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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

JEAN R. KIKUMOTO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2010 FEB -8 PM 1:38

FILED

ORDER EXTENDING THE NON-CONSENSUAL VIDEO CONFERENCE
PILOT PROJECT IN THE COURTS OF THE THIRD CIRCUIT
(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

Having considered the 2009 Non-Consensual Video Conference Pilot Project Report, submitted in accordance with our February 10, 2009, order extending 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, 2010 through January 31, 2012.

IT IS FURTHER ORDERED that the Chief Judge and the Chief Court Administrator of the Third Circuit shall submit for this court's consideration, annual reports about the pilot project. The reports shall be submitted no later than January 4, 2011 and January 4, 2012. The reports 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 reports 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 8, 2010.



Anna O. Takulua



James E. Dull, Jr.



**2009 REPORT ON THE
CONTINUED NON-CONSENSUAL VIDEO CONFERENCE PILOT PROJECT
IN THE COURTS OF THE THIRD CIRCUIT**

The Supreme Court of the State of Hawaii established a non-consensual video conference pilot project in the District, Circuit, and Family Courts of the Third Circuit Court. This project was conducted from January 1, 2008 through December 31, 2008. The project was ordered to be continued from January 1, 2009 through January 31, 2010.

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, by January 4, 2010. The following report includes data collected from the District, Circuit, and Family Courts of the Third Circuit Court. Please note that due to technical problems, there were some months when the video conferencing equipment could not be used.

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

In 2009, there were approximately 354 total hearings via video conference. Please refer to Attachment I for information about 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 heard each month 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.

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

*Rec'd email
02/11/2010*

**2009 REPORT ON THE
CONTINUED NON-CONSENSUAL VIDEO CONFERENCE PILOT PROJECT
IN THE COURTS OF THE THIRD CIRCUIT**

Charlene Iboshi, First Deputy Prosecuting Attorney here in the County of Hawaii, stated that the prosecutors "think it's a good idea". She too notes occasional technical difficulties. She would like to see video conferencing expanded to include more mainland prison systems. This writer notes that there was one video conferenced hearing this past year to an Arizona prison.

Cody Frenz, a prosecutor based in Hilo, stated that she appreciated the convenience of the system, saying, "The video-conferences are now held in the courtroom; previously the judge, court staff, and attorneys had to go to a room in the courthouse that was quite a distance away. Now, there is no need to pack up and move".

Ms. Frenz also observed that "Flying can be stressful for anyone, let alone someone with mental health issues; having the video conferences allows them to continue treatment while making their appearance in court without the added stress of flying. The video conferences also diminish any safety concerns for transporting a mental health Defendant that may already be in restraints while at the hospital through a crowded airport and onto a confined plane".

One drawback that Ms. Frenz noted is that "There is a slight delay in the system [previously mentioned in the 2008 video conference report] by Kevin Hashizaki, Hilo prosecutor]; quite often there are a lot of instances of "speaking over one another" (unintentionally) due to the delay. However, even with this problem, the pros still outweigh the cons".

Kona prosecutors Dale Ross and Linda Walton both reported that their experience with video conferenced hearings have been completely positive, with the exception of technical problems such as difficulty hearing the distance site.

Peter Bresciani, a Public Defender based in Kona, stated that generally, he is opposed to video conferenced hearings. He does not dispute that these types of hearings can save money and resources because of the distance and costs of travel and transportation. However, he believes that they take a toll on the attorney-client relationship. He gave the example of a client who was in Honolulu; he spoke to her about doing a stipulated facts trial so she could be acquitted because of a mentally disease defect or disorder. While she agreed to the procedure, Mr. Bresciani said that it was very hard to make her comfortable with the documentation that needed to be signed to submit the matter for a

**2009 REPORT ON THE
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stipulated facts trial. When a client appears for a face to face hearing, Mr. Bresciani is able to go over the forms in person. In this example, Mr. Bresciani eventually had to have a colleague from the Honolulu Public Defender's office visit the client to execute the forms.

