

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the  
COURTS OF THE THIRD CIRCUIT  
OF  
THE STATE OF HAWAI'I

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STATE OF HAWAII

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ORDER EXTENDING THE NON-CONSENSUAL VIDEO CONFERENCE  
PILOT PROJECT IN THE COURTS OF THE THIRD CIRCUIT  
(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJs., and  
Intermediate Court of Appeals Chief  
Judge Recktenwald, assigned by reason of vacancy)

Having considered the 2008 Non-Consensual Video  
Conference Pilot Project Report, submitted in accordance with our  
December 17, 2007, order establishing the NON-CONSENSUAL VIDEO  
CONFERENCE PILOT PROJECT IN THE COURTS OF THE THIRD CIRCUIT  
(project), a copy of which is attached hereto,

IT IS HEREBY ORDERED that the project is continued,  
effective *nunc pro tunc* January 1, 2009 through January 31, 2010.

IT IS FURTHER ORDERED that the Chief Judge and the  
Chief Court Administrator of the Third Circuit shall submit for  
this court's consideration a report about the pilot project. The  
report shall be submitted no later than January 4, 2010. The  
report shall include, but need not be limited to, the number and  
types of matters heard by video conference during the term of the  
pilot project, the number and types of challenges and objections  
to video conference hearings, and the monetary and other resource  
savings, if any, that resulted from such video conference

hearings. To the extent that information is available, the report shall include monetary and resource savings to parties and affected state or county agencies, including the Office of the Prosecuting Attorney, the Department of Public Safety, the Hawai'i Police Department, the Office of the Public Defender, and any other entity for which information is available.

DATED: Honolulu, Hawai'i, February 10, 2009.



Anna C. Nakayama



James E. Dillie Jr.

Mark E. Redtenbacher



**Circuit Court of the Third Judicial Circuit - THE JUDICIARY • STATE OF HAWAII**

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**Ronald Ibarra**  
CHIEF JUDGE, THIRD JUDICIAL CIRCUIT  
THIRD DIVISION - KONA

**Lester D. Oshiro**  
CHIEF COURT ADMINISTRATOR

**Greg K. Nakamura**  
DEPUTY CHIEF JUDGE  
FIRST DIVISION - HILO  
SENIOR FAMILY JUDGE, FAMILY DIVISION

**Glenn S. Hara**  
JUDGE, SECOND DIVISION - HILO

**Elizabeth A. Strance**  
JUDGE, FOURTH DIVISION - KONA

January 15, 2009

Honorable Supreme Court Chief Justice Ronald T.Y. Moon  
Supreme Court  
Alliolani Hale  
417 S. King Street  
Honolulu, Hawaii 96813

Dear Chief Justice Moon,

Enclosed please find the 2008 Non-Consensual Video Conference Pilot Project Report as required by the Supreme Court Order In the Matter of the Courts of the Third Circuit of The State of Hawaii filed and dated on December 17, 2007. Chief Judge Ronald Ibarra and I reviewed the report and are forwarding it on to the Supreme Court.

It is our recommendation that the Supreme Court allow the program to continue in light of the costs savings to the State in regards to transportation costs and attorneys' fees for court appointed counsel as well as non financial concerns such as security and the well being of patients. With the budget crisis upon us, the feasibility of this project would prove to be of great value to the Judiciary.

Please contact us should there be any questions in this matter. Thank you for your consideration.

Sincerely,

Handwritten signature of Ronald Ibarra.

Ronald Ibarra  
Chief Judge  
Third Circuit

Handwritten signature of Lester D. Oshiro.

Lester D. Oshiro  
Chief Court Administrator  
Third Circuit

RI/LDO:jjja

**REPORT ON THE  
NON-CONSENSUAL VIDEO CONFERENCE PILOT PROJECT  
IN THE COURTS OF THE THIRD CIRCUIT**

A non-consensual video conference pilot project was established in the District, Circuit, and Family Courts of the Third Circuit Court. This project was conducted from January 1, 2008 through December 31, 2008.

