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SP. NO. 1CSP-20-000082

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

In the Matter of the) SP. No. 1CSP-20-000082
) (Special Proceeding)
CIRCUIT COURT OF THE FIRST)
CIRCUIT'S RESPONSE TO THE) NINETEENTH AMENDED EMERGENCY
COVID-19 OUTBREAK) ORDER #4 REGARDING FAMILY COURT
) OF THE FIRST CIRCUIT
_____)

NINETEENTH AMENDED EMERGENCY ORDER #4
REGARDING FAMILY COURT OF THE FIRST CIRCUIT

This matter comes before the Court in light of the public health emergency in the State of Hawai'i.

To further protect the health and safety of First Circuit Court employees and all court participants, and pursuant to the Orders of Chief Justice Mark E. Recktenwald filed as of August 6, 2021 under SCMF No. 20-0000152, In the Matter of the Judiciary's Response to the COVID-19 Outbreak, and with authority as Chief Judge of the above-entitled Court, IT IS HEREBY ORDERED:

1. All Orders issued by the Family Court of the First Circuit, from the Amended Emergency Order #4 Regarding Family Court of the First Circuit filed March 16, 2020 through the Eighteenth Amended Emergency Order #4 Regarding Family Court of the First Circuit filed June 9, 2021, are hereby extended through October 4, 2021, except as modified herein.

2. No party or attorney shall appear in person unless permitted pursuant to this Order or prior approval is granted by the presiding judge. Approval may also be granted to those individuals who do not have access to a telephone or computer to participate remotely.

3. No person shall enter First Circuit Judiciary facilities if they have: (i) a fever or chills, cough, shortness of breath or difficulty breathing, or other symptoms of respiratory illness or of COVID-19 as set forth by the Centers for Disease Control and Prevention (CDC), except where the Department of Health (DOH) has advised that quarantine is not necessary; (ii) had close contact with a person who has or is suspected to have COVID-19, except where the DOH has advised that quarantine is not necessary; or (iii) traveled outside of Hawai'i in the past ten (10) days and have not either (a) satisfied the State's Safe Travels program's negative test exception to the mandatory self-quarantine period and any applicable post-arrival test requirements or (b) satisfied the State's Safe Travels program's requirements for Trans-Pacific travel regarding completion of a vaccination regimen approved by DOH, subject to any subsequent travel restrictions imposed through Statewide or County emergency orders, rules, or proclamations. Further, any person entering First Circuit Judiciary facilities shall wear a face covering as described and recommended by the CDC and shall maintain appropriate social distancing of at least six (6) feet, both inside and outside the courtroom. Exceptions may be made by the presiding judge to the restrictions in extraordinary circumstances.

4. Parties, attorneys, witnesses, and other persons shall remain outside the courthouse as directed by court staff until the Court is ready for their hearing or testimony.

5. Adult Criminal Courts.

a. Jury trials recommenced December 14, 2020 and may continue to proceed, barring further public health or other developments that would make doing so imprudent. All jury trials shall comply with social distancing mandates as ordered by federal, state, and county officials, and shall be conducted in a manner that ensures the safety of Judiciary personnel, jurors, and court users. Any jury trial that cannot be conducted in such a manner shall be further postponed until such a time that all court users' safety can be adequately safeguarded.

b. The First Circuit Family Court adult criminal courts (to include courtrooms 8B, 8C and 8D), shall continue to conduct all other matters, bench trials, motions and hearings (including evidentiary hearings), in compliance with all other court rules and orders, either remotely (*e.g.*, telephone, WebEx, Zoom or other video conferencing) or in person, as the court may require. If the court requires in-person proceedings, the hearings shall be held on a staggered basis to the extent possible and counsel and parties shall practice social distancing.

c. In addition to the provisions listed in No. 3 above, regarding who can enter Judiciary facilities in the First Circuit, no person shall enter if they have had close prolonged contact with a person who has or is suspected to have COVID-19, except where the DOH has advised that quarantine is not necessary

and except for medical personnel or emergency first responders who do not have or are not suspected to have COVID-19 and are present for court hearings/trial.

d. Upon appropriate motion, the presiding judge may grant exceptions to these restrictions in extraordinary circumstances.

