

Friday, October 27, 2017

TO: Christian Molina,
FROM: Jose Toscano, Director of Campus Life
SUBJECT: Appeal

The Online Election for College of Arts, Science, & Education (CASE) Senators was held on April 18-19, 2017, because it was delayed due to a ballot issue. On April 19, 2017, Christian Molina filed a complaint with the Elections Board against FIYOU party (Complaint), alleging that Jose Sirven and Sebastian Cajamarca, members of the FIYOU party, “were speaking to students [around campus] and approaching them with ipads for the purpose of taking the mobile polling location to the student and soliciting their vote.” The Elections Board has never reviewed this Complaint. The CASE Election results were announced.

On April 21, 2017, FIUNITED filed a writ of certiorari claiming, among other things, that the CASE Election results were announced without addressing the Complaint, making it a pending grievance.¹ On May 5, 2017, the SGC-MMC Supreme Court issued an opinion on the Plaintiff’s claims, including the CASE Election violation. As explained by the Vice President for Student Affairs in his May 23, 2017 email, there was a flaw with the action of the SGC-MMC Supreme Court ruling on the CASE Election: *i.e.*, the SGC-MMC Supreme Court failed to follow its recent precedent for recusing itself when there is an obvious conflict. *See e.g., Sirven v. SGA-MMC Supreme Court.* In this instance, the conflict occurred because the brother of the Chief Justice of the SGC-MMC Supreme Court filed the Complaint. Because the SGC-MMC Supreme Court should have recused itself, the Vice President for Student Affairs referred the

¹ Article VI, Sec. 6.06 (g)(i)(7) of the SGC-MMC statutes states that “[a]ll pending grievances regarding elections must be resolved prior to the results of the General/Special Election being announced.”

case involving the CASE Senators to the Office of Student Conduct and Conflict Resolution to hold a hearing on issues raised in the writ.²

On August 18, 2017, the Office of Student Conduct and Conflict Resolution (SCCR) (acting as the Elections Hearing Board) held a hearing to determine if the CASE Senators violated the Elections Code. After hearing the case, the acting Elections Hearing Board ruled that there was no violation of the Elections Code because it was unclear what regulations governed this special election. On August 21, 2017, Molina filed an appeal in regards to the aforementioned ruling (Appeal). In his Appeal, Molina alleges: (i) a violation of Florida Government in the Sunshine Laws; (ii) a violation of Student Due Process Rights as defined in the SGA Constitution because he was unaware of the procedure to be followed at the hearing; and (iii) a violation of the SGC-MMC Statutes and the SGC-MMC Elections Code because there was no quorum. For these reasons, Molina asks that the ruling be overturned.

Review

As the Director of Campus Life, I have the authority to review appeals for election violations. *See* Article VI, Sec. 6.06(g)(i)(2) of the SGC-MMC Statutes.

I. Violation of Florida Government in the Sunshine Laws

According to Molina, the hearing in question was held on Friday, August 18, 2017 at 9:00 a.m. However, the details of the hearing were only posted later in the evening of Thursday, August 17, 2017. Based on Molina's calculations this "would leave only approximately 12 non-business hours and 1 business hours [sic] before the hearing in question."

In the past if the complaint was filed during the election, the Elections Board would notify parties as provided in the Elections Code, specifically Article VI, Sec. 6.06(g)(i)(2) of the SGC-MMC Statutes. Taking into consideration the fact that Molina filed the complaint with the Elections Board during the CASE election, the Acting Elections Board should have followed the notice requirements outlined in the Article VI, Sec. 6.06(g)(i)(2)(a) of the SGC-MMC Statutes, specifically, this:

² Per Article VIII, Sec. 8.04(a)(iii) of the SGC-MMC Statutes.

Both the complainant and defendants [sic] must receive written notice of the time and location from the Elections Commissioner **no less than twenty-four (24) hours before a hearing is conducted.**

Given that such notice was posted on Thursday, after the normal business hours, and the hearing was held on Friday morning, I agree that the notice given in this case was not proper. To cure the improper procedure, the case needs to be reheard. *C.f., Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002).

II. Violation of Student Due Process Rights as defined in the SGA Constitution

Molina further asserts that he was not made aware of the hearing's procedure prior to the hearing itself. Molina also claims that, although the SGA Constitution offers the right to a speedy and public hearing, he was "certainly offered a very speedy hearing, but not offered a public hearing."

The SGC MMC Statutes provide that if the complaint was filed during the election, the Elections Board would first review the complaint to determine whether there should be a hearing. See Article VI, Sec. 6.06(g)(i)(2) of the SGC-MMC Statutes. However, the SGC-MMC Statutes do not, set forth the procedure to be followed during such hearing. In practice, once it was decided that a hearing would be held, the Elections Board would decide a case based on the evidence contained in the complaint and that has been provided to the Elections Board. In this case, the acting Elections Board should follow that same procedure when it hears the case on remand and also accept any written evidence from the defendant(s).

Therefore, to avoid any possible confusion and new precedents, I recommend that the acting Elections Board follows the same process as the Elections Board does while hearing the complaints filed during the election.

III. Violation of the SGC-MMC Statutes and the SGC-MMC Election Code

Lastly, Molina states that the acting Elections Hearing Board did not have a quorum since "only three (3) members were present for the hearing." Molina cites Article VI Section 6.02(e)(i)5 of the SGC-MMC Statutes, which provides that the elections board is required to have a minimum of five (5) members. However, Molina misreads the prior precedent of *Devondra*

Shaw (2016). That opinion did not address the number of people necessary to constitute a quorum. Instead, it held that, if a body acted without a quorum, the action was null and void.

Neither SGA Constitution nor the SGC-MMC Statutes define the term “quorum.” However, Robert's Rules of Order,³ states in its section on committees and boards, “[t]he quorum of the committee of the whole is the same as that of the assembly.” Pursuant to Robert's Rules of Order, quorum of the assembly “is a majority of the number enrolled as attending the convention, not those appointed. The quorum of any other deliberative assembly with an enrolled membership (unless the by-laws provide for a smaller quorum) is a majority of all the members.”

There is a precedent for recognizing that 3 out of 5 members of the SGC-MMC Supreme Court constitute a quorum. *See, e.g., Santti v. Santti*. Therefore, when the acting Elections Hearing Board acted with three out of five members present, there was a quorum.

Conclusion

Because the law provides that any Sunshine Law irregularities and/or due process errors can be cured with another hearing action done according to the law, I remand this case to the acting Elections Hearing Board (i.e., SCCR) for further proceedings consistent with this opinion.

Cc: Christian Molina, Lower Senator
Hiram Duarte, CASE
Nicholas LaRoz, CASE
Dariana Uliver, CASE
Cassidie-Anne Toussaint, CASE
Paulo Vargas, CASE
Antonia Passalacque, CASE
Jose Toscano, Director, Campus Life

³ As per the SGC-MMC Statutes: “All SGC-MMC meetings shall be run in accordance with the latest edition of Robert’s Rules of Order.”