

**STATE OF WISCONSIN
BEFORE THE ELECTIONS COMMISSION**

ANNETTE KUGLITSCH,

Complainant,

COMPLAINANT'S VERIFIED
REPLY TO THE ANSWER OF
RESPONDENT

v.

EL 25-13

LINDA GOURDOUX,

Respondent.

**I. RESPONDENT'S ANSWER DOES NOT EVINCE A LAWFUL
BASIS FOR TERMINATING COMPLAINANT AS A SPECIAL
VOTING DEPUTY.**

**A. Respondent provides no factual basis to find that
Complainant engaged in terminable conduct.**

Respondent acknowledges that in order to have properly terminated Complainant as a Special Voting Deputy (SVD) under Wis. Stat. §§ 6.875(4)(b), 7.15(1)(f), and 7.30(6)(c), that Respondent needed to find that Complainant "lacks the qualifications...fails to attend training sessions required under s. 7.15(1)(e) unless excused therefrom, is guilty of neglecting his or her official duties, or commits official misconduct." (Answer, ¶¶ 3-6).

Respondent does not allege that she found that Complainant lacks qualifications, failed to attend required training, or committed "official misconduct" as an SVD. Respondent instead alleges—

I made the determination that the **Complainant is unfit for duty as a special voting deputy, amply demonstrated by her public behavior**, and removed her from the list of special voting deputies as directed and authorized by statute.

(Answer, ¶ 15)(emphasis added). Respondent also contends that “Complainant’s failure to perform her duties at Oak Hill Terrace property and her interference with other workers constituted neglect of her official duties as a special voting deputy.” (Answer, ¶ 8).

However, the activities at Oak Hill Terrace described by Respondent, even if assumed to be 100% accurate, do not serve as justification for Complainant’s termination.

First, at no time does Respondent assert that she was aware of any of the facts alleged in regard to the activity at Oak Hill Terrace *prior* to making the decision to terminate Complainant as an SVD. Respondent merely states that she terminated Complainant based on her “public behavior.” What “public behavior?” It’s never specified, and respondent never identifies what led her to make the conclusion that Complainant was “unfit” to serve as an SVD.

Second, the statutes that Respondent admits are applicable require a finding that Complainant specifically was “guilty” of neglect of official duties. Respondent does not assert she ever made such a finding. Her only asserted finding was that Complainant was “unfit” for duty in Respondent’s opinion—not an allowable basis for termination.

Third, the activities set forth in the Affidavit of Mollie Schenk, even if true, clearly do not amount to “neglect of official duties. In fact, it appears to be a case where Ms. Schenk (not the Respondent) had a philosophical disagreement with Complainant as to

how the SVD process should be conducted at Oak Hill Terrace. How, in any way, is it “neglect” of duty when Ms. Schenk avers under oath that Complainant—

- “Kept telling people where they needed to stand in proximity to voters” (Affidavit of Mollie Schenk, ¶ 10);
- “She would also question when voters were being assisted by their spouses” (*Id.*);
- “Too much time was spent making demands of and questioning other poll workers” (*Id.*);
- When the process was completed Complainant “barraged us with questions” (*Id.*, ¶ 12);
- Complainant was “telling the other SVDs what they could and could not do” (*Id.*); and
- “She had an issue whenever a voter wanted to assist their spouse in reading and filling out their ballot.” (*Id.*)

None of the above examples of actions in any way reflect “neglect of official duties.” Rather they show someone who is extremely concerned about following the correct procedure, perhaps at the expense of expediency which was what was the apparent goal of Ms. Schenk.

At one point Ms. Schenk provides hearsay testimony that an SVD stated to her that Complainant “spent more time talking on the phone than working” before Ms. Schenk arrived. (*Id.*, ¶ 14). However, even if this hearsay testimony is accepted it is untrue.

Complainant has reviewed the her data usage from her cell phone provider. Voting commenced at 9:30am and ended approximately at 12:15pm. The usage data demonstrates that, both call and text during the time frame of the election at Oak Hill Terrace, shows a total calling time of 5 min 9 secs. Four of those minutes were actually fellow SVD Joseph O' Grady using Complainant's phone to speak with Respondent's office as Mr. O' Grady was having difficulty contacting the office through his phone and asked Complainant to use her phone. So while it may be true that *Complainant* did not speak with Respondent's office (Affidavit of Mollie Schenk, ¶ 14), Respondent is aware that Mr. O' Grady *did* use her phone to do so.

