NO. 30045

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

FILED
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E. FILIPINANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

JAMES H. PFLUEGER, Petitioner,

vs.

THE HONORABLE RANDAL G.B. VALENCIANO, JUDGE OF THE CIRCUIT COURT OF THE FIFTH CIRCUIT, STATE OF HAWAI'I; and DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAI'I, Respondents.

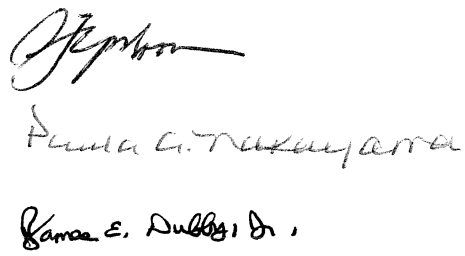
ORIGINAL PROCEEDING
(CR. NO. 08-1-0280)

ORDER
(By: Moon, C.J., Nakayama and Duffy, JJ.; and Acoba, J. and Circuit Judge Hifo, in place of Recktenwald, J., recused, Dissenting)

Upon consideration of the petition for a writ of mandamus filed by petitioner James H. Pflueger and the papers in support, it appears that the denial of the disqualification of the Attorney General as prosecutor in Cr. No. 08-1-0280 is reviewable on a appeal from a judgment of conviction, should such a judgment be entered in Cr. No. 08-1-0280, and petitioner fails to demonstrate that immediate review of the disqualification matter is necessary to prevent harm that cannot be remedied on appeal. 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.); Wong v. Fong, 60 Haw. 601, 604, 593 P.2d 386, 389 (1979) (a writ of mandamus will issue from the denial of

disqualification of counsel where irreparable and immediate harm would otherwise result); Chuck v. St. Paul Fire and Marine Insurance Co., 61 Haw. 552, 560, 606 P.2d 1320, 1325-26 (1980) (a writ of mandamus will issue from the disqualification of counsel where the petitioner will be irreparably harmed by the delay associated with the ordinary appellate process).

Accordingly,

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

DATED: Honolulu, Hawai'i, October 30, 2009.