

NO. 04-15306

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EARL F. ARAKAKI, et al.,)	D.C. No. CV-02-00139 SOM/KSC
)	District of Hawaii
Plaintiffs-Appellants,)	
)	
vs.)	
)	STATE DEFENDANTS-APPELLEES'
LINDA LINGLE, in her)	AND HHCA/DHHL DEFENDANTS-
official capacity as)	APPELLEES' MOTION FOR
GOVERNOR OF THE STATE OF)	EXTENSION OF TIME TO FILE
HAWAII, et al.,)	ANSWERING BRIEF;
)	DECLARATION OF GIRARD D.
State Defendants-Appellees,)	LAU; CERTIFICATE OF SERVICE
)	
HAUNANI APOLIONA, et al.,)	
)	
OHA Defendants-Appellees,)	
)	
MICAH KANE, et. al.,)	
)	
HHCA/DHHL Defendants-)	
Appellees,)	
)	
THE UNITED STATES OF)	
AMERICA, and JOHN DOES 1-10)	
)	
Defendants-Appellees,)	
)	
STATE COUNCIL OF HAWAIIAN)	
HOMESTEAD ASSOCIATIONS,)	
and ANTHONY SANG, SR.,)	
)	
SCHAA Defendants/)	
Intervenors-Appellees)	
)	

HUI KAKO' O' AINA)
HO' OPULAPULA, BLOSSOM)
FEITEIRA and DUTCH SAFFERY,)
)
HUI Defendants/Intervenors-)
Appellees.)
_____)

STATE DEFENDANTS-APPELLEES' AND HHCA/DHHL
DEFENDANTS-APPELLEES' MOTION FOR
EXTENSION OF TIME TO FILE ANSWERING BRIEF

DECLARATION OF GIRARD D. LAU

CERTIFICATE OF SERVICE

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STATE DEFENDANTS-APPELLEES' AND HHCA/DHHL
DEFENDANTS-APPELLEES' MOTION FOR
EXTENSION OF TIME TO FILE ANSWERING BRIEF

State Defendants-Appellees and HHCA/DHHL Defendants-Appellees hereby move, pursuant to Ninth Circuit Rule 31-2.2(b), for a 28-day extension of time to allow their Answering Brief to be filed August 3, 2004, for the reasons stated in the attached Declaration of Girard D. Lau.

DATED: Honolulu, Hawaii, June 8, 2004.

MARK J. BENNETT
Attorney General
State of Hawaii

GIRARD D. LAU
Deputy Attorney General
Attorney for State Defendants-
Appellees and HHCA/DHHL
Defendants-Appellees

DECLARATION OF GIRARD D. LAU

I am counsel of record for State Defendants-Appellees and HHCA/DHHL Defendants-Appellees (hereinafter, "State Defendants") in this case, and declare as follows:

1. The Answering Brief is currently due July 6, 2004, pursuant to the Time Schedule Order dated February 25, 2004.

2. The Answering Brief was first due July 6, 2004, as stated in the previous paragraph, no previous extensions of time having been sought.

3. State Defendants hereby request an extension of time to file its Answering Brief of 28 days, to August 3, 2004.

4. The requested extension of time is necessary for multiple reasons, as follows:

a. I will be out of town from June 17, 2004 through July 5, 2004 (a total of 19 days), on a previously scheduled trip to China with my 82 and 84 year-old parents, on my first and only trip to China, for me to learn about and experience my ancestral roots (I am a Chinese-American). This China tour was planned back on December 13, 2003, two months **before** this appeal had been filed. My parents have always hoped and dreamed that their son could visit China someday with them, to learn about his and their cultural heritage, and I have wished to do so, too, but have always postponed such a trip because of work

commitments. Last year, realizing that I may have little time left to travel to China with my aging parents, my parents scheduled a trip with me to China last summer, but unfortunately, the SARS epidemic forced cancellation of that 2003 trip. Consequently, when the opportunity arose to make a replacement trip to China with my parents in the summer of **2004**, I felt compelled to not miss this opportunity and signed on to go. Canceling this trip now would not only incur serious financial penalties, but would deprive my parents and I of potentially our last chance to travel to China together. Accordingly, because I will be out of the office on this China trip for a total of 19 days -- 19 days that fall within the response period for filing an Answering Brief in this case -- it will be impossible for me to file the Answering Brief without a significant extension of time. I am the attorney in the Attorney General' s office responsible for drafting this brief.

