

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

For Publication

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

VICENTE MANGLONA ATALIG, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
COMMONWEALTH ELECTION )  
COMMISSION et. al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**CIVIL ACTION NO. 05-0516B**  
  
**ORDER FOLLOWING RULING  
FROM THE BENCH GRANTING  
DEFENDANT’S MOTION TO  
DISMISS**

This matter came before the Court on Defendants’ Motion to Dismiss. The Plaintiff, Vicente Manglona Atalig (“Atalig”), was represented by Stephen C. Woodruff, Esq. Assistant Attorney General James D. Livingstone and Arin Greenwood represented the Defendants, Commonwealth Election Commission (“CEC”), along with its Commissioners Miguel M. Sablan, Miranda V. Manglona, Henry S. Atalig, Frances M. Sablan, Elizabeth Dlg. Aldan, Melvin B. Sablan, Jose L Itibus, and Jose P. Kiyoshi (hereafter collectively referred to as “the Commissioners”). Perry B. Inos, Esq. appeared as counsel for Real Party in Interest, Joseph Sonago Inos (“Inos”). CEC, the Commissioners and Inos filed a *Motion to Dismiss Verified Complaint or , in the Alternative, for Summary Judgment*,<sup>1</sup> Atalig opposed the Motion. After carefully reviewing the pleadings and upon hearing the testimony of the witness and the arguments of counsels, the Court ruled from the bench as follows.

\_\_\_\_\_

<sup>1</sup> Although Defendants have stated that this case should be dismissed on jurisdictional grounds, they have used language and case law implying that this is a 12(b)(6) Motion to Dismiss. This Court is not deciding this matter as a dismissal for failure to state a claim, instead, the Court is relying on a 12 (b)(1) Motion to Dismiss standard. As many courts have noted, a motion under Rule 12(b)(1) should not be confused with a motion under Rule 12(b)(6) to dismiss for failure to state a claim for relief under federal or state law because the two are analytically different. As many courts have observed, the former determines whether the plaintiff has a right to be in the particular court and the latter is an adjudication as to whether a cognizable legal claim has been stated. See *Wright and Miller*, 5B Fed. Prac. & Proc. Civ.3d § 1350. Here, the Court is not determining whether or not the Plaintiff has brought a valid claim, but whether Plaintiff has complied with the statutory requirements giving this Court the power to hear the matter at all.

1 **BACKGROUND FACTS<sup>2</sup>**

2 This election contest concerns the mayoral race of Rota. Atalig filed his complaint on  
3 December 2, 2005. In his moving papers Atalig alleges that “CEC made two significant errors in  
4 conduct of the November general election and tabulation of votes.” Plaintiff’s Opposition to  
5 Defendants Motion to Dismiss. The primary concern for Atalig is that on November 19, 2005, CEC  
6 made the decision not to count 150 of the absentee ballots. Atalig specifically has issue with CEC  
7 not counting 72 of the absentee ballots. Inos, Atalig, Victor B. Hocog and Julian Taisacan ran as  
8 candidates for the position of Mayor for Rota. Inos garnered 511 votes (92 of which were absentee  
9 ballots), Atalig received 500 votes (95 of which were absentee ballots), Hocog received 385 votes  
10 (with 36 absentee ballots) and Taisacan had 19 votes (4 of which from absentee ballots).  
11 Declaration of Gregorio C. Sablan, filed December 7, 2005 (“Sablan Decl.”).

12 The CNMI general election took place on November 5, 2005. On November 19, 2005 CEC  
13 counted and certified the absentee ballots for the election. The election results were published in  
14 the local papers and were televised on cable media. The results were also posted on the official CEC  
15 website on the evening of November 19, 2005. Id. Rudy Pua and Diego C. Blanco were appointed  
16 to serve as observers for the Republican Party of the Northern Mariana Islands Association and they  
17 were present when CEC counted the initial ballots from on-island voters and again when CEC  
18 counted the absentee ballots. Id.

19 CEC, the Commissioners and Inos argue that Atalig’s claim should be time barred because  
20 the complaint was filed outside the seven day time limit set forth in the statute. They contend that  
21 Atalig knew all facts necessary to bring an action on November 19, 2005 and at the very latest,  
22 November 21, 2005. Atalig counters that he filed well within the time limits proscribed because the  
23 clock did not start to run until November 28, 2005. Additionally he argues that even if he was  
24 outside of the seven day limitation, he was well within the 15 days contemplated by statue. The  
25 Court does not agree with Atalig.

26 **DISCUSSION**

27 \_\_\_\_\_  
28 <sup>2</sup> Although the parties have raised several issues before this Court involving a number of factual senarios, this Court is  
focused on the facts and issues that relate to question of jurisdiction.

