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SCMF-20-0000152

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Judiciary’s Response
to the COVID-19 Outbreak

ORDER REGARDING TEMPORARY SUSPENSION OF THE TIME REQUIREMENTS
UNDER HAWAI‘I RULES OF PENAL PROCEDURE RULE 5(c) (3)
(FIRST CIRCUIT)

(By: Recktenwald, C.J., Nakayama, McKenna, and Eddins, JJ.,
and Wilson, J., dissenting¹)

The COVID-19 pandemic has caused a public health emergency. In response to the declared state of emergency, the Judiciary postponed non-urgent court business and limited in-person proceedings in an effort to ensure the health and safety of court users and Judiciary personnel, and to minimize the risk

¹ Dissent to Amended Order Re: Felony Defendants (Filed August 18, 2020); Order Re: Petty Misdemeanor, Misdemeanor, and Felony Defendants at Maui Community Correctional Center, Hawai‘i Community Correctional Center, and Kaua‘i Community Correctional Center (Filed August 24, 2020); Order Re: Petty Misdemeanor, Misdemeanor, and Felony Defendants (Filed August 27, 2020); and Order Denying Petitioner’s “Motion to Compel Compliance with This Court’s Orders” (Filed September 1, 2020). The Dissent was filed on February 18, 2021, in SCPW-20-0000509. See also Dissent Re: Order Regarding Temporary Extension of the Time Requirements Under Hawai‘i Rules of Penal Procedure Rule 10(a), (b), and (c) (Circuit Court of the Third Circuit), filed on June 1, 2021.

of spreading COVID-19 in the courts. As COVID-19 cases remained low, court operations resumed in accordance with public health safety guidance, and to the extent possible with available resources. Criminal proceedings have proceeded in-person and by video conference in accordance with court rules and as feasible.

In mid-July 2020, there was a surge of COVID-19 cases in Hawai'i, and particularly within our community correctional centers and facilities, including at the O'ahu Community Correctional Center ("OCCC"), where inmates were being held in quarantine and the transport to court of custody defendants was suspended. At the time, in a letter to the court, the Office of the Public Defender requested the temporary suspension of, *inter alia*, Hawai'i Rules of Penal Procedure Rule 5(c)(3),² noting that defendants released from OCCC on bail or otherwise may need to

² HRPP Rule 5(c)(3) provides the following time requirements for a preliminary hearing:

The court shall conduct the preliminary hearing within 30 days of initial appearance if the defendant is not in custody; however, if the defendant is held in custody for a period of more than 2 days after initial appearance without commencement of a defendant's preliminary hearing, the court, on motion of the defendant, shall release the defendant to appear on the defendant's own recognizance, unless failure of such determination or commencement is caused by the request, action or condition of the defendant, or occurred with the defendant's consent, or is attributable to such compelling fact or circumstance which would preclude such determination or commencement within the prescribed period, or unless such compelling fact or circumstance would render such release to be against the interest of justice.

quarantine and comply with isolation requirements, and that allowing the courts to continue matters for non-custody defendants would assist in those endeavors.

On August 27, 2020, this court entered an order temporarily suspending the time requirements set forth under HRPP Rule 5(c)(3) for First Circuit criminal matters. The order was extended as conditions required. The order expired on May 31, 2021, when the statewide positivity rate and hospitalizations had stabilized, and there was reported to be no active COVID-19 cases at OCCC.

Since then, the rate of positive COVID-19 cases and hospitalizations on O'ahu have continued to fluctuate. In recent weeks, statewide infection and hospitalization rates have surged, with record numbers of positive cases and rapidly increasing hospitalizations being reported. In addition, the number of active positive cases reported at OCCC has also grown.

Health and safety continue to be paramount during this unprecedented time. The current trajectory of the pandemic and its impact on our community require continued flexibility and vigilance in adapting to these extraordinary circumstances, and the continued need to protect court users and Judiciary personnel during this unprecedented time remains vital. Under the current circumstances, a temporary suspension of the time

requirements set forth under HRPP Rule 5(c)(3) for First Circuit criminal matters is necessary.

Accordingly, pursuant to article VI, section 7 of the Hawai'i Constitution and Hawai'i Revised Statutes §§ 601-1.5 and 602-5(a)(6), and Governor David Y. Ige's Emergency Proclamations,

IT IS HEREBY ORDERED that the First Circuit may temporarily extend the time requirements for preliminary hearings, as set forth under HRPP Rule 5(c)(3), no longer than reasonably necessary to protect public health and safety. Judges, however, are strongly encouraged to follow the time requirements and provisions set forth under HRPP Rule 5(c)(3) to the extent possible, and utilize remote technology as feasible.

This order is effective as of the date of filing and shall expire on October 4, 2021, unless otherwise modified or extended.

Dated: Honolulu, Hawai'i, August 19, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

