



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
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September 12, 2012

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

The Office of Elections, in addition to its normal preparations for the 2012 General Election, has been focused on the election cases challenging the results of the 2012 Primary Election and working with the County of Hawaii on learning from the Primary Election and preparing for the General Election.

Election Cases

Following the Primary Election, the law provides a six-day window of time to file an election contest, in the Hawaii Supreme Court, challenging the results of the election. HRS § 11-173.5. As the sixth day was August 17, 2012 (Friday), which is Admissions Day, the deadline was legally extended to the next business day, August 20, 2012 (Monday). HRS § 1-29.

A total of three cases were filed by August 20, 2012, while a fourth case was filed on August 21, 2012, under the contention that the application of a court rule regarding the counting of days, resulted in the deadline being August 21, 2012. As will be explained below, the Hawaii Supreme Court dismissed all four cases and confirmed that the deadline was August 20, 2012. These dismissals occurred between August 23, 2012 and August 31, 2012.

1. *Dejean v. Nago*, SCEC-12-0000714 (August 23, 2012)

Plaintiff Khistina Caldwell DeJean was a candidate for Mayor of the City and County of Honolulu. Appearing pro se, "she allege[d] that (a) some polling places in Hawaii county opened late, (b) the media discriminated against her when they did not '[o]pen [t]he [d]oor' to minor children during a debate and excluded her from media opportunities, (c) extending voting hours at the end of

the day does not help people who have to vote before going to work in the morning, and (d) she received a 'threat' to report for jury duty within ten days." Ultimately, the Hawaii Supreme Court dismissed the complaint as her allegations were not sufficient to find that the election results would have changed.

2. *Han v. Manahan, et al.*, SCEC-12-0000716 (August 27, 2012)

Plaintiff Martin Han was a candidate for Honolulu City Councilmember, District 7. He alleged that the winner of the contest "received an increase in votes by violating Hawaii's electioneering law (HRS 11-132 (2009)) and "work[ing] together for votes with" the current District 7 councilmember, who was now a candidate for the State Representative, District 30. The Hawaii Supreme Court dismissed the case as Plaintiff had "failed to present specific acts or 'actual information of mistakes or error sufficient to change the results of the election.'"

3. *Cermelj v. Kawauchi and Nago*, SCEC-12-0000722 (August 28, 2012)

Plaintiff Hope Louise Cermielj was a non-partisan candidate for State Representative, District 4. Appearing pro se, she generally alleged that discrimination of freedom of speech and freedom of the press had occurred and that a recount should be ordered. The Hawaii Supreme Court dismissed the complaint as the Plaintiff "failed to present specific acts or actual information of mistakes, error or irregularities sufficient to change the results of the election."

4. *Akaka v. Housel, et al.*, SCEC-12-0000725 (August 31, 2012)

Plaintiff Kaleihikina "Kalei" Akaka was a candidate for State Representative, District 6. She alleged, among other things, that the Governor wrongfully extended the statutory hours of voting and that this resulted in invalid ballots cast after the statutory close of polls being intermingled with valid ballots cast during the statutory polling hours. As such, Plaintiff sought a new election, a manual recount, and attorneys' fees.

Plaintiff's complaint was filed on August 21, 2012 (Tuesday). As previously noted above, this was one day beyond the filing deadline. The Hawaii Supreme Court found that Plaintiff's contention that the filing was timely, pursuant to a court rule regarding the computation of deadlines, was incorrect as the rule could not enlarge or modify the statutory deadline provided for in HRS § 11-173.5. Additionally, the Court noted the Plaintiff's complaint lacked "actual information of mistakes, errors or irregularities sufficient to change the primary election results for the office of state representative, district 6." Plaintiff has filed a motion for reconsideration with the Court and the motion is currently pending before it.

County of Hawaii

After the Primary Election, the Office of Elections and the County of Hawaii expressed publicly their difference of opinion on the implementation and execution of the 2012 Primary Election in the County of Hawaii. Following the last Elections Commission meeting, on August 22, 2012, the Office of Elections sought a way to rebuild the partnership between the Office of Elections and County of Hawaii and to move forward with preparations for the 2012 General Election.

With this in mind, the Chief Election Officer spoke to the clerks of the County of Maui, County of Kauai, and the City and County of Honolulu about what could be done as an election community. It was agreed that it would be very beneficial to all involved to participate in a series of troubleshooting workshops.

Specifically, there were to be three separate day-long workshops that would be held in the County of Maui, County of Kauai, and the City and County of Honolulu. Each workshop would be lead by the County Clerk and the Election Administrator of that county. The workshops would focus on how elections are implemented in each county and how that knowledge could be used to improve election administration in the County of Hawaii in the November 6, 2012 General Election.

Despite the different geographical and logistical challenges faced by each county, the administration of neighbor island elections is more similar than dissimilar. There exists "best practices" common to all jurisdictions. Knowledge of these best practices along with solutions to unique situations provides election administrators a solid knowledge base to deal with the inevitable, unforeseen issues that may occur during the absentee mail and walk periods, as well as coordination of hundreds of election days officials on election day.

On August 23, 2012, a letter extending this offer to the Clerk of the County of Hawaii was sent by the Office of Elections. The County Clerk responded the same day and accepted the offer. She suggested the week of September 17, 2012 for the three workshops. She also noted that the County of Hawaii was "coordinating a gathering of Precinct Chairs, DC Coordinators, Troubleshooters, Warehouse Personnel, and Election Division Staff to discuss challenges that occurred during the 2012 Primary Election" for mid-September 2012. The County Clerk invited us to attend the gathering and noted that her staff would communicate with our office's secretary to check on our availability in mid-September 2012.

