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

Objections of: SYLVIA KOPEC	)	
	)	
To the Nomination	)	**No.: 07-EB-MUN-002**
Papers of: GEORGE SIMS	)	**(rel. MUN-005)**
	)	
Candidate for the office of	)	
Clerk of the 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 SYLVIA KOPEC ("Objector") to the nomination papers ("Nomination Papers") of GEORGE SIMS, candidate for the office of Clerk for 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 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 Christopher Agrella for further hearings and proceedings.

6. The Objector 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, SYLVIA KOPEC, by counsel, Dan Johnson-Weinberger; and the Candidate, GEORGE SIMS, *pro se*.

7. The Objector raised several objections to the Candidate's Nomination Papers, including the allegation against the validity of individual signatures identifying them by sheet and line and that the Candidate's petition did not contain a sufficient number of valid signatures to meet the 12,500 minimum signature requirement for the office of City Clerk of the City of Chicago.

8. The Objector also alleged that the Candidate's Nomination Papers were defective because the Candidate failed to file a receipt evidencing the filing of a Statement of Economic Interests as required by law.

9. 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.

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

11. The Candidate and the Objector or their duly authorized representative(s) were present during the examination of the registration records at all times.

12. The examination of the registration records of the Board was terminated on January 6, 2007 after examining 338 petition sheets because it was determined by the Board's staff that although the Candidate's Nomination Papers contained on their face 15,685 purportedly valid signatures, 4,440 objections had been sustained during the records examination leaving the Candidate well below the minimum 12,500 valid signatures required by law.

13. 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.

14. 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.

15. The Electoral Board finds that the Candidate has an insufficient number of valid signatures on his Nomination Papers to be placed upon the ballot as a candidate for election to the office of Clerk of the City of Chicago.

16. The Electoral Board further finds that the Candidate failed to file with his Nomination Papers a receipt evidencing the filing of a Statement of Economic Interests as required by law.

17. The Electoral Board finds that there was another objection filed against the Candidate's Nomination Papers in case 07-EB-MUN-005 and that the Electoral Board sustained the objections filed in that case and also found that the Candidate's Nomination Papers are invalid.

18. 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 SYLVIA KOPEC to the Nomination Papers of GEORGE SIMS, candidate for election to the office of Clerk of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of GEORGE SIMS, candidate for election to the office of Clerk 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 19th 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 OF OBJECTIONS TO THE NOMINATION PETITIONS OF CANDIDATES FOR THE FEBRUARY 27, 2007, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

SYLVIA KOPEC, Petitioner - Objector, v. GEORGE SIMS, Respondent - Candidate.	)	2007 JAN 15 A 8:50 No. 07 EB MUN 002 City Clerk (related: 07 EB MUN 005)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on January 2, 2007. It was set on the call for 11:30 a.m., and at 11:30 a.m. the matter was first called for hearing. The objector appeared through counsel, Mr. Daniel Johnson-Weinberger, Esq., and the candidate appearing individually. Each side filed the appropriate appearance.

The file contained the original petition papers of the candidate and the objections of the objector, which were marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearance of the parties marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection.

The objection raised three issues; first, a straight forward recapitulation sheet objection, made on a line by line basis and incorporating a recapitulation exhibit; second, a "pattern of fraud" allegation; and third, an allegation that the candidate had failed to file his receipt for his Statement of Economic Interests with the city's board of elections.

The hearing examiner noted that the original petition papers did not contain any such receipt. In addition, the board's copy of the "Receipt for Nomination Papers" was checked "NO" in the section referencing whether the candidate had filed this receipt with the candidate's nomination papers. detailing the documents submitted. However, mindful that that filing could have been made separately from the petition papers, this matter was reserved for the moment.

At that point the hearing examiner inquired of the parties whether either side intended to file any preliminary motions. Informed by the candidate that he intended to do so, the parties were informed of the briefing schedule and the matter set over until January 5, 2007, at 9:00 a.m. for hearing.

In addition, the matter was also scheduled to start its record examination on January 4, 2007, with four teams for each side.