Furthermore, a review of Complainant's text messaging during the voting time demonstrates 5 incoming texts with zero responses/outgoing. The accusation that Complainant was somehow "neglecting" her duties as an SVD at Oak Hill Terrace are completely without basis.

Respondent provides no other factual basis to find that Complainant was guilty of neglect of her official duties. Respondent provides an asserted set of facts regarding Complainant's acts as an observer at New Perspectives. (Answer, ¶ 9). However, although couched as "official misconduct," none of the facts can be described as "official misconduct" *while acting as an SVD*. Which is the position from which Complainant was terminated that is the subject of this Complaint.

Further, Complainant clearly did nothing wrong in that situation. As is noted at page 19 of the Commission's *Absentee Voting in Residential Care Facilities and Retirement Homes* Manual, only certain persons may assist residents in the absentee ballot process at certain stages—

Who May Undertake the Following Actions for Electors Voting by Special Voting Deputy

The following table summarizes the rules related to assisting voters served by SVDs.

Action	Anybody	Family Member*	SVD	Power of Attorney or Guardian
<u>Assist</u> a voter in completing a Voter Registration Application. +	Yes	Yes	Yes	Yes
<u>Assist</u> the voter by signing the voter's name on the Voter Registration Application. +	Yes	Yes	Yes	Yes
<u>Assist</u> a voter in completing a request for absentee ballot.	Yes	Yes	Yes	Yes
<u>Assist</u> the voter by signing the voter's name on an absentee ballot request.	Yes	Yes	Yes	Yes
<u>Assist</u> a voter in marking a ballot at the direction of a voter.	No	Yes	Yes	No
<u>Assist</u> the voter by completing the Absentee Certificate Envelope.	No	Yes	Yes	No
<u>Assist</u> the voter by signing the voter's name on the Absentee Cert Envelope.	No	Yes	Yes	No
<u>Assist</u> a voter by requesting an absentee ballot for the voter.	No	No	No	Yes

+ Before the open registration cut off only.

* Includes a family member employed by the facility.

Nowhere does Respondent provide any justification for allowing a "friend" to help a resident "vote." That is clearly a duty set aside for SVDs and immediate family members. Further, there is no factual basis to conclude that Complainant intervened directly *with the residents* at all. It is alleged that the residents got tears in their eyes when a *third party* informed them that the friend could not help (which is correct under the law).

Complainant states with full conviction that at no time did she interact with anyone other than SVDs at New Perspectives and that any implication otherwise is completely false.

Regardless, in no way were the alleged acts at New Perspectives in any way “official misconduct” in regard to Complainant’s duties as an SVD. And again, there’s no evidence Respondent relied on, or even knew of this situation prior to terminating Respondent.

Finally, Respondent provides a series of inappropriate, baseless *ad hominem* attacks on Complainant. None of these alleged “facts” constitute a basis for finding that Complainant neglected official duties or was guilty of official misconduct. IN fact, the overtly biased and attacking tone of Respondent undermines her credibility altogether. Clearly, there is a personal animosity that has crept into the decision-making process.

Respondent has provided zero factual basis to support any finding that Complainant either neglected official duties or committed official misconduct in her role as an SVD, and therefore the termination of Complainant is without basis and Complainant’s status as an SVD should be restored immediately.

B. Respondent admits that Complainant did not receive Due Process in regard to her Termination.

Respondent states—

Complainant was given notice of her removal as a special voting deputy in a January 24, 2025 telephone conversation with me. **Complainant was not given a hearing because her behavior warranted her removal summarily, as authorized by statute. A hearing is not required by statute.**

(Answer, ¶ 23)(emphasis added).

Respondent’s position is legally indefensible for two reasons. First, Respondent admits that a finding of neglect of official duties or official misconduct was required to

terminate Complainant. Indeed, Respondent states “her behavior warranted her removal summarily.” As addressed above, there is no factual basis that Complainant’s “behavior” warranted termination in any way.

