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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

THIRD EXTENSION OF 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., concurring and 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.

[1] See Concurrence and Dissent Re: Order Regarding Temporary Extension of the Time Requirements Under Hawaiʻi Rules of Penal Procedure Rule 10(a), (b), and (c), filed on August 20, 2020.

Criminal proceedings have proceeded in-person and by video conference in accordance with court rules and as feasible.

In July 2020, there was a surge of COVID-19 cases in Hawai‘i, with record numbers of positive cases and increased hospitalizations being reported. There was also a surge of COVID-19 cases in our community correctional centers and facilities, particularly at the O‘ahu Community Correctional Center ("OCCC"). As a result, additional time was required to 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 to ensure the health and safety of court users and personnel.

Thus, on August 18, 2020, this court entered the "Order Regarding Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 10(a), (b), and (c)," which provided that the first circuit may temporarily extend the time requirements for arraignments no longer than reasonably necessary to protect public health and safety, while encouraging judges to utilize remote technology whenever possible. Since then, as the COVID-19 cases continued to remain high, this court extended the provisions of the August 18, 2020 order. Currently, the August 18, 2020 order, as extended, expires on November 16, 2020.

The rate of positive COVID-19 cases and hospitalizations on O‘ahu, including at OCCC, continues to

fluctuate. These evolving conditions require flexibility and vigilance, and the continued need to protect the health and safety of court users and Judiciary personnel during this unprecedented time remains paramount. Thus, a further extension of the August 18, 2020 order for first circuit criminal matters is necessary.

Accordingly, pursuant to article VI, section 7 of the Hawai‘i Constitution, Hawai‘i Revised Statutes §§ 601-1.5 and 602-5(a)(6), and Governor David Y. Ige’s Emergency Proclamations,

IT IS HEREBY ORDERED that the August 18, 2020 “Order Regarding Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 10(a), (b), and (c)” for first circuit criminal matters is further extended until December 31, 2020, unless otherwise further modified or extended.

Dated: Honolulu, Hawai‘i, November 13, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Lisa M. Ginoza