

not entitled to file an amicus brief in this matter. Furthermore, this Courts order only allowed the filing of one supplemental brief by Defendants and one was already filed by County Defendants.

Even if this Court does find State of Hawaii to be an amici in this appeal this motion should be denied for the reasons listed below.

On June 15, 2016 this Court ordered;

Filed clerk order (Deputy Clerk: SM): Appellant's motion for leave to file a supplemental brief (Docket No. [84]) is referred to the merits panel. Within 14 days after the date of this order, the appellant may submit a supplemental brief not to exceed 2,400 words. Within 28 days after the date of this order, the appellees may file a supplemental response brief not to exceed 2,400 words. The proposed briefs shall be lodged pending the Courts's resolution of appellant's motion. [10016724] (AF) [Entered: 06/15/2016 05:17 PM]

See Docket No. 85.

This Court gave Defendants leave to file a "brief" not briefs. Thus, this Court's order contemplated the filing of one brief by the Defendants in in response to that order. That was done by the County Defendants in its most recent filing. *See* Docket No. 90. After the filing of that brief, Defendants right to file a responsive brief was used up. Thus, if this Court finds that the State of Hawaii is a Defendant, this motion should not be granted because the Defendants in this action already filed a brief and the filing of an additional one defies this Court's order.

Alternatively, if this Court finds that the State of Hawaii is an amici in this appeal then this motion should be denied because it violates F.R.A.P. 28 (c) “Reply Brief. The appellant may file a brief in reply to the appellees brief. Unless the court permits, no further briefs may be filed.” *Id.* Here, State of Hawaii relies on F.R.A.P. 29(a) to circumvent F.R.A.P. 28(c)’s clear command. However, civil rules which arguably conflict must be construed in a manner as to allow both to co-exist when possible. F.R.A.P. 29 allows for a state to “file an amicus-curiae brief without the consent of the parties or leave of court...no later than 7 days after the principal brief of the party being supported is filed”.

Here, the authors of the F.R.A.P. clearly contemplated giving States the right to file one amicus per appeal within seven days of the party being supported. It did not intend for States to be able to file multiple amicus briefs throughout the course of an appeal. Furthermore, State of Hawaii did not ask for Mr. Young’s consent in filing this brief. It simply filed its brief along with the attached brief. So to the extent that State of Hawaii files a discretionary brief then it should be denied on the grounds it did not actually ask for the consent of either party¹. Finally F.R.A.P. 29 only allows amicus

¹ State of Hawaii did not attempt to contact Mr. Young before filing this motion. Mr. Young’s only recent contact with State of Hawaii was when he contacted them

brief to be half the size of the party briefs. State of Hawaii files a brief twice this size without any support from the rules or case law.

State of Hawaii could have defended its laws while complying with this Court's order. It could have filed a joint brief with County Defendants. Rather, it asks this Court to allow it to file a second brief without support from this Court's order or the federal rules. The State of Hawaii has always been and continues to be a named Defendant to this action. Mr. Young urges this Court to deny State of Hawaii's motion to file a supplemental amicus brief. Mr. Young further urges this Court to issue an order which clarifies this issue for the parties and their attorneys for future litigation in this and other matters.

for their position on his motion to file a supplemental brief. They replied "As an amicus only, the State of Hawaii would not object to plaintiff's (sic) filing a motion seeking to file a supplemental brief attempting to distinguish Young from Peruta, provided that plaintiff would not object to the State of Hawaii filing a response to that supplemental brief. Whether the various County of Hawai'i defendants, who are parties, would object to plaintiff filing the supplemental brief is, of course, their decision." Mr. Young did not actually agree to this. However, he would have had State of Hawaii agreed to file a joint brief with County of Hawaii or agreed that each set of Defendants be limited to briefs half the size of Mr. Young's Brief. It simply is patently unfair for the Defendants in this appeal to be allowed twice as much briefing as Mr. Young.

Respectfully submitted this 14th day of July, 2016

s/ Alan Beck

Alan Beck (HI Bar No. 9145)

CERTIFICATE OF SERVICE

On this, the 14th day of July, 2016, I served the foregoing pleading by electronically filing it with the Court's CM/ECF system which generated a Notice of Filing and effects service upon counsel for all parties in the case. I declare under penalty of perjury that the foregoing is true and correct.

s/ Alan Beck

Alan Beck (HI Bar No. 9145)