The candidate duly filed a motion to strike. The objector did not file a written response. The candidate thereafter filed a motion demanding that the candidate's motion to strike be granted automatically because of the objector's non-response.

On January 5, 2007, at 9:00 a.m. the matter was recalled for hearing. The candidate appeared personally, and objector's counsel not yet appearing, he was contacted at approximately 9:10 a.m. by telephone to see if he was tied up on another election matter, having indicated a heavy caseload at the January 2, 2007, initial hearing. When reached by the hearing officer, Mr. Johnson-Weinberger, Esq., stated that he was already on his way but caught in traffic and would be there shortly, definitely before 10:00 a.m., and further apologized for any complications his tardiness caused. Because

the candidate was also up for hearing immediately thereafter on 07 EB MUN 005, the hearing officer decided to pass 07 EB MUN 002 for the moment so as to proceed with the next case, all parties in the next case already present at that point, after which 07 EB MUN 002 would be immediately recalled. If objector's counsel was not present when 07 EB MUN 002 was recalled, the hearing officer would immediately defaulted objector and strike her objection.

The candidate objected on the record to the delay, and demanded the hearing officer immediately default the objector, a request which the hearing officer denied, in part because the delay was minimal, the objector had filed her appearance, was taking part in the record examination and otherwise actively pursuing her objection, and the candidate had another objection hearing immediately following such that the delay posed no inconvenience to the candidate. Parenthetically, the candidate himself requested that the next case, 07 EB MUN 005, be delayed some 15 minutes after its set hearing time so the candidate could step out and attend to another matter, a continuance which the hearing officer granted without objection by any of the objectors in that case.

While 07 EB MUN 005 was proceeding, at approximately 9:45 a.m., Mr. Johnson-Weinberger appeared and was seated in the room, and 07 EB MUN 002 was recalled at the conclusion of the 07 EB MUN 005 matter, approximately 9:55 a.m.

Upon recalling 07 EB MUN 002, candidate's counsel apologized for his tardiness, then indicated he had not received the motion to strike nor the candidate's secondary motion in relation to the objector's failure to respond to the candidate's initial motion to strike. The candidate stated that he had left a copy with the board of elections for pick-

up, reminding objector's counsel that he had agreed to accept service by fax, e-mail, or having it dropped off at the board's office. Objector's counsel acknowledged this agreement, but clearly seemed to indicate he expected to at least be notified with a telephone call from the candidate if anything was filed at the board so that he could pick it up. However, the candidate provided objector's counsel with a copy of the candidate's pleadings at that point, objector's counsel quickly scanned it, and stated that he did not believe he was required to file a written response to this motion, and wouldn't have, because the motion failed to allege any basis entitling the candidate to any relief.

Rule 5 states, in pertinent part, that ". . . . a response to the motion, ***if any***, must be made in writing and filed . . . ." . The hearing examiner interprets the use of the term "if any" to require a written response only where respondent raises a substantive argument in opposition. However, in the limited situation where the response is merely that the motion makes no sense or otherwise fails to allege a legally cognizable basis on its face, the hearing examiner's interpretation is that no written response is necessarily required, nor is a penalty or forfeit required for the failure to do so.

Objector's entire response, made orally, was that the candidate's motion raised nothing which would require the striking of the objection, i.e., it was legally deficient on its face. Had objector's counsel attempted to argue anything further against the motion, the hearing officer would have barred any such argument as being violative of Rule 5.

It is the hearing examiner's recommendation that the candidate's motion to strike be denied, finding it is legally deficient on its face. The motion alleges nothing upon which any relief could be granted, and in several places simply sets out irrelevant

statements.

In the main, the motion alleged a series of denials that there was anything wrong with the candidate's nomination papers, coupled with a claim that the objection must be struck because the objector did not set out all the evidence required to prove the allegations, followed by the further allegation that the candidate had timely filed his Statement of Economic Interests with the Cook County Clerk.

Tellingly, the candidate's motion to strike failed to assert, much less evidence, that he had timely filed his receipt with the Chicago Board of Elections for filing his Statement of Economic Interests with the Cook County Clerk.

