007 the issue of Objector's subpoena had been treated in detail and the full opportunity to request witness subpoenas having been given Objector, the belated Objector's request for additional subpoenas was denied.
11. Also, during the December 10, 2007 hearing, the parties engaged in case management/pre-hearing discussions concerning the agenda and contents of the scheduled December 12, 2007 evidentiary hearing. Among other things, it was agreed that a notary or notaries (other than Nilda Delgado) could be called to testify first. Depending upon the nature and contest of this direct and cross-examinations, those particular sheets notarized by the testifying notary (notaries) could be submitted for Record Examination on an *ad hoc* basis. This Agreement in part arose out of the results of the December 7th and 8th Record Examination of the 59 sheets.¹ These results were testified to by Board Employee, Charles Holiday, Jr. The Board's results were identified, marked and admitted as Board Group Exhibit E. Copies were given to counsel. Mr. Holiday noted that some of the signatures examined

¹ For unknown reasons counsel abandoned this Agreement.

were also to be submitted to a handwriting expert. With that qualification, Board Group Exhibit E concludes that with respect to the 59 sheets, there existed 854 valid signatures. The minimum valid signatures requirement is 1,000.

12. Additionally, during the course of proceedings on December 10, 2007, the Candidate's counsel² orally moved for the filing *instanter* of Candidate's Motion to Dismiss Or , In the Alternative, To Limit The Scope Of Any Evidentiary Hearing. The motion to file *instanter* was granted without objection by counsel for Objector. Based upon the totality of the circumstances, Candidate's Motion To Dismiss was denied. The Alternative Motion To Limit was granted and such limitation would be consistent with the Board's Remandment Order.
13. On December 12 and December 14, 2007 the evidentiary hearings were conducted. Objector had subpoenaed 16 circulators (Minda Noriega, circulated one sheet), and one notary Nilda Iris Delgado, and a subpoena *duces tecum* for two days of employment records of Nilda Iris Delgado (Mrs. Delgado).³
14. On December 12, 2007, 13 subpoenaed circulators testified and Mrs. Delgado testified. Also, the *duces tecum* productions comprised of one document constituting a one-day (Tuesday, October 23, 2007) listing of work hours: (8:51 a.m. to 5:02 p.m.). The October 13, 2007 employment date that was subpoenaed was a non-work day, Saturday.

² Without objection, Attorney Nottage, filed an additional appearance on behalf of the Candidate.

³ As stated above, Mrs. Noriega circulated one sheet – sheet 142, but had notarized many sheets.

15. Testimony of subpoenaed circulators:

A. **Testimony of Circulator Luis G. Arroyo, Sr.** Circulator Arroyo

testified that he had circulated sheet 136 (8 signatures).⁴ He testified that the time period of circulation was very busy and people were working on multiple campaigns. Circulator Arroyo testified that he could not remember how many petitions he circulated, but he thought it was multiple sheets. Circulator Arroyo could not remember the day he took his petitions to a campaign office for notarization. He took them to his campaign office, 6100 Block of Belmont Avenue. He testified that he had another campaign office on Armitage Avenue. The notaries were in the same room at the campaign office. There may have been more than two notaries in the office but he testified he was not certain whether Mrs. Delgado was present at this time. He testified that when he signed sheet 136 he did not know that he was under oath; (Report of Proceedings, 12/12/07, Tr. 52) and he probably was not standing in front of a notary but the notary was in the room. (*Ibid*, Tr. 53-4)

B. **Testimony of Circulator Maritza Garcia.** Ms. Garcia testified that she

circulated Objector's No. 2 and Objector's No. 3.⁵ Circulator Garcia testified that she dropped off her sheets at the Belmont Avenue office.

Ms. Garcia recalled that she signed the sheet in front of Ozzie Miranda.

⁴ Objector's Exhibit No. 1, Sheet 136 – only sheet that Circulator Arroyo, Sr. circulated [Notarized by Mrs. Delgado]

⁵ Obj No. 2 (Sheet 133 – 20 signatures), Obj No. 3 (Sheets 101-104 – 99 signatures). Ms. Garcia also circulated Sheet 57 – 25 signatures), which sheet was notarized by Minda Noriega. Obj No. 2 was notarized by Mrs. Delgado, Obj No. 3 was notarized by Minda Noriega.