Mr. Bresciani also stated that, because of the nature of Public Defender work, he does not get many opportunities for in-person contact with clients who are in custody. However, the client is readily available to meet with him before or after traditional court appearances. With video conferenced hearings, he feels that the lack of in-person contacts with clients is detrimental to the attorney-client relationship.

That being said, Mr. Bresciani notes that the Kona court has been accommodating in allowing breaks during video conferenced hearings, so that counsel can privately discuss matters with the client, i.e., clearing the courtroom for a private discussion.

Hilo Public Defender Jennifer Wharton stated that aside from the delays in transmission, she believes that the system works well. She also noted that when she needs to speak with her distance client, the Third Circuit Judge clears the courtroom. However, she is not certain that the distance Judge does the same, stating that "Confidentiality is debatable".

For the report submitted last year, Dudley Akama, Deputy Attorney General, gave a picture of how traditional face-to-face Court proceedings impact mentally ill patients who must be transported to hearings from Hawaii State Hospital (HSH). Patients can become destabilized due to lack of timely medication & HSH staff support. Patients often experience fatigue, anxiety, and fear. The patient would be before the Judge perhaps very briefly, and then face the return trip to the hospital. After a long and traumatic trip of fifteen hours or more, HSH staff would then be faced with the task of re-stabilizing the patient, which could take weeks.

Mr. Akama also informed this writer about the use of manpower resources used for such hearings: typically, two sheriffs, one doctor, one social worker, and one witness in addition to the patient.

Mr. Akama was contacted for updated input for this report, and reiterated the

**2009 REPORT ON THE
CONTINUED NON-CONSENSUAL VIDEO CONFERENCE PILOT PROJECT
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above issues. He continues to endorse video conferenced hearings as a more humane approach to engaging mentally ill defendants in the Court process.

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, the hours of overtime Sheriffs may work, and the location of the transport, as follows:

| | Airfare | Mileage | Per Diem | Sheriff's Overtime | TOTAL |
|----------------------------------------------------|--------------------------------------------------------------------|------------------------------|----------|-------------------------------------------------------|--------|
| Juvenile Detention | \$720 (2 sheriffs, 1 youth) | -- | \$40 | 20 hours (Sheriffs are on call 24/7) \$148- \$1480 | \$2240 |
| Hawaii State Hospital, 704 hearings | \$720 (2 sheriffs, 1 patient) | -- | \$40 | 5 hours \$148 - \$370 | \$1130 |
| Hawaii State Hospital, all other types of hearings | \$1440 (2 sheriffs, 1 witness, 1 doctor, 1 attorney, 1 patient) | -- | \$40 | 5 hours \$148 - \$370 | \$1850 |
| Kona-Hilo transports (2 sheriffs) | -- | \$130 round trip (240 miles) | \$40 | 4 hours \$148 - \$296 | \$466 |
| Interisland transports | \$720 (2 sheriffs, 1 defendant) | -- | \$40 | 5 hours \$148 - \$370 | \$1130 |

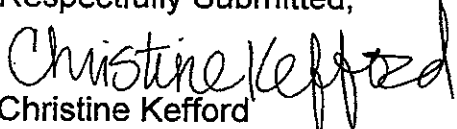
**2009 REPORT ON THE
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Airfare is calculated at \$120.00 per one-way ticket. Sheriff's overtime is calculated using an average hourly overtime pay rate of \$37.00 per hour, per Sheriff. Mileage is calculated by multiplying miles traveled by \$0.55 (standard mileage reimbursement).

The **total cost savings** in the year 2009, based on the data available, was **\$472,304.00**. 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. The Judiciary's awareness of the current economic conditions affecting the State and our nation have caused the Judiciary to implement a number of cost-cutting measures, including expanding the use of video conferencing among the islands.

