

*FAX Distribution to:*

- Prosecutor 808 241-1758
- Defense Attorney
  - Public Defender 808 274-3422
  - Private Attorney \_\_\_\_\_
- Adult Probation 808 482-2652
- State Designate 808 832-1855
- 2<sup>nd</sup> Examiner Dr. \_\_\_\_\_
- 3<sup>rd</sup> Examiner Dr. \_\_\_\_\_
- KCMHC Forensics 808 241-3133
- AMHD Forensics 808 777-6169
- Sheriff Division 808 482-2389
- KPD Cellblock 808 241-1645
- KCCC 808 241-3059
- OCCC 808 832-1412
- HSH Forensics 808 236-8716
- Kahi Mohala 808 677-2810
- Other \_\_\_\_\_
- Other \_\_\_\_\_

**IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
STATE OF HAWAII**

STATE OF HAWAII,

vs.

\_\_\_\_\_

Defendant.

) **CR. No.** \_\_\_\_\_

) **FC-CR.** \_\_\_\_\_

) **REP. NO(S):** \_\_\_\_\_

) [List offenses or attach complaint, information or  
indictment]

)

)

) ORDER SUSPENDING PROCEEDINGS,  
FOR EXAMINATION OF DEFENDANT  
UNDER HRS CHAPTER 704, AND  
SETTING FURTHER COURT DATE

) [Fitness Only]

) Hearing Date: \_\_\_\_\_

) JUDGE: \_\_\_\_\_

)

**ORDER SUSPENDING PROCEEDINGS, FOR EXAMINATION OF DEFENDANT  
UNDER HRS CHAPTER 704, AND SETTING FURTHER COURT DATE**

A motion for examination under Section 704-404, Hawaii Revised Statutes (“HRS”), was made:       [ ] by Defendant  
  [ ] by State of Hawaii  
  [ ] sua sponte by the Court

Said motion came on for hearing on \_\_\_\_\_.  
Defendant was present   [ ] in person       [ ] via videoconferencing.  
Defendant’s counsel, \_\_\_\_\_, and Deputy Prosecuting  
Attorney \_\_\_\_\_, representing the State of Hawaii, were  
present.

Finding good cause, IT IS HEREBY ORDERED that:

**A.    SUSPENSION OF PROCEEDINGS, HRS § 704-404(1)**

Further proceedings herein shall be suspended except for matters pertaining to  
bail.

**B.    APPOINTMENT OF EXAMINER(S), HRS §704-404(2)**

Defendant shall be examined by:

   State Designate  
          Adult Mental Health Division  
          Court Evaluation Branch  
          1700 Lanakila Street  
          Honolulu, Hawaii 96817

   \_\_\_\_\_  
          Psychiatrist’s name  
          \_\_\_\_\_  
          \_\_\_\_\_

   \_\_\_\_\_  
          Psychiatrist’s, Psychologist’s or Physician’s name  
          \_\_\_\_\_  
          \_\_\_\_\_

**C.    DATABASE, HRS §704-404(8)**

The Adult Client Probation Services Branch shall obtain and timely make  
available for inspection by the examiner(s), all existing medical, mental health, social,

police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes and Rule 16 of the Hawaii Rules of Penal Procedure.

- The court further orders that alcohol and drug abuse patient records within the scope of 42 C.F.R. part 2 that are in the custody of public agencies be provided to the Adult Client Probation Services for review by the examiner(s).

**D. PLACE OF DETENTION AND/OR EXAMINATION**

Defendant shall be examined at:

- The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Director of Public Safety.
- The Kauai Judiciary Complex, 3970 Kaana Street, Lihue, Kauai, in a secured detention area interview room to be specified by the Department of Public Safety Sheriffs Division. Arrangements shall be made by contacting the Sheriffs Division at (808) 482-2472 **not less than three (3) business days before the desired examination date.**
- A hospital or other suitable facility designated by the Director of Health ["DOH Facility"] to which the Defendant is ordered committed until \_\_\_\_\_ **(a period not exceeding 30 days)**, unless the Court determines that a longer period is necessary.
- Counsel for the parties have stipulated that a period in excess of 30 days is necessary and the Court so orders.
- The place, date and time requested by the examiner(s). To arrange Defendant's appointment with the examiner(s), examiner(s) shall contact:

Office of the Public Defender  
Deputy Public Defender \_\_\_\_\_  
Telephone: (808) 241-7128

- Defendant's Attorney \_\_\_\_\_,  
Telephone: \_\_\_\_\_

**E. CONTENTS OF REPORT, HRS §§704-404(4), (5), (6), (7), 704-405, 704-406**

The report(s) of the above-identified examiner(s) shall include the following:

1. A description of the nature of the examination.

2. An opinion as to Defendant's capacity to understand the proceedings against Defendant and to assist in Defendant's own defense.
3. An assessment of the risk of danger to the Defendant or to the person or property of others for consideration and determination of the Defendant's release on conditions.
4. Where more than one examiner is appointed, a statement that the opinion rendered was arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between the examiners for clarification. A description of the communication shall be included in the report.
5. The report may include a diagnosis if the examiner is able to render an opinion based on the information provided.
6. If Defendant's capacity to understand the proceedings against Defendant and/or assist in Defendant's own defense is impaired:
  - a. Should Defendant be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment because Defendant, as a result of Defendant's present mental condition, is a danger to Defendant, or the person or property of others? HRS §704-406(1); or
  - b. May Defendant be released on conditions without danger to Defendant or to another or a risk of substantial danger to property of others, and if so, what are those conditions? HRS §704-406(1).
7. Is there a substantial likelihood that Defendant will acquire the capacity to understand the proceedings against Defendant and/or to assist in Defendant's own defense within a reasonable period of time? If so provide an estimate of the reasonable period of time. HRS §704-406(3).
8. If the examination cannot be conducted by reason of the unwillingness of Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether Defendant's unwillingness was the result of physical or mental disease, disorder, or defect.
9. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

**F. OTHER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. DUE DATE OF EXAMINER'S REPORT**

The examiner(s) shall file a written report with the Court no later than \_\_\_\_\_ . An original plus three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the above-entitled court for distribution to the prosecuting attorney, defendant's counsel and the Adult Client Probation Services Branch.

**H. NEXT COURT DATE**

Pursuant to Section 704-405, HRS, the issue of Defendant's fitness to proceed shall be determined by the Court. **Defendant is ordered to appear before this Court on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m. or sooner, if the examiner(s) has/have completed the examination, and defense counsel can set an earlier court hearing.** If, on the date of such hearing, the Defendant's treating physician determines that transport to the hearing would present a risk of danger to Defendant or others, or if Defendant chooses to waive his/her physical presence at the hearing, Defendant's presence at the hearing may be by way of Video-Conferencing.

DATED: Lihue, Hawaii,

\_\_\_\_\_  
Judge

APPROVED AS TO FORM on \_\_\_\_\_:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Defense Counsel