There were a lot of people in the campaign office room. No one asked her to show identification or swear to the document. (*Ibid.*, Tr. 64-67)

With respect to Obj No. 3, Circulator Garcia testified that she turned these sheets into Coordinator Miranda at the Belmont office on September 29, 2007. I signed these sheets in the car before I gave them to Coordinator Miranda (*Ibid.*, Tr. 75) I did not see Notary Noriega on September 29, 2007. (*Ibid.*, Tr. 77)

C. Testimony of Circulator Epifano Santos, Sr. Circulator Santos, Sr. testified that he signed Obj. No. 4 at the Candidate's home on October 23, 2007 before notary Mrs. Delgado.⁶

D. Testimony of Circulator Edwin Diaz. With respect to Obj. No. 5,⁷ Circulator Diaz testified that he turned these sheets in at the Armitage Avenue campaign office to Kevin Lamm also present was a woman. He testified that he signed them in the office while Lamm and the woman were sitting at a desk. I don't remember her name. (*Ibid.*, Tr. 80-87).

E. Testimony of Circulator Rory Guerra. With respect to Obj. No. 6,⁸ Circulator Guerra testified that these sheets were the totality of the sheets he circulated in the Delgado campaign. He met Circulator Massas at Circulator Massas' mother's store, went to the Delgado campaign office on North Western Avenue and signed his sheets before Notary Mrs. Delgado late afternoon early evening (*Ibid.*, Tr. 93, 96).

⁶ Obj. No 4 (Sheet 127 – 25 signatures)

⁷ Obj. No. 5 (Sheets 128, 129, 138, 139, all notarized on October 23, 2007 by Notary Mrs. Delgado – 71 signatures)

⁸ Obj. No. 6 (Sheets 72, 73, 123, 189 – 97 signatures, all notarized on Saturday, October 13, 2007 by Mrs. Delgado.)

F. Testimony of Carlos Agrelo. With respect to Obj. No. 7,⁹ Circulator Agrelo identified the sheets as his, having turned them in on October 23, 2007 at the home of Mr. and Mrs. Delgado on West Shakespeare around 7:00 p.m. He believed he turned them in on a weekday and he signed them in front of Notary Mrs. Delgado. (*Ibid.*, Tr. 100) Circulator Agrelo testified that it could have been October 13, 2007 when he turned in his sheets and signed before Mrs. Delgado. I circulated a lot of petitions (*Ibid.*, Tr. 105)

With respect to Obj. No. 8¹⁰ sheets 63-69, Circulator Agrelo testified that he turned these sheets into the Delgado campaign office on North Western Avenue. He could not remember precisely if he turned them in on September 29, 2007. He turned them into Mrs. Delgado. I signed them in front of Mrs. Delgado and office people were in the room. I can't explain that these sheets say that it was Ms. Noriega who notarized. (*Ibid.*, Tr. 111) Ms. Noriega could have been present when I signed sheets 63-69. I don't know who Ms. Noriega is and I could have notarized these sheets before Ms. Noriega. (*Ibid.*, Tr. 113)

G. Testimony of Circulator Jose Massas. With respect to Obj. No. 9,¹¹ Mr. Massas testified he turned them into Rory Guerra and they went to the Delgado campaign office on North Western Avenue. He initially gave

⁹ Obj No. 7 (Sheets 78, 79, 84-86, 89, 175 signatures, all notarized on Saturday, October 13, 2007 by Mrs. Delgado). Mr. Agrelo also circulated sheets 63-69, all notarized by Mrs. Noriega on September 29, 2007.

