HAWAIʻI RULES OF PENAL PROCEDURE

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Comments and commentary are provided by the rules committee for interpretive assistance. The comments and commentary express the view of the committee and are not binding on the courts.

The Judiciary
State of Hawaiʻi

HAWAIʻI RULES OF PENAL PROCEDURE

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HAWAIʻI RULES OF PENAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. SCOPE; INTERPRETATION; EFFECTS OF E-FILING AND AUTOMATION.

(a) Scope of rules. These rules shall govern the procedure in the courts of the State in all penal proceedings, with the exceptions stated in Rule 54.

(b) Interpretation and enforcement of rules. These rules shall be read and construed with reference to each other, the Hawaiʻi Electronic Filing and Service Rules, and the Hawaiʻi Court Records Rules. In any conflict amongst the Hawaiʻi Rules of Penal Procedure, the Hawaiʻi Court Records Rules, and the Hawaiʻi Electronic Filing and Service Rules, the Hawaiʻi Electronic Filing and Service Rules shall prevail.

(c) Effect of Hawaiʻi Electronic Filing and Service Rules. Documents filed and notices given in accordance with the Hawaiʻi Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice and service requirements of these Hawaiʻi Rules of Penal Procedure.

Notwithstanding any language in these Hawaiʻi Rules of Penal Procedure requiring the filing or service of additional paper copies of documents, such copies are not required for documents filed through the Judiciary Electronic Filing System (JEFS).

(d) Effect of automation on processes and procedures. Duties set out in these rules may be performed by automation.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 2. PURPOSE AND CONSTRUCTION.

These rules are intended to provide for the just determination of every penal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 2.1. CLASSIFICATION OF PROCEEDINGS.

All criminal proceedings shall be divided into the following classes: Traffic, Criminal Traffic, Criminal, Family Criminal, Special Proceeding, and Special Proceeding - Prisoner.

Proceedings in mandamus, habeas corpus, quo warranto, prohibition, and any other proceedings not specifically included herein shall be classified under Special Proceeding.

(Added February 4, 2000, effective July 1, 2000.)

Rule 2.2. FORM OF PLEADINGS AND MOTIONS.

(a) General. All pleadings and documents to be filed shall be in substantially the form annexed to these rules and described in particular in this rule. All documents shall be prepared to display, print, and copy in a clear and legible manner.

(b) General requirements.

(1) QUALITY AND SIZE OF PAPER, AND STYLE OF TYPE.

(i) Documents to be conventionally filed shall be typed or printed in black and shall be neat, clean, and legible.

(ii) Conventionally filed documents shall be submitted on unruled, opaque, unglazed, white, standard quality 8 ½ x 11 inch paper, not less than 13 pound weight, with a portrait orientation.

(iii) The type shall be standard 12 point pica or equivalent and yield no more than 14 characters to the inch. Footnotes and quotations shall be in the same font and size as the text. Twelve point Times New Roman, Courier New, or Arial fonts are deemed to satisfy the requirements of this rule. No attempt shall be made to reduce or condense the print in a manner that would increase the content of the document.

(2) MARGINS.

(i) Each page, except the first page, shall have a margin at the top and bottom of 1 inch. The first page shall have a 3 inch margin at the top and a 1 inch margin at the bottom.

(ii) The left-hand and right-hand side margin shall be not less than 1 inch.

(3) SPACING. Lines shall be double spaced or one and one-half spaced except in headings, quotations, citations, indexes, footnotes, and appendices; provided that descriptions of real property and quotations may be single spaced.

(4) TWO-SIDED COPIES. Copies of conventionally filed documents, but not originals, may be two-sided.

(5) PAGINATION. All pages to a document, except the first page, shall be numbered consecutively at the bottom and shall be firmly bound together at the top.

(6) SIGNATURE. Signatures and all other handwritten entries on conventionally filed documents shall be in legible black or blue ink. The name of the signator shall be typed or printed under the signature. The page on which the signature(s) appear(s) shall contain at least 2 lines of text and/or a notation at the bottom of the page with the following information: case number, case name, and title of document.

(7) EXHIBITS. Exhibits may be fastened to pages of the specified size. Copies of exhibits shall be as legible as the original.

(c) No flyleaf shall be attached. No flyleaf shall be attached to any conventionally filed document, unless required by a specific rule.

(d) Form of first page of a document. Except as provided in paragraph (f), the first page of each document shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, attorney number, office address, telephone number, facsimile number (if any), and electronic mail address of the attorney for the party in whose behalf the document is filed, or of the party if appearing pro se;

(2) The space at the top right of the center of the page shall be left blank for the use of the clerk of the court.

