

Direct line: 608-252-9326
Email: jpa@dewittllp.com

May 6, 2022

**VIA EMAIL: kaardal@mklaw.com
AND FIRST CLASS MAIL**

Erick G. Kaardal, Esq.
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402

RE: In the Matter of *Sandra Klitzke v. Wolfe, et al.*

Dear Mr. Kaardal:

As you know, the law firm of DeWitt LLP (“DeWitt”) is retained as special counsel for the Wisconsin Elections Commission (“Commission”) with respect to the above-referenced matter. This letter is in response to the Complaint, dated March 31, 2022, which you submitted to the Commission, pursuant to Wis. Stat. § 5.06, on behalf of your client, Ms. Sandra Klitzke, through her guardian, Ms. Lisa Goodwin.

Pursuant to the Wis. Admin. Code § EL 20.04(1), DeWitt has conducted a review of the Complaint to determine whether it is timely, is sufficient as to form, and states probable cause. This letter serves as formal notice to the Complainant that we have determined the Complaint fails to state probable cause. As such, we are returning the Complaint to you without prejudice pursuant to Wis. Admin. Code § EL 20.04(2).

Complainant’s Allegations

The Complaint states that Complainant Sandra Klitzke is a resident of an adult residential care facility in Grand Chute, Wisconsin. Complaint, ¶ 1. According to the Complaint, Ms. Klitzke has had cognitive decline for many years. *Id.* ¶ 7. In 2019, her daughter, Lisa Goodwin, petitioned the Outagamie County Circuit Court to be appointed as Ms. Klitzke’s guardian. *Id.* ¶¶ 6, 8. Following a hearing, the court entered a guardianship order appointing Ms. Goodwin as Mr. Klitzke’s guardian on February 21, 2020. *Id.* ¶¶ 14-15. This order states, in relevant part:

In the Matter of *Sandra Klitzke v. Wolfe, et al.*
May 6, 2022
Page 2

The individual [Ms. Klitzke] is in need of a guardian of the person.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

The individual has the incapacity to exercise the right to

* * *

☒(3) register to vote or to vote in an election.

Complaint, Ex. F. (emphasis original).

Despite the Order, the Complaint alleges that Ms. Klitzke voted in the November 3, 2020 and April 6, 2021 elections. Complaint, ¶ 19. According to the Complaint, neither Ms. Goodwin nor any other member of her immediate family completed an absentee ballot for Ms. Klitzke in either election. *Id.* ¶¶ 20, 23. The Complaint further alleges that Ms. Klitzke remained a registered voter as of the filing of the Complaint. *Id.* ¶¶ 24-25.

The Complaint names as Respondents Ms. Megan Wolfe, Administrator of the Commission; Ms. Angie Cain, whom the Complaint identifies as Town Clerk for the Town of Grand Chute, Wisconsin; and Ms. Barb Bocik, Clerk of Circuit Court for the Outagamie County Circuit Court. *Id.* ¶¶ 3-5.

With respect to Ms. Bocik, the Complaint alleges that, as Clerk of Court, Ms. Bocik was “responsible to ensure guardianship and other orders that expressly state a person does not have the capacity to vote, are forwarded to the municipal clerk and the Wisconsin Elections Commission with a completed Notice of Eligibility form...” *Id.* ¶ 5. According to the Complaint, this obligation arises under Wis. Stat. § 54.25, which states, in relevant part:

The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, 6.93, or 7.52(5) with the responsibility for determining challenges to registration and voting that may be directed against that elector.

Wis. Stat. § 54.25(2)(c)(1)(g) (cited at Complaint, ¶¶ 33, 59). The Complaint alleges that Ms. Bocik failed to follow through on her obligation under Wis. Stat. § 54.25. *Id.* ¶¶ 64-65.

With respect to Ms. Wolfe and Ms. Cain, the Complaint alleges that these Respondents “failed to update the WisVote database to ensure Klitzke and others similarly situated did not register to vote and did not vote.” *Id.* ¶ 66.

The Complaint alleges that all Respondents abused their discretion and violated state law when their “actions, omissions, or inactions” permitted Ms. Klitzke to vote even though she was

In the Matter of *Sandra Klitzke v. Wolfe, et al.*

May 6, 2022

Page 3

ineligible to do so. *Id.* ¶¶ 67-71. Accordingly, pursuant to Wis. Stat. § 5.06, the Complaint requests that the Commission, among other things, “issue an appropriate administrative correction or other remedy.” *Id.*, p. 17.

