

**Electronically Filed
Supreme Court
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SCPW-12-0000911

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SHAYLENE ISERI-CARVALHO, Prosecuting Attorney,
County of Kauai, State of Hawai'i, Petitioner,

vs.

THE HONORABLE KATHLEEN N.A. WATANABE,
Judge of the Fifth Judicial Circuit Court,
State of Hawai'i, Respondent.

ORIGINAL PROCEEDING

ORDER

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ.,
and Circuit Judge Lee, in place of Pollack, J.)

On October 29, 2012, petitioner Shaylene Iseri-Carvalho, Prosecuting Attorney, County of Kaua'i, State of Hawai'i filed a petition for a writ of mandamus for an order directing the respondent judge to immediately convene an open session of the Fifth Circuit Court in order to receive the return from the October 26, 2012 grand jury session. By order entered on October

29, 2012, this court ordered the respondent judge to receive the grand jury return by no later than 4:00 p.m. on October 29, 2012, and to answer the petition.

On October 30, 2012, the respondent judge filed her answer to petitioner's October 29, 2012 petition for a writ of mandamus. In addition, on October 30, 2012, petitioner filed a supplemental request for mandamus relief. Upon consideration of the respondent judge's answer, petitioner's supplemental request for mandamus relief, the supporting documents and declarations, and the record, it appears that (1) petitioner has alternative means to adequately seek the relief sought concerning the conduct of the respondent judge and her staff, and the disqualification of the respondent judge, and (2) petitioner's request for an expedited warrant is moot. Petitioner, therefore, is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Moreover, where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before

the court under circumstances in which he or she has a legal duty to act). Accordingly,

IT IS HEREBY ORDERED that petitioner's request for supplemental mandamus relief is (1) denied as to the relief requested with respect to the respondent judge and her staff's conduct and the respondent judge's disqualification, and (2) dismissed as to the relief requested with respect to an expedited warrant.

DATED: Honolulu, Hawai'i, December 4, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Randal K.O. Lee