(3) The caption shall conform to the following:

(i) The name of the court shall be centered and not less than 3 inches from the top of the page;

(ii) The space to the left of the center of the page shall contain the case name;

(iii) In the space to the right of the case name, there shall be listed: the case number, the title of any document(s) attached, and the hearing date, time, and name of the presiding judge.

(iv) In the center of the page below the caption, there shall be a title stating the character of the document.

(v) Notice that certification or acknowledgment of service is attached may be entered at the bottom margin.

(e) Contents of first paragraph. When the purpose of a motion is to request the court to issue an order, the first paragraph of the motion shall contain a concise statement of the relief sought. When applicable, the first paragraph shall include a reference to any prior order, judgment or decision implicated by the relief sought.

(f) Two or more documents filed together. Except as otherwise provided in the Hawaiʻi Electronic Filing and Service Rules, when 2 or more documents are filed together (such as a motion and its supporting documents), the documents following the first document need not begin on a new page and need not comply with the first page requirements of paragraph (d), except that the title of the ensuing document(s) must be centered on the page before the first paragraph of that document.

(g) Signing of pleadings and other documents. Every pleading and other document shall be signed by the party or the party's counsel. Where 2 or more documents are filed together, the party or party's counsel need only provide one signature at the close of the documents filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other documents, the affidavits or declarations must be separately executed. Documents filed through JEFS shall be signed as provided by Rule 5 of the Hawaiʻi Electronic Filing and Service Rules.

(h) Forms furnished by the court. The court shall furnish forms approved by the supreme court, and those forms shall be used in all appropriate instances, unless otherwise permitted by the court.

Approved forms may be reproduced through photocopiers, computers, or other means. A reproduced form shall be similar in design and content to the approved form. Any person filing a form that is not identical in content to an approved form shall advise the court of the differences by attaching a short explanatory addendum to the document. The court may impose sanctions upon the filing person for failure to comply with this rule. The approved forms or any reproduction thereof permitted by this rule shall not be subject to the format requirements of this rule.

(Added February 4, 2000, effective July 1, 2000; further amended April 23, 2012, effective June 18, 2012.)

Rule 2.3. DEFINITIONS.

See Rule 1 of the Hawaiʻi Electronic Filing and Service Rules for definitions.

(Added April 23, 2012, effective June 18, 2012.)

II. INITIATION OF THE CASE

Rule 3. APPLICATION FOR ARREST WARRANT.

(a) In General. An application for the issuance of a warrant of arrest may be in the form of affidavit(s), an information supported by declaration(s) or affidavit(s), or a complaint supported by affidavit(s). It shall contain a written statement of the essential facts constituting the offense being alleged. No warrant of arrest shall issue unless it appears from the application that there is probable cause to believe that an offense has been committed and that the defendant has committed it. More than one warrant may issue on the same application. The issuance and execution of warrants shall be as provided in Rule 9.

(b) Application by Information. An application for the issuance of a warrant of arrest in the form of an information supported by declaration(s) or affidavit(s) shall be presented to a judge within the circuit in which the offense is alleged to have been committed or who otherwise by law has jurisdiction to issue a warrant of arrest on the application.

(c) Application by Affidavit or Complaint. An application for the issuance of a warrant of arrest in the form of affidavit(s), or a complaint supported by affidavit(s) shall be subscribed by the complainant under oath or affirmation before the prosecutor and shall forthwith be presented to a district court judge within the circuit in which the offense is alleged to have been committed or who otherwise by law has jurisdiction to issue a warrant of arrest on the application.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 4. ELIGIBILITY; REGISTRATION REQUIRED.

As provided by Rule 4 of the Hawaiʻi Electronic Filing and Service Rules, unless exempted by the court, each attorney representing a party to a case maintained in JIMS shall register as a JEFS user and file all documents electronically.

(Added April 23, 2012, effective June 18, 2012.)

Rule 5. PROCEEDINGS FOLLOWING ARREST.

(a) In general.

(1) UPON ARREST. An officer making an arrest under a warrant shall take the arrested person without unnecessary delay before the court having jurisdiction, or, for the purpose of admission to bail, before any judge or officer authorized by law to admit the accused person to bail.

