NO. 29594

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

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

FILED
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NORMA T. YAMA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

ORIGINAL PROCEEDING
(CR. NO. 08-1-0869)

ORDER
(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJ., and Intermediate Court of Appeals Chief Judge Recktenwald, assigned by reason of vacancy)

Upon consideration of the petition for a writ of mandamus filed by petitioner Michael C. Tierney and the papers in support, it appears that the denial of the motion to disqualify the respondent judge is reviewable on appeal from the judgment entered in Cr. No. 08-1-0869. Petitioner can appeal from the judgment pursuant to HRS § 641-11 (Supp. 2008) and petitioner can seek review of the denial of the motion to disqualify on appeal from the judgment. Consequently, petitioner's case is not one in which the question of disqualification cannot otherwise be reviewed and immediate review by way of mandamus and/or prohibition is not warranted. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus and/or prohibition 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.); Peters v. Jamieson, 48 Haw. 247, 257, 397 P.2d 575, 582 (1964) ("[A] writ of prohibition will lie to compel a trial judge to recuse him[] or [her]self because of bias or prejudice which appears from the record, where . . . the case is one in which the question of disqualification cannot otherwise be reviewed."). Disqualification of a first circuit court judge is governed by HRS § 601-7 (1993 and Supp. 2008), not 28 U.S.C. § 455, and petitioner is not entitled to mandamus review pursuant to federal law. Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied without prejudice to seeking relief by way of appeal.

DATED: Honolulu, Hawai'i, February 2, 2009.