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HIGH COURT OF AMERICAN SAMOA  
Clerk's Office

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FILED TIME: 3:13 pm  
6/11/18  
TERRY S. FIELDING  
CLERK OF COURTS

Attorney for: DEFENDANTS DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS  
KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY  
KNEUBUHL NADINE FULTS

HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES )  
K. OPELLE and BENJAMIN ("BEN") ) CA No.: 28-2013  
KNEUBUHL, JR., )

Plaintiffs,

-vs-

DOUGLAS CRANE "MIKE" KNEUBUHL, )  
DOUGLAS KNEUBUHL, JR., CARRIE )  
SUE KNEUBUHL LAVIGNE ECKERT and )  
KELLY KNEUBUHL NADINE FULTS, )

Defendants.

DEFENDANTS' OPPOSITION TO  
PLAINTIFF FRANCES OPELLE'S  
MOTION FOR CONTINUANCE AND  
TO EXTEND SCHEDULE FOR SUMMARY  
JUDGMENT FILING FOR CA NO. 28-  
13

Defendants DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL,  
JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY KNEUBUHL  
NADINE FULTS (hereinafter collectively "Defendants" or "MIKE K.  
FAMILY") hereby submit their Opposition to Plaintiff Frances  
Opelle's Motion for a Continuance and to Extend the Schedule for  
Summary Judgment Filings for CA No. 28-13.

STATEMENT OF THE CASE

1  
2 On April 13, 2018, the Court issued its Order  
3 Deconsolidating Cases and Setting Civil Action No. 28-13 for a  
4 Decision by Summary Judgment. In its Order, the Court set up a  
5 briefing schedule, which provided in pertinent part as follows:

6 Friday, May 11, 2018: All initial memoranda of points  
7 and authorities concerning the issues to be resolved  
8 via summary judgment in CA No. 28-13 must be received  
9 and filed with the court and served on all of the  
10 parties. *Late filings will be ignored by the Court.*

11 (Emphasis added to last sentence.)

12 On May 18, 2018, a week after the May 11, 2018 deadline,  
13 Plaintiff Frances Opelle belatedly filed her Motion for a  
14 Continuance. No affidavit was filed in support of the motion.  
15 The motion seeks leave of court to "[a]llow a continuance  
16 extending the deadlines for filing of memorandum of points and  
17 authorities for summary judgment on CA 28-2013 to June 20,  
18 2018." (Opelle Motion for Continuance, p. 5.)

ARGUMENT

19 The decision to grant or deny a continuance is in the  
20 discretion of the trial court and will only be overturned upon a  
21 clear showing of abuse of that discretion. *Su'esu'emanogi*  
22 *Williams v. Tupuola Petelo*, 6 A.S.R.3d 44, 46 (App.Div. 2002).  
23 A motion for a continuance should be supported by an affidavit  
24 stating the facts and circumstances showing cause for  
25  
26



1 postponement. *Cohen v. Herbert*, 186 Cal.App.2d 488, 493, 8  
2 Cal.Rptr. 922 (1960).

3 In this case, the motion for a continuance of the briefing  
4 schedule should be denied, given that it was not supported by  
5 affidavit, and that it was untimely. Frances Opelle knew well  
6 before the May 11 deadline the grounds for her motion for a  
7 continuance, certainly no later than May 1<sup>st</sup> (see Opelle Motion  
8 for Continuance, p. 2), but did not move for the continuance  
9 until May 18<sup>th</sup>, a week after the deadline had passed. *Cf. United*  
10 *States v. Kelly*, 749 F.2d 1541, 1552 (11<sup>th</sup> Cir. 1985) (motion for  
11 continuance of oral argument made on day of oral argument  
12 properly denied as untimely; "[t]he grounds for the motion for  
13 continuance and substitution of counsel were known to Kelly well  
14 before the scheduling of oral argument."). The movant has no  
15 right, by an unsupported and belated motion, to control this  
16 Court's discretion in scheduling the submission of briefs and  
17 thereby delay that schedule and a decision in the case, by over  
18 a month. Under these circumstances, it is well within the  
19 discretion of the Court to deny the motion.  
20  
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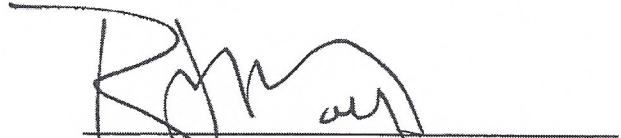
22 An order issued by a court certifies that the judge has in  
23 fact exercised his judgment, that the premises of the order are  
24 true, that the order itself is lawful, and that it is  
25 appropriate under all the circumstances that the order be given  
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the force of law. *Bank of Hawaii v. Ieremia*, 8 A.S.R.2d 177,  
181 (Trial Div. 1988).

Wherefore, for the reasons expressed above, the Court  
should deny the motion for a continuance and for an extension of  
the schedule for summary judgment filings in CA No. 28-13.

Dated: 6/11/18



ROY J.D. HALL, JR.  
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