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

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

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

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<sup>1</sup> See 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 late May 2021, there was an increase in COVID-19 positive cases being reported at the Hawai'i Community Correctional Center ("HCCC"). As a result, HCCC was in lockdown and the transport of custody defendants was suspended. In early August 2021, statewide infection and hospitalization rates surged, with record numbers of positive cases and rapidly increasing hospitalizations being reported. Additionally, HCCC remained in lockdown with no transports occurring. It was therefore necessary to temporarily suspend the time requirements set forth under HRPP Rule 5(c)(3)<sup>2</sup> for Third Circuit criminal matters.

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<sup>2</sup> 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

Thus, on August 19, 2021, this court entered the "Order Regarding Temporary Suspension of the Time Requirements Under Hawai'i Rules of Penal Procedure Rule 5(c)(3) (Third Circuit)," which provided that the Third Circuit may temporarily extend the time requirements for preliminary hearings no longer than reasonably necessary to protect public health and safety, while encouraging judges to follow the time requirements under HRPP Rule 5(c)(3) to the extent possible and to utilize remote technology as feasible. As pandemic-related restrictions and conditions remained in place, this court extended the provisions of the August 19, 2021 order. Currently, the August 19, 2021 order expires on January 28, 2022.

The rate of positive COVID-19 cases and hospitalizations on Hawai'i Island, and within our community correctional centers, continues to fluctuate. In the last month, with the emergence of the Omicron variant, Hawai'i saw a surge in statewide positive case numbers and hospitalizations, with record numbers of positive cases and rapidly increasing hospitalizations being reported.

As the pandemic conditions continue to evolve and impact our community, health and safety precautions continue to

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or commencement within the prescribed period, or unless such compelling fact or circumstance would render such release to be against the interest of justice.

remain in place. It is also understood that HCCC continues to remain in lockdown. Given the fluidity of these conditions and the current trajectory of the pandemic, flexibility and vigilance in adapting to these extraordinary circumstances is vital, and the continued need to protect court users and Judiciary personnel during this unprecedented time remains paramount. Thus, an extension of the August 19, 2021 order for Third 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 August 19, 2021 "Order Regarding Temporary Suspension of the Time Requirements Under Hawai'i Rules of Penal Procedure Rule 5(c)(3) (Third Circuit)," for Third Circuit criminal matters, is extended until March 25, 2022, unless otherwise modified or extended.

Dated: Honolulu, Hawai'i, January 27, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

