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TERRY S. FIELDING
CLERK OF COURTS

Attorney for:

HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES
K. OPELLE and BENJAMIN ("BEN")
KNEUBUHL, JR.,

Plaintiffs,

-vs-

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

Defendants.

)
) CA No.: 28-2013
)
)
) DEFENDANTS' OPPOSITION TO
) PLAINTIFF FRANCES OPELLE'S
) MOTION TO STRIKE OR,
) IN THE ALTERNATIVE, FOR A
) CONTINUANCE TO RESPOND TO
) DEFENDANTS' POSITION MEMO

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 to Strike Defendants' Position Memo or,
in the alternative, for a continuance to respond to Defendants'
Position Memo.

STATEMENT OF THE CASE

1
2 In its February 20, 2018 Order Regarding Status of the
3 Case, the Court pointed out that the trial judge who heard this
4 matter, Associate Justice Lyle L. Richmond, became disabled
5 after the conclusion of the nonjury trial of these matters but
6 before Judge Richmond could file findings of fact and
7 conclusions of law. The Court then "encourage[d] the parties
8 to consider how they would like to proceed with these cases."
9 (Court's Order Regarding Status of the Case and Setting Status
10 Hearing, p. 4 (Feb. 20, 2018).) The February 20, 2018 Order set
11 the status hearing for March 29, 2018. (*Id.*, p.1.) Other than
12 setting the date of the status hearing, the February 20, 2018
13 Order did not set a deadline for submission of the parties'
14 views. The Order nowhere allowed for a party to respond to the
15 submissions of the other parties.
16

17 Defendants thereafter, on March 28, 2018, the day before
18 the status hearing, timely submitted their Position memorandum
19 regarding the procedure to be followed in view of Judge
20 Richmond's disability.
21

22 Following the status hearing held on March 29, 2018, the
23 Court issued its April 13, 2018 Order Deconsolidating Cases and
24 Setting Civil Action No. 28-13 for a Decision by Summary
25 Judgment. In its April 13, 2018 Order, the Court stated as
26 follows:

1 Since the Court issued its last order on February
2 20, 2018, the parties have filed multiple motions on
3 the subject of how we should proceed on these
4 consolidated proceedings – given the departure of the
5 previous presiding justice and his substitution by the
6 undersigned After carefully considering the
7 written filings and oral submissions of the parties,
8 we hereby deconsolidate the two actions, and we will
9 decide the civil action first by way of summary
10 judgment.

11 (Order of April 13, 2018, pp. 1-2.) The April 13, 2018 Order
12 noted the receipt of submissions from Frances Opelle and from
13 Defendants. (*Id.*, p. 2 n. 1.)

14 On the same day the Court issued its April 13, 2018 Order,
15 Frances Opelle moved to strike Defendants' March 28, 2018
16 Position memorandum "or alternatively [if the motion to strike
17 is] disallowed, Plaintiff respectfully request[s] she be allowed
18 to reply to Defendant's March 28, 2018 filing with the Court."
19 (Frances Opelle's Motion to Reply to Defendant's Position
20 Statement, p. 3.)


21 An order issued by a court certifies that the judge has in
22 fact exercised his judgment, that the premises of the order are
23 true, that the order itself is lawful, and that it is
24 appropriate under all the circumstances that the order be given
25 the force of law. *Bank of Hawaii v. Ieremia*, 8 A.S.R.2d 177,
26 181 (Trial Div. 1988).

PLAINTIFF OPELLE'S MOTION TO REPLY
SHOULD BE DENIED OR DISMISSED AS MOOT.

1
2 Frances Opelle's Motion to Reply should be denied or
3 dismissed as moot. "Ordinarily, this court, like courts in
4 general, will not consider a question the answer to which cannot
5 have any practical effect upon an existing controversy." *State*
6 *ex rel. La Crosse Tribune v. Circuit Court for La Crosse County,*
7 *115 Wis.2d 220, 228, 340 N.W.2d 460 (1983).* Defendants'
8 Position memorandum was already considered by the Court, along
9 with the submissions of the other parties, and the Court has
10 already decided on a course of action by the issuance of its
11 April 13, 2018 Order. Thus, any ruling on the motion would not
12 "have any practical legal effect upon a[n] . . . existing
13 controversy." Black's Law Dictionary 1159 (4th ed. 1968)
14 (definition of "moot" when used as an adjective).
15

16
17 Wherefore Frances Opelle's Motion to Reply should be denied
18 or dismissed as moot.

19 Dated: 6/11/18

20
21 
22 ROY J.D. HALL, JR.
23 Attorney for DEFENDANTS
24 DOUGLAS CRANE "MIKE"
25 KNEUBUHL, DOUGLAS KNEUBUHL,
26 JR., CARRIE SUE KNEUBUHL
LAVIGNE ECKERT and KELLY
KNEUBUHL NADINE FULTS