These cost savings reflect monetary savings only. It would be difficult to quantify the societal savings to our respective communities. All facets of our government are facing staffing shortages. Thus, 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 4, 2010

ATTACHMENT I: The Numbers and Types of Matters Heard by Video Conference During the 2009 Term of the Video Conference Pilot Project

| Type of Hearing | Number of Hearings/Location of Hearings | |
|--------------------------------------------------|---------------------------------------------|----|
| 704 Hearing | 11/HSB | 11 |
| A&P (Arrestment and Plea) | 20/HCCC | 29 |
| | 2/OCCC | |
| | 2/Halawa | |
| | 4/HSB | |
| | 1/Kona <- Hilo Courts | |
| A&P/STA (Arrestment and Plea/Status of Case) | 1/HSB | 1 |
| Fitness | 7/HSB | 7 |
| FOP (For Payment) | 1/HSB | 1 |
| Hearings | 10/DH | 44 |
| | 2/Kona <- Hilo Interim Home (Youth Shelter) | |
| | 2/ 1st CC | |
| | 27/HSB | |
| | 1/5th CC | |
| | 1/Halawa | |
| | 1/HCCC | |
| Juvenile Detention | 83/DH | 83 |
| Motions | 1/Arizona | 21 |
| | 2/OCCC | |
| | 9/HSB | |
| | 5/HCCC | |
| | 3/Kona <- Hilo Courts | |
| | 1/HYCF | |
| Order to Show Cause | 2/HSB | 2 |
| PCR (Proof of Compliance on Conditional Release) | 33/HSB | 33 |
| POC (Proof of Compliance) | 9/HSB | 9 |
| Probation Revocation | 1/HSB | 1 |
| Re-sentencing | 2/OCCC | 2 |
| Return on Bench Warrant | 1/Kona <- Hilo Courts | 5 |
| | 1/DH | |
| | 3/OCCC | |

ATTACHMENT I: The Numbers and Types of Matters Heard by Video Conference During the 2009 Term of the Video Conference Pilot Project

| Type of Hearing | Number of Hearings/Location of Hearings | |
|----------------------------------------------------------------------------------------|-----------------------------------------|------------|
| Return on Doctor's Report | 5/SHS | 5 |
| Review | 13/SHS | 21 |
| | 1/HYCF | |
| | 2/Halawa | |
| | 3/HCCC | |
| | 1/ 2nd CC | |
| | 1/ 5th CC | |
| Sentencing | 1/OCCC | 2 |
| | 1/Halawa | |
| STA/FOC (Status of Case/Continued for payment of the Criminal Injury Compensation Fee) | 1/SHS | 1 |
| STA/PCR (Status of Case/Proof of Compliance on Conditional Release) | 1/SHS | 1 |
| STA/FOP (Status of Case/For Payment) | 1/SHS | 1 |
| STA (Status of Case) | 67/SHS | 67 |
| Stipulation | 3/SHS | 3 |
| Trials | 2/SHS | 2 |
| TRO Violation | 1/SHS | 2 |
| | 1/HCCC | |
| GRAND TOTAL | | 354 |

Legend:

| | |
|-------------------------------------|------------------------------------------------------------|
| 1st CC - First Circuit Court, Oahu | DH - Detention Home, Oahu |
| 2nd CC - Second Circuit Court, Maui | Halawa - Halawa Prison, Oahu |
| 5th CC - Fifth Circuit Court, Kauai | HCCC - Hawaii Community Correctional Center, Hawaii Island |
| | SHS - Hawaii State Hospital, Oahu |
| | HYCF - Hawaii Youth Correctional Facility, Oahu |
| | OCCC - Oahu Community Correctional Center |

**ATTACHMENT II: IN-CUSTODY VIDEO CONFERENCES
2009**

DH=Detention Home, Oahu; HSH=Hawaii State Hospital, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