6. Domestic Division. All matters currently scheduled shall be conducted by video or telephone, except as provided below.

a. Trials, extended hearings, and settlement conferences shall be conducted in person unless the court in its sole discretion orders or approves a request for video and/or telephone appearance.

b. The court in its sole discretion may order or approve requests for other hearings to be conducted in person.

c. Procedure for in-person trials/hearings in the Domestic Division.

i. Attorneys and parties shall not enter the courthouse until fifteen (15) minutes prior to the scheduled time of the hearing.

ii. Attorneys and parties shall comply with any deadlines set by scheduling orders.

iii. Witnesses shall wait outside the courthouse until it is their time to testify. It will be the obligation of attorneys and parties to notify their witnesses of this procedure.

iv. Witnesses may appear by video or telephone by agreement of the parties (subject to court approval) and/or order of the court. If a witness will appear by video or telephone, it shall be the

responsibility of the attorney or party to: ensure that the witness has received the information necessary to appear remotely (*e.g.*, a “Zoom” invitation or link); have the e-mail address and/or telephone number available for the court to contact the witness; and provide the witness with any of the opposing party’s exhibits or ensure that the exhibits can be displayed on the viewing screen.

- v. Social distancing arrangements will be required in the courtroom, and attorneys and parties shall comply with directions of the presiding judge in the courtroom and the directions of the bailiffs while in the courthouse.

7. Special Division. All matters currently scheduled shall be conducted by video or telephone except as provided below.

- a. Hearings and trials in temporary restraining order and gun violence protective order cases shall be conducted in person, unless the court in its sole discretion orders or approves a request for video and/or telephone appearance;

- b. Hearings on motions requesting the return of firearms shall be conducted in person unless the court in its sole discretion orders or approves a request for video and/or telephone appearance;

- c. Initial return hearings in assisted community treatment cases shall be conducted by video or telephone; provided, however, that parties and attorneys may appear in person if they so desire; and

d. The court in its sole discretion may order or approve requests for other hearings to be conducted in person.

e. Procedure for in-person trials/hearings in the Special Division.

i. Attorneys and parties shall not enter the courthouse until fifteen (15) minutes prior to the scheduled time of the hearing.

ii. Attorneys and parties shall comply with any deadlines set by scheduling orders.

iii. Witnesses shall wait outside the courthouse until called to testify. It will be the obligation of attorneys and parties to notify their witnesses of this procedure.

iv. Witnesses may appear by video or telephone by agreement of the parties (subject to court approval) and/or order of the court. If a witness will appear by video or telephone, it shall be the responsibility of the attorney or party to: ensure that the witness has received the information necessary to appear remotely (*e.g.*, a “Zoom” invitation or link); have the e-mail address and/or telephone number available for the court to contact the witness; and provide the witness with any of the opposing party’s exhibits or ensure that the exhibits can be displayed on the viewing screen.

v. Social distancing will be required in the courtroom, and attorneys and parties shall comply with directions of the

presiding judge in the courtroom and the directions of the bailiffs while in the courthouse.

8. Juvenile Division.

a. All cases on the FC-J and FC-S calendars may be rescheduled, if necessary, and/or set on a staggered schedule to promote social distancing. Social distancing arrangements will be required in the courtroom, and attorneys and parties shall comply with directions of the presiding judge in the courtroom and the directions of the bailiffs while in the courthouse hallway.

b. All attorneys shall consult with their respective clients prior to any scheduled hearing as part of their professional obligations to ensure effective representation.

c. Minors shall not be brought to the courthouse unless otherwise stated below.

d. Interpreters shall appear in person for all hearings.

e. Unless permitted by other court order, requests to appear by video or telephone must be submitted in writing.

f. FC-S cases:

i. Temporary foster custody cases and return hearings. All deputy attorney generals (DAG), parent counsel, and parents shall appear in person. Social workers and Guardians Ad Litem (GALs)/Court-Appointed Special Advocates (CASAs) may appear by video or telephone unless otherwise ordered or instructed by the court. Unless otherwise permitted by the

court, parents in custody shall be transported if transportation is permitted by the particular institution.

