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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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ORDER FURTHER EXTENDING JUNE 5, 2020 ORDER TEMPORARILY  
SUSPENDING IN PART HAWAI'I RULES OF PENAL PROCEDURE RULE 6(a)  
(CIRCUIT COURT OF THE FIRST CIRCUIT)  
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

On March 4, 2020, Governor David Ige declared a state of emergency in Hawai'i in response to the public health threat posed by COVID-19. In response to the declared state of emergency, the Chief Justice issued an Order on March 16, 2020, which, among other things, postponed non-urgent court business in an effort to ensure the health and safety of court personnel and users, and minimize the risk of spreading COVID-19 in the courts.

Pursuant to the Chief Justice's May 22, 2020 Order Regarding Jury Trial and Grand Juries, beginning June 1, 2020, grand jury proceedings were allowed to commence as directed by

the chief judge of the respective circuit. At that time, based on recommended health and safety guidelines that physical distancing be maintained, and with limited resources, the First Circuit Court did not have the capacity in Ka'ahumanu Hale to place 16 grand jurors as required under Hawai'i Rules of Penal Procedure Rule 6(a), as well as the individuals required to be present while the grand jury is in session as set forth under Hawai'i Rules of Penal Procedure Rule 6(d), in the same space and allow for physical distancing.

Therefore, to protect the health and safety of Judiciary personnel, jurors, and court users consistent with the recommendations of public health authorities, while maintaining court operations during the COVID-19 pandemic without unnecessary delay, on June 5, 2020, this court issued its "Order Temporarily Suspending in Part Hawai'i Rules of Penal Procedure Rule 6(a)", which, as to the First Circuit, temporarily reduced the number of members of a grand jury from 16 members to 12 members through July 31, 2020. As the positivity rate of COVID-19 cases increased, and the ongoing health concerns and the continued mandate for physical distancing remained in place, it was necessary to extend the June 5, 2020 order. Currently, the June 5, 2020 order expires on December 31, 2021.

The First Circuit Court has taken significant steps to be able to allow grand jury proceedings to resume with 12-member

grand jury panels and in compliance with physical distancing measures. Given the fluidity of pandemic conditions and the recent emergence of the Omicron variant, current emergency orders and health and safety guidelines in place, and continued guidance regarding physical distancing, it is necessary for the 12-member grand jury panels to remain in effect to allow the First Circuit Court to continue to hold grand jury proceedings.

Therefore, pursuant to Article VI, section 7 of the Hawai'i Constitution and Hawai'i Revised Statutes §§ 602-5(a)(6) and 612-27,

IT IS HEREBY ORDERED that the June 5, 2020 "Order Temporarily Suspending in Part Hawai'i Rules of Penal Procedure Rule 6(a)" is further extended until June 30, 2022. This order may be modified or extended as necessary.

Dated: Honolulu, Hawai'i, December 16, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

