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Mayor



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February 11, 2010

Danny A. Mateo  
Council Chair  
County of Maui  
200 S. High Street  
Wailuku, HI 96793

Re: Hawaii Supreme Court decision in DeJetley v. Kaho`ohalahala

Dear Council Chair Mateo:

The purpose of this letter is to provide a brief summary of the decision rendered yesterday by the Supreme Court of Hawai`i in DeJetley v. Kaho`ohalahala, No. 29919 (Haw. Feb. 10, 2010). This letter also supplements matters discussed in my letter to you dated November 16, 2009, regarding the Supreme Court's decision in another case concerning Council member Solomon P. Kaho`ohalahala, Dupree v. Hiraga, 121 Haw. 297 (2009).

As background, I note that the plaintiffs in DeJetley are a coalition of Lana`i residents and voters who sought a declaratory judgment in Second Circuit Court that Mr. Kaho`ohalahala was not a resident of Lana`i, had therefore immediately forfeited his office, and that the Lana`i Council seat was vacant. Plaintiffs filed an appeal with the Hawai`i Supreme Court after Judge Joseph E. Cardoza determined that plaintiffs must seek relief through the impeachment provisions of Section 13-13 of the Revised Charter of the County of Maui, and dismissed plaintiffs' lawsuit.

The County Clerk was dismissed from the DeJetley case and did not participate in the appeal.

In brief, the Hawai`i Supreme Court in DeJetley held that plaintiffs may pursue a declaratory judgment action under Section 632-1, Hawai`i Revised Statutes, against Mr. Kaho`ohalahala, and may amend their complaint to include quo warranto relief (in other words, a civil action challenging the authority by which a public office is held). The Court vacated the judgment entered by Judge Cardoza and remanded (in other words, sent back) the case to the

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Second Circuit Court for further proceedings consistent with the Supreme Court's decision.

As discussed in my November 16, 2009 letter, a decision of the Hawai`i Supreme Court does not take effect until the Court issues a judgment on appeal. As also discussed, the Court does not usually enter a judgment on appeal until after a ten-day period for the filing of motions for reconsideration has expired.

In rendering its decision in DeJetley, the Hawai`i Supreme Court did not declare the Lana`i Council seat vacant, nor did the Court deprive Mr. Kaho`ohalahala of seat, voice, or vote on the Council. The Court did not invalidate any past Council action or prohibit or limit the Council from acting upon pending or future matters.

In deciding DeJetley, the Hawai`i Supreme Court did not make any determination as to whether Mr. Kaho`ohalahala was a resident of Lana`i for purposes of public office residency requirements. In fact, the Court noted:

It does not appear in the record that it has been factually determined whether Kaho`ohalahala was a resident of Lana`i for purposes of his public office residency requirement. In Dupree, this court affirmed the Board's decision that Kaho`ohalahala was not a resident of Lana`i for purposes of voter registration.... But, the issue of whether Kaho`ohalahala was actually a resident of Lana`i for public office purposes appears to be unresolved on any factual basis.<sup>1</sup>

As a result of the Court's decision to remand the case, Judge Cardoza will presumably have to decide whether Mr. Kaho`ohalahala is a Lana`i resident for public office purposes.

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<sup>1</sup> DeJetley v. Kaho`ohalahala, No. 29919, slip op. at n.36 (Haw. Feb. 10, 2010).

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I have no information at this time regarding the possible scheduling of further proceedings before Judge Cardoza.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brian T. Moto". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

BRIAN T. MOTO  
Corporation Counsel

BTM:lak

c: Jane E. Lovell, Deputy Corporation Counsel  
Jeffrey T. Kuwada, County Clerk  
Webpage