

IT IS FURTHER ORDERED that the parties are to confer, and on or before Friday, April 3, 2015, shall file a report indicating whether a telephonic hearing on the issue of setting an appropriate penalty is sufficient, or whether an in-court hearing is preferable or necessary.

IT IS ALSO FURTHER ORDERED that, if the parties prefer or require an in-court hearing, the time for such a hearing is set for Tuesday, May 5, 2015, at 2:00 p.m. at the FSM Supreme Court in Colonia, Yap.

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CHUUK STATE SUPREME COURT APPELLATE DIVISION

ALEXANDER (SANDER) R. NARRUHN,)	CSSC APPEAL NO. 03-2011
)	
Appellant,)	
)	
vs.)	
)	
CHUUK STATE ELECTION COMMISSION,)	
)	
Appellee.)	
)	
JOHNSON S. ELIMO,)	
)	
Real Party in Interest.)	
)	

ORDER DISMISSING APPEAL WITH PREJUDICE

Decided: April 17, 2015

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding
Hon. Brian Dickson, Temporary Justice*
Hon. Derensio Konman, Temporary Justice**

*Attorney at Law, Legislative Counsel, 12th Chuuk State Legislature, Chuuk State
** Attorney at Law, Directing Attorney Micronesia Legal Services Corporation, Chuuk Office

APPEARANCES:

For the Appellant:	Ben K. Enlet P.O. Box 1650 Weno, Chuuk FM 96942
For the Respondent:	Joses R. Gallen, Esq. Chuuk Attorney General Office of the Attorney General P.O. Box 1050 Weno, Chuuk FM 96942

Narruhn v. Chuuk State Election Comm'n.
20 FSM R. 36 (Chk. S. Ct. App. 2015)

For the Real Party in Interest: Johnny Meippen, Esq.
P.O. Box 705
Weno, Chuuk FM 96942

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HEADNOTES

Appellate Review – Decisions Reviewable

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Appellate Review – Decisions Reviewable; Elections

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Appellate Review – Decisions Reviewable

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Mandamus and Prohibition – When May Issue

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Mandamus and Prohibition – Procedure

A petition for a writ of mandamus will be dismissed when the named respondent is the Chuuk State Election Commission because it is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Director and Commissioners should have been named as respondents. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

* * * *

COURT'S OPINION

PER CURIAM:

Approximately three (3) years ago, on or about October 12, 2011, Appellant Alexander (Sander) R. Narruhn ("Appellant") filed a notice of appeal with a statement of issues ("Appeal") following the September 12, 2011 Chuuk State Supreme Court Trial Division's "Order Denying Petition" for a writ of mandamus. In essence, this appeal sought the same relief as the writ of mandamus for the Court to direct the Chuuk State Election Commission to announce (and conduct) a runoff election between the two highest vote-getters in the August 24, 2011 special election to fill the vacancy in the Governor's position.

Narruhn v. Chuuk State Election Comm'n.
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Per a review of the appellate record, no further action was taken by the Appellant. Thus, it is unclear whether the Appellant has abandoned prosecution of this action.

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM Intrm. 177, 178 (Chk. S. Ct. App. 2007). The Panel reviewed and noted the Chuuk State Court Trial Division's "Order Denying Petition." [Narruhn v. Chuuk State Election Comm'n, 18 FSM Intrm. 16 (Chk. S. Ct. Tr. 2011).] It further noted that Real Party in Interest, Johnson S. Elimo, took oath of office and had served as Governor of Chuuk State since August 2011 until April 2013. Real Party in Interest, Johnson S. Elimo, was re-elected in April 2013 as Governor and presently serves as Chuuk State Governor. A run-off election following the August 24, 2011 special election seems not possible.

Thus, the issues of the appeal at bar are mooted. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM Intrm. 442, 444 (App. 2003); FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

Nevertheless, the Panel has carefully reviewed and considered the Appeal. For the reasons that follow, the Appeal is dismissed with prejudice.

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus. The five elements are: (1) the respondent must be a judicial or other public officer, (2) the act to be compelled must be non-discretionary or ministerial, (3) the respondent must have a clear legal duty to perform the act, (4) the respondent must have failed or refused to perform the act, and (5) there must be no other adequate legal remedy available. In re Failure of Justice to Resign, 7 FSM Intrm. 105, 109 (Chk. S. Ct. App. 1995).

Here, the first element is not satisfied. The Chuuk State Election Commission is not a public officer – it is a public office. See Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015); Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 568 (Kos. S. Ct. Tr. 2002) (The Office of the Attorney General is not a public officer – it is a public office). In order to meet the mandamus requirement of a public officer, the Director and the Commissioners should have been named as a respondent. Therefore, on this basis alone, the Appeal must be dismissed.

Based on the foregoing, the Appeal is DISMISSED WITH PREJUDICE.

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