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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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

FIFTH EXTENSION OF ORDER REGARDING
TEMPORARY EXTENSION OF THE TIME REQUIREMENTS UNDER
HAWAIʻI RULES OF PENAL PROCEDURE RULE 5(c)(3)
(By: Recktenwald, C.J., Nakayama, McKenna, and Eddins, JJ.,
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. Criminal proceedings have proceeded in-person and by video conference in accordance with court rules and as feasible.

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

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, inmates were being held in quarantine and the transport of custody defendants was suspended, thus impacting the time requirements for preliminary hearings under Hawai‘i Rules of Penal Procedure ("HRPP") Rule 5(c)(3). Further, in a letter to the court dated August 18, 2020, the Office of the Public Defender requested the temporary suspension of, *inter alia*, HRPP Rule 5(c)(3), noting that defendants released from OCCC on bail or otherwise may need to quarantine and comply with isolation requirements, and that allowing the courts to continue matters for non-custody defendants would assist in those endeavors.

Thus, on August 27, 2020, this court entered the "Order Regarding Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 5(c)(3)," which provided that the first circuit may temporarily extend the time requirements for preliminary hearings no longer than reasonably necessary to protect public health and safety, while encouraging

judges to follow the time requirements under HRPP Rule 5(c)(3) to the extent possible and to utilize remote technology as feasible. Since then, as the COVID-19 cases continued to remain high, as transports of custody defendants from all Oʻahu correctional facilities were suspended, and the number of citations issued for Hawaiʻi Revised Statutes ("HRS") ch. 127A violations grew exponentially, this court extended the provisions of the August 27, 2020 order. Currently, the August 27, 2020 order, as extended, expires on February 14, 2021.

The rate of positive COVID-19 cases and hospitalizations on Oʻahu, including at OCCC, as well as the number of citations for HRS ch. 127A violations, continues to fluctuate. Additionally, the limited availability of workstations at OCCC for remote hearings have impacted the time requirements for preliminary hearings under HRPP Rule 5(c)(3). While the current positivity rate may appear to be stabilizing, the pandemic conditions nevertheless continue to evolve, and health and safety precautions continue to remain in place. Given the uncertainty of these conditions, flexibility and vigilance in adapting to the extraordinary circumstances is vital, 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 27, 2020 order for first circuit criminal matters is necessary.

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

IT IS HEREBY ORDERED that the August 27, 2020 "Order Regarding Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 5(c)(3)" for first circuit criminal matters is further extended until March 31, 2021, unless otherwise further modified or extended.

Dated: Honolulu, Hawai‘i, February 8, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins