

NO. 29414

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ANDY MARTIN, Petitioner,

vs.

LINDA LINGLE, Governor, State of Hawai'i;  
DR. CHIYOME FUKINO, in her capacity as Director  
of the Department of Health, State of Hawai'i; and  
THE HONORABLE BERT I. AYABE, JUDGE OF THE CIRCUIT COURT  
OF THE FIRST CIRCUIT, STATE OF HAWAII, Respondents.

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

ORIGINAL PROCEEDING  
(CIV. NO. 08-1-2147)

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the petition for a writ of mandamus filed by petitioner Andy Martin and the papers in support, it appears that the issuance by the Department of Health of a certified copy of a vital statistics record to petitioner was not mandatory, but involved the exercise of discretion and judgment. See HRS § 338-18(b) (Supp. 2007) (The department shall disclose vital statistics records to those persons enumerated in HRS § 338-18(b)(1) through (13); otherwise, "[t]he department shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record."). Therefore, petitioner is not entitled to mandamus relief against the respondent public officials. See In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999) (Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual's claim is clear and

certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available.); Salling v. Moon, 76 Hawai'i 273, 274 n. 3, 874 P.2d 1098, 1099 n.3 (1994) ("A duty is ministerial where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion and judgment.").

It further appears that the Hawai'i Rules of Civil Procedure and the Rules of the Circuit Courts of the State of Hawai'i do not provide petitioner with a clear and indisputable right to a telephonic hearing or an expedited hearing in Civil No. 08-1-2147. Scheduling a hearing for November 7, 2008 and requiring petitioner to personally appear at the hearing was within the discretion of the respondent judge and was not a flagrant and manifest abuse of discretion. Therefore, petitioner is not entitled to mandamus relief against the respondent judge. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Such writs are not intended to supersede the legal discretionary authority of the lower courts, nor are they intended to serve as legal remedies in lieu of normal appellate procedures. Where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the

judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act.). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, October 22, 2008.



Steven Levinson

Aunā C. Nakayama



James E. Duggan, Jr.