It has been ordered that the Chief Judge and the Chief Court Administrator of the Third Circuit Court submit a report about the Non-Consensual Video Conference Pilot Project in the Courts of the Third Circuit, for the Supreme Court's consideration. The following report includes data collected from the District, Circuit, and Family Courts of the Third Circuit Court. Please note that not all of the statistical information on video-conferencing has been available for collection, thus this information represents most but not all of our hearings.

1. The numbers and types of matters heard by video conference during the term of the pilot project:

In 2008, there were approximately 433 total hearings via video conference. Please refer to Attachment I for a breakdown of the numbers and types of matters heard by video conference during the term of the pilot project.

Attachment II gives information on the types of hearings each month heard in District, Family and Circuit Courts, for both the Hilo and Kona sides of Hawaii Island.

2. The number and types of challenges and objections to video conference hearings:

Court clerks who provided data did not note any objections to proceedings with hearings via video conference. Challenges were more of a technical nature, such as difficulties connecting to or hearing the distance site, and difficulties getting the defendant into the room.

For illumination on the experience of video-conferenced hearings, this writer discussed challenges and objections with a random sampling of different attorneys.

Michael Ebesugawa, Deputy Public Defender, stated that although the defending attorneys can easily speak to the defendant prior to the hearing (via telephone), it can be cumbersome to speak to the defendant if issues unfold during the hearing.

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This would entail stopping the hearing and initiating another phone call. Mr. Ebesugawa stated also that he was unsure exactly what the defendant saw, on the tv screen. He wondered about the logistics of the camera, and stated that this problem could interfere with the defendant's right to confront witnesses. Mr. Ebesugawa stated, "the essence of confrontation is face-to-face, and this can be diluted in a video-conferenced hearing."

Former Deputy Public Defender Francis Alcain (currently in private law practice) has had experience with video-conferenced juvenile detention hearings. Mr. Alcain felt these hearings were a positive for the defendant because there is no proper holding area on Hawai'i Island for juvenile defendants awaiting hearings. Also, being able to avoid travel was far less disruptive for the defendant and the staff that oversee him in the detention home setting. Mr. Alcain echoed Mr. Ebesugawa's statement that talking to the defendant during the hearing could be cumbersome. Mr. Alcain explained that the camera was usually on the presiding Judge, and thus the defendant might not see who was representing him, although the defendant could hear his attorney. Our current video-conferencing capabilities do not have the type of technology in which the camera focuses on the speaker.

Kevin Hashizaki, Deputy Prosecuting Attorney, has experience with video-conferenced hearings through our mental health hearing calendars. Mr. Hashizaki stated that in his opinion, being able to hold hearings via video conference is particularly beneficial for the mentally ill defendant, allowing for the defendant to continue to receive care and support from the hospital while addressing legal issues. Mr. Hashizaki stated that in his experience, neither defendants nor their attorneys have complained about not being able to see the distance courtroom. Problems he has noted have been more of a technological nature - "it's not in real-time [there is a slight delay in transmission]; we could use an upgrade at some point."

Dudley Akama, Deputy Attorney General, gives us a picture of how traditional face-to-face Court proceedings impact mentally ill patients. For these hearings, patients are transported by two Sheriffs from the Hawai'i State Hospital (HSH) to hearings, via commercial airlines. Due to the Sheriff's procedural requirements, patients are always shackled (arms and legs) even if clinically the patient do not require restraints. The patient is picked up from the hospital as early as 3:00 a.m. to go to the airport. While en route, some patients decompensate due to fatigue,

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anxiety, and fear caused by the lack of HSH staff support, and due to not being able to take their medication as scheduled. This decompensation can result in "dangerous, aggressive, or at the least, annoying behaviors" which ultimately led one local airline to ban the transport of mentally ill patients on their flights. Upon arrival at the Court, patients are placed in a holding cell with criminal court inmates awaiting their hearing. Finally, the patient, now having been away from the support of the hospital for five or six hours, goes before the Judge, perhaps only for a few minutes. The reverse process then occurs to get the patient back to the hospital. Returning to HSH after a long and traumatic trip of fifteen hours or more, HSH staff are then be faced with the task of re-stabilizing the patient.

