Electronically Filed
FIRST CIRCUIT
1CSP-20-0000082
01-DEC-2020
09:25 AM
Dkt. 117 DOC

SP. NO. 1CSP-20-0000082

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

In the Matter of the CIRCUIT COURT OF THE FIRST CIRCUIT'S RESPONSE TO THE COVID-19 OUTBREAK	SP. No. 1CSP-20-0000082 (Special Proceeding) THIRTEENTH AMENDED EMERGENCY ORDER #4 REGARDING FAMILY COURT OF THE FIRST CIRCUIT

THIRTEENTH AMENDED EMERGENCY ORDER #4
REGARDING FAMILY COURT OF THE FIRST CIRCUIT

This matter comes before the Court in light of the public health emergency in the State of Hawai‘i.

To further protect the health and safety of First Circuit Court employees and all court participants, and pursuant to the Orders of Chief Justice Mark E. Recktenwald filed as of November 25, 2020 under SCMF No. 20-0000152, In re the Judiciary’s Response to the COVID-19 Outbreak, and with authority as Chief Judge of the above-entitled Court, IT IS HEREBY ORDERED:

1. All Orders issued by the Family Court of the First Circuit, from the Amended Emergency Order #4 Regarding Family Court of the First Circuit filed March 16, 2020 through the Twelfth Amended Emergency Order #4 Regarding Family Court of the First Circuit filed November 4, 2020, are hereby extended through December 31, 2020, except as modified herein.

2. No party or attorney shall appear in person unless permitted pursuant to this Order or prior approval is granted by the presiding judge. Approval may also be granted to those individuals that do not have access to a telephone or computer to participate remotely.

3. No person shall enter First Circuit Judiciary facilities if they have: (i) a fever, cough, shortness of breath or difficulty breathing, or other symptoms of respiratory illness; (ii) had close contact with a person who has or is suspected to have COVID-19; or (iii) traveled outside of Hawai‘i in the past fourteen (14) days and have not satisfied the negative test exception to the mandatory 14-day quarantine, subject to any subsequent out-of-state travel restrictions imposed through Statewide or Court emergency orders, rules, or proclamations. Further, any person entering First Circuit Judiciary facilities shall wear a face covering as described and recommended by the Centers for Disease Control and Prevention and shall maintain appropriate social distancing of at least six feet, both inside and outside the courtroom. Exceptions may be made to the restrictions in extraordinary circumstances.

4. Parties, attorneys, witnesses, and other persons shall remain outside the courthouse as directed by court staff until the Court is ready for their hearing or testimony.

5. <u>Adult Criminal Courts.</u>

a. Jury trials may recommence beginning December 14, 2020, barring further public health or other extraordinary developments that would

make doing so imprudent. All jury trials shall comply with social distancing mandates as ordered by federal, state, and county officials, and shall be conducted in a manner that ensures the safety of Judiciary personnel, jurors, and court users. Any jury trial that cannot be conducted in such a manner shall be further postponed until such a time that everyone's safety can be adequately safeguarded.

b. The First Circuit Family Court adult criminal courts (to include courtrooms 8B, 8C and 8D), shall continue to conduct all other matters, bench trials, motions and hearings (including evidentiary hearings), in compliance with all other court rules and orders, either remotely (e.g., telephone and/or available WebEx or other video technology) or in person, as the Court may require. If the Court requires in-person proceedings, the hearings shall be held on a staggered basis and counsel and parties shall practice social distancing.

6. Domestic Division. All matters currently scheduled shall be conducted by video or telephone, except as provided below.

a. Trials, extended hearings, and settlement conferences shall be conducted in person unless video and/or telephone participation is approved by order of the Court or upon approved request.

b. Other hearings as required in the Court's sole discretion or upon approved request shall be conducted in person.

c. Procedure for in-person hearings in the Domestic Division.

i. Attorneys and parties shall not enter the courthouse until fifteen (15) minutes prior to the scheduled time of the hearing.

ii. Attorneys and parties shall comply with any deadlines set by way of the order scheduling the trial.

iii. Witnesses shall wait outside the courthouse until it is their time to testify. It will be the obligation of the attorney or party to notify their witnesses appropriately.

iv. Witnesses may appear by video or telephone by agreement of the parties and/or order of the Court. In the event a witness will be appearing by video or telephone, it shall be the responsibility of the attorney or party to ensure that the witness has received the WebEx "Invitation", that the attorney or party has the e-mail address and telephone number available for the Court to contact the witness, and that the witness has any exhibits of the opposing party.

v. Social distancing arrangements will be made in the courtroom, and attorneys and parties shall comply with directions of the presiding judge in the courtroom and the directions of the bailiffs while in the courthouse hallway.