On August 27, 2012, a statewide debriefing with the voting system vendor was held with the Office of Elections and the counties. This meeting recapped the vendor's performance in the primary election, and provided all administrators the opportunity to discuss potential improvements for the upcoming general election. Unfortunately, the County of Hawaii was not able to attend and stated that it would coordinate separately with the vendor. At this meeting the counties and the Office of Elections discussed the County of Hawaii's proposal to hold all the workshops in one week.

On August 28, 2012, a joint letter from the Chief Election Officer, Clerk of the County of Maui, Clerk of the City and County of Honolulu, and Clerk of the County of Kauai was sent to the Clerk of the County of Hawaii, explaining various issues they had with her proposal to have meetings during the week of September 17, 2012.

In part, it was noted that the deadline for the county clerks to mail out absentee ballots to overseas and military voters covered by state and federal law is September 21, 2012. As such, the county clerks would need to be on-island during this week. Additionally, it was noted that a certain amount of time between workshops would be beneficial for the participants to: (a) process what had been presented, (b) consider whether certain processes or procedures, with appropriate modifications, would work in their county, and (c) come back to the next workshop to discuss with other election officials their thoughts and ideas triggered by the previous workshop.

As such, the Chief Election Officer and the county clerks proposed the following dates: (1) County of Kauai – September 10, 2012; (2) County of Maui – September 27, 2012; and (3) City and County of Honolulu – October 4, 2012. Further, it was noted that in order to make these workshops as beneficial as they can be for the County of Hawaii, each county had committed for their county clerk and election administrator to be present for each workshop.

The Clerk of the County of Hawaii responded that the dates looked fine except for September 10, 2012, as she had her own election workshop scheduled for that date and that she was suggesting that Deputy County Clerk Steve Lopez attend the workshop on Kauai. Despite not being offered to have at least the acting elections administrator attend the Kauai workshop, it was determined that it was the County Clerk's prerogative to determine who would attend on her behalf and that the Kauai workshop would go forward.

Given the County Clerk's reference to her conducting an election workshop of her own on that day, we assumed that she was referring to the debriefing that she had mentioned in earlier correspondence that she had invited us to and for which she said her staff would be contacting us about our

availability. As such, on September 4, 2012, we contacted the County Clerk's administrative assistant to find out when the County of Hawaii would be holding its debriefing or debriefings. We were told that the schedule had not been confirmed. Despite this, we told the County Clerk's administrative assistant that it was our intent to attend the debriefings. On September 6, 2012 (Thursday), as we had not heard back about the debriefings and given that the next day was a Furlough Friday for the County of Hawaii, we sent the County Clerk and her administrative assistant an email renewing our inquiry about the debriefings, given that we needed to make reservations to attend the first debriefing, which we understood might be on September 10, 2012 (Monday). A little after 6:00 p.m. we received an email providing the dates for four meetings with the Chairs and Voting Assistance Officials for September 10-14, in Hilo, Pahoa, Naalehu, and Kona, all beginning at 6:00 p.m.

Our office immediately made reservations to attend all of the debriefings, except for the one in Naalehu, given that there was not enough time to drive from Naalehu to either Kona or Hilo to catch the last flight back to Oahu.

On September 10, 2012, the Kauai election workshop was held. There were 27 people in attendance. The Chief Election Officer and his section heads, along with the county clerks of the County of Maui, County of Kauai, and the City and County of Honolulu, and their elections administrators, were in attendance. Additionally, each county brought additional support staff.

For the County of Hawaii, Deputy County Clerk Steve Lopez and three staff members were in attendance. However, the acting elections administrator was not present. We were very thankful for the attendance of the three staff members, as it was our understanding that their attendance had not been confirmed until the prior business day of September 6, 2012.

The County of Kauai provided an excellent detailed presentation about its operations and conducted a tour of its facilities. Attendees had many questions and were very complimentary to the County of Kauai about its efficient and tightly run operation.

At the conclusion of the training, the Chief Election Officer and his Precinct Operations Section Head flew to the County of Hawaii to attend the debriefing that the County Clerk had scheduled for 6:00 p.m. in the Hilo Council Chambers. They arrived in plenty of time for the debriefing and welcomed attendees as they entered the chambers. Upon the arrival of the County Clerk she began the debriefing. The acting elections administrator was not present and neither was anyone else from her office.

During the debriefing that ran for approximately two hours, there were numerous complaints and issues raised about what occurred on Election Day. Following the debriefing, our office had renewed concerns about the County Clerk's familiarity with the administration of elections. However, it was hoped that if her staff had been in attendance, some of these concerns may have been allayed.

The following day, the Chief Election Officer and the Precinct Operations Section Head attended the debriefing in Pahoā. This time the County Clerk brought her administrative assistant to attend. Again it appeared that the County Clerk had not brought her acting elections administrator or anyone else who could directly assist the County Clerk in answering the questions from the attendees. Again, our concerns were renewed as to the preparedness of the County of Hawaii.

Given our concerns, we will attempt to attend any further debriefings the County of Hawaii may invite us to, and we will continue to attempt to work with the County of Hawaii on ensuring a well administered General Election.