

## Summary Notes on SCC Rules Committee Opinion on OCC Jurisdiction to Hear Complaint:

1. The first paragraph of the complaint identifying the accusation(s) is shown below.
2. The Subject of complaint is accused of violating two bylaws:
  - a. LGBT bylaw Article Five Section 3
  - b. DPH bylaw Article V Section 7A, Paragraph 2
3. The state parliamentarian opined DPH Bylaws Article I Section 8 applies *only* to violations of the DPH Constitution, Bylaws or Platform – *not* Caucus bylaws or County bylaws.
4. At the November 24 meeting, the OCC voted to request an opinion from the SCC Rules Committee whether OCC had jurisdiction to hear the complaint under DPH Bylaws Article I Section 8.
5. The opinion of the Rules Committee, dated December 28, was that the complaint should be heard by the OCC, in accordance with DPH Bylaws Article I Section 8 (see below).
6. However, the Rules Committee further opined if the chairs interpret the complaint as being against the *Caucus*, the jurisdiction question should be revisited. If the chairs interpret the complaint as being against the *Accused Member* acting in his capacity as *Chair of the Caucus*, then the complaint should be heard by the OCC, in accordance with DPH Bylaws Article I Section 8.
7. It was clear that the Complainant intended the Subject of the complaint to be against the Accused Member, acting in his capacity as Chair of the Caucus, and not against the Caucus as a whole.

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September 10, 2018

Mr. James Logue  
Secretary, O'ahu County Democrats  
P.O. Box 1973  
Honolulu, Hawai'i 96806

Re: Complaint against [REDACTED]

### Introduction

This is a complaint against [REDACTED] for violating LGBT Caucus Bylaws, Article Five - Membership, Section 3 (Member Voting Rights), and of DPH bylaws Section 7A, paragraph 2, (Failing hold democratic election and failing to give public notice of meeting to members on neighbor islands and to O'ahu members unable to attend in person) of the August 21 meeting of the LGBT Caucus for which elections were on the agenda.

TO: Chair, Oahu County Committee  
CC: Chair, Democratic Party of Hawai'i  
FROM: Standing Committee on Rules, State Central Committee  
RE: Opinion on Original Jurisdiction of Complaints  
DATE: December 28, 2018

The State Central Committee (SCC) Standing Committee on Rules (Committee) provides this opinion at the request of the Oahu County Committee (OCC). The request is in connection to a complaint alleging that the LGBT Caucus Chairperson conducted a caucus officer election<sup>1</sup> in violation of caucus and Democratic Party of Hawai'i (DPH) bylaws. On November 24, 2018, the OCC passed the following two motions:

1. Request from the SCC Rules Committee an advisory opinion on whether the complaint regarding the LGBT Caucus election is subject to Article I, Section 8 of the Democratic Party of Hawai'i (DPH) Bylaws.
2. If the OCC does not receive the requested opinion by the next OCC General Meeting,<sup>2</sup> the OCC will move forward with the complaint.

Article 1, Section 8 of the DPH Bylaws discusses the expulsion, reprimand, or censure of an individual DPH member. Specifically, this opinion will refer to Article 1, Section 8B of the DPH bylaws. This opinion will only address the original jurisdiction of the OCC versus the SCC in hearing this complaint. This opinion will not address the contents, merits, or details of the complaint. Therefore, this opinion will not provide any recommendations as to disposition of the complaint other than original jurisdiction.

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<sup>1</sup> Conducted on August 21, 2018

<sup>2</sup> The next OCC meeting is scheduled for January 26, 2019

The central question considered by the Committee is whether the State Central Committee or the Oahu County Committee has original jurisdiction over complaints regarding caucuses. In determining original jurisdiction, the Committee reviewed Article 1, Section 8B, paragraphs 2, 5, and 7 of the DPH bylaws. These sections state in relevant part:

- (2) The complaint shall be submitted to the County Secretary.
- (5) The County Chairperson shall refer each complaint to the County Rules Committee or a special committee to investigate the charges (the "Investigation Committee"). The referral of complaint shall be reported to the County Committee at its next meeting and shall be recorded in the minutes.
- (7) The County Committee shall place the complaint on the agenda at its next meeting following receipt of the Investigation Committee Report or by agreement with the accused member at some other time.

An ambiguity must exist before there is any occasion for interpretation.<sup>3</sup> The Committee sees no ambiguity in the above-referenced portions of the DPH governing documents, although it acknowledges that there is currently no specific language relating to violations perpetrated by caucuses, which are statewide organizations. The DBH Bylaws are clear that a County Committee has jurisdiction in disciplinary procedures including investigation, holding a hearing, and determining the appropriate action regarding the accused person's membership.<sup>4</sup> The Bylaws also state that "a member expelled, reprimanded, or censured may appeal the decision of the County Committee to the State

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<sup>3</sup> RONR (11<sup>th</sup> ed.), p. 588, ll. 28-29

<sup>4</sup> DPH Bylaws, Article I, Section 8B (5) & (7)

Central Committee.<sup>5</sup> The committee makes no interpretation other than the plain-text meaning of the language. The Committee acknowledges that it is the responsibility of the County Secretary and the County Chair to process complaints against DPH members. Therefore, the county of residence for the accused has original jurisdiction. Whether or not a violation occurred is subject to the findings of the fact-finder followed by consideration by, in this case the OCC.

Alternatively, the DPH and the OCC chairpersons can consider whether the complaint addresses the actions of the caucus or the actions of one individual member. If the chairpersons conclude that the complaint addresses the action of the caucus, the matter of original jurisdiction should be revisited. If the chairpersons conclude that the complaint addresses the actions of one individual member, then the complaint should be subject to Article 1, Section 8, of the DPH bylaws.

The Committee discussed this matter at length on December 1, 2018. During the discussion, Committee members agreed that the DPH governing documents do not provide a method for the state party to have original jurisdiction to process complaints against individual DPH members. It has been standard practice for county chairs to process complaints alleging a violation of state party rules. The Committee sees no reason to break from this practice. However, several members did suggest additions to the Bylaws be considered at the next convention to address violations perpetrated by caucuses as a whole, rather than individual members. Although caucuses are statewide organizations, the

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<sup>5</sup> DPH Bylaws, Article I, Section 8B (8)

complaint alleged a violation by an individual DPH member. Violations of state party rules by individual members are subject to Article 1, Section 8, of the DPH bylaws.

Should the state party exercise original jurisdiction to hear this complaint, there would be no process, guidance, or structure for the proceedings. There would be nothing to govern the rights of the complainant and the accused.

The Committee opines that due to the process described in Article 1, Section 8B, paragraphs 2, 5, and 7 of the DPH bylaws, original jurisdiction for a complaint alleging a violation of state party rules by one individual resides with the county of residence of the accused. At the completion of the county process, the accused shall retain the right to appeal in accordance with Article I, Section 8B (8) of the DPH bylaws.

Applicability: This opinion is valid as of the date of this writing. This opinion could become invalid by subsequent amendments to the DPH governing documents.

The following members of the Committee submit this opinion.

Ann Freed  
Charles Grigsby  
Leimomi Khan  
Maya Parish  
Cynthia Rezentos  
Carlos A. Santana  
Heidi Schemp

The following members of the Committee have voluntarily recused themselves from this matter.

Michael Golojuch, Sr.  
Jeff McKnight