Probable Cause Review

Under Wis. Stat. § 5.06(1), a “complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Probable cause is defined in Wis. Admin. Code EL § 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.” “Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred; when the activity is alleged to have occurred and who are the witnesses to the events.” Wis. Admin. Code EL § 20.03(3).

Complainant, therefore, has the obligation to set forth sufficient facts to show probable cause to believe that Respondents Wolfe, Cain, and Bocik committed a violation of law or abuse of discretion that permitted Ms. Klitzke to vote despite the court order prohibiting her from doing so. As explained below, the Complaint has not set forth sufficient facts to make the showing required by Wis. Stat. § 5.06(1).

A. There Is No Probable Cause With Respect To Ms. Bocik Because, As Clerk of Court, Ms. Bocik Is Not An Election Official.

The Complaint does not state probable cause with respect to Ms. Bocik, the Clerk of Court for Outagamie County Circuit Court, because the Complaint sets forth no facts establishing that Ms. Bocik is an “election official” within the meaning of Wis. Stat. § 5.06.

Section 5.06 authorizes the Commission to consider complaints filed against election officials:

Whenever any elector of a jurisdiction or district served by an *election official* believes that a decision or action *of the official* or the failure *of the official* to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or *the official* has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that *the official* be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law.

In the Matter of *Sandra Klitzke v. Wolfe, et al.*

May 6, 2022

Page 4

Wis. Stat. § 5.06(1) (emphasis added). An “election official” is defined as “an individual who is charged with any duties relating to the conduct of an election.” Wis. Stat. § 5.02(4e). As the Commission has previously found, “fleeting or minimal ties ... to electoral processes” are not enough to classify someone as an election official.” *Sherry Seaman, et al. v. Brian Noe, et al.*, Case No. EL 20-21, p. 3 (Jan. 5, 2021).¹

Elections in Wisconsin are governed by Chapters 5-12 of the Wisconsin Statutes. Only two statutes within these chapters even mention any obligations of a clerk of court. One of those statutes, Wis. Stat. § 9.01, only speaks of clerks of court to specify where a party aggrieved by a recount must file a notice of appeal and where those affected by such appeal must send papers related to the recount. The other statute, Wis. Stat. § 8.28, merely states where a clerk of court must transmit a copy of a judgment finding that a member of the legislature fails to meet a residency requirement.

Neither of these two statutes mentioning a clerk of court relate to “the conduct of an election,” as would be required to make a clerk of court an “election official” within the meaning of Wis. Stat. § 5.02(4e). In making this determination, we give the statutory language “its common, ordinary, and accepted meaning.” *Town of Rib Mountain v. Marathon Cty.*, 2019 WI 50, ¶ 9, 386 Wis. 2d 632, 926 N.W.2d 731 (citation omitted). In this case, the common, ordinary, and accepted meaning of the noun “conduct” is “the act, manner, or process of carrying on: MANAGEMENT.” *Conduct*, Merriam-Webster Dictionary (2020). The tasks set forth in Wis. Stat. §§ 9.01 and 8.28 do not relate to the management of an election, and they are not integral in the process of carrying out an election. Rather, they are, at most, the kinds of “fleeting or minimal ties ... to electoral processes” that the Commission has previously found insufficient to make one an election official under Wis. Stat. § 5.06. Since a clerk of court is not charged with any duties relating to the *conduct* of an election, a clerk of court is not, therefore, an election official.

The Complaint does not allege facts showing otherwise. The Complaint fails to allege any facts demonstrating that Ms. Bocik, as the Clerk of Court for Outagamie County Circuit Court, is charged with any duties relating to the conduct of an election. The Complaint also does not allege that Ms. Bocik is an election official. Accordingly, the Complaint fails to state probable cause that Ms. Bocik is subject to the jurisdiction of the Commission under Wis. Stat. § 5.06.

¹ Available at: https://elections.wi.gov/sites/elections/files/2021-01/Decision%20Letter_Seaman%20et%20al.%20v.%20Town%20of%20Omro%20et%20al_Final.pdf.