b. Even putting aside the fact that I will be out of town for 19 days of the Answering Brief response period, a significant extension of time would be necessary in any event given the complexity of the legal issues in this case, and the large number of issues plaintiffs-appellants have chosen to raise in their Opening Brief. The Opening Brief is a lengthy 68 pages long, and deals with multiple highly complex justiciability, constitutional Indian law, and issue preclusion matters, as well as numerous other issues that must be addressed. Accordingly, even if I were not out of town during the response period, I would have sought, at

the very least, a telephone extension of time of 14 days, under 9th Cir. R. 31-2.2(a), but probably an even longer period under 9th Cir. R. 31-2.2(b), given the complexity and "volume" of this case. Thus, although a 33-day extension would be fair -- 19 days (out of country) plus 14 days telephone extension due to complexity of the case, and other factors discussed below -- I seek only a 28-day extension.

c. In addition, prior to, or immediately after, the trip, I will be busy working on other matters taking a significant amount of my time. These matters include, for example, drafting and filing an Answering Brief in Wu v. Administrative Director of the Courts, No. 26287 (Hawaii Supreme Court), drafting an Answering Brief in Luke v. Administrative Director of the Courts, No. 26490 (Hawaii Supreme Court), assisting other attorneys in our office on Office of Hawaiian Affairs v. State of Hawaii, Civil No. 03-1-1505-07 (Hawaii 1st Circuit Court), and Dixson Service, Inc. v. State of Hawaii, Civ. No. 04-00228 DAE-KSC (U.S. District Court, D. Haw.), as well as providing general appellate advice to other attorneys in our Department handling appeals.

d. Compounding the problem, our Appellate Division, of which I am a part, will lose its one and only secretary on June 18, 2004 (and we have no paralegals either), and there is a strong possibility -- based upon past experience, and stringent state government hiring rules-- that we will not be able to fill the

position for many weeks. Accordingly, in addition to my legal duties on my cases, I will also likely have to perform numerous clerical tasks for all of my cases.

*** **

For all of these reasons, therefore, it will be impossible to complete the answering brief in the present case without a 28-day extension of time.

5. The above reasons demonstrate my substantial need for the requested 28-day extension of time.

6. During the past three months, I have reviewed portions of the record and researched much of the law I believed would be relevant to this appeal. I represent that I have exercised diligence and that the Answering Brief will be filed within the time requested.

7. I have consulted with the other parties to this appeal, and none of them (including the United States), except for plaintiffs-appellants, object to this request. Plaintiffs-appellants' objection, of course, is hardly surprising, as they have throughout this litigation repeatedly objected to virtually every action, taken by not only opposing parties, but by the U.S. District Court Judge, that would potentially lengthen the time for this case to be completely resolved, even though the objected-to actions were deemed necessary for the efficient and proper resolution of this case. Their objections have been appropriately rejected. This is not surprising, as the programs Plaintiffs are challenging have been going on for

either **25 years** (Office of Hawaiian Affairs), or over **80 years** (Department of Hawaiian Home Lands). Consequently, our requested 4-week extension will cause no significant prejudice. Indeed, **although plaintiffs will surely claim prejudice, any such claim is belied by the fact that they never pursued a preliminary injunction (indeed, they withdrew their preliminary injunction request; see Clerk's Record 164) in the District Court for nearly 2 years!** For plaintiffs to now claim a 4-week extension is prejudicial flies in the face of their own actions. See Oakland Tribune v. Chronicle Pub. Co., 762 F.2d 1374, 1377 (9th Cir. 1985) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."). Compounding matters, **plaintiffs did not seek expedited review in this Ninth Circuit appeal, further proving that they would not be prejudiced by the requested 4-week extension.** See Danielson v. Int'l Broth. of Elec. Workers, 509 F.2d 1371, 1375 (2d Cir. 1975) ("failure to seek expedited review [also demonstrates] that there is no real danger of irreparable harm").

I, Girard D. Lau, do declare under penalty of law that the foregoing is true and correct.

June 8, 2004
Dated _____

Girard D. Lau
Deputy Attorney General
Counsel for State Defendants-Appellees
and HHCA/DHHL Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing was duly served on each of the following persons by depositing the same in the U.S. mails, first class postage prepaid, on June 8, 2004:

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DATED: Honolulu, Hawaii, June 8, 2004.

Girard D. Lau
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