

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721
(808) 936-4428
lanny.sinkin@gmail.com
Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO MOTION TO**
The Thirty Meter Telescope at the Mauna) **STRIKE UNIVERSITY OF HAWAI'I AT**
) **HILO'S OPPOSITION TO TEMPLE OF**
) **LONO'S MOTION FOR SUMMARY**
) **JUDGMENT (DESECRATION)**
) **FILED SEPTEMBER 17, 2016 [DOC-**
Kea Science Reserve, Kaohe Mauka,) **264]; MEMORANDUM; COS**
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

**TEMPLE OF LONO MOTION TO STRIKE UNIVERSITY OF HAWAI'I AT HILO'S
OPPOSITION TO TEMPLE OF LONO'S MOTION FOR SUMMARY JUDGMENT
(DESECRATION) FILED SEPTEMBER 17, 2016 [DOC-264]**

On September 17, 2016, the Temple of Lono filed its Motion for Summary Judgment (Desecration) [DOC-264].

On February 22, 2017, the University of Hawai'i at Hilo filed its opposition to the Temple's motion.

The Temple herein moves to strike the University's opposition.

DATED: Kurtistown, Hawai'i, February 22, 2017

_____/s/_____
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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation) **TEMPLE OF LONO MEMORANDUM**
District Use Permit (CDUP) (HA-3568 for) **IN SUPPORT OF MOTION TO**
The Thirty Meter Telescope at the Mauna) **STRIKE UNIVERSITY OF HAWAI'I AT**
Kea Science Reserve, Kaohe Mauka,) **HILO'S OPPOSITION TO TEMPLE OF**
Hamakua District, Island of Hawai'i) **LONO'S MOTION FOR SUMMARY**
TMK (3) 4-4-015:009) **JUDGMENT (DESECRATION), FILED**
) **SEPTEMBER 17, 2016 [DOC-264]**
)
_____)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO TEMPLE OF LONO'S
MOTION FOR SUMMARY JUDGMENT (DESECRATION),
FILED SEPTEMBER 17, 2016 [DOC-264]**

I. INTRODUCTION

On September 17, 2016, the Temple of Lono filed its Motion for Summary Judgment (Desecration) ("Mot.")

On February 22, 2017, the University of Hawai'i at Hilo filed its opposition to the Temple's motion ("Opp.")

The Temple herein moves to strike the University's opposition.

II. ARGUMENT

A. The University Motion is filed in violation of the administrative rules.

Hawaii Administrative Rules ¶13-1-34 Motions states:

(a) ... The presiding officer shall set the time for filing all motions **and opposing memorandum.**”

(emphasis added)

At no time since the filing of the Temple’s motion for summary judgment, DOC-264, has the presiding officer ever set a time for the filing of a memorandum in opposition to that motion.

With no time set for the filing of an opposition, the University’s opposition is filed without proper leave and, therefore, premature. The opposition should be struck.

B. Alternatively, the University delay in filing its opposition is tantamount to a default

If there is somehow the presumption that an opposition could be filed without permission of the hearing officer, then surely waiting more than five months to file such an opposition is tantamount to defaulting. Hawaii

Administrative Rules ¶13-1-34 Motions. states:

(c) Failure to serve or file ... [a] **memorandum in opposition to a motion** ... shall be deemed a **waiver of objection** to the granting or denial of the motion.

(emphasis added)

C. The opposition filed is simply further proof of the systematic denial of the Temple’s due process rights .

The Applicant has to violate the rules in order to file an opposition to the Temple’s motion because the Hearing Officer has systematilly refused to take up motions filed by the Temple, including the motion at issue here. See e.g. DOC 324 and 371. The refusal of the presiding officer to take up motions filed by the Temple

is evidence of bias against the Temple and has reduced the Temple to second-class status as a party.

III. CONCLUSION

The University's opposition to the Temple's motion for summary judgment on the desecration issue is filed in violation of the administrative rules and long after any reasonable time for such a pleading to be filed. The opposition should be struck.

DATED: Kurtistown, Hawai'i, February 22, 2017

_____/s/_____
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Lay representative for Temple of Lon

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FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Permit (CDUP) HA-3568 for) **CERTIFICATE OF SERVICE**
The Thirty Meter Telescope at the Mauna)
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the **TEMPLE OF LONO MOTION TO STRIKE UNIVERSITY OF HAWAII AT HILO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT (DESECRATION), FILED SEPTEMBER 7, 2016** was served on the following parties by email on February 22, 2017:

Michael Cain <michael.cain@hawaii.gov>, Office of Conservation & Coastal Lands <dlnr.maunakea@hawaii.gov>, Kealoha Pisciotta-Keomailani Von Gogh <keomaivg@gmail.com>, Clarence Ching <kahiwaL@cs.com>, Uncle Kalani Flores <ekflores@hawaiiantel.net>, Pua Case <puacase@hawaiiantel.net>, cordylinecolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <bianca@kahea.org>, Ian Sandison <isandison@carlsmith.com>, tluikwan@carlsmith.com, John P. (Pete) Manaut <jpm@carlsmith.com>, Lindsay N. McAneeley <lmcaaneeley@carlsmith.com>, T. Shinyama' <RShinyama@wik.com>, douging@wik.com <douging@wik.com>, mehana kihoi <uhiwai@live.com>, Kahookahi Kanuha <kahookahi@gmail.com>, Joseph Camara <kualiic@hotmail.com>, lsa@torkildson.com <lsa@torkildson.com>, njc@torkildson.com <njc@torkildson.com>, leina'ala s <leinaala.mauna@gmail.com>, Maelani Lee <maelanilee@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, akulele@yahoo.com <akulele@yahoo.com>, s.tabbada@hawaiiantel.net <s.tabbada@hawaiiantel.net>, tiffniekakalia <tiffniekakalia@gmail.com>, Glen Kila <makakila@gmail.com>, Brannon Kealoha <brannonk@hawaii.edu>, hanahanai@hawaii.rr.com <hanahanai@hawaii.rr.com>, pohaku7@yahoo.com <pohaku7@yahoo.com>, Ivy McIntosh

<3popoki@gmail.com>, Kealamakia Jr. <mkealama@yahoo.com>, Patricia Ikeda <peheakeanila@gmail.com>, Yuklin Aluli <yuklin@kailualaw.com>, Dexter Kaiama <cdexk@hotmail.com>

and will be served by first class mail or hand delivery on February 23, 2017 to:

1. Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

2. Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

3. Michael Cain, Custodian of Records
Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, Hawai'i 96813

Dated: February 22, 2017

_____/s/_____
Lanny Alan Sinkin