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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) TWENTY-FIRST AMENDED EMERGENCY
COVID-19 OUTBREAK) ORDER #4 REGARDING FAMILY COURT
) OF THE FIRST CIRCUIT
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TWENTY-FIRST 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.

In light of the recent surge in COVID-19 infection and hospitalization rates throughout the State of Hawai'i with record numbers of positive cases being reported, the First Circuit Courts will continue to conduct remote proceedings while also implementing additional precautions to reduce the number of people congregating in Judiciary facilities.

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 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 Emergency Orders regarding 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 Twentieth Amended Emergency Order #4 Regarding Family Court of the First Circuit filed September 9, 2021, are hereby extended unless further ordered by the Court and except as modified by, or inconsistent with, the provisions herein.

2. Entry into First Circuit Judiciary facilities in which Family Court proceedings or operations take place shall be governed by the provisions of the Orders of Chief Justice Mark E. Recktenwald filed under SCMF No. 20-0000152, In the Matter of the Judiciary's Response to the COVID-19 Outbreak, including, but not limited to: Order Directing Courthouse Closures, filed March 20, 2020, and any modifications or extensions thereof; Order Regarding Judiciary Operations, filed November 29, 2021, and any modifications or extensions thereof; Fifth Amended Order Regarding Entering Judiciary Facilities, filed June 15, 2021, and any modifications or extensions thereof; and Order Regarding Requirements for Attorneys Entering Judiciary Facilities, filed November 12, 2021, and any modifications or extensions thereof.

3. 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.

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. Pursuant to the December 23, 2021 Order Postponing Jury Trials, entered by Chief Justice Mark E. Recktenwald in SCMF No. 20-0000152, all jury proceedings shall be postponed to dates after February 28, 2022.

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. 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 the 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 remotely, either by video or telephone, unless the court, in its sole discretion, orders or approves a request for an in person appearance;

- c. Initial return hearings in assisted community treatment cases shall be conducted remotely, either by video or telephone, unless the court, in its sole discretion, orders or approves a request for an in person appearance; 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 enter the courthouse unless 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 and FC-J cases:

i. All matters currently scheduled shall be conducted by video or telephone except as otherwise stated in this Order.

ii. Temporary foster custody cases and motions to transition from family supervision to foster custody shall be held with all parties and counsel appearing in person, unless otherwise ordered by the court. For these hearings only, the social worker and Guardian Ad Litem may appear by video or telephone. Social distancing arrangements will be made in the courtroom.

iii. FC-S review hearings shall be held with all parties and counsel appearing by video or telephone. In-person appearances may be

held in the Court's sole discretion or upon approved request.

- (1) Due to COVID-19 concerns, minors shall not be brought to the courthouse until further notice. Arrangements shall be made with the Guardian Ad Litem to communicate remotely with the minor and schedule a meeting with the presiding judge.
- (2) All attorneys shall consult with their respective clients prior to any scheduled hearing as part of their professional obligation to ensure effective representation.
- (3) All attorneys shall forward the remote hearing information to their clients.

- iv. FC-S trials shall continue to be held with all parties and counsel appearing in person, unless otherwise ordered 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 appropriately. Witnesses may appear remotely by agreement of the parties and/or order of the Court. Pretrial conferences shall be scheduled to discuss trial procedures. Social distancing arrangements will be made in the courtroom.
- v. FC-J uncontested motions, dispositions, arraignment and plea hearings, and pretrial conferences shall continue to be held using a combination of in-person and remote appearances, as directed by the presiding judge. Proceedings involving minors who are being held at Hale Ho`omalua (DH) or residing at Home Maluhia

(Shelter) shall be conducted from the Kapolei Courthouse courtrooms. Provided, however, that the minor and his/her counsel shall participate in the hearing remotely from DH or the Shelter, unless otherwise directed by the Court; one parent/guardian may participate in person from the courtroom; a second parent or guardian may participate remotely if approved by the Court.

- vi. FC-J contested motions, change of plea hearings, and trials shall be held with all parties and counsel appearing in person, unless otherwise ordered by the Court. Only one parent shall be permitted to attend the hearing in person with the minor. The second parent may participate remotely if approved by the Court. Representatives from the Department of Health and other ancillary agencies may appear remotely. Witnesses shall wait outside the courthouse until it is their time to testify. It will be the obligation of the attorneys to notify their witnesses appropriately. Unless otherwise ordered by the Court, pretrial conferences shall only be set for felony trial cases.

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 in-person and 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, unless otherwise directed by the presiding judge. 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/programing as directed by the Kids First Program.

14. This Order shall be effective immediately and may be modified or extended as circumstances warrant, but absent further action this Order shall remain in effect through February 28, 2022.

It is so Ordered.

DATED: Honolulu, Hawai'i, December 28, 2021.

/s/ R. Mark Browning



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