

FAX Distribution to:

- ☒ Prosecutor 808 241-1758
☒ Defense Attorney
 ☐ Public Defender 808 274-3422
 ☐ Private Attorney _____
☒ Adult Probation 808 482-2652
☒ State Designate 808 832-1855
☐ 2nd Examiner Dr. _____
☐ 3rd Examiner Dr. _____
☒ KCMHC Forensics 808 241-3133
☒ AMHD Forensics 808 777-6169
☒ Sheriff Division 808 482-2389
☐ KPD Cellblock 808 241-1645
☐ KCCC 808 241-3059
☐ OCCC 808 832-1412
☐ HSH Forensics 808 236-8716
☐ Kahi Mohala 808 677-2810
☐ Other _____
☐ Other _____

**IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,

vs.

Defendant.

) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
)
) **ORDER SUSPENDING PROCEEDINGS,**
) **FOR EXAMINATION OF DEFENDANT**
) **UNDER HRS §704-404(2)(a)**
)
) **[NON-VIOLENT PETTY MISDEMEANOR]**
) **[Attach Copy of Complaint]**
)
) **Hearing Date:** _____
) **JUDGE:** _____
)

**ORDER SUSPENDING PROCEEDINGS, FOR
EXAMINATION OF DEFENDANT UNDER HRS §704-404(2)(a)**

A motion for examination under Section 704-404(2)(a), Hawaii Revised Statutes (“HRS”), was made: ☐ by Defendant
 ☐ by State of Hawaii
 ☐ sua sponte by the Court

Said motion came on for hearing on _____. Defendant ☐ was physically present ☐ appeared via video-conferencing. Defendant’s counsel, _____, and Deputy Prosecuting Attorney _____, representing the State of Hawaii, were present. Defendant is charged in the above-entitled case with petty misdemeanor(s) not involving violence or attempted violence.

The Court, finding that there is reason to doubt Defendant’s fitness to proceed in this matter, and for good cause appearing,

IT IS HEREBY ORDERED as follows:

A. SUSPENSION OF PROCEEDINGS, HRS § 704-404(1)

Further proceedings herein shall be suspended except for matters pertaining to bail.

B. APPOINTMENT OF EXAMINER(S), HRS §704-404(2)(a)

A qualified examiner shall be appointed to provide an expedited report solely upon the issue of the Defendant’s capacity to understand the proceedings against the Defendant and Defendant’s ability to assist in his/her own defense.

C. PLACE OF EXAMINATION

Defendant shall be examined at:

- ☐ The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Department of Corrections and Rehabilitation.
- ☐ The Kauai Judiciary Complex, 3970 Kaana Street, Lihue, Kauai, in a secured detention area interview room to be specified by the Department of Law Enforcement, Sheriffs Division. Arrangements shall be made by contacting the Sheriffs Division at (808) 482-2470 **not less than three (3) business days before the desired examination date.**
- ☐ A hospital or other suitable facility designated by the Director of Health [“DOH Facility”] to which the Defendant is ordered committed until _____ **(a period not exceeding seven (7) days).**

☐ Other (please specify) _____

D CONTENTS OF REPORT, HRS §§704-404(2)(a)

The examiner's report shall include the following:

1. A description of the nature of the examination.
2. A diagnosis of the physical or mental condition of Defendant at the present time.
3. An opinion as to Defendant's fitness to proceed, i.e., Defendant's capacity to understand the proceedings against Defendant and to assist in Defendant's own defense.
4. If the examination cannot be conducted by reason of the unwillingness of Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether Defendant's unwillingness was the result of physical or mental disease, disorder, or defect. If it is not possible to make such a determination, the report shall expressly state that it is not possible to determine whether the Defendant's unwillingness is the result of physical or mental disease, disorder, or defect.
5. If the Defendant persists in refusing to participate in an examination, and the examiner cannot determine whether the Defendant's unwillingness to participate is the result of physical or mental disease, disorder, or defect, the examiner shall render an opinion as to the Defendant's fitness to proceed based on the medical, mental health, social, police, juvenile, and other pertinent records available to the examiner.
6. The examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

E OTHER

F. DUE DATE OF EXAMINER'S REPORT

The examiner shall file a written report with the Court no later than _____. The **original** of the report of the examination, including any supporting documents, shall be submitted to the Clerk of the Court by either of the following methods: (1) mailing via U.S. Postal Service to 3970 Ka'ana

Street, Lihue, Hawaii 96766; or (2) emailing to LegalDocs.5CC@Courts.Hawaii.Gov. As a courtesy, the examiner is encouraged to fax/email an unfiled copy of the report to the appropriate judge's chamber. FAX numbers for judges' chambers are:

District Court Chambers #2 – (808) 482-2535
Family Court Chambers #1 – (808) 482-2541
Family Court Chambers #3 – (808) 482-2655
Circuit Court Chambers #4 – (808) 482-2662
Circuit Court Chambers #6 – (808) 482-2561

The Clerk of the Court shall distribute the report, and any supporting documents, to the prosecuting attorney, Defendant's counsel, and the Adult Client Services Branch.

G. DUE DATE OF UPDATED REPORT TO COURT FROM THE DIRECTOR OF HEALTH

If the Defendant is committed to the custody of the Director of Health, within seven (7) days from the commitment of the Defendant to the custody of the Director of Health, or as soon thereafter as is practicable, the Director of Health shall report to the Court on the Defendant's current capacity to understand the proceedings against the Defendant and the Defendant's current ability to assist in the Defendant's own defense.

H NEXT COURT DATE

Defendant is ordered to appear before this Court for a hearing on Defendant's fitness to proceed. The hearing shall take place within two (2) days of the filing of the examiner's report, or as soon thereafter as is practicable, on _____, at _____ .m. If the Defendant has been committed to the custody of the Director of Health, and in the event that Defendant's treating physician determines that transport to the hearing would present a risk of danger to Defendant or others, or if Defendant chooses to waive his/her physical presence at the hearing, Defendant's presence at the hearing may be by way of video-conferencing.

DATED: Lihue, Hawaii,

Judge

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel