

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JUANITA M. TAISACAN)	CIVIL ACTION NO. 99-0719
)	
Plaintiff,)	ORDER GRANTING
)	MOTION TO DISMISS
v.)	
)	
BOARD OF ELECTIONS,)	
)	
Defendant.)	
)	

I. INTRODUCTION

This matter came before the court on December 30, 1999, on Defendant's motion to dismiss the amended complaint. Assistant Attorney General Robert Goldberg appeared on behalf of the Defendant, and Joseph A. Arriola appeared for the Plaintiff. The court, having reviewed the briefs, exhibits, and affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

On November 29, 1999, Plaintiff, a write-in candidate in the November 6, 1999, general election for the Rota Board of Education representative, filed a verified complaint contesting the election results. Taisacan, asserted that the Board of Elections ("BOE") erred in the calculation of votes "sufficient to change the final result of the election as to any person who has been declared elected." Pl. Compl. at 2. Defendant filed a motion to dismiss.

On December 10, 1999, Taisacan filed an amended complaint adding an additional sentence [p. 2] to the ground for contesting the election.¹ On December 22, 1999, this court issued an order giving Defendant leave to file a motion to dismiss the amended complaint as the filing of the

¹ This sentence did not add a new claim but clarified the original claim.

FOR PUBLICATION

amended complaint mooted Defendant's original motion to dismiss. Defendant then filed a motion to dismiss the amended complaint on December 22, 1999. Plaintiff filed an opposition to which Defendant replied.

III. ISSUE

Whether Plaintiff's amended complaint should be dismissed.

IV. ANALYSIS

An election contest is a method to insure the honesty and validity of elections. Under 1 CMC § 6421 et seq., a special statutory proceeding to contest elections is provided, and as such, its requirements are generally to be treated as jurisdictional. Because the procedure for contesting an election is purely statutory the contestant must comply with the statutory requirements to invoke jurisdiction over the contest. *See, e.g., Walker v. Wrightson*, 374 A.2d 570, 572 (Del. Super. Ct. 1977) (holding that because election contests are statutory creations and not derived from common law, election contest petitions normally must strictly comply with statutory requirements).

When a voter contests any election he must file a written complaint with the court. *See* 1 CMC § 6423(a). "The contestant shall verify the statement of contest, and shall file it within seven days after the discovery of the fact supporting the contest, except that no complaint may be filed over 30 days after the declaration of the official results." 1 CMC § 6423(b). Thus, the statute clearly states that the contestant must verify the substance of the contested facts. Here, Plaintiff failed to verify her amended complaint. Plaintiff has not attached a statement of verification, a declaration made under the penalty of perjury, or even an affidavit to her amended complaint. Thus, Plaintiff fails to comply with the statutory requirements of an election contest.² [p. 3]

² Plaintiff contends that her amended complaint is verified because it relates back to her original verified complaint. Under Com. R. Civ. P. 15(c), "[a]n amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action,
or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted . . ."

Amended pleadings add matters to or withdraw matters from the previous pleadings to correct or change them. An

Further, Plaintiff's amended complaint fails to name a real party in interest. Plaintiff names the BOE but does not name the winning candidate. The court, after reading the controlling statutes and past election contests, determines that the winning candidate is the proper defendant. For example, 1 CMC § 6422(a), states that “[n]o irregularity or improper conduct in the proceedings of the election may void an election result, unless the irregularity or misconduct resulted in a defendant being declared either elected or tied for election.” The BOE cannot be “declared either elected or tied for election.” The only person that can satisfy this statutory language is the winning candidate.

Also, under 1 CMC § 6423(d), the BOE, upon receiving the verified complaint, “shall cause to be delivered to the defendant a copy of the complaint filed by the contestant.” Thus, the statute provides the winning candidate with the right to be informed of the substance of the contested facts, which Plaintiff is relying on to defeat the winning candidate’s apparent right to hold office. Here, there is no defendant that the BOE can serve with a copy of the complaint. The winning candidate has not been made a party to the suit and therefore cannot be informed of the contest or respond. Because the winning candidate is the party with a real interest in, and adversely affected by, the outcome of any election contest, the winning candidate is the proper defendant.

Plaintiff cannot now amend the amended complaint to add the proper party. Under Com. R. Civ. P. 15(a), “[a] party may amend the party’s pleading once as a matter of course . . . Otherwise, a party may amend the party’s pleading only by leave of court or by written consent of the adverse party. . . .” The court will not grant Plaintiff leave to amend the complaint again.

The time for instituting a contest in the case at hand has expired. Under § 6423(b), a [p. 4] contestant has seven days after discovering the grounds for challenging the election results to file a

amended pleading supersedes the last pleading, which becomes ineffective. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir 1997); *Wellness Comm. v. Wellness House*, 70 F.3d 46, 49 (7th Cir. 1995) (stating that the amended pleading is a complete substitute, and the former pleading no longer performs any function). “The original pleading cannot be used to cure defects in the amended pleading, unless the relevant portion is specifically incorporated in the new pleading.” *Wellness Comm.*, 70 F.3d at 49. Thus, Plaintiff’s amended complaint replaced her original verified complaint. The verification of the original complaint no longer “performs any function” and is waived by the superseding complaint.

complaint. No complaint may be filed over thirty days following the declaration of official results.³ Here, the overall thirty-day period in which contestants could file complaints ended December 12, 1999, as the BOE declared the official results of the election on November 12, 1999.

Thus, the statute explicitly provides for expedience in disposing of election contests. *Cf. Taimanao v. Super Ct.*, 4 N.M.I. 94, 97 (stating that “[t]he purpose of time limitations within which to conduct election contest hearings . . . is to ensure the speedy adjudication of election contests”). To allow further amendment of the complaint after the expiration of the filing deadline, would be against the policy of the statute, which is to insure that election contests be instituted and disposed of speedily. *See, e.g., Kraft v. King*, 585 N.E.2d 308, 310 (Ind. Ct. App. 1992) (holding that petition to contest an election may not be amended to conform with the jurisdictional requirements of the statutes after the original filing deadline has expired). Therefore, to amend Plaintiff’s complaint to add a new party would extend the period to file an election contest beyond that prescribed by the election contest statutes. This court will not allow this action. The statutes are unequivocal and should be adhered to accordingly.

V. CONCLUSION

Therefore, for the reasons stated above, Defendant’s motion to dismiss Plaintiff’s amended complaint is GRANTED.

SO ORDERED this 5 day of January, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge

³ For example, if Plaintiff discovered grounds for challenging the election on the twenty-eighth day after the declaration of the official results, Plaintiff would have the twenty-ninth and the thirtieth day to file her complaint. Her seven days would be shortened by the statute’s overall thirty-day limitation. Plaintiff fails to allege the date on which she discovered the grounds to contest the election. Plaintiff filed her complaint on November 29, 1999. Giving Plaintiff the benefit of the doubt, the court will assume that Plaintiff’s complaint is timely in that she discovered the alleged errors on November 22, 1999. Further, the BOE must deliver to the defendant a copy of the complaint within five days of receipt of the verified complaint. *See* 1 CMC § 6423(d). Here, this action would have been completed within the thirty day period.