In pertinent part, an objection is simply required to fully state the nature of the objections and what relief is being sought to comply with the Election Code. *Crosby v. Beavers*, 95 EB ALD 202, CBEC, January 24, 1995. An objection is sufficient if it apprises the candidate of the specificity of each objection, thus making evaluation possible. *Elysee v. Patterson*, 04 EB RGA 14, January 20, 2004. This objection does so in all respects. It sets forth clear, concise allegations referencing standard appendix-recapitulation sheets, as well as a direct allegation that the candidate failed to timely file a receipt with the Chicago Board of Elections evidencing his filing of his Statement of Economic Interests with the Cook County Clerk. Such an objection is sufficient, and the candidate's motion is simply incorrect that the objection must also set out all the evidence which bears on the allegations. This is merely the pleading stage, and the objection "fully states the nature of the allegations and what relief is being sought".

Having ruled on the candidate's motion to strike, the hearing officer turned to

paragraph 15 of the objection, wherein it was alleged that the candidate failed to timely file a receipt with the Chicago Board of Elections evidencing his filing of his Statement of Economic Interests with the Cook County Clerk.

The hearing officer stated that he had examined the records and found no such receipt. The hearing office did not find it with the petition sheets, which he had examined, nor of record anywhere else with the Chicago Board of Elections, having inquired of board personnel whether any record existed of it being filed separate from the nomination papers. In addition, as stated above, the hearing examiner has found that the board's copy of the "Receipt for Nomination Papers" was checked "NO" in the section referencing whether the candidate had filed this receipt with the candidate's nomination papers.

The hearing officer indicated his intent to rule at this time on this issue, specifically to recommend to the board that it sustain the objection on this ground. At this point in the hearing the candidate repeatedly argued that he was in compliance, and seemed to evidence an inability to differentiate between the filing of the statement itself, with the county clerk, and the requirement that he file the receipt for filing same with the city electoral board.

The hearing officer went so far as to cite to and tab the relevant section of the Election Code in an effort to aid the candidate's understanding, to no avail. The candidate then claimed to finally understand, and to have evidence that would prove he filed such a receipt with the Chicago Board of Elections.

In an effort to give the candidate every chance to stay on the ballot, the hearing

officer set January 8, 2007, at 11:00 a.m. to permit the candidate to present any evidence on this issue.

On January 8, 2007, at 11:00 a.m. the case was recalled, and both sides appeared, the candidate personally, the objector through counsel. At this time, the candidate produced a copy of his receipt for filing of the Statement of Economic Interests, which evidenced that the candidate did file said statement. However, the candidate produced nothing in support of any claim that he had filed a receipt with the Chicago Board of Elections on or before the December 18, 2006, deadline evidencing his filing of his Statement of Economic Interests with the Cook County Clerk.

Upon the close of this evidentiary offer by the candidate, the hearing officer stated that it would be his recommended decision to the board that it sustain the objection, paragraph 15, and find the objection stated a basis for invalidating the candidate's nomination papers on a summary basis, in that the candidate had failed to timely file a receipt with the Chicago Board of Elections evidencing his filing of his Statement of Economic Interests with the Cook County Clerk. *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3d 958, 569 N.E.2d 628 (2nd Dist. 1991); *Wojkowski v. Hablet*, 95 CO 12, Cir.Ct. Cook County, 1995, *aff'd*, Ill.App.Ct. No. 1-59-0374, Feb. 16, 1995.

In addition, just prior to commencing the January 8, 2007, hearing, the hearing examiner received a memorandum from Charles Holiday, Jr., Assistant Manager of Registration, informing the hearing officer that pursuant to Rule 6 the decision had been made by board personnel to halt the candidate's record examination on January 6, 2007, at approximately 11:00 a.m. The memo further stated that the candidate's nomination

papers contained a total of 15,685 signatures, and after examining 338 pages, (approximately 6,800 signatures) the candidate's nomination papers had so many sustained objections (4,440) that he was already thousands of signatures below the number of valid signatures required (12,500), such that to continue the record examination would only put the candidate further behind. The hearing examiner noted that the number of signatures found invalid in this truncated record examination exceeded 65% of the number the candidate submitted. At that rate of sustained objections, a completed record examination would leave the candidate with only some 5,000 valid signatures.