- ii. Review hearings. All DAG, social workers, parent counsel, and parents shall appear in person. GALs/CASAs and Resource Caregivers may appear by video or telephone. If transport is permitted by the particular institution, parents in custody may be transported at the court's discretion. Otherwise, parents in custody shall participate by video or telephone.
- iii. Mediations. The mediator shall decide whether mediation will occur remotely or in person. If mediation occurs remotely, the hearing shall proceed with all parties appearing by video or telephone. If the mediation is in person, the DAG, social worker, parent counsel, and parents shall appear in person. All other participants shall appear by video or telephone to ensure social distancing in the courtroom.
- iv. Pre-trial hearings/conferences. Only attorneys shall appear in person, unless there is a stipulation or calendared hearing for that case scheduled for the same time. In cases where there is a substantive stipulation to be placed on the record, parents shall also appear in person.
- v. Trials. Trials, to include FC-A or FC-G cases related to FC-S cases, shall continue to be held with all parties and counsel appearing in person, unless otherwise approved by the court at

a pre-trial conference. Parents in custody shall be transported if transportation is permitted by the particular institution. Otherwise, parents in custody shall appear by video or telephone. Witnesses shall wait outside of the courthouse until called to testify. It will be the obligation of the attorneys and/or parties to notify their witnesses of this requirement. Witnesses may appear remotely by agreement of the parties (subject to court approval) and/or order of the Court.

- vi. Guardianship and adoption hearings. All DAG, social workers, proposed guardian(s)/adoptive parent(s), and the minor(s) shall appear in person. GALs/CASAs may appear by video or telephone. For adoption cases, upon written request, extended family members may participate by video or telephone (subject to court approval).
- vii. Orders. All orders not submitted immediately after the hearing shall be submitted to the court by the close of business of the next business day following the hearing.
- viii. Meetings with minors. Meetings with minors and GALs/CASAs may be held in person or by video or telephone at the court's discretion.
- ix. Other:
 - a. Department of Health (DOH) and Department of Education (DOE) representatives shall appear by video or

telephone, unless otherwise ordered or approved by the court.

- b. Parent supports (*e.g.*, case managers, military supervisors, *etc.*) shall appear by video or telephone unless permission is obtained from the court prior to the hearing. Requests shall be submitted in writing.

g. FC-J cases:

- i. Detention Home (DH) hearings. DH hearings will occur at DH. The Deputy Prosecuting Attorney (DPA), Deputy Public Defender (DPD), court officer, minor and one parent/guardian shall appear in person. The second parent/guardian shall be permitted to participate in the hearing with the minor by video or telephone, if approved by the court in advance. DAG and representatives from the DOH, DOE, and other ancillary agencies shall appear by video or telephone unless otherwise ordered or approved by the court. If the minor is in Department of Human Services (DHS) custody, the social worker and DAG shall appear in person.
- ii. Arraignment, pleas, and motions. All parties, attorneys, and the court officer shall appear in person unless a timely request is made and approved by the court. DAG and representatives from the DOH, DOE, and other ancillary agencies may appear by video or telephone upon written request and at the court's

discretion. If the minor is in DHS custody, the social worker and DAG shall appear in person.

- iii. Disposition hearings. All parties, attorneys, and the court officer shall appear in person, unless a timely request is made and approved by the court. DAG and representatives from the DOH, DOE, and other ancillary agencies may appear by video or telephone upon written request and at the court's discretion. If the minor is in DHS custody, the social worker and DAG shall appear in person.
- iv. Pre-trial conferences. Conferences will only be held in "felony" cases unless otherwise ordered by the court. Only the attorneys and the court officer shall participate and appear by video or telephone, unless it is the minor's/respondent's intent to change his/her plea. For changes of plea, the attorneys, minor/respondent, one parent/guardian, and the court officer shall appear in person.
- v. Trial. The DPA, DPD, minor, one parent/guardian, and the court officer shall appear in person. The second parent/guardian shall be permitted to participate in the hearing with the minor by video or telephone, if approved by the court in advance. DAG and representatives from the DOH, DOE, and other ancillary agencies may appear by video or telephone upon written request and at the court's discretion. If the minor is in

DHS custody, the social worker and DAG shall appear in person. Witnesses shall appear in person unless otherwise ordered or approved by the court. Witnesses shall wait outside of the courthouse until it is their time to testify. It will be the obligation of the attorneys to notify their witnesses of this requirement. Co-minor trials may be bifurcated to maintain social distancing, if necessary and subject to applicable law. Expedited trials for minors in custody shall be set after any mandatory quarantine period has expired.

