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Supreme Court
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16-NOV-2010
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NO. 30722

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

DELANIE PRESCOTT-TATE, Deputy Prosecuting Attorney, Respondent.

ORIGINAL PROCEEDING

ORDER

(By: Recktenwald, C.J., Acoba and Duffy, JJ., and Nakayama, J., Dissenting, with whom Circuit Judge Crandall, assigned by reason of vacancy, Joins)

Upon consideration of respondent's "Motion to Have Michael C. Tierney Declared a Vexatious Litigant," filed on September 14, 2010, and the papers in support,

IT IS HEREBY ORDERED that the motion is denied.

DATED: Honolulu, Hawai'i, November 16, 2010.

/s/ Mark E. Recktenwald

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.



DISSENT BY NAKAYAMA, J.,
WITH WHOM CRANDALL, SUBSTITUTE JUSTICE, JOINS

I respectfully dissent. Since January 2007, Mr. Tierney has filed thirty-four writ proceedings, five of which qualify for vexatious litigant determination. Three of those petitions were denied and one is still pending. In addition, he has filed six proceedings in the fifth and first circuit district courts, five of which qualify for vexatious litigant determination. All five of the district court proceedings were dismissed or denied. The movant has met its burden of proof that Mr. Tierney qualifies as a vexatious litigant. I would, therefore, grant the motion.

/s/ Paula A. Nakayama

/s/ Virginia L. Crandall

