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- ☒ Prosecutor 808 241-1758
☒ Defense Attorney
 ☐ Public Defender 808 274-3422
 ☐ Private Attorney _____
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☐ 2nd Examiner Dr. _____
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**IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
)
 vs.)
 _____,) **ORDER SUSPENDING PROCEEDINGS,**
) **FOR EXAMINATION OF DEFENDANT**
 Defendant.) **UNDER HRS CHAPTER 704, AND**
) **SETTING FURTHER COURT DATE**
) **[Fitness Only, HRS§704-404]**
) **[Attach Copy of Complaint]**
)
) **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 video-conferencing. Defendant's counsel, _____, and Deputy Prosecuting Attorney _____, representing the State of Hawaii, were present.

The Court, finding that there is reason to doubt Defendant's fitness to proceed, and for good cause appearing, IT IS HEREBY ORDERED as follows:

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 or Psychologist's name

- ☐ _____
Psychiatrist's or Psychologist's name

C. DATABASE, HRS §704-404(9)

The Adult Client 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 any substance use disorder 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 Services for review by the examiner(s).

D. PLACE OF EXAMINATION

Defendant shall be examined at:

- ☐ The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Department of Corrections and Rehabilitation.
- ☐ The Kauai Judiciary Complex, 3970 Kaana Street, Lihue, Kauai, in a secured detention area interview room to be specified by the Department of Law Enforcement, Sheriffs Division. Arrangements shall be made by contacting the Sheriffs Division at (808) 482-2470 **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.
- ☐ 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(3), (5), (6), (8), 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. A diagnosis of the physical or mental condition of Defendant at the present time.
3. An opinion as to Defendant's fitness to proceed, i.e., Defendant's capacity to understand the proceedings against Defendant and to assist in Defendant's own defense. If the opinion of the examiner is that Defendant's capacity to understand the proceedings against Defendant and/or assist in Defendant's own defense is impaired:
 - a. An opinion as to whether Defendant should be committed to the

custody of the Director of Health, pursuant to HRS § 704-406(1), 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 to the person or property of others;

- b. An opinion as to whether Defendant may be released on conditions without danger to Defendant or to the person or property of others, and if so, what those conditions should be. HRS § 704-406(1); and
 - c. An opinion as to whether there is 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).
- 4. A statement that the diagnosis and opinion rendered were arrived at independently of other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
 - 5. 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. If it is not possible to make such a determination, the report shall expressly state that it is not possible to determine whether the Defendant's unwillingness is the result of physical or mental disease, disorder, or defect.
 - 6. If the Defendant persists in refusing to participate in an examination, and the examiner cannot determine whether the Defendant's unwillingness to participate is the result of physical or mental disease, disorder, or defect, the examiner shall render an opinion as to the Defendant's fitness to proceed based on the medical, mental health, social, police, juvenile, and other pertinent records available to the examiner.
 - 7. 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 _____. The **original** of the report(s) of the examination(s), including any supporting documents, shall be submitted to the Clerk of the Court by either of the following methods:

(1) mailing via U.S. Postal Service to 3970 Ka'ana Street, Lihue, Hawaii 96766; or (2) emailing to LegalDocs.5CC@Courts.Hawaii.Gov . As a courtesy, the examiner is encouraged to fax/email an unfiled copy of the report to the appropriate judge's chamber. FAX numbers for judges' chambers are:

District Court Chambers #2 – (808) 482-2535
Family Court Chambers #1 – (808) 482-2541
Family Court Chambers #3 – (808) 482-2655
Circuit Court Chambers #4 – (808) 482-2662
Circuit Court Chambers #6 – (808) 482-2561

The Clerk of the Court shall distribute the report, and any supporting documents, to the prosecuting attorney, Defendant's counsel, and the Adult Client Services Branch.

Any request for an extension of the due date of an examiner's report shall be made in writing and filed with the Court prior to the due date.

H. NEXT COURT DATE

Defendant is ordered to appear before this Court for a further hearing on _____, 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