(2) PROBABLE CAUSE DETERMINATION UPON ARREST WITHOUT A WARRANT. As soon as practicable, and, Rule 45 notwithstanding, not later than 48 hours after the warrantless arrest of a person held in custody, a district judge shall determine whether there was probable cause for the arrest. No judicial determination of probable cause shall be made unless there is before the judge, at the minimum, an affidavit or declaration of the arresting officer or other person making the arrest, setting forth the specific facts to find probable cause to believe that an offense has been committed and that the arrested person has committed it. If probable cause is found as aforesaid, an appropriate order shall be filed with the court as soon as practicable. If probable cause is not found, or a proceeding to determine probable cause is not held within the time period provided by this subsection, the arrested

person shall be ordered released and discharged from custody.

(3) CONSOLIDATION WITH OTHER PROCEEDINGS. The probable cause determination may, in the discretion of the judge, be combined with a bail hearing under subsection (a)(1) of this rule, an arraignment, a preliminary hearing or any other preliminary proceeding in the criminal case so long as the probable cause determination takes place in the time period provided under subsection (a)(2) of this rule. A probable cause determination shall not constitute an initial appearance unless it is combined with another preliminary proceeding in the same case.

(b) Offenses other than felony.

(1) ARRAIGNMENT. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed and proceedings shall be had in accordance with this section (b). A copy of the complaint, including any affidavits in support thereof, and a copy of the appropriate order, if any, shall be furnished to the defendant. If a defendant is issued a citation in lieu of physical arrest pursuant to Section 803-6(b) of the Hawaiʻi Revised Statutes and summoned to be orally charged as authorized by Rule 7(a) of these rules, a copy of the citation shall be filed and proceedings shall be had in accordance with this section (b). When the offense is charged by complaint, arraignment shall be in open court, or by video conference when permitted by Rule 43. The arraignment shall consist of the reading of the complaint to the defendant and calling upon the defendant to plead thereto. When the offense is charged by a citation and the defendant is summoned to be orally charged, arraignment shall be in open court or by video conference when permitted by Rule 43. The arraignment shall consist of a recitation of the essential facts constituting the offense charged to the defendant and calling upon the defendant to plead thereto. The defendant may waive the reading of the complaint or the recitation of the essential facts constituting the offense charged at arraignment, provided that, in any case where a defendant is summoned to be orally charged by a citation as authorized by Rule 7(a), the recitation of the essential facts constituting the offense charged shall be made prior to commencement of trial or entry of a guilty or no contest plea. In addition to the requirements of Rule 10(e), the court shall, in appropriate cases, inform the defendant of the right to jury trial in the circuit court and that the defendant may elect to be tried without a jury in the district court.

(2) PLEA. The plea shall be entered in accordance with the provisions of Rule 11. The defendant shall not be entitled to a preliminary hearing; provided that if a defendant, having been arrested without a warrant, is held in custody for a period of more than 48 hours, Rule 45 notwithstanding, after the defendant's initial appearance in court without a commencement of trial, the defendant shall be released to appear on the defendant's own recognizance unless the court finds from a sworn complaint or from an affidavit or affidavits filed with the complaint or pursuant to subsection (a)(2) of this rule that there is probable cause to believe that an offense has been committed and that the defendant has committed it; provided further that if the defendant demands a jury trial under subsection (b)(3) of this rule, the court shall, upon the defendant's motion, discharge the defendant unless probable cause is found as aforesaid.

(3) JURY TRIAL ELECTION. In appropriate cases, the defendant shall be tried by jury in the circuit court unless the defendant waives in writing or orally in open court the right to trial by jury. If the defendant does not waive the right to a trial by jury at or before the time of entry of a plea of not guilty, the court shall commit the defendant to the circuit court for trial by jury. Within 7 days after the district court's oral order of commitment

(i) the district court shall sign its written order of commitment,

(ii) the clerk shall enter the district court's written order, and

(iii) the clerk shall transmit to the circuit court all documents in the proceeding and any bail deposited with the district court; provided, however, that if trial by jury is waived in the circuit court, the proceedings may be remanded to the district court for disposition.

(4) TRIAL. A defendant who pleads not guilty and is not entitled to or has waived the right to trial by jury shall be tried in the district court.

(5) SENTENCE. If the defendant is adjudged guilty after trial or plea, sentence shall be imposed without unreasonable delay.

(c) Felonies. In the district court, a defendant charged with a felony shall not be called upon to plead, and proceedings shall be had in accordance with this section (c).

