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Supreme Court  
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NO. SCPW-12-0000413

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MICHAEL TIERNEY, Petitioner,

vs.

THE HONORABLE RICHARD K. PERKINS, JUDGE OF THE CIRCUIT  
COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I, Respondent.

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ORIGINAL PROCEEDING  
(S.P.P. No. 12-1-0011)

ORDER

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

Upon consideration of petitioner Michael Tierney's petition for a writ of mandamus, it appears that petitioner fails to demonstrate that the respondent judge has refused to grant a hearing under circumstances in which a hearing is required by HRPP Rule 40(f). Therefore, petitioner is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (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. Such writs are not intended to supersede the legal discretionary authority of the lower courts, nor are they

intended to serve as legal remedies in lieu of normal appellate procedures. 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 it has a legal duty to act.). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, May 7, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