¹⁰ Obj. No. 8 Sheets 63-69, 175 signatures

¹¹ Obj. No. 9, (Sheets 77, 81-82, 235, 240, 140 signatures. All notarized on October 13, 2007 before Notary Mrs. Delgado.) Circulator Massas also circulated sheet 191 – 13 signatures on 10/13/07, Notary Delgado.

them to Guerra at his mother's place of business. It was later in the afternoon when we went to the Delgado campaign office. We were in front of Mrs. Delgado and she was putting stamps on the petitions. (*Ibid.*, Tr. 120) Circulator Massas testified that he went to Jose Moreno's campaign office on December 2, 2007. I did not say my sheets were notarized. (*Ibid.*, Tr. 123) Such a statement is a lie (*Ibid.*, Tr. 125) I just talked about my calendar/ad. (*Ibid.*, Tr. 127)

H. **Testimony of Circulator Angel Rivera.** With respect to Obj. No. 10,¹² Circulator Rivera testified that he turned these sheets into Kevin Lamm at the Belmont Avenue campaign office and that there were a lot of people at the office. He could not recall whether Mrs. Delgado or Ms. Noriega were present. He could not recall the day of the week he turned them in. The whole room was full of people. (*Ibid.*, Tr. 132) Mr. Rivera testified that at this time and place he did not show identification or say "I swear".

With respect to Obj. No. 11,¹³ Mr. Rivera testified that he turned these sheets into the Belmont Avenue campaign office to Kevin Lamm. There were a few people around It's always packed. He testified he did not recall the day of the week. (*Ibid.*, Tr. 136) He could not recall who else was present when he signed the sheets in front of Kevin Lamm.

With respect to Obj. No. 12,¹⁴ Mr. Rivera testified that every time he turned sheets in they were turned in at the Belmont office. When he signed he doesn't know if anybody was watching or not. (*Ibid.*, Tr. 140)

¹² Obj. No. 10 (Sheet 124 – 25 signatures, 10/23/07, Notary Delgado)

¹³ Obj. No. 11 (Sheets 111-112 – 49 signatures 9/29/07, Notary Noriega)

¹⁴ Obj. No. 12 (Sheet 54 – 25 signatures, 9/29/07, Notary Noriega)

Mr. Rivera, on further examination testified that there could have been notaries present when he signed the petitions on September 29, 2007.

(Ibid., Tr. 143)

I. **Testimony of Circulator Jain Mayor.** With respect to Obj. No. 13,¹⁵ Circulator Mayor testified he turned these sheet in at the Belmont Avenue campaign office later in the afternoon. He testified he did not sign before a notary. *(Ibid., Tr. 146)*

J. **Testimony of Circulator Ivan Gonzalez.** With respect to Obj. No. 14,¹⁶ Circulator Gonzalez testified that he turned these sheets in at the home of Candidate Delgado and that he signed these sheets before notary Mrs. Delgado.

With respect to Obj. No. 15,¹⁷ Circulator Gonzalez testified that he turned these sheets in at the North Western Avenue campaign office and that he signed before notary Miranda. The notaries were there all day, they opened the office. *(Ibid., Tr. 154 – 155)*

K. **Testimony of Circulator Hector Dominquez.** With respect to Obj. No. 16,¹⁸ Circulator Dominquez testified initially that he turned them in on a Saturday, September 29, 2007 at the Belmont Avenue office. He turned them into people sitting at the table, Minda Noriega. *(Ibid., Tr. 159-160)* There were 10 or 15 other people at the office. People were signing and some were getting notarizations. Mr. Dominquez upon looking at the

¹⁵ Obj. No. 13 (Sheet 126 – 25 signatures, 10/23/07, Notary Delgado)

¹⁶ Obj. No. 14 (Sheet 125 – 25 signatures, 10/23/07, Notary Delgado)

¹⁷ Obj. No. 15 (Sheets 21, 165, 203 and 206 – 49 signatures, 10/20, 10/21/07, Notary G. Miranda)

¹⁸ Obj. No. 16 (Sheets 130, 132 – 40 signatures, 10/23/07, Notary Delgado)

exhibit acknowledged that the date was October 23, 2007 and Nilda Delgado. Mr. Dominquez could not remember whether Mrs. Delgado was at the Belmont office that day. (*Ibid.*, Tr. 161) He testified that he saw Minda Noriega at the Belmont office. He testified that he that he signed in front of all the people at the Belmont office.