When afforded the opportunity to face the Court via video conference, the mentally ill patient is able to face the Court in an environment which is comfortable and secure and all of the above issues are virtually eliminated. The patient's care continues without interruption and hospital staff is able to continue its support of the patient. The client is more reliably able to tolerate, and respond appropriately to, Court proceedings.

3. The monetary and other resource savings to parties and affected state or county agencies, including the Office of the Prosecuting Attorney, the Department of Public Safety, the Hawai'i Police Department, the Office of the Public Defender, and any other entity for which information is available:

Hearing cost savings vary, depending on the type of defendant, how many and what types of staff are involved, and the location of the transport, as follows:

Hearings that are video-conferenced from the Honolulu Juvenile Detention Home save approximately \$1240.00 per hearing (\$600 airfare, \$40 per diem, \$600 overtime [2 Sheriffs, 1 defendant]).

704 Motion hearings that are video-conferenced from HSH to the Third Circuit Court save the Judiciary approximately \$1310.00 per hearing (\$620 airfare, \$40 per diem, \$480 overtime [2 Sheriffs, 1 patient]).

Motion to Treat hearings that are video-conferenced from HSH or Kahi Mohala Hospital to the Third Circuit Court save approximately \$3040.00 per hearing (\$2000 airfare \$40 per diem, \$1000 overtime [2 Sheriffs, 1 witness, 1 doctor, 1

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attorney, 1 patient]).

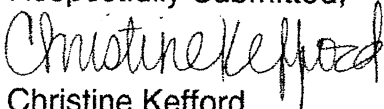
Hearings that are video-conferenced between the Hilo and Kona Courts save approximately \$295 per hearing (\$55 gas, \$40 per diem, \$200 overtime [2 Sheriffs, 1 defendant]).

Hearings that are video-conferenced from OCCC save the Judiciary approximately \$1300.00 per hearing (\$600 airfare, \$40 per diem, \$660 overtime [2 Sheriffs, 1 defendant]).

The total cost savings in the year 2008, based on the data available, was \$503,820.00. The cost savings may not necessarily come out of Judiciary funds. Expenses not paid by the Judiciary come out of the State Budget and Finance funds.

These cost savings reflect monetary savings only. It would be difficult to quantify the societal savings to our respective communities. When sheriffs, doctors, social workers, and any other staff that may accompany a defendant to a face-to-face hearing are freed from this responsibility, they can instead focus on more important work - which serves to increase community safety and client support.

Respectfully Submitted,



Christine Kefford

Program Specialist, Third Circuit Court

Date: January 8, 2009

**ATTACHMENT I: The numbers and types of matters heard by video conference during the term of the pilot project:**

In 2008, there were approximately 433 total hearings via video conference, as follows:

- 140 Juvenile Detention hearings (Detention Home, Oahu)
- 4 FC-S Hearings
  - 2 HCCC/Kona
  - 2 OCCC/Kona
- 1 Shelter Care Adjudication Hearing (Detention Home, Oahu)
  
- 183 "704" Hearings (KH/HSH)
- 26 Review Hearings (KH/HSH)
- 7 Return on Doctor's Report Hearings
  - 1 Hilo Hospital
  - 6 KH/HSH
- 6 Fitness to Proceed Hearings (KH/HSH)
- 2 Motions to Dismiss (KH/HSH)
- 1 One-Panel Hearing (KH/HSH)
- 1 Motion to Appoint Examiner (KH/HSH)
- 1 Order to Hospitalize (KH/HSH)
- 1 Motion to Authorize Medication (KH/HSH)
- 1 Motions to Terminate Conditional Release (KH/HSH)
- 1 Motion (KH/HSH)
- 1 DOH Motion (KH/HSH)
- 1 Hearing on 72-Hour Hold (KH/HSH)
- 1 Status Hearing (KH/HSH)
- 1 Conditional Release Motion from Santa Barbara County, CA (costs not calculated, not included in cost savings analysis)
  