(1) INITIAL APPEARANCE; SCHEDULING OF PRELIMINARY HEARING. At the initial appearance the court shall, in addition to the requirements under Rule 10(e), furnish the defendant with a copy of the complaint and affidavits in support thereof, if any, together with a copy of the appropriate order of judicial determination of probable cause, if any, and inform the defendant of the right to a preliminary hearing. If the defendant waives preliminary hearing pursuant to subsection (c)(2) of this rule, the court shall forthwith commit the defendant to answer in the circuit court. If the defendant does not waive such hearing, the court shall schedule a preliminary hearing, provided that such hearing shall not be held if the defendant is indicted or charged by information before the date set for such hearing.

(2) WAIVER OF PRELIMINARY HEARING. The defendant may in open court waive preliminary hearing, provided that the court shall accept such waiver only after the defendant has signed a written statement acknowledging:

(i) The defendant is aware of the defendant's constitutional right to require the State to establish probable cause before the State can begin formal felony prosecution in circuit court;

(ii) That in order to establish probable cause the State must offer sufficient evidence to "lead a person of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion" that the defendant has committed the felony charged or an included felony;

(iii) That the State has the choice of establishing probable cause at a public preliminary hearing in front of a judge, at a closed proceeding before the grand jury, or through an information with supporting exhibit(s) presented to a judge;

(iv) That if a judge or the grand jury concludes that the State has established probable cause and if formal charges are then filed in circuit court, a defendant then has the right to obtain written transcripts of the grand jury proceeding or preliminary hearing, or a copy of the exhibit(s) supporting the information and the transcript or exhibit(s) that might help the defendant in preparing for trial;

(v) That if a defendant waives preliminary hearing, the State may then prosecute the defendant immediately in circuit court, without waiting for a grand jury indictment or finding of probable cause by a judge based on an information and supporting exhibit(s); and

(vi) By waiving a preliminary hearing, the defendant is giving up the right to a probable cause determination and is also giving up the right to obtain written transcripts of the preliminary hearing or grand jury proceeding and exhibit(s) supporting the information.

(3) TIME FOR PRELIMINARY HEARING; RELEASE UPON FAILURE OF TIMELY DISPOSITION. The court shall conduct the preliminary hearing within 30 days of initial appearance if the defendant is not in custody; however, if the defendant is held in custody for a period of more than 2 days after initial appearance without commencement of a defendant's preliminary hearing, the court, on motion of the defendant, shall release the defendant to appear on the defendant's own recognizance, unless failure of such determination or commencement is caused by the request, action or condition of the defendant, or occurred with the defendant's consent, or is attributable to such compelling fact or circumstance which would preclude such determination or commencement within the prescribed period, or unless such compelling fact or circumstance would render such release to be against the interest of justice.

(4) EVIDENCE. The prosecution and the defendant may introduce evidence and produce witnesses, who shall be subject to cross-examination. The defendant may testify, subject to cross-examination. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing. Motions to suppress must be made to the trial court as provided in Rule 12.

(5) DURATION OF HEARING; CONTINUANCE. Once the preliminary hearing has commenced, the court, for good cause shown, may continue it.

(6) DISPOSITION. If from the evidence it appears that there is probable cause to believe that the felony charged, or an included felony, has been committed and that the defendant committed it, the court shall commit the defendant to answer in the circuit court; otherwise, the court shall discharge the defendant.

The finding of probable cause may be based in whole or in part upon hearsay evidence when direct testimony is unavailable or when it is demonstrably inconvenient to summon witnesses able to testify to facts from personal knowledge. If the defendant is held to answer in the circuit court, the court shall transmit to the circuit court all papers and articles received in evidence at the preliminary hearing and any bail received by it.

(7) TIME FOR COMMITMENT TO CIRCUIT COURT. Within 7 days after the district court's oral order of commitment

(i) the district court shall sign its written order of commitment,

(ii) the clerk shall enter the district court's written order, and

(iii) the clerk shall transmit to the circuit court all documents in the proceeding and any bail deposited with the district court.

(8) BAIL. The district court, as authorized by Hawaiʻi Revised Statutes, chapter 804, may admit the defendant to bail or modify bail any time prior to the filing of the written order committing the case to circuit court.

(Amended February 28, 1983, effective February 28, 1983; amended effective September 2, 1988; further amended November 22, 1994, effective December 5, 1994; further amended April 11, 1995, effective April 26, 1995; further amended September 5, 1996, effective October 1, 1996; further amended effective September 17, 1997; further amended February 4, 2000, effective July 1, 2000; further amended November 17, 2000, effective January 1, 2001; further amended December 7, 2006, effective January 1, 2007; further amended December 17, 2007, effective July 1, 2008; further amended December 21, 2007, effective January 1, 2008; further amended April 23, 2012, effective June 18, 2012; further amended January 31, 2014, effective July 1, 2014.)

