

NO. 27777

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ALICE P. CLAY, Petitioner

vs.

THE HONORABLE SABRINA S. MCKENNA, Judge of the Circuit Court of the First Circuit, State of Hawai'i; STATE OF HAWAI'I, LLOYD JAMES HOCHBERG, JR.; STANTON CLAY CHAPMAN CRUMPTON & IWAMURA; GERALD S. CLAY; ROBERT E. CHAPMAN; SCOTT I. BATTERMAN and DOE DEFENDANTS 1-20, Respondents

ORIGINAL PROCEEDING
(CIV. NO. 05-1-1720)

ORDER

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

Upon consideration of Petitioner Alice P. Clay's application for a writ of mandamus, the papers in support and opposition, and the records and files herein, it appears: (1) Petitioner is seeking review of the order granting a motion to disqualify Petitioner's attorney and the order denying the motion for reconsideration in Clay v. Hochberg, Civil No. 05-1-1720, presently pending in the Circuit Court of the First Circuit; (2) a petition for a writ of mandamus is an appropriate way to review an order of disqualification. See Straub Clinic & Hospital v. Kochi, 81 Hawai'i 410, 917 P.2d 1284 (1996); Chuck v. St. Paul Fire and Marine Insurance Co., 61 Haw. 552, 606 P.2d 1320 (1980); (3) where the basis upon which the trial court rested its order of disqualification is clearly insufficient and a convincing showing is made by the petitioner that irreparable and immediate

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harm would otherwise result, the petitioner's application for a writ of mandamus will be granted; Chuck, 61 Haw. at 558, 606 P.2d at 1324; (4) Petitioner fails to establish that the basis upon which the order of disqualification was granted is clearly insufficient, and she fails to make a convincing showing that she will suffer irreparable and immediate harm as a result of the disqualification order; and (5) thus, Petitioner fails to demonstrate she is entitled to a writ of mandamus. Therefore,

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

DATED: Honolulu, Hawai'i, June 19, 2006.

Rory Soares Toomey
for petitioner on the writ

James D. Boughey
and Mark L. Cokee
for respondents
Stanton Clay Chapman
Crompton & Iwamura,
Gerald S. Clay; Robert E.
Chapman, and Scott I.
Batterman in opposition

Keith K. Hiraoka
and Rhonda L. Ching
for respondent
Lloyd James Hochberg,
Jr. on the statement
of no position