Implied in Respondent’s statement is that there was a finding that the statutory requirements for termination “summarily” were met. The problem for Respondent is that the “finding” she made was completed without Complainant receiving due process.

Termination for neglect of official duties or official misconduct is synonymous with termination for cause. See Wis. Stat. § 17.16(2)(Defining “cause” as ‘inefficiency, neglect of duty, official misconduct or malfeasance in office.’) The United States Supreme Court held in *Goss v. Lopez*, 419 U.S. 565, 573, 95 S.Ct. 729, 735, 42 L.Ed.2d 725 (1975)—

‘ . . . a state employee who under state law . . . has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process.’

In addition to there being a property right at stake, when discharge is only for cause personal liberty is implicated. *State ex rel. DeLuca v. Common Council of City of Franklin*, 72 Wis. 2d 672, 693, 242 N.W.2d 689 (1976). In *Board of Regents of State Colleges v. Roth* (1972), 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548, the Supreme Court held—

Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

There is both an employability and a reputational aspect to the requirement of due process in this situation. See *De Luca*, 72 Wis. 2d at 693. “[W]herever charges might seriously impair one's standing and associations in the community, the reputational interest has been infringed. An infringement upon an employability interest is shown when the reasons for dismissal are those that would significantly undermine

opportunities for future employment. *Id.* Here, Respondent's action of terminating SVD status—thus preventing future employment as same—and her scurrilous accusations, including accusations that Complainant made a blind resident of a nursing home cry, warrant due process. *Id.*; see *Hostrop v. Board of Junior College District No. 515*, 471 F.2d 488 (7th Cir. 1972)(Accusations that imply “unsavory character traits” warrant due process).

Respondent admits she provided exactly zero due process. Her position as an SVD was subject to an express and inferred right of removal only for cause. However, no statute provides the exact proceeding that must be followed. In that instance she was entitled to a “hearing and determination according to the principles of justice” under the common law. *Ekern v. McGovern*, 154 Wis. 157, 142 N.W. 595, 597 (1913). She received no such hearing as admitted by Respondent.

Even the Commission has recognized the need for fairness in termination of SVDs stating at page 137 of the August 2024 Election Administration Manual that “in the interest of fairness, a hearing before the governing body is recommended before dismissal.” While this is not a regulatory requirement by the Commission, it is a recognition that principles of fairness and due process are applicable in this situation and that SVDs should be afforded fair hearings before termination.

Finally, as is noted by Respondent, if there is a finding that an SVD is “guilty” of neglect or misconduct, termination shall happen “summarily.” (Answer, ¶ 15). Respondent provides no factual basis to conclude that any termination happened on the proper timetable.

Complainant's termination was invalid for Respondent's failure to provide due process to Complainant and her status should be restored immediately for that reason as well.

II. CONCLUSION

Respondent admits that she needed to find under Wis. Stat. §§ 6.875(4)(b), 7.15(1)(f), and 7.30(6)(c), that Complainant "lacks the qualifications...fails to attend training sessions required under s. 7.15(1)(e) unless excused therefrom, is guilty of neglecting his or her official duties, or commits official misconduct." Respondent provides no evidence that any of those standards were met. Even if the evidence presented demonstrates as such, Complainant received no due process hearing to address the accusations of Respondent as was required. Respondent's termination of Complainant was invalid and Complainant's status as an SVD for the City of Waukesha must be restored immediately.

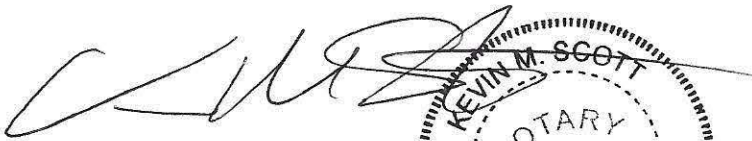
I, Annette Kuglitsch, first being duly sworn on oath state that I personally read the above Reply, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.



Annette Kuglitsch
Complainant

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Sworn to and subscribed before me this 31st Day of March, 2025.



Kevin M. Scott
My commission is permanent