Rule 6. GRAND JURY.

(a) Summoning grand juries. Each circuit court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of 16 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(b) Objections to grand jury and grand jurors.

(1) CHALLENGES. The prosecutor may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be heard by the court.

(2) MOTION TO DISMISS. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section (c) of this rule that, after deducting the number not legally qualified, not less than three-fourths but in no event less than 8 of the jurors present concurred in finding the indictment.

(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson and may remove either of them for cause. The foreperson shall have the power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(d) Who may be present. The prosecutor, the independent grand jury counsel, the witness under examination, and interpreters when needed, may be present while the grand jury is in session. An official reporter or operator of a recording device shall be present and shall fully record all evidence presented to and all statements made before the grand jury. No person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Secrecy of proceedings and disclosure.

(1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecutor for use in the performance of the prosecutor's duties. Otherwise, a juror, prosecutor, interpreter, reporter or

operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, subject, however, to the provisions of subsection (e)(2) of this rule. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(2) After indictment is returned against a defendant, the defendant shall, on motion to the court and subject to payment therefor, have the right to a transcript of that portion of the grand jury proceedings which relates to the offense charged in the indictment; subject, however, to regulation by the court under Rule 16 (e)(4).

(f) Finding and return of indictment. Eight members shall constitute a quorum. An indictment may be found only upon the concurrence of three-fourths, but in no event fewer than 8 of the jurors present. The indictment shall be returned by the grand jury through its foreperson to a judge in open court. If the defendant is in custody or has given bail and the required number of jurors do not concur in finding an indictment, the grand jury through its foreperson shall so report to the court in writing forthwith. Evidence supporting a superseding indictment shall be considered by the same grand jury panel that returned the original indictment, and shall be found only upon the concurrence of three-fourths, but in no event fewer than 8 of the jurors who considered the original indictment. A grand jury panel considering a superseding indictment may consider any evidence presented to support its original indictment. In regard to both an original indictment and a superseding indictment, evidence of a clearly exculpatory nature known to the prosecution shall be disclosed to the grand jury. In the event that the term of the grand jury that returned the original indictment has expired, a new indictment may be presented to another grand jury.

(g) Discharge and excuse. The grand jury shall serve for a term as provided by law. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(h) Oath or affirmation. Substantially the following oath shall be administered to the grand jurors:

"You, and each of you, do solemnly swear or affirm that you will diligently inquire and make true determinations of all matters and things presented to you or which shall otherwise come to your knowledge; that you will indict no one through envy, hatred, or malice, nor leave anyone unindicted through fear, favor, affection, gain, reward or hope therefor, but will determine all things truly, as they come to your knowledge, according to the best of your understanding; and that you will keep secret matters occurring before you, except as you may be permitted to disclose the same by law or order of the court."

(Amended January 6, 1982, effective January 6, 1982; amended effective September 2, 1988; further amended December 7, 2006, effective January 1, 2007; further amended February 10, 2011, effective July 1, 2011.)

III. THE CHARGE

Rule 7. INDICTMENT, INFORMATION, OR COMPLAINT.

(a) Use of indictment, information, or complaint. The charge against a defendant is an indictment, a superseding indictment, an information, or a complaint filed in court, provided that, in any case where a defendant is accused of an offense that is subject to a maximum sentence of less than 6 months in prison (other than Operating a Vehicle Under the Influence of an Intoxicant) and is issued a citation in lieu of physical arrest pursuant to Section 803-6(b) of the Hawaiʻi Revised Statutes and summoned to appear in court, the citation and an oral recitation of the essential facts constituting the offense charged as set forth in Rule 5(b)(1), shall be deemed the complaint, notwithstanding any waiver of the recitation. The prosecutor's signature upon the citation shall not be required.

(b) When felony may be prosecuted by complaint. A felony may be prosecuted by a complaint under any of the following 3 conditions:

(1) if with respect to that felony the district judge has found probable cause at a preliminary hearing and has committed the defendant to answer in the circuit court pursuant to Rule 5(c) of these rules;

(2) if, pursuant to Rule 5(c)(2) of these rules, the defendant has waived in open court the right to a preliminary hearing; or

(3) if, pursuant to Rule 7(c) of these rules, the defendant has waived in open court the right to an indictment.