With respect to Obj. No. 17,¹⁹ Circulator Dominquez testified that it was September 29, 2007 that he took his father to the VA. With respect to Obj. No. 16 Dominquez testified that he signed before Kevin Lamm or Alex Garcia. He testified that Mrs. Delgado could have been at the Belmont Avenue office. There was a crowd. (*Ibid.*, Tr. 167)

With respect to Obj. No. 18,²⁰ Circulator Dominquez testified that he signed this sheet before notary Garcia and he remembered being with his brother on October 6, 2007. Mr. Dominquez testified that he thought he did not work on October 23, 2007. Mr. Dominquez testified that on each date he turned in his sheets there were notaries in the room. (*Ibid.*, Tr. 170) Mr. Dominquez testified that on October 23, 2007 he dropped the sheets off probably in the evening.

L. Testimony of Circulator Victor Gonzalez. With respect to Obj. No. 19,²¹ Circulator Gonzalez testified that he turned his sheets in at the Armitage Avenue office. He testified that at this place he signed them in front of Kevin Lamm and Iris [Mrs. Delgado]. (*Ibid.*, Tr. 176)

¹⁹ Obj. No. 17 (Sheet 56 – 25 signatures, 9/29/07, Notary Noriega)

²⁰ Obj. No. 18 (Sheet 162 – 15 signatures, 10/6/07, Notary Alex Garcia)

²¹ Obj. No. 19 (Sheets 134 – 135 – 37 signatures, 10/23/07, Notary Delgado)

With respect to Obj. No. 20,²² Circulator Victor Gonzalez testified that he would turn in his sheets in either at the Armitage or Belmont office. He testified he did not remember names like Minda Noriega. (*Ibid.*, Tr. 178 – 179). Sheet 157 might have been done at the Armitage office. Every time he turned in sheets he signed in front of a notary. (*Ibid.*, Tr. 180)

16. **Testimony of Notary Nilda Iris Delgado.**

Mrs. Delgado testified that she had notarized the Statement of Candidacy and had notarized 37 sheets. Mrs. Delgado testified that when legal documents are signed, she authenticates the signature. (*Ibid.*, Tr. 23) Mrs. Delgado testified that the volunteers in her husband's campaign office are her acquaintances. She testified that when she notarizes a document it is the case that she knows them personally or she makes sure she knows them. (*Ibid.*, Tr. 24)

Mrs. Delgado testified that her practice of notarization is to witness the signature. She may not have the signer directly in front of her, there is a lot of people, but she witnesses their signatures. (*Ibid.*, Tr. 25) She testified she knew all the signers. [sic "signings"] (*Ibid.*, Tr. 26)

Mrs. Delgado testified that she did notarizations at the North Western Avenue office on October 13, 2007, early evening. The 13th of October was a Saturday. October 23, 2007 was a Tuesday. Mrs. Delgado testified she worked on October 23, 2007 and that the notarizations were performed in the evening at the Armitage office.

²² Obj. No. 20 (Sheets 157, 169, 196, 238 – 22 signatures, 9/15, 9/29/07, Notary Noriega). Circulator Victor Gonzalez also circulated sheets 159 and 160, 10/6/07, 10/13/07, Notary Alex Garcia and Notary Noriega, respectively, total 30 signatures.

Mrs. Delgado testified that Respondent's No. 2 is the Loyalty Oath. She filled in the information on October 22, 2007 and that this document and the Statement of Candidacy were both executed in the presence by Candidate Delgado, also in the presence of the campaign manager. (*Ibid.*, Tr. 31) These documents were signed at my home.

17. Testimony of Notary Minda Noriega.

On December 14, 2007 Notary Minda Noriega testified as a subpoenaed witness. She testified that she circulated one sheet, sheet 142, marked and admitted as Obj. No. 21.²³ Mrs. Noriega testified that she turned the sheet in at the Belmont office and signed before Alex. She does not know Mrs. Delgado. She does not know whether Mrs. Delgado was present at this time. She testified that she signed as a notary in Luis Arroyo, Sr.'s office.

Looking at Obj. No. 3,²⁴ Ms. Noriega testified that she does not know Circulator Maritza Garcia but that person who signed the circulator's affidavit did so in front of her. It was always the case that the affiant was either in front of her or person swore it was his or her signature.

At this point in the proceedings the Objector rested pending any post-record examination pleadings.