| | CC - Hilo | CC - Kona | DC - Hilo | DC - Kona | FC - Hilo | FC - Kona |
|----------|-------------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------|
| January | 4 hearings (DH) | 1 A&P (HCCC) 1 Mtn (HCCC) 1 Rtn Dr's (HSH) | 5 PCR (HSH) 1 POC (HSH) 1 Mtn (HSH) 3 STA (HSH) 1 STAFOP (HSH) | 1 704-Review (HSH) 1 A&P (HCCC) 1 Mtn (HCCC) | 9 Juv Detention (DH) | 1 Hearing (Halawa) 5 Juv Detention (DH) |
| February | 2 hearings (DH) | 1 A&P (Halawa) 3 Hearings (HSH) 1 RBW (OCCC) | 5 STA (HSH) 2 PCR (HSH) 1 STAF/PCR (HSH) 3 POC (HSH) 1 Viol/TRO (HSH) | 1 A&P (HALAWA) 1 Mtn (HCCC) 2 OSC (HSH) 1 RBW (OCCC) 1 Rtn Dr's (HSH) 1 Review (HSH) 1 Sentencing (OCC C) | 5 Review (HSH) 4 Juv Detention (DH) | 2 Hearings (from 1 st CC Courtroom) 1 Juv Det (DH) 2 Reviews (Halawa) |
| March | No video-conferenced hearings | 1 A&P (OCCC) 1 A&P (Hilo CC) 1 Hearing (HSH) 1 Mtn (Hilo CC) | 1 STA (HSH) 2 PCR (HSH) | 1 Mtn (OCCC) 1 Rtn Dr's (HSH) | 12 Juv Detention (DH) | 1 Hearing (from 5 th CC Courtroom) 4 Juv Det (DH) |
| April | No video-conferenced hearings | 2 A&P (HCCC) 1 Mtn (HCCC) | 1A&P (HSH) 1 Hearing (HSH) 4 PCR (HSH) 1 POC (HSH) 5 STA (HSH) | 2 704-Review (HSH) 2 A&P (OCCC) 1 Mtn (HCCC) | 2 Juv Detention (DH) | 3 Juv Det (DH) |
| May | 1 Mtn (OCCC) 1 Mtn (HSH) | 1 Sentencing (Halawa) | 1 A&P (HSH) 7 PCR (HSH) 2 STA (HSH) | 1 704-Review (HSH) | 1 Juv Detention (DH) | 2 Hearings (from Hilo Interim Home) 4 Juv Det (DH) 1 Review (HCCC) |

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2009**

DH=Detention Home, Oahu; HSH=Hawaii State Hospital, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

| | CC - Hilo | CC - Kona | DC - Hilo | DC - Kona | FC - Hilo | FC - Kona |
|-----------|--------------------------------|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| June | 1 Hearing (HSH) 1 Mtn (HSH) | 2 A&P (HCCC) 1 Fitness (HSH) 1 Ret Dr's (HSH) | 3 PCR (HSH) 5 STA (HSH) | 1 704-Review (HSH) 3 A&P (HCCC) 1 Fitness (HSH) | Not in use - technical problems with equipment | 4 Juv Det (DH) |
| July | 3 Hearings (HSH) | 1 A&P (HCCC) 1 Review (HSH) 1 A&P (HSH) | 3 PCR (HSH) 3 POC (HSH) 8 STA (HSH) | 1 A&P (HSH) 1 Fitness (HSH) 2 Review (HSH) | Not in use - technical problems with equipment | 1 TRO Viol (HCCC) 1 RBW (DH) 1 Juv Det (DH) |
| August | 3 Hearings (HSH) | 1 A&P (HCCC) 1 Mtn (Hilo CC) 1 Mtn (HSH) 1 Resent (OCCC) 1 Review (HSH) | 1 FOP (HSH) 1 STA/FOC (HSH) 1 POC (HSH) 1 A&P/STA (HSH) 7 STA (HSH) | 1 A&P (HCCC) 1 Mtn (Hilo CC) 1 Mtn (HSH) 1 Re-sentencing (OCCC) 2 Stip (HSH) | Not in use - technical problems with equipment | 1 Juv Det (DH) |
| September | 6 Hearings (HSH) | 2 A&P (HCCC) 2 Mtn (HSH) | 1 Mtn (HSH) 3 PCR (HSH) 10 STA (HSH) | 2 A&P (HCCC) 1 Fitness (HSH) 1 Stip (HSH) | 6 Juv Det (DH) | 5 Juv Det (DH) 1 Con't Hearing (DH) 1 Mtn (HYCF) 1 Review Hearing (from 5 th CC Courtroom) |
| October | 1 Trial (HSH) | 3 A&P (HCCC) 1 Hearing (HCCC) | 2 Hearings (HSH) 2 PCR (HSH) 7 STA (HSH) | 2 Reviews (HSH) 1 Probation Revo. (HSH) | 5 Juv Det (DH) 1 Review (HSH) 1 Mtn (HSH) | No video-conferenced hearings |

