

**Electronically Filed
Supreme Court
SCPW-17-0000927
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NO. 21908 and SCPW-17-0000927

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

No. 21908

STATE OF HAWAI‘I,
Plaintiff-Appellee,

vs.

JEROME ROGAN,
Defendant-Appellant.

SCPW-17-0000927

NICK GRUBE,
Petitioner,

vs.

THE HONORABLE ROM A. TRADER,
Judge of the Circuit Court of the First Circuit,
State of Hawai‘i, Respondent Judge,

and

STATE OF HAWAI‘I, ALAN AHN, and TIFFANY MASUNAGA, Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(1PC970001153) AND ORIGINAL PROCEEDING (CASE NO. 1PC151001338)

AMENDED ORDER

(By: Recktenwald, C.J., McKenna, Eddins, and Ginoza, JJ.,
and Circuit Judge Viola, in place of Devens, J., recused)

Pending before the court are Defendant-Appellant Jerome Rogan's and Respondent Alan Ahn's (Movants) requests to seal the case files based on expungement orders issued by the Department of the Attorney General (Attorney General) and Hawai'i Revised Statutes (HRS) § 831-3.2(f) (Supp. 2018) (Subject Motions). See Case No. 21908 Dkt. 26; SCPW-17-0000927 Dkt. 33. Published opinions have previously been entered by the court in both cases. State v. Rogan, 91 Hawai'i 405, 984 P.2d 1231 (1999); Grube v. Trader, 142 Hawai'i 412, 420 P.3d 343 (2018).

It is ordered:

A. The cases are sua sponte consolidated for purposes of oral argument and disposition. See Hawai'i Rules of Appellate Procedure, Rule 3(b). All future submissions shall be filed in SCPW-17-0000927.

B. The court finds that supplemental briefing and oral argument is warranted and will therefore invite the Office of the Public Defender, as amicus curiae, to file supplemental briefing and participate in oral argument on the Subject Motions. The Office of the Public Defender would not be representing any party, but instead it is invited to submit supplemental briefing and present oral argument in support of the Subject Motions as a friend of the court. A copy of the

Subject Motions, this order, and SCPW-17-0000927 Docket Nos. 35, 37, 43, shall be served by the Clerk of the Supreme Court on the State Public Defender Jon N. Ikenaga and Assistant Public Defender Hayley Y. Cheng. The Office of the Public Defender shall file a notice in SCPW-17-0000927 by **December 4, 2024** on whether it will accept the court's invitation and enter an appearance as amicus counsel, or will decline.

C. By later filed order, the court will set a supplemental briefing schedule on the following issues: (1) whether sealing the entire case file under HRS § 831-3.2(f) violates the public's right of access under the first amendment of the U.S. Constitution and/or article I, section 4 of the Hawai'i Constitution; (2) whether narrower remedies are available, short of a total sealing, that would protect the interests advanced by HRS § 831-3.2(f), and if so, what are those remedies; and (3) the extent, if any, HRS § 831-3.2(f) encroaches on the Judiciary's independence and power to administer its own records. See generally Haw. Const. article VI, §§ 1,7; HRS §§ 601-5 (2016), 602-5.5 (2016).

D. Notice is provided that the Department of the Attorney General will be required to submit supplemental briefing and participate in oral argument on this matter.

E. A copy of this order shall be conventionally served on Movants. Jerome Rogan and Alan Ahn may also participate in oral

argument through counsel. To inquire on the possibility of obtaining pro bono counsel, Rogan and/or Ahn are encouraged to contact the Appellate Pro Bono Program by e-mail (appellate@vlsh.org) or phone (808-528-7046).

DATED: Honolulu, Hawai'i, November 22, 2024.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Matthew J. Viola