7. Special Division. All matters currently scheduled shall be conducted by video or telephone except as provided below.

a. Hearings and trials in Temporary Restraining Order and Gun Violence Protective Order cases shall be conducted in person, unless video and telephone participation is appropriate in the Court's sole discretion or upon approved request;

b. Hearings on motions requesting the return of firearms shall be conducted in person;

c. Initial return hearings in Assisted Community Treatment cases shall be conducted by video or telephone, unless a party or attorney wishes to appear in person; and

d. Other hearings as required in the Court's sole discretion or upon approved request shall be conducted in person.

e. Trials in the Special Division. If a case is set for trial in the Special Division, the parties and attorneys shall comply with any deadlines set by way of the order scheduling the trial. In addition, each party/attorney shall forward the "Invitation" received to their witnesses and shall have the e-mail addresses and telephone numbers for their witnesses available for the Court to contact the witnesses. Each party/attorney shall ensure that their witnesses have any exhibits they may need to testify, including the exhibits of the opposing party. Alternatively, each party/attorney shall ensure that they are able to display exhibits on the screen for everyone to view.

8. Juvenile Division.

a. All matters currently scheduled shall be conducted by video or telephone except as otherwise stated in this Order. Matters shall be rescheduled, if necessary, to accommodate a staggered schedule and to promote social distancing.

b. All cases on the FC-J and FC-S calendars may be set on a staggered schedule.

c. Temporary foster custody cases and motions to transition from family supervision to foster custody shall be held with all parties and counsel appearing in person. For these hearings only, the social worker and Guardian Ad Litem may appear by video or telephone. Social distancing arrangements will be made in the courtroom.

d. FC-S review hearings shall be held with all parties and counsel appearing by video or telephone. In-person appearances may be held in the Court's sole discretion or upon approved request.

i. Due to COVID-19 concerns, minors shall not be brought to the courthouse until further notice. Arrangements shall be made with the Guardian Ad Litem to communicate with the minor via WebEx and schedule a meeting with the presiding judge.

ii. All attorneys shall consult with their respective clients prior to any scheduled hearing as part of their professional obligation to ensure effective representation.

iii. All attorneys shall forward the WebEx information to their clients.

e. FC-S trials shall continue to be held with all parties and counsel appearing in person, unless otherwise ordered by the Court. Witnesses shall wait outside of the courthouse until it is their time to testify. It will be the obligation of the attorneys to notify their witnesses appropriately. Witnesses may appear remotely by agreement of the parties and/or order of the Court. Pretrial conferences

shall be scheduled to discuss trial procedures. Social distancing arrangements will be made in the courtroom.

f. FC-J uncontested motions, dispositions, arraignment and plea hearings, and pretrial conferences shall continue to be held with all parties, counsel, and agencies appearing in person, unless otherwise ordered by the Court. Only one parent shall be permitted to appear in person for the hearing with the minor. The second parent may participate by WebEx (video or telephone) if approved by the Court in advance. Such requests shall be made through the Probation Officer at least 24 hours prior to the hearing. Representatives from the Department of Health and other ancillary agencies may appear by video or telephone. Other third parties may appear by video or telephone if approved by the Court in advance. Such requests shall be made through the Probation Officer at least 24 hours prior to the hearing. Unless otherwise ordered by the Court, pretrial conferences shall only be set for felony trial cases.

g. FC-J contested motions, change of plea hearings, and trials shall be held with all parties and counsel appearing in person, unless otherwise ordered by the Court. Only one parent shall be permitted to attend the hearing in person with the minor. The second parent may participate by WebEx (video or telephone) if approved by the Court in advance. Such requests shall be made through the Probation Officer at least 24 hours prior to the hearing. Representatives from the Department of Health and other ancillary agencies may appear by video or telephone. Witnesses shall wait outside the courthouse until it is their time to testify. It will be the obligation of the attorneys to notify their witnesses appropriately.

Unless otherwise ordered by the Court, pretrial conferences shall only be set for felony trial cases.