(c) Waiver of indictment. The defendant may in open court waive indictment, provided that the court shall accept such waiver only after the defendant has signed a written statement acknowledging:

(1) The defendant is aware that there is the constitutional right to require the State to establish probable cause before the State can begin formal felony prosecution in circuit court;

(2) That in order to establish probable cause the State must offer sufficient evidence to "lead a person of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion" that the defendant has committed the felony charged or an included felony;

(3) That if a grand jury concludes that the State has established probable cause and if the grand jury returns an indictment, a defendant then has the right to obtain written transcripts of the grand jury proceeding, and these transcripts might help the defendant in preparing for trial; and

(4) By waiving an indictment, the defendant is giving up the right to a probable cause determination and is also giving up the right to obtain written transcripts of the grand jury proceeding or preliminary hearing, or exhibit(s) supporting an information.

(d) Nature and contents. The charge shall be a plain, concise and definite statement of the essential facts constituting the offense charged. An indictment shall be signed by the prosecutor and the foreperson of the grand jury. An information shall be signed by the prosecutor. A complaint shall be signed by the prosecutor. The charge need not contain a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The charge shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Formal defects, including erroneous reference to the statute, rule, regulation or other provision of law, or the omission of such reference, shall not be ground for dismissal of the charge or for reversal of a conviction if the defect did not prejudice the defendant.

(e) Surplusage. The court, on motion or agreement of the defendant, may strike surplusage from the charge.

(f) Amendment.

(1) The court may permit a charge other than an indictment to be amended at any time before trial commences if substantial rights of the defendant are not prejudiced.

(2) The court may permit a charge other than an indictment to be amended after trial commences and before verdict or finding if the defendant personally, knowingly, and voluntarily agrees to the amendment on the record.

(g) Bill of particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such other later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(h) Court in which charge filed.

(1) An indictment or information shall be filed in the circuit court.

(2) A complaint may be filed in either the district or circuit court; provided that a complaint shall not be filed initially in the circuit court when it charges:

(i) a felony, and none of the 3 conditions set forth in Rule 7(b) of these rules has yet occurred, or

(ii) only an offense or offenses other than a felony.

(Amended February 28, 1983, effective February 28, 1983; further amended July 20, 1983, effective July 20, 1983; further amended November 17, 2000, effective January 1, 2001; further amended March 9, 2005, effective July 1, 2005; further amended December 7, 2006, effective January 1, 2007; further amended December 17, 2007, effective July 1, 2008; further amended February 10, 2011, effective July 1, 2011; further amended April 23, 2012, effective June 18, 2012.)

Rule 8. JOINDER OF OFFENSES AND DEFENDANTS.

(a) Joinder of offenses. Two or more offenses may be joined in one charge, with each offense stated in a separate count, when the offenses:

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

(b) Joinder of defendants. Two or more defendants may be joined in the same charge:

(1) when each of the defendants is charged with accountability for each offense included in the charge;

(2) when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy; or

(3) when, even if conspiracy is not charged and all of the defendants are not charged in each count, the several offenses charged:

(i) were part of a common scheme or plan; or

(ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to join related offenses.

(1) A defendant who has been tried for one offense may thereafter move to dismiss a charge in a subsequent trial for any related offense, as defined in Rule 13(b)(1), unless the related offense is one which was pending in court prior to the commencement of the first trial. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecutor did not have sufficient evidence to warrant trying the offense charged in the second trial at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(2) Entry of a plea of guilty or nolo contendere to one offense does not bar the subsequent prosecution of a related offense.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 9. OBTAINING THE APPEARANCE OF DEFENDANT.

(a) Methods.

(1) SUMMONS. Upon request of the prosecutor, the clerk shall issue a summons for a defendant named:

(i) in the complaint;

(ii) in the indictment; or

(iii) in the infor mation.

When a defendant is a corporation or any legal entity other than a natural person, a summons instead of a warrant shall issue to an authorized representative of the entity.

(2) WARRANT. The court may order issuance of a warrant instead of a summons upon request of the prosecutor; provided however, that no warrant shall issue:

(i) Upon a complaint unless it appears from the sworn complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it; or

‘ (ii) Upon an information unless it appears from the information and the exhibit(s) filed with the information that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(3) DELIVERY FOR SERVICE.

(i) *Warrant*. The clerk shall deliver the warrant to the chief of police or other person authorized by law to execute it.

(ii) *Summons*. The clerk shall deliver the summons to the chief of police, prosecutor or other person authorized by law to serve it.

(4) NUMBER OF COPIES. More than one copy of a warrant or summons may be issued on the same complaint, information, or indictment.

(5) FAILURE TO APPEAR. If a defendant fails to appear in response to a summons, a warrant may issue. If a corporation or any legal entity other than a natural person fails to appear in response to a summons, a plea of not guilty may be entered by the court, and the court may proceed to trial and judgment.