- 24 Arraignment and Pleas
  - 18 HCCC
  - 3 KH/HSH
- 9 Proof of Compliance Hearings (HCCC/Kona Court)
- 8 TRO Hearings (HCCC/ Kona Court)
- 4 Trials
  - 1 HCCC/Kona Court
  - 3 KH/HSH
- 1 Sentencing, Return on Bench Warrant (Kona Court to Hilo Court)
- 1 Re-sentencing (OCCC)
  
- 1 Motion to Withdraw as Counsel (OCCC/Hilo Court)
- 1 Motion (Honolulu Attorney General/KH-HSH)
- 1 Motion (Aloha House Maui)
- 1 Motion (HCCC)

**TOTAL MATTERS HEARD VIA VIDEO CONFERENCE DURING PILOT PROJECT: 433**

DH=Detention Home, Oahu; KH/HSH=Kahi Mohala/Hawaii State Hosp, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

**ATTACHMENT II: IN-CUSTODY VIDEO CONFERENCES DURING PILOT PROJECT, 2008**

DH=Detention Home, Oahu; KH/HSH=Kahi Mohala/Hawaii State Hosp, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

	CC - Hilo	CC - Kona	DC - Hilo	DC - Kona	FC - Hilo	FC - Kona
January	4 juv detention (DH)	1 POC ( HCCC)	27 (704's) (KH/HSH)	4 reviews (KH/HSH) 1 status (KH/HSH)	21 juv detention (DH)	3 juv detention (DH)
February	2 juv detention (DH)	1 rtn on dr's rpt (Hilo Hosp) 1 rtn on dr's rpt (KH/HSH)	17 (704's) (KH/HSH)	3 fitness (KH/HSH) 3 reviews (KH/HSH)	20 juv detention (DH) 1 mtn/one panel (KH/HSH)	1 juv detention (DH)
March	No video-conferenced hearings	1 resentencing (OCCC) 1 mtn to trm cr (KH/HSH) 2 POC (HCCC) 1 A&P (HCCC)	13 (704's) (KH/HSH) 1 A&P (KH/HSH)	2 reviews (KH/HSH) 1 fitness (KH/HSH)	8 juv detention (DH)	4 juv detention (DH)
April	No video-conferenced hearings	1 hospitalization (KH/HSH) 1 POC (HCCC) 1 mtn to dsm/cont (KH/HSH) 1 sen/RBW (Hilo CC)	21 (704's) (KH/HSH)	4 reviews (KH/HSH)	8 juv detention (DH) 1 CR review (KH/HSH)	6 juv detention (DH)
May	1 mtn to w/d as cnsl (OCCC) 1 mtn auth meds (KH/HSH)	2 POC (HCCC) 1 rtn on dr's rpt (KH/HCCC) 1 mtn (Hnl AG)	20 (704's) (KH/HSH)	No data available	1 mot/dism (KH/HSH)	1 trial (HCCC) 2 TRO (HCCC) 2 juv detention (DH)
June	1 (704) (KH/HSH) 1 DOH mtn (KH/HSH)	3 POC (HCCC) 1 mtn (KH/HSH) 2 A&P/mtn(HCCC)	14 (704's) (KH/HSH)	No data available	No video-conferenced hearings	2 juv detention (DH)

**ATTACHMENT II: IN-CUSTODY VIDEO CONFERENCES DURING PILOT PROJECT, 2008**

DH=Detention Home, Oahu; KH/HS=Kahi Mohala/Hawaii State Hosp, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

