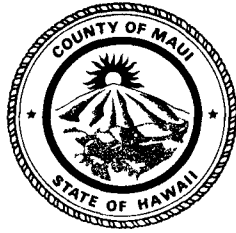


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MEMO TO: Josiah Nishita, Deputy County Clerk

FROM: Edward S. Kushi, First Deputy Corporation Counsel 

DATE: March 30, 2016

SUBJECT: CONCURRENT SUBMISSION OF NOMINATION PAPERS AND
FINANCIAL DISCLOSURE STATEMENTS

First my apologies for the late reply. We respond to your request of February 12, 2016 as set forth below:

- 1) Do the Charter and Maui County Code provisions provided above require a candidate for elective County office to file nomination papers and a financial disclosure statement with both the County Clerk and the Board of Ethics to be in compliance with the Charter and Maui County Code?

SHORT ANSWER: No.

- 2) If the answer to question 1 is yes, will a copy of page 1 and page 5 of the nomination papers filed with County Clerk be acceptable for filing with the Board of Ethics? Pages 2 through 4 of the nomination papers contain the signatures, birthdays and addresses of registered voters who have nominated the candidate. A copy of the nomination papers and Board of Ethics financial disclosure statement have been attached for your ease of reference.

SHORT ANSWER: Not applicable.

- 3) If the answer to question 1 is yes, is a candidate who has already filed nomination papers and a financial disclosure statement with the County Clerk, and a financial disclosure statement with the Board of Ethics, required to refile nomination papers and a financial disclosure

SHORT ANSWER: Not applicable.

- 4) After a candidate has successfully filed their nomination papers and financial disclosure statement with the County Clerk, are candidates immediately required to file the appropriate paperwork with the Board of Ethics to be in compliance with the Charter and Maui County Code? If not, what is the deadline for a candidate's submission to the Board of Ethics?

SHORT ANSWER: Candidates should file their public financial disclosure statements with the Board of Ethics within a reasonable time before or after their filing of their nomination papers with the County Clerk's Office, but in no event later than the deadline set for the filing of their nomination papers.

DISCUSSION:

- A. Relevant State Statutes, Maui County charter provisions, ordinances, and case law.

The authority for the filing and receipt of official nomination papers for candidates for county elective office is vested with and in the Office of the Maui County Clerk.¹

Although the Maui County Board of Ethics ("BOE") mandates the filings of public and confidential financial disclosure statements for certain officers, board and commission members, and candidates for county elective offices, the BOE does not have the authority nor responsibility to accept candidates' nomination papers.²

¹ Section 12-6, Hawaii Revised Statutes ("HRS"); Section 5-3.4, Maui County Charter, 1983, as revised ("Charter").

² Article 10, Charter.

The Charter simply requires:

All elected county officers, all candidates for elective county office, and such appointed officers or other employees as the Council shall designate by ordinance shall file with the board of ethics and the county clerk financial disclosure statements in a form or forms to be prescribed by the board of ethics. Such financial disclosure statements shall be open to public inspection. (Emphasis added.)³

Also, that:

A candidate for elective county office shall file a financial disclosure statement concurrently with the filing of nomination papers.⁴ (emphasis added)

Further, the Maui County Code (“MCC”) requires that:

Candidates for Elective Office. All candidates for nomination or elective office in County government shall file a public financial disclosure statement concurrently with their nomination papers. A new public financial disclosure statement shall be filed each year a person becomes a candidate for office.⁵ (emphasis added)

Lastly, in the recent case of Mateo v. Mamuad⁶, Judge Peter T. Cahill confirmed and concluded that our Charter and MCC mandate that financial disclosure statements submitted by candidates for elective office be filed concurrently with nomination papers.⁷

B. Conclusion.

Based on the above, in addition to other duties and responsibilities with respect to election duties and activities, a candidate for county elective office has two (2) distinct and separate duties:

1. On or before the deadline for filing, a candidate must file a public financial disclosure statement concurrently (together) with the candidate’s nomination papers with the County Clerk; and

³ Section 10-3.1, Charter.

⁴ Section 10-3.3, Charter.

⁵ Section 2.56.060(A)(1), MCC.

⁶ Civil No. 14-1-0376(2), Second Circuit Court, State of Hawaii.

⁷ “Findings of Fact, Conclusions of Law, and Order Disqualifying Neldon Mamuad as a Candidate for Mayor of the County of Maui; Order” entered on June 27, 2014; Conclusions of Law Nos. 3 and 6.

Josiah Nishita, Deputy County Clerk
March 30, 2016
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2. On or before the deadline for filing nomination papers for elective office, a candidate must file a public financial disclosure statement with the BOE.

Call if further discussion or clarification is needed.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

cc: Danny A. Mateo, County Clerk
Gary Murai, Deputy Corporation Counsel
2016-0201