(b) Form.

(1) WARRANT. The warrant shall be in such form as may be prescribed by the issuing court and shall

(i) be signed by a judge;

(ii) contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(iii) describe the offense alleged in the charge;

(iv) state the date when issued and the court from which it is issued;

(v) command that the defendant be arrested and brought before the issuing court;

(vi) specify the amount of bail;

(vii) contain a prohibition against execution of the warrant between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit court permits execution during those hours in writing on the warrant; and

(viii) specify such other conditions as to time, place or manner of arrest as the judge may deem appropriate.

A designated judge of the district court shall be available at all times to consider requests to permit execution during the hours specified in subsection (vii), but any judge of the district or circuit court may authorize such execution.

(2) SUMMONS. The summons shall be in such form as may be prescribed in the issuing court and shall

(i) contain the name of the defendant;

(ii) describe the offense alleged in the charge;

(iii) command the defendant to appear before the court at a stated place and at a stated time, which shall be not less than 5 days from the time of service of the summons unless waived by the defendant;

(iv) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits personal delivery during those hours in writing on the summons.

(v) contain a warning to the person summoned that failure to obey the summons will render the person subject to prosecution for contempt;

(vi) state the date when issued and the court from which it is issued; and

(vii) be signed by the clerk.

(c) Execution or service and return.

(1) BY WHOM. A warrant shall be executed by a police officer or by some other officer authorized by law. A summons may be served by a police officer or by any person who is not the complaining witness and who is not less than 18 years of age.

(2) TERRITORIAL LIMITS. The warrant may be executed or the summons served at any place within the State.

(3) MANNER.

(i) *Warrant.* The warrant shall be executed without unnecessary delay by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of arrest, but upon request, the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The officer executing the

warrant shall bring the arrested person promptly before the court.

(ii) *Summons.* A summons shall be served upon the defendant without unnecessary delay by delivering a copy to the defendant personally, or by mailing it, delivery to the defendant only with return receipt requested. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also sending a copy by certified or registered mail to the corporation's last known address within the State or at its principal place of business elsewhere.

(4) RETURN.

(i) *Warrant.* On or before the date of the defendant's initial appearance after service of the warrant, the officer executing a warrant shall make return thereof to the court. At the request of the prosecutor any unexecuted warrant shall be returned and cancelled. A warrant returned unexecuted may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for execution.

(ii) *Summons.* On or before the date set for the defendant's appearance, the officer or other person to whom a summons was delivered for service shall make return thereof to the court if personally served or of the return receipt if served by mail. At the request of the prosecutor any unserved summons shall be returned and cancelled. A summons returned unserved may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for service.

(Amended September 14, 1983, effective October 1, 1983; further amended effective April 28, 1994; further amended December 7, 2006, effective January 1, 2007.)

Rule 10. ARRAIGNMENT IN CIRCUIT COURT.

(a) A defendant who has been held by district court to answer in circuit court shall be arraigned in circuit court within 14 days after the district court's oral order of commitment following (i) arraignment and plea, where the defendant elected jury trial or did not waive the right to jury trial or (ii) initial appearance or preliminary hearing, whichever occurs last.

(b) Following service of grand jury warrant, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following arrest or return.

(c) Following service of an information charging warrant of arrest, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following arrest or return.

(d) Arraignment in the circuit court shall be conducted in open court or by video conference when permitted by Rule 43. The arraignment shall consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the charge before the defendant is called upon to plead. In felony cases charged by written information, the defendant shall be furnished with a copy of the information and all attached exhibits at the initial court appearance and the custody of the materials shall be governed by Rule 16.

(e) Upon the initial appearance of the defendant before the court, the court shall:

(1) be satisfied that the defendant is informed of the charge;

(2) inform the defendant that there is no requirement to make a statement and that any statement made may be used against the defendant;

(3) advise the defendant of the right to counsel;

(4) inform the defendant of the potential for immigration consequences by reading the advisement in §802E-2, Hawaiʻi Revised Statutes, at the commencement of the arraignment and plea hearing to all defendants present;

(5) allow the defendant reasonable time and opportunity to consult counsel; and

(6) admit the defendant to bail as provided by law or in these rules.

(Amended December 5, 1995, effective February 1, 1995; further amended February 2, 1996, effective March 1, 1996; further amended September 5, 1996, effective October 1, 1996; further amended December 7, 2006, effective January 1, 2007; further amended December 21, 2007, effective January 1, 2008; further amended January 31, 2014, effective July 1, 2014.)