	CC - Hilo	CC - Kona	DC - Hilo	DC - Kona	FC - Hilo	FC - Kona
July	1 A&P (KH/HS) 1 Trial (KH/HS) 1 mtm to appt exmr (KH/HS)	3 A&P/mtm(HCCC)	17 (704's) (KH/HS)	No data available	1 review (KH/HS)	1 shlr care/adjctn (DH) 2 juv detention (DH)
August	1 (704) (KH/HS) 1 rtn (KH/HS) 1 hrg 72 hr hold (KH/HS)	No data available	13 (704's) (KH/HS)	3 reviews (KH/HS)	8 juv detention (DH)	5 juv detention (DH) 1 FC-S (HCCC)
September	2 rtn (KH/HS) 1 review hrg (KH/HS) 2 fitness hrg (KH/HS) 1 A&P (KH/HS)	9 A&P (HCCC)	7 (704's) (KH/HS)	2 reviews (KH/HS)	14 juv detention (DH)	4 juv detention (DH)
October	1 Trial (KH/HS)	3 A&P (HCCC)	10 (704's) (KH/HS)	3 reviews (KH/HS)	13 juv detention (DH)	1 juv detention (DH) 3 TRO (HCCC)
November	No video- conferenced hearings	1 A&P (HCCC) 1 Motion (HCCC)	12 (704's) (KH/HS)	2 reviews (KH/HS)	12 juv detention (DH)	1 juv detention (DH) 4 TRO (HCCC)
December	1 Status Hearing (KH/HS) 1 Trial (KH/HS) 1 Rtn (KH/HS)	3 A&P (HCCC) 2 Motion (HCCC) 1 Motion (Aloha House, Maui) 1 Motion (Santa Barbara County, CA)*	11 (704's) (KH/HS)	No video- conferenced hearings	No data available	3 FC-S Hearings (1 from HCCC, 2 from OCCC)

**ATTACHMENT II: IN-CUSTODY VIDEO CONFERENCES DURING PILOT PROJECT, 2008**

DH=Detention Home, Oahu; KH/HSH=Kahi Mohala/Hawaii State Hosp, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

	CC - Hilo	CC - Kona	DC - Hilo	DC - Kona	FC - Hilo	FC - Kona
TOTAL HEARINGS DURING PILOT PROJECT (1/1/08 through 12/31/08)	4 DH-Oahu 19 KH/HSH-Oahu 1 OCCC	34 HCCC 6KH/HSH 1 Hilo Hospital 1 KH/HCCC 1 OCCC 1 Honolulu AG (KH/HSH) 1 Santa Barbara County, CA*	182 KH/HSH-Oahu	28 KH/HSH-Oahu	104 DH-Oahu 4 KH/HSH-Oahu	32 DH-Oahu 12 HCCC-Oahu 2 OCCC
COST SAVINGS	1240X4=\$4,960 1310X19=\$24,890 1300X1=\$1,300 TOTAL=\$31,150	295X34=\$10,030 1310X7=\$9,170 1300X1=\$1,300 TOTAL=\$20,500	1310X182=\$238,420	1310X28=\$36,680	1240X104=\$128,960 1310X4=\$5,240 TOTAL=\$134,200	1240X32=\$39,680 2X1300=\$2,600 295X2=\$590 TOTAL=\$42,870
<b>GRAND TOTAL OF COST SAVINGS DURING PILOT PROJECT: \$503,820.00</b>						

\*The costs for the hearing video-conferenced from Santa Barbara County, CA, have not been calculated and thus are not included in the savings analysis.

**HEARING COSTS:**

Hearings that are video-conferenced to the Third Circuit from:

- Honolulu Juvenile Detention Home save approximately \$1240.00 per hearing (\$600 airfare, \$40 per diem, \$600 overtime [2 Sheriffs, 1 defendant]).
- HSH or Kahi Mohala save the Judiciary approximately \$1310.00 per hearing (\$620 airfare, \$40 per diem, \$480 overtime [2 Sheriffs, 1 patient]).
- OCCC save the Judiciary approximately \$1300.00 per hearing (\$600 airfare, \$40 per diem, \$660 overtime [2 Sheriffs, 1 defendant]).
- Between the Hilo and Kona Courts save approximately \$295 per hearing (\$55 gas, \$40 per diem, \$200 overtime [2 Sheriffs, 1 defendant]).