9. Specialty Courts

a. Family Drug Court. Hearings will continue to be held via video or telephone as directed by the presiding judge. In-person appearances may be approved by the presiding judge.

b. Zero to Three (ZTT). Hearings will continue to be held via video or telephone as directed by the presiding judge. In-person appearances may be approved in the sole discretion of the presiding judge.

c. Imua Kākou. Hearings shall continue to be conducted by way of paper review only unless otherwise directed by the presiding judge.

d. Truancy Court. Truancy Court shall resume December 11, 2020. Hearings shall be held using a combination of video and telephone appearances, as directed by the presiding judge. Hearings shall be scheduled and, when appropriate, shall be staggered. In-person appearances may be approved in the sole discretion of the presiding judge.

e. Girls Court. Girls Court hearings shall be held using a combination of video and telephone appearances, as directed by the presiding judge. Hearings shall be scheduled and when appropriate, shall be staggered. In-person appearances may be approved in the sole discretion of the presiding judge.

f. Juvenile Drug Court. Juvenile Drug Court hearings shall be held using a combination of in-person appearances along with video and telephone appearances, as directed by the presiding judge. Hearing times shall continue to

be staggered as directed by the presiding judge. The juvenile, one parent, the juvenile's probation officer, the prosecutor, and the public defender shall all appear in person for the hearings. The deputy attorney general, stakeholders, and service providers shall participate in the hearings via video or telephone.

10. Video & Telephone Hearings Procedures for Remote Matters in Domestic Division, Special Division, Juvenile Division, and Specialty Courts.

a. Video Hearings. The Court directs that parties and attorneys appear for remote hearings via video conference whenever possible through WebEx or other video application as may be directed by the Court (smartphone and/or computer with video, audio, and microphone is required). For Domestic Division, Special Division, and Specialty Court cases, if the Court has an e-mail address for the party and/or counsel, the Court will send an "Invitation" to attend the hearing by e-mail, which will include a link to join the meeting at the scheduled time. For Juvenile Division cases, attorneys shall forward the WebEx information provided to their clients. A party or attorney may need to download the WebEx program or application to their device, which is recommended. A party or attorney may learn more by visiting www.webex.com. At the time of the hearing, all participants must be in a quiet place, without interruption or distractions. Parties and attorneys shall not call the bailiff's desk if they are able to enter the meeting room lobby.

b. Telephone Procedure. In the event video is unavailable, parties and attorneys may participate in the hearing by telephone. The Court may call the parties and attorneys through the WebEx application, which will appear on their telephone as an out-of-state telephone number. Attorneys are to inform their clients

of the above procedures to prevent multiple telephone calls being received at the bailiff's desk.

c. If a party or attorney is unable to enter the meeting room lobby for a video hearing and has also not received a telephone call from the Court, they shall call the bailiff's desk at (808) 954-8087 for the second floor, or (808) 954-8085 for the third floor.

11. Domestic Division and Special Division Civil Case Requirements

a. Cases Where a Party is Represented by an Attorney. In cases where both parties are represented by attorneys, the attorneys shall confer with one another prior to the date of the hearing to attempt to resolve any disputed issues. If a contested hearing is necessary, attorneys are encouraged to agree to proceed by way of offers of proof. In cases where one party is represented by an attorney, the attorney shall confer, or attempt to confer, with the opposing party prior to the date of the hearing in an effort to resolve any disputed issues. Failure of attorneys to confer prior to the date of the hearing may result in the Court rescheduling the matter to a future date.

b. Exhibits or Documents. Any exhibits or documents that a party intends to use or present at the hearing shall be provided to the Court in compliance with any other Court order but, in any event, shall not be provided later than three business days prior to the scheduled hearing. Exhibits shall be provided to the opposing parties or attorneys no later than forty-eight (48) hours prior to the hearing. Exhibits shall be mailed to the Court or dropped off at the Family Court drop box located at the entrance to the Family Court in Kapolei. Attorneys are

encouraged to exchange exhibits with each other by e-mail or other electronic means.

12. Child Support Enforcement Agency Appeals shall continue to proceed as scheduled.

13. In-person appearances for the Kids First Program shall continue to be suspended until after December 31, 2020, but parties may be required to participate in online education/programing as directed by the Kids First Program.

14. This Order may be modified as circumstances warrant, but absent further action this Order shall remain in effect.

It is so Ordered.

DATED: Honolulu, Hawai‘i, December 1, 2020.

/s/ R. Mark Browning

HON. R. MARK BROWNING, CHIEF JUDGE
First Circuit Court, State of Hawai‘i