



DEPARTMENT OF THE ATTORNEY GENERAL

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For Immediate Release
August 26, 2016

News Release 2016-58

**COURT UPHOLDS GOVERNOR IGE'S APPOINTMENT
OF TOM GORAK TO THE PUBLIC UTILITIES COMMISSION**

HONOLULU – State circuit court Judge Edwin C. Nacino ruled today that Governor Ige's appointment of Tom Gorak to the Public Utilities Commission (PUC) was valid.

Commissioner Gorak had been appointed on an interim basis to the PUC after Commissioner Mike Champley's term expired on June 30, 2016. Commissioner Gorak's interim appointment lasts only until the next legislative session ends in May 2017, unless he is confirmed for a full-term appointment by the Senate before then. Former PUC Commissioner Hermina Morita sued Commissioner Gorak claiming Governor Ige's appointment was improper.

According to the Hawaii Constitution, the governor may fill vacancies in certain public offices under the constitution's interim appointments provision. Article V, section 6 of the Hawaii Constitution provides that "when the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall expire, unless such appointment is confirmed, at the end of the next session of the senate."

Attorney General Doug Chin said, "The interim appointments authority is part of Hawaii's constitution. Today's ruling affirms Governor Ige's exercise of that authority."

The case turned on whether there was a "vacancy" for purposes of the interim appointments provision of the constitution when Commissioner Champley's term expired on June 30, 2016. Judge Nacino heard arguments on the case yesterday and today ruled entirely in Commissioner Gorak's favor.

The circuit court will enter a final order and judgment shortly. The petitioner may elect to appeal within 30 days after the judgment is entered.

A copy of today's minute order is attached.

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For more information, contact:

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CIVIL MOTIONS CALENDAR
FIRST CIRCUIT
FIFTEENTH DIVISION

DATE: THURSDAY, AUGUST 25, 2016
JUDGE: HONORABLE EDWIN C. NACINO, JUDGE PRESIDING
CLERK: BERYL PARRILLA
REPORTER: SHARON HULIHEE
BAILIFF/LAW CLERK: SEAN C WONG

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9:00 A.M.

1SP 16-1-000251 HERMINA M MORITA
VS.
THOMAS GORAK ET AL

MARK J BENNETT
FOR HERMINA M MORITA

- 1) RESPONDENT/DEFENDANT THOMAS GORAK AND DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT (J. MOLAY)
- 2) PETITIONER/PLAINTIFF HERMINA M. MORITA'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT (M. BENNETT)

COURT REPORTER: SHARON HULIHEE

9:14 AM: COURT CONVENED W/APPEARANCES BEING MADE BY MARK BENNETT AND MATEO CABALLERO WITH PETITIONER/PLAINTIFF HERMINA MORITA; JOHN MOLAY AND DEIRDRE MARIE-IHA WITH RESPONDENT/DEFENDANT THOMAS GORAK; RICHARD WADA, KRISLEN MAUNAKEA AND WINTEHN PARK FOR HAWAII STATE SENATE (AS AMICUS CURIAE).

9:14 AM: THERE BEING NO OBJECTIONS, THE COURT GRANTED THE APPLICATION OF EXTENDED COVERAGE.

9:15 AM: ARGUMENT BY MR. MOLAY.

9:30 AM: RECESS.

9:35 AM: COURT RECONVENED.

9:35 AM: ARGUMENT BY MR. BENNETT.

10:00 AM: FURTHER ARGUMENT BY MR. MOLAY.

10:04 AM: COURT NOTED THAT THE PARTIES HAVE STIPULATED THAT COUNTS II AND IV WILL BE DISMISSED WITHOUT PREJUDICE. THE COURT TOOK THIS MATTER UNDER ADVISEMENT AND WILL RULE AS TO COUNTS I AND III, VIA MINUTE ORDER.

10:05 AM: MATTER CONCLUDED.

MINUTE ORDER: AUGUST 26, 2016

RESPONDENT/DEFENDANT THOMAS GORAK AND DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT AND PETITIONER-PLAINTIFF HERMINA M. MORITA'S

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CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT CAME ON FOR HEARING ON JULY 20, 2016. THE COURT INITIALLY TOOK THESE MATTERS UNDER ADVISEMENT.

BASED UPON THE STIPULATED FACTS, THE WRITTEN SUBMISSIONS (INCLUDING THE SENATE'S AMICUS BRIEF), THE ARGUMENT OF COUNSEL, AND THERE BEING NO GENUINE ISSUES OF MATERIAL FACT, THE COURT HEREBY GRANTS RESPONDENT/DEFENDANT THOMAS GORAK AND DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT AND DISMISSES COUNTS I AND III. THE COURT ALSO DENIES PETITIONER-PLAINTIFF HERMINA M. MORITA'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I AND III.

AS TO COUNT I, THE COURT ACCEPTS DEFENDANTS' ARGUMENTS WHICH INCLUDED THAT A VACANCY OCCURRED UPON THE EXPIRATION OF MR. CHAMPLEY'S TERM OF OFFICE. THUS, THE COURT FINDS GOVERNOR IGE'S INTERIM APPOINTMENT OF MR. GORAK WHEN THE SENATE WAS NOT IN SESSION TO BE VALID AND SUBJECT TO ALL OTHER LIMITATIONS FOUND IN ARTICLE V, SECTION 6, PARAGRAPH 5 OF THE HAWAII CONSTITUTION.

(***SEE PHASE A FOR CONTINUATION OF MINUTES***)

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PHASE A - CONTINUATION OF MINUTES

CONTINUATION OF MINUTES - PHASE A

REGARDING COUNT III, THE COURT IS NOT PERSUADED BY PLAINTIFF'S ARGUMENTS REGARDING STANDING AND FINDS THAT PLAINTIFF LACKS STANDING TO PURSUE THIS COUNT.

FINALLY, THE PARTIES STIPULATED THAT COUNTS II AND IV BE DISMISSED WITHOUT PREJUDICE.

MR. MOLAY TO PREPARE THE ORDER AS TO BOTH MOTIONS AND MR. BENNETT TO PREPARE THE STIPULATION FOR DISMISSAL OF COUNTS II AND IV. A COPY OF THIS MINUTE ORDER WAS TRANSMITTED TO MR. MOLAY, MR. BENNETT, AND MR. WADA VIA ATTORNEY COURT JACKET, ON AUGUST 26, 2016.

DATE: 08-26-2016 BY ORDER OF THE COURT: B. Parrilla CLERK