9. Specialty Courts

a. Family Drug Court. Hearings shall be held in person or as otherwise directed by the presiding judge. Video or telephone appearances may be approved by the presiding judge.

b. Zero to Three (ZTT). Hearings shall be held in person or as otherwise directed by the presiding judge. Video or telephone appearances may be approved by the presiding judge.

c. Imua Kākou. Initial hearings for Voluntary Admission to Imua Kākou and any hearing which will result in the entry of an order terminating a young adult from Imua Kākou shall be held via video, telephone, or as directed by the presiding judge. All other hearings shall continue to be conducted by way of paper review only unless otherwise directed by the presiding judge.

d. Truancy Court. Hearings shall be held using a combination of video and telephone appearances, as directed by the presiding judge. Scheduled hearings

shall be staggered as deemed appropriate by the court. In-person appearances may be approved in the sole discretion of the presiding judge.

e. Girls Court. Girls Court hearings shall be held using a combination of video and telephone appearances, as directed by the presiding judge. For admission hearings, the minor, one parent/guardian, minor's counsel, and the probation officer shall appear in person. The second parent shall be permitted to participate in the hearing with the minor by video or telephone, if approved by the court in advance. For all other hearings, parties shall appear by video or telephone unless otherwise ordered by the court. In-person appearances may be approved in the sole discretion of the presiding judge. Scheduled hearings shall be staggered as deemed appropriate by the court.

f. Juvenile Drug Court. Juvenile Drug Court hearings shall be held using a combination of in-person appearances along with video and telephone appearances, as directed by the presiding judge. Hearing times shall continue to be staggered as directed by the presiding judge. The juvenile, one parent/guardian, the juvenile's probation officer, the DPA, and the DPD shall all appear in person for the hearings. The DAG, stakeholders, and service providers shall participate in the hearings via video or telephone.

10. General Video & Telephone Hearing Procedures for Remote Matters in Domestic Division, Special Division, Juvenile Division, and Specialty Courts.

a. Video Hearings. The court directs that parties and attorneys appear for remote hearings via video conference whenever possible through Zoom or other video application as may be directed by the court (smartphone and/or computer

with video, audio, and microphone is required). For Domestic Division, Special Division, and Specialty Court cases, if the court has an e-mail address for the party and/or counsel, the Court will send an “invitation” to attend the hearing by e-mail, which will include a link to join the meeting at the scheduled time. For Juvenile Division cases, attorneys shall forward the Zoom or other video application information provided to their clients. The court recommends that attorneys and parties download the Zoom or other video program application to any device or computers that are used to participate remotely in court proceedings. At the time of the hearing, all participants must be in a quiet place, without interruption or distractions. Parties and attorneys shall not call the bailiff’s desk if they are able to enter the meeting room lobby.

b. Telephone Procedure. In the event video is unavailable, parties and attorneys may participate in the hearing by telephone. The court may call the parties and attorneys through Zoom or other video application; the call will likely appear on their telephone as an out-of-state telephone number. Attorneys are to inform their clients of the above procedures.

c. If a party or attorney is unable to enter the meeting room lobby for a video hearing and has also not received a telephone call from the court, they shall call the bailiff’s desk at (808) 954-8087 for the second floor, or (808) 954-8085 for the third floor.

11. Domestic Division and Special Division Civil Case Requirements.

a. Cases Where A Party Is Represented By An Attorney. In cases where both parties are represented by attorneys, the attorneys shall confer with one

another prior to the date of the hearing to attempt to resolve any disputed issues. If a contested hearing is necessary, attorneys are encouraged to agree to proceed by way of offers of proof. In cases where one party is represented by an attorney, the attorney shall confer, or attempt to confer, with the opposing party prior to the date of the hearing in an effort to resolve any disputed issues. Failure of attorneys to confer prior to the date of the hearing may result in the court rescheduling the matter to a future date.

b. Exhibits or Documents. Any exhibits or documents that a party intends to use or present at the hearing shall be provided to the court in compliance with any other court order but, in any event, shall not be provided later than three business days prior to the scheduled hearing. Exhibits shall be provided to the opposing parties or attorneys no later than forty-eight (48) hours prior to the hearing. Exhibits shall be mailed to the court or dropped off at the Family Court drop box located at the entrance to the Family Court in Kapolei. Attorneys are encouraged to exchange exhibits with each other by e-mail or other electronic means.

12. Child Support Enforcement Agency Appeals shall continue to proceed as in the normal course.

13. In-person appearances for the Kids First Program shall continue to be suspended, but parties may be required to participate in online education/programming as directed by the Kids First Program.

14. This Order may be modified as circumstances warrant, but absent further action this Order shall remain in effect.

It is so Ordered.

DATED: Honolulu, Hawai'i, August 11, 2021 .

/s/ R. Mark Browning



HON. R. MARK BROWNING, CHIEF JUDGE
First Circuit Court, State of Hawai'i