In the Matter of *Sandra Klitzke v. Wolfe, et al.*

May 6, 2022

Page 5

B. There Is No Probable Cause To Find That Ms. Wolfe or Ms. Cain Committed A Violation Of Law Or An Abuse Of Discretion Because The Complaint Does Not Allege That Such Respondents Failed To Perform An Act Or Duty Based Upon Information Known To Them.

As set forth above, the Complaint alleges that the Clerk of Court for Outagamie County Circuit Court was required by statute to forward Ms. Klitzke’s guardianship order to the Commission and to the municipal clerk for the Town of Grant Chute, Wisconsin, where Ms. Klitzke resides. *Id.* ¶¶ 5, 33-34, 59. According to the Complaint, the Commission – through its Administrator, Ms. Wolfe – and Ms. Cain as the municipal clerk then must act upon such information according to their respective responsibilities. *Id.* ¶¶ 38, 66.

The Complaint does not state probable cause with respect to Ms. Wolfe or Ms. Cain because the Complaint sets forth no facts establishing that these Respondents actually received the information from the Clerk of Court upon which the Complaint alleges they were supposed to act to remove Ms. Klitzke as a registered voter.

To the contrary, the Complaint alleges that the Clerk of Court failed to follow the required procedure with respect to Ms. Klitzke’s guardianship order:

Upon information and belief, the Circuit Court Clerk or the Register in Probate or both under current court procedures, does not deliver the Notice of Voting Eligibility to the WEC. ...

Upon information and belief, the Circuit Court Clerk does not deliver the Notice of Voting Eligibility to the municipal clerk where the ward resides, here, Grand Chute Township, as found under Wisconsin Statutes § 54.25(2)(c)(1)(g) or other election law authority.

Id. ¶¶ 64-65.

Since the Complaint alleges that the Commission and the municipal clerk were never actually provided the relevant information by the Clerk of Court, the Complaint fails to allege that Ms. Wolfe or Ms. Cain failed to undertake any obligation under law. The Complaint does not allege that Ms. Wolfe or Ms. Cain are responsible for independently searching judicial records to determine if an individual is under a guardianship that has removed the right to vote. Nor are we aware of any authority that would require Ms. Wolfe or Ms. Cain to undertake such an obligation. Accordingly, the Complaint does not state probable cause that Ms. Wolfe or Ms. Cain violated Wisconsin law or committed an abuse of their discretion.

In the Matter of *Sandra Klitzke v. Wolfe, et al.*

May 6, 2022

Page 6

C. There Is No Probable Cause To Find A Violation Of Law Or An Abuse Of Discretion With Respect To Any Other Voter.

Although the Complaint is brought in the name of Ms. Sandra Klitzke alone, the Complaint alleges that “what has occurred in the case of Klitzke’s guardianship order has occurred repeatedly for equal if not greater lengths of time to others similarly situated.” Complaint, ¶ 41. The Complaint further states that Respondents’ alleged “inaction” has affected “Klitzke and others similarly situated.” *Id.* ¶¶ 67-70.

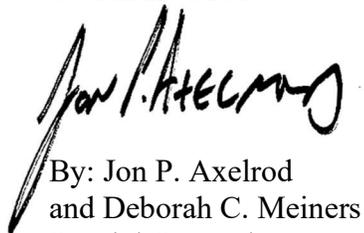
Despite mentioning others who are supposedly “similarly situated” to Ms. Klitzke, the Complaint does not state any further allegations concerning such individuals. Among other things, the Complaint does not identify any such persons by name or state any allegations concerning their guardianship orders, whether such orders removed their right to vote, or whether such orders were transmitted to the Commission. The Complaint therefore fails to state probable cause that any violation of law or abuse of discretion exists with respect to these “similarly situated” individuals.

Conclusion

For the forgoing reasons, the Complaint does not meet the standards set forth in Wis. Stat. § 5.06(1) and Wis. Admin. Code EL § 20.02(4). We are therefore returning the Complaint, without prejudice, pursuant to Wis. Admin. Code § EL 20.04(2).

Sincerely,

COMMISSION



By: Jon P. Axelrod
and Deborah C. Meiners
Special Counsel

JPA:sd

cc: Thomas C. Bellavia, Esq. (*via email*)
Steven C. Kilpatrick, Esq. (*via email*)
Ms. Angie Cain
Ms. Barb Bocik