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STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation  
District Use Application (CDUA) HA-3568 for  
the Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Ka'ohē Mauka, Hāmākua,  
Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT  
HILO'S **OPPOSITION TO TEMPLE OF  
LONO'S MOTION TO FILE MOTION  
OUT OF TIME [DOC. 179];**  
CERTIFICATE OF SERVICE

**THE UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO TEMPLE OF LONO'S  
MOTION TO FILE MOTION OUT OF TIME [DOC. 179]**

**I. INTRODUCTION**

The Temple of Lono ("*Temple*") seeks to file a *sur-reply* memorandum (*i.e.*, a second response, as Doc. 179) to the opposition brief [Doc. 135] of the University of Hawaii at Hilo ("*University*"), under the guise of a belated "motion," *after the Temple already has filed a reply to the University's opposition* [Doc. 176]. There is no basis to allow two extra briefs when the original deadlines called for only a motion, an opposition and then argument at the hearing (which the Temple had full and fair opportunity to state its positions on the record). The University opposes the Temple's motion to file a *second response*, however it is labeled, because: (1) the Temple's filing a reply to the University's opposition on August 4, 2016

already violated the **August 1, 2016** deadline for “[r]esponses” set in Minute Order No. 13; (2) filing a *disguised sur-reply* is not proper based on the clear, unqualified deadlines set in Minute Order No. 13; and (3) there is *no good cause* to allow the Temple to file the purported motion, over *three weeks after the motions deadline*. To the extent that the Temple will try to argue this pleading is simply an effort to seek reconsideration, that is premature since no formal order has been entered. Thus, the Temple’s motion should be denied.

## II. ANALYSIS

The Hearing Officer set a procedure and a schedule for pre-hearing motions and *all* “[r]esponses” to those motions. Minute Order No. 13 [Doc. 115], at 6 part II (filed July 21, 2016). Under that order, parties could file motions by **July 18, 2016**, “[r]esponses” were to be filed by **August 1, 2016**, and no responses (including replies) after August 1, 2016 were allowed. *Id.*<sup>1</sup> On July 18, 2016, the Temple filed a motion for partial summary judgment [Doc. 78]. On August 1, 2016, the University opposed that motion [Doc 135]. *On August 4, 2016, without leave of the Hearing Officer, the Temple filed an improper reply [Doc. 127]*. Evidently, the Temple (or its counsel representative) thinks its “[r]esponses” do not include its reply or its proposed sur-reply.

The Temple already has responded to the University’s opposition in writing once [Doc. 176],<sup>2</sup> albeit in plain violation of the August 1, 2016 “[r]esponses” deadline. *See* Minute Order No. 13, at 6. The Temple was then given a full opportunity to state anything further on the

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<sup>1</sup> The Order’s August 1, 2016 deadline covered, inter alia, “[d]eadline for filing Responses to pre-hearing motions.” Order No. 13 [Doc. 115], at 6 part II.

<sup>2</sup> The Temple admits: “Although *there was no schedule for filing a reply*, the Temple filed a partial reply that addressed the attack. DOC-176.” Temple Mem. at 2 (emphasis added). Minute Order No. 13 used “[r]esponses.” *Id.* at 6. “Responses” includes *replies*. The Temple Appears to be arguing that it can avoid a deadline for “[r]esponses,” but not specifically “replies,” to mean that the Temple could file a “reply.” Even so, any further brief is clearly unwarranted under the rules, order or the oral positions taken at the hearing.

record at the hearing, which it did. Yet on August 5, 2016, the Temple filed a motion to file a "motion out of time." The exhibit attached to that motion (*i.e.*, Exhibit 2), demonstrates that the requested briefing is primarily an expanded version of the Temple's improper reply [Doc. 176]. No substantive basis for that new brief is presented other than the Temple's efforts to misinterpret and inflame the University's position that the Temple's initial motion was baseless.

The Temple is offended by the University's opposition [Doc. 135].<sup>3</sup> The Temple wants to respond, *yet again*, to the University's opposition which addressed the Temple's improper efforts to make this proceeding about the free exercise of its religion, by carefully ignoring controlling contrary case law on the free exercise and establishment clauses of the United States and Hawaii Constitutions. *See* University's Opp. [Doc. 135] (substantiating same). Per Minute Order No. 13, "[r]esponses" (including replies) after August 1, 2016, are improper. Additional sur-replies after August 1, 2016 should be doubly so. Yet, the Temple asks for a third chance to respond to the University's opposition, after its reply brief and further argument at the hearing, by casting a sur-reply as a "motion out of time," and then asking to file that disguised sur-reply *over three weeks* after the motions deadline has passed, and over one week after the "[r]esponses" deadline has passed. The Hearing Officer should enforce the unqualified bar against "[r]esponses" (including replies) after August 1, 2016 and, even more so, for any disguised sur-replies after that deadline. There is no exception to Minute Order No. 13's "[r]esponses" deadline for instances where: (1) a party claims offense or takes umbrage at wording in an opposition; *or* (2) a religious entity seeks to restate the relevancy of its creed that has been challenged fairly and firmly as unconstitutional in the University's opposition brief.

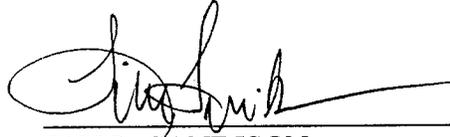
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<sup>3</sup> The Temple (falsely) characterizes the University's opposition as "libelous diatribe." *See* Temple Mot., Ex. 2 [Mem.] at 1.

**III. CONCLUSION**

For these reasons, the University's position is that the proposed motion is improper and violates the existing deadlines; or otherwise it is a premature motion to reconsider submitted before any actual order has been filed.

DATED: Honolulu, Hawai'i, August 10, 2016.



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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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DATED: Honolulu, Hawai'i, August 10, 2016.

A handwritten signature in black ink, appearing to read 'Ian L. Sandison', written over a horizontal line.

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