

NO. 29904

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioner,

vs.

DISTRICT COURT OF THE FIRST CIRCUIT,
STATE OF HAWAII, Respondent.

EMILIANO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JUL -8 AM 9:46

FILED

ORIGINAL PROCEEDING

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

Upon consideration of the petition for a writ of mandamus filed by petitioner Michael C. Tierney and the papers in support, it appears that petitioner submitted to the district court of the first circuit, pursuant to HRS § 604-10.5 (Supp. 2008), a Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment (petition). The district court -- upon receipt and review of the petition -- struck the petition without filing and returned it to petitioner. Petitioner seeks a writ of mandamus directing the district court to file the petition.

A writ of mandamus will issue where a petitioner demonstrates a clear and indisputable right to relief and a lack of other means to redress adequately the alleged wrong or obtain the requested action. Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999). Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt,

and no other remedy is available. In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999), citing Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996).

Petitioner has an indisputable right to have his petition for temporary restraining order filed. See DCRCP 5(e) ("Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form[.]"). The filing of the petition is a ministerial duty of the district court. The district court struck the petition without filing and returned it to petitioner. Petitioner has no remedy other than mandamus. Therefore,

IT IS HEREBY ORDERED that the clerk of the appellate court shall process the petition for writ of mandamus without payment of the filing fee.

IT IS FURTHER ORDERED that the petition for writ of mandamus is granted as follows:

1. The clerk of the appellate court shall forthwith transmit to the District Court of the First Circuit, Honolulu Division, the papers enclosed with the petition for writ of mandamus, to wit: (1) Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment; (2) Return of Service; (3) Ex Parte Application for Relief from Costs; and (4) district court Form 1D-P-985.

2. The District Court of the First Circuit, Honolulu Division, upon receipt of the aforementioned papers, shall forthwith file the Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment.

Dated: Honolulu, Hawai'i, July 8, 2009.



Puni L. Rubiano



Man E. Redmond

Man E. Redmond