1           The threshold issue for this Court to determine is whether it has jurisdiction to hear this case.  
2           The question of whether this Court has jurisdiction arises from a statutory limitation on the right to  
3           file an election contest. The Legislature, in creating a statutory right to contest an election  
4           specifically provided a time limitation for the filing of that contest. Specifically, 1 CMC § 6603 (b)  
5           states: “the contestant shall verify the complaint and shall file and serve it upon the defendant within  
6           seven days after the discovery of the fact supporting the contest, except that no complaint may be  
7           filed over fifteen days after the declaration of the official results.”

8           Since the common law has made no provision for election contests, courts must follow the  
9           mandates carved out by statute, and the statutes permitting such election contests provide special  
10          statutory proceedings. See *Bodine v. Hiler*, 463 N.E.2d 539, 541 (Ind.Ct.App.1984). One who  
11          seeks the benefit of a statutory proceeding must comply with all procedural terms of the statute.  
12          *State ex rel. Young v. Noble Circuit Court*, 263 Ind. 353 (1975).

13          The CNMI Supreme court has held that “statutes governing election contests are to be strictly  
14          construed.” *Mundo v. Superior Court*, 4 NMI 395 (1996). See also *Bodine*, 463 N.E.2d at 541 ( The  
15          requirements imposed by the statute are jurisdictional and in light of the fact that such statutory  
16          proceedings are special and summary in nature, the statutory requirements to secure jurisdiction  
17          must be strictly observed.) Furthermore, because election contests are special proceedings, most  
18          courts have held that the rules of civil procedure do not apply. See *Womack v. Foster*, 340 Ark. 124,  
19          and *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465. Although the CNMI Supreme Court has not  
20          squarely addressed the issue of “timely filing” they have addressed the issue of “timely service”  
21          where they state that “service of election contest complaints is not governed by Com.R.Civ.P. 4 but  
22          by the express language of 1 CMC § 6423. It would logically follow then that all time limits  
23          contained within the statute would be controlled by the language of the statute, not by the time limits  
24          proscribed in the Civil Rules of Procedure.

25          Several courts have addressed the issue of timely filing and an overwhelming majority of  
26          jurisdictions have held that the right to contest an election is purely statutory and the time limits in  
27          the statute must be strictly enforced. See *Town of Plymouth v. Church-Dlugokenski*, 48 Conn.Supp.  
28          481Conn.Super.,2003 (Extreme diligence and promptness are required in election-related matters.);

1 *Arredondo v. City of Dallas*, 2002 WL 1164101, Tex.App.Dallas, 2002 (Election contest must be filed  
2 within 30 days after return date of election; 30 day limit is jurisdictional and non-waivable.); *Mayor  
3 and Council of City of Wadley v. Hall*, 410 S.E.2d 105 Ga., 1991 (Petition challenging an election,  
4 filed more than five days after election results were declared, was untimely and deprived trial court  
5 of jurisdiction over contest.); *Forbes v. Bell*, 816 S.W.2d 716 Tenn., 1991 (Court cannot review  
6 grounds for invalidating election results unless they have been filed within statutory period, rules  
7 of practice in civil actions to the contrary notwithstanding). By waiting until December 2, 2005 to  
8 file his complaint, Atalig surpassed the seven day limit set forth in 1 CMC § 6603 (b). Because  
9 Atalig's complaint was untimely, this Court does not have jurisdiction over this matter.

### 10 **CONCLUSION**

11 The fixing of the time period within which to bring an action contesting an election  
12 is vested solely with the legislature. Although there might be some contrary authority, special state  
13 statutes of limitation for election contests are applied strictly. A short time period for bringing an  
14 action contesting an election reflects the legislature's strong desire to avoid election uncertainty and  
15 the confusion and prejudice which can come in its wake.

16 The CNMI election contest provisions are designed to resolve election disputes as quickly  
17 as possible. One of the rationales behind these provisions is to fill the contested elective office at  
18 the earliest opportunity, which maintains the public's confidence in the elective process. Also, it is  
19 paramount not to bring the workings of the government to a screeching halt while election results  
20 are picked over by attorneys and litigants. The statute governing this proceeding is very explicit,  
21 seven days to file a complaint means just that, seven days. Here, Atalig has failed to bring his  
22 contest within the required time limits and as such, Defendant's Motion to Dismiss is hereby  
23 **GRANTED.**

24 **IT IS SO ORDERED**

25 **ENTERED** this 21st day of December 2005.

26  
27 /s/  
28 KENNETH L. GOVENDO, Associate Judge