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SCMF-20-0000152

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of the Judiciary's Response
to the COVID-19 Outbreak

ORDER REGARDING TEMPORARY EXTENSION OF THE TIME REQUIREMENTS UNDER HAWAIʻI RULES OF PENAL PROCEDURE RULE 10(a), (b), and (c)
(By: Recktenwald, C.J., Nakayama, and McKenna, JJ.,
and Chief Judge Ginoza, assigned by reason of vacancy, with
Wilson, J., dissenting[1])

The COVID-19 pandemic has caused a public health emergency. In response to the pandemic, the Judiciary postponed non-urgent court business and limited in-person proceedings in an effort to ensure the health and safety of court users and Judiciary personnel, and to minimize the risk of spreading COVID-19 in the courts. As COVID-19 cases remained low, court operations resumed in accordance with public health safety guidance, and to the extent possible with available resources. Criminal proceedings have proceeded in-person and by video conference in accordance with court rules and as feasible.

[1] A dissent by Wilson, J., is forthcoming.

Since July 2020, however, there has been a surge of COVID-19 cases in Hawai‘i, with record numbers of positive cases and increased hospitalizations being reported. There has also been a surge of COVID-19 cases in our community correctional centers and facilities, particularly at the O‘ahu Community Correctional Center ("OCCC"). Currently, nearly two hundred inmates at OCCC and thirty staff members have tested positive for COVID-19, with more testing ongoing.

It has been brought to our attention that most defendants who are currently appearing face-to-face in first circuit court for arraignment have been released from OCCC in the last 14 days. Additional time must be afforded for arraignments in order to give sufficient opportunity for those released from OCCC to self-isolate or quarantine for possible COVID-19 exposure as necessary and in order to ensure the health and safety of court users and personnel.

HRPP Rule 10 provides the following time requirements for the arraignment of a defendant:

> (a) A defendant who has been held by district court to answer in circuit court shall be arraigned in circuit court within 14 days after the district court's oral order of commitment following (i) arraignment and plea, where the defendant elected jury trial or did not waive the right to jury trial or (ii) initial appearance or preliminary hearing, whichever occurs last.
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> (b) Following service of grand jury warrant, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following the arrest or return.

> (c) Following service of an information charging warrant of arrest, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following arrest or return.

Given the time requirements set forth in HRPP Rule 10, out-of-custody defendants are required to be brought into the court for their face-to-face arraignment, potentially jeopardizing the health and safety of court users and Judiciary personnel. For many of these out-of-custody defendants, due to legal representation issues and lack of contact information, virtual appearances are, for the most part, not logistically possible at this time.

In light of these recent developments and the extraordinary and unprecedented health and safety issues that continue to impact our community, including court proceedings, a temporary extension of the time requirements set forth under HRPP Rule 10(a), 10(b) and 10(c) for first circuit criminal matters is necessary. Accordingly, pursuant to article VI, section 7 of the Hawai‘i Constitution and Hawai‘i Revised Statutes §§ 602-5(a)(6), Governor David Y. Ige’s Emergency Proclamations, and HRS § 601-1.5,

IT IS HEREBY ORDERED that the Circuit Court of the First Circuit may temporarily extend the time requirements for arraignments, as set forth under HRPP Rule 10(a), 10(b), and 10(c), no longer than reasonably necessary to protect public

health and safety. Judges, however, are strongly encouraged to utilize remote technology whenever possible.

This order is effective as of the date of filing and shall expire on September 17, 2020, unless otherwise modified or extended.

Dated: Honolulu, Hawai‘i, August 18, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Lisa M. Ginoza