

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
☐ 2nd Examiner Dr. _____
☐ 3rd 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 _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
)
 vs.)
)
)
 _____,) **ORDER FOR RE-EXAMINATION OF**
) **DEFENDANT AS TO FITNESS TO**
 Defendant.) **PROCEED**
) **[704-406(3), HRS]**
)
) **Hearing Date:** _____
) **Time:** _____
) **Judge:** _____
 _____)

ORDER FOR RE-EXAMINATION OF DEFENDANT AS TO FITNESS TO PROCEED

_____’s Motion for Re-Examination of Defendant, pursuant to HRS Section 704-406(3), came on for hearing on _____. Present were Deputy Prosecuting Attorney _____ for the State of Hawaii, and Defendant’s counsel, _____.

Defendant was [] physically present [] present by video-conference.

The Court, finding that there is reason to believe that the Defendant has regained fitness to proceed, and for good cause appearing,

IT IS HEREBY ORDERED as follows:

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

Further proceedings herein shall be suspended except for matters authorized by HRS Section 704-407.

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

Defendant shall be re-examined by:

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

☐ _____
Psychiatrist's or Psychologist's name

Address

☐ _____
Psychiatrist's or Psychologist's name

Address

C. DATABASE, HRS SECTION 704-404(9)

The Adult Client Services Branch shall obtain and timely make available for inspection by the examiner, 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 Branch for review by the examiner(s).

D. PLACE OF RE-EXAMINATION

- ☐ Defendant shall be re-examined at a hospital or other suitable facility as deemed appropriate by the Director of Health ("DOH Facility") to which the Defendant is ordered committed until _____ (a period not to exceed thirty (30) days, unless the Court determines a longer period is necessary).
- ☐ Defendant shall be re-examined at 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.**
- ☐ Defendant shall be re-examined at the Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Department of Corrections and Rehabilitation.
- ☐ Defendant shall be re-examined on a date and time as requested by the examiner(s). To arrange the Defendant's appointment, the examiner(s) shall contact:
 - ☐ Office of the Public Defender
Deputy Public Defender _____
Telephone: (808) 241-7128
 - ☐ Defendant's counsel, _____
Telephone: _____

E. CONTENTS OF REPORT, HRS SECTIONS 704-404(4); 704-406(3)

The examiner(s)' report shall include the following:

1. A description of the nature of the examination.
2. A diagnosis of the physical or mental condition of the 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 the Defendant and to assist in Defendant's own defense. If the opinion of the examiner is that Defendant lacks the capacity to understand the proceedings against Defendant and/or assist in Defendant's own defense is impaired:
 - a. 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.
4. If the opinion of the examiner is that the Defendant is not fit to proceed and that there is not a substantial likelihood that Defendant will become fit within a reasonable period of time, the examiner shall advise the Court on the following questions, as applicable:
 - a. Is the Defendant mentally ill and/or suffering from a substance abuse condition?
 - b. Is the Defendant imminently dangerous to self or others, gravely disabled or obviously ill?
 - c. Is the Defendant in need of care or treatment, or both? If so, are there suitable alternatives available through existing facilities and programs that would be less restrictive than hospitalization?
5. A statement that the diagnosis and opinion rendered was 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.
6. If the re-examination cannot be conducted by reason of the unwillingness of the Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the 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.
7. 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.
8. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

F. 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.

G. NEXT COURT DATE

Defendant is ordered to appear before this Court on _____ at _____ .m., or sooner if all necessary examiner reports have been filed and Defendant's counsel can set an earlier court hearing. In the event that Defendant's treating physician determines that transport to the hearing would present a risk of danger to Defendant or others, or if the Defendant chooses to waive their 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

Defendant's Counsel