18. Testimony of Candidate Delgado.

Candidate Delgado commenced the testimony in candidate's case. Respondent's No. 1 dated October 22, 2007 was identified as the Statement of Candidacy. This document was notarized before Mrs. Delgado at his home, also

²³ Obj. No. 21 (Sheet 142 – 15 signatures, 10/23/07, Notary Delgado)

²⁴ Obj. No. 3 (Sheets 101-104, 9/29/07, Notary Maritza Garcia)

present was his campaign manager Ivan Gonzalez. Candidate Delgado then identified Respondent's No. 2 as his Loyalty Oath which document was similarly executed, notarized and witnessed as Respondent's No. 1.

19. Testimony of Notary Delgado.

Mrs. Delgado narrowly testified that she notarized the signatures of Candidate Delgado after he signed in her presence on 10/22/07.²⁵

At this point in the proceedings, counsel for the parties presented their closing statements.

20. The hearing examiner makes the following findings of fact and conclusions of law:

- a. Finds that based upon the testimony admitted, the sheets of Luis Arroyo, Sr., Maritza Garcia and Jain Mayor are defective which defect invalidates all of the signatures on these sheets.

L. Arroyo	Sheet 136	8 signatures
M. Garcia	Sheets 133, 101 – 104, Sheet 57	144 signatures
J. Mayor	Sheet 126	<u>25 signatures</u>

Total 177 invalid signatures

- b. Finds that with respect to the balance of the circulator's affidavits, although some hazy memories led to some discrepancies and some apparent conflicts, that on balance, based on the totality of the circumstances, including but not limited to, multiple campaigns, crowded campaign offices, multiple

²⁵ Obj. Nos. 1 through 20 together with Respondent's No. 1 & 2 were admitted into evidence during these proceedings.

circulators, multiple notaries and time constraints, these discrepancies and apparent conflicts in testimony by the circulators do not rise to fraud, nor can it be concluded (added to the notaries' testimony) that fraud or a pattern of fraud was established by Objector in a clear and convincing manner.


- c. Finds similarly that any discrepancies or apparent conflicts contained within the testimony of Notary Delgado and Notary Noriega do not rise to fraud or a pattern of fraud. Such a pattern was not established by Objector in a clear and convincing manner or by clear and convincing evidence. A "pattern" must be a regular, intentional and an organized framework used with the purpose of undermining the electoral process. Such a pattern was not established.
- d. Finds that although some notarizations and signings may have been effected through negligent means such as disconnects between notary and signer, no evidence exists of prevalent forging of circulator's signatures or intentional misconduct.
- e. Finds that the complete record examination establishes 2,844 valid signatures.²⁶
- f. Finds that the complete record examination establishes a total of 4,963 signatures.

²⁶ See sheet 235 net results – should be an additional net 4 valid signatures. Also, sub-total for sheets 151-200 is 439 valid signatures.

- g. Finds that invalidation of sheets 57, 101-104, 126, 133, and 136 results in a net adjustment downward of 125 signatures to 2,719 valid signatures.
- h. Concludes that based upon the holdings in *Durr v. Love*, 03-EB-ALD-101 (CBEC, 2/5/03); *Affd, Durr v. Chicago Board of Election Commissioners*, 03 COEL 028 (Cir. Ct of Cook County, 2/20/03) (Judge Nathaniel Howse, Jr.) and the trilogy of opinions of *Fortas v. Dixon*, 122 Ill. App. 3d 697, 462 N.E. 2d 615 (1st Dist. 1984); *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201, 509 N.E. 2d 555 (1st Dist. 1987); *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364, 523 N.E. 2d 1299 (1st Dist. 1988); *Williams v. Butler*, 35 Ill. App. 3d 532, 341 N.E. 2d 394 (4th Dist. 1976) that Objector failed to establish a pattern of fraud based upon clear and convincing evidence and thus Objector's petition is overruled.
- i. Finds that Petition sheets totaled 4,963 signatures
Finds that Board established 2,844 valid signatures
Finds that net invalid signatures based on finding (a) were 125 signatures
Finds net total valid signatures 2,719 valid signatures
- j. Recommends that the Candidate's papers having 2,719 valid signatures and surpassing the 1,000 minimum valid signature requirement, the name of the Candidate William "Willie"

Delgado appear on the ballot as candidate for nomination to the
office of State Senator in the General Assembly for the 2nd
Legislative District of the State of Illinois.

Date: December 16, 2007



Hearing Examiner
William P. Jones