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2009**

DH=Detention Home, Oahu; HSH=Hawaii State Hospital, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

| | CC - Hilo | CC - Kona | DC - Hilo | DC - Kona | FC - Hilo | FC - Kona |
|----------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| November | No video-conferenced hearings | 1 A&P (HCCC) 1 Mtn (Arizona) 1 Review (from 2nd CC Courtroom) | 11 STA (HSH) 1 Hearing(HSH) 1 PCR (HSH) 1 Motion (HSH) | 2 Fitness (HSH) | 4 Juv Det (DH) 1 Mtn (HSH) 1 Ret 704 (HSH) | 2 Juv Det (DH) 1 RBW (Hilo CC) |
| December | 2 Hearings (HSH) 1 Trial (HSH) | 1 RBW (OCCC) 2 Hearings (HSH) | 2 Hearings (HSH) 3 STA (HSH) 1 PCR (HSH) | 1 Fitness (HSH) 1 704 Review (HSH) | 3 Ret 704 (HSH) 9 Juv Det (DH) | 3 Hearings (DH) 1 Juv Det (DH) 2 Review (HCCC) 1 Review (HYCF) |
| TOTAL HEARINGS | 6/DH X \$720 = \$4320 19/HSH X \$1850 = \$35,150 1/OCCC X \$1130 = \$1130 | 2/Halawa X \$1130 = \$2260 16/HCCC X \$466 = \$7456 15/HSH X \$1850 = \$27,750 4/OCCC X \$1130 = \$4520 1/Hilo CC = \$466 1/2nd CC = \$1130 | 123/HSH X \$1850 = \$227,550 | 5/704 X \$1130 = \$5650 22/HSH X \$1850 = \$40,700 1/Halawa X \$1130 = \$1130 10/HCCC X \$466 = \$4600 6/OCCC X \$1130 = \$6780 | 4/704 X \$1130 = \$4520 57/DH X \$720 = \$41,040 8/HSH X \$1850 = \$14,800 | 36/DH X \$720 = \$25,920 3/Halawa X \$1130 = \$3390 4/HCCC X \$466 = \$1864 2/Hilo Interim Hm X \$466 = \$932 2/HYCF X \$1130 = \$2260 1/Hilo CC = \$466 2/1st CC = \$2260 2/5th CC = \$2260 |
| COST SAVINGS | \$40,600.00 | \$45,582.00 Savings not calculated: (1) hearing from Arizona | \$227,550.00 | \$58,860.00 | \$60,360.00 | \$39,352.00 |

GRAND TOTAL SAVINGS: \$472,304.00

ATTACHMENT II: IN-CUSTODY VIDEO CONFERENCES

2009

DH=Detention Home, Oahu; HSH=Hawaii State Hospital, Oahu; HCCC=Hawaii Correctional, Hilo; OCCC=Oahu Correctional, Oahu

LEGEND:

A&P = Arraignment and Plea
A&P/STA= Arraignment and Plea/Status of Case S
FOP = For Payment
Juv Det = Juvenile Detention
Mtn = Motion
PCR = Proof of Compliance of Conditional Release
POC= Proof of Compliance
OSC = Order to Show Cause

RBW = Return on Bench Warrant
STA = Status of Case
STA/FOC = Status of Case/Continued for Payment of the Criminal Injury Compensation Fee
STA/FOP = Status of Case/For Payment
STA/PCR = Status of Case/Proof of Compliance on Conditional Release
Stip = Stipulation
TRO Viol = Temporary Restraining Order Violation

