

**Electronically Filed  
Supreme Court  
SCMF-20-0000152  
30-SEP-2021  
12:04 PM  
Dkt. 143 ORD**

SCMF-20-0000152

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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

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SECOND EXTENSION OF 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)

(By: Recktenwald, C.J., Nakayama, McKenna, and Eddins, JJ.,  
with Wilson, J., dissenting<sup>1</sup>)

The COVID-19 pandemic has caused a public health emergency. In response to the pandemic, 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 minimize the risk 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 late May 2021, there was an uptick of COVID-19 positive cases being reported at the Hawai‘i Community

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<sup>1</sup> See 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.

Correctional Center ("HCCC"). Throughout this period, it was reported that there were approximately two hundred fifty-six active positive COVID-19 cases at HCCC. As a result, HCCC was in lockdown and no transport or remote hearings were occurring at the time, thus affecting the time requirements for arraignments under Hawai'i Rules of Penal Procedure Rule 10.

Thus, on June 1, 2021, this court entered the "Order Regarding Temporary Extension of the Time Requirements Under Hawai'i Rules of Penal Procedural Rule 10(a), (b), and (c)," which provided that the third circuit may temporarily extend the time requirements for arraignments no longer than reasonably necessary to protect public health and safety, while encouraging judges to utilize remote technology whenever possible. Currently, the June 1, 2021 order expires on September 30, 2021.

The rate of positive COVID-19 cases and hospitalizations on Hawai'i Island, and within our community correctional centers, continues to fluctuate. In early August 2021, statewide infection and hospitalization rates surged, with record numbers of positive cases and rapidly increasing hospitalizations being reported. Additionally, it is also understood that HCCC continues to remain in lockdown. As the pandemic conditions continue to evolve and impact our community, health and safety precautions continue to remain in place. Given the current trajectory of the pandemic and the fluidity of these conditions, flexibility and vigilance in adapting to these extraordinary circumstances is vital, and the continued need to protect the health and safety of court users and Judiciary personnel during this unprecedented time remains paramount. A further extension of the June 1, 2021 order for third circuit criminal matters is therefore necessary.

Accordingly, pursuant to article VI, section 7 of the Hawai'i Constitution, 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 June 1, 2021 "Order Regarding Temporary Extension of the Time Requirements Under Hawai'i Rules of Penal Procedural Rule 10(a), (b), and (c)" for third circuit criminal matters is further extended until November 30, 2021, unless otherwise modified or extended.

Dated: Honolulu, Hawai'i, September 30, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