Despite the high percentage of sustain rates, the objector never seriously attempted to pursue her "pattern of fraud" allegation.

The hearing officer concluded by stating that he would recommend the board affirm the decision to halt the record examination, and furthermore, that he would recommend this as an additional and separate ground in support of his recommended decision to sustain the objector's petition and declare the candidate's nomination papers invalid and insufficient in law and fact.

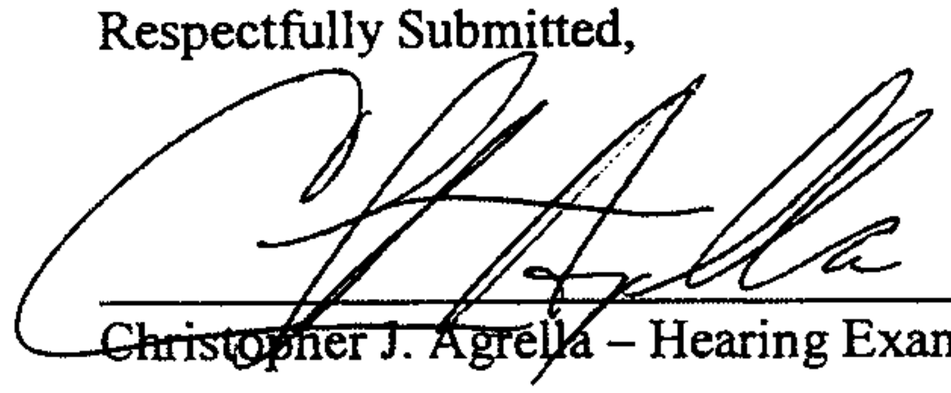
There being no other matters at issue, the hearing examiner concluded the case.

This hearing examiner recommends to the Board that it adopt the above findings, decisions and recommendations of the hearing examiner, that the Board further sustain the objection and declare that said nomination papers are insufficient and invalid in law and fact in that the nomination papers lack the minimum number of validly collected signatures of qualified and duly registered voters of the City of Chicago as required by law (12,500)

for said office, and that this Board further declare that the name of the candidate, George Sims, not appear and not be printed on the ballot for election to the office of City Clerk of the City of Chicago, to be voted upon at the February 27, 2007, Municipal General Election for Mayor, Clerk, Treasurer and Alderman in the City of Chicago..

Christopher J. Agrella
Hearing Examiner
330 East Main Street
Suite 205
Barrington, Illinois 60010
Office: (847) 381-6800
Fax: (847) 381-6866

Respectfully Submitted,



Christopher J. Agrella – Hearing Examiner

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

Sylvia Kopec	)	
	)	
Objector(s)	)	
	)	No.: 07-EB-[redacted]
vs.	)	
	)	
George Sims	)	
Candidate	)	

ORDER

The Candidate's Emergency Motion for Change in Hearing Officer is set for consideration at the meeting of the Electoral Board scheduled for Tuesday, January 16, 2007 at 5:00 p.m. in the Board's Conference Room, 8th Floor, 69 W. Washington Street, Chicago, Illinois.

Dated: January 15, 2007.

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, *ex officio* as the ELECTORAL BOARD

By: James Scanlon
General Counsel

I, Steven Ciesla, certify that I notified Dan Johnson Weinberger
(Name of Person Giving Notice) (Name of Person Notified)
the Objector, the attorney or the duly appointed representative for the Objector, of this Order on 1/15/07 at 5:20
(Date) (Time)
(✓) by telephone at telephone number 773-933-4870; or
( ) by facsimile at fax number _____.

Said he would not appear

I, Steven Ciesla, certify that I notified George Sims,
(Name of Person Giving Notice) (Name of Person Notified)
the Candidate, the attorney or the duly appointed representative for the Candidate, of this Order on 1/15/07 at 5:20
(Date) (Time)
(✓) by telephone at telephone number 7733273213; or
( ) by facsimile at fax number _____.

spoke to Patrick Wright 773-881-7355 Left Message