Rule 10.1. DELETED.

Rule 10.2. REPEALED.

Rule 11. PLEAS.

(a) Alternatives.

(1) IN GENERAL. A defendant may plead not guilty, guilty or no contest. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or no contest or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) CONDITIONAL PLEAS. With the approval of the court and the consent of the State, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specific pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) No contest. A defendant may plead no contest only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advice to defendant. The court shall not accept a plea of guilty or no contest without first addressing the defendant personally in open court and determining that the defendant understands the following:

(1) the nature of the charge to which the plea is offered; and

(2) the maximum penalty provided by law, and the maximum sentence of extended term of imprisonment, which may be imposed for the offense to which the plea is offered; and

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made; and

(4) that if the defendant pleads guilty or no contest there will not be a further trial of any kind, so that by pleading guilty or no contest the right to a trial is waived.

(d) Advisement concerning alien status. Prior to entry of a plea of guilty or no contest, or admission of guilt or sufficient facts to any offense punishable as a crime under state law, except those offenses designated as infractions, the court shall read the advisement in §802E-2, Hawaiʻi Revised Statutes, on the record to the defendant.

(e) Insuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first addressing the defendant personally in open court and determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or no contest results from any plea agreement.

(f) Plea agreement.

(1) IN GENERAL. The prosecutor and counsel for the defendant, or the defendant when acting pro se, may enter into plea agreements that, upon the entering of a plea of guilty or no contest to a charged offense or to an included or related offense, the prosecutor will take certain actions or adopt certain positions, including the dismissal of other charges and the recommending or not opposing of specific sentences or dispositions on the charge to which a plea was entered. The court may participate in discussions leading to such plea agreements and may agree to be bound thereby.

(2) NOTICE OF PLEA AGREEMENT. Any plea agreement shall be disclosed by the parties to the court at the time the defendant tenders the defendant's plea. Failure by the prosecutor to comply with such agreement shall be grounds for withdrawal of the plea.

(3) WARNING TO DEFENDANT. Upon disclosure of any plea agreement, the court shall not accept the tendered plea unless the defendant is informed that the court is not bound by such agreement, unless the court agreed otherwise.

(4) INADMISSIBILITY OF PLEA DISCUSSIONS. Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or of a plea of no contest, or of an offer to plead guilty or no contest to the offense charged or any other offense, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or penal proceeding against the person who made the plea or offer.

However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of no contest, or an offer to plead guilty or no contest to the offense charged or any other offense is admissible in a penal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(g) Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the court shall not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(Amended September 2, 1988, effective September 2, 1988; further amended July 12, 1993, effective August 26, 1993; further amended October 28, 1993, effective November 15, 1993; further amended December 7, 2006, effective January 1, 2007; further amended January 31, 2014, effective July 1, 2014; further amended June 24, 2014, effective July 1, 2014.)

Rule 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS.

(a) Pleadings and motions. Pleadings in penal proceedings shall be the charge, and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) defenses and objections based on defects in the institution of the prosecution;

(2) defenses and objections based on defects in the charge (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

(3) motions to suppress evidence or for return of property;

(4) requests for discovery under Rule 16;

(5) requests for consolidation or severance of charges or defendants under Rules 13 and 14;

(6) motions to dismiss under Rule 8(c) for failure to join related offenses; and

(7) motions to transfer under Rule 21.

(c) Motion date. Pretrial motions and requests must be made within 21 days after arraignment unless the court otherwise directs.

(d) Notice by the prosecution of the intention to use evidence.

(1) AT THE DISCRETION OF THE PROSECUTION. At the arraignment or as soon thereafter as is practicable, the prosecution may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subsection (b)(3) of this rule.

(2) AT THE REQUEST OF THE DEFENDANT. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the prosecution's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on motion. A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict; provided that a motion to suppress made before trial shall be determined before trial. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of failure to raise defenses or objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, within the time set by the court pursuant to section (c), or within any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Effect of determination. If the court grants a motion based on a defect in the institution of the prosecution or in the charge, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new charge. Nothing in this rule shall be deemed to affect provisions of any statute relating to periods of limitations.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 12.1. NOTICE OF ALIBI.

(a) Notice by defendant. If a defendant intends to rely upon the defense of alibi, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the prosecutor in writing of such intention and file a copy of such notice with the court.

(b) Disclosure of information and witnesses. Upon receipt of notice that the defendant intends to rely upon an alibi defense, the prosecutor shall inform the defendant in writing of the specific time, date, and place at which the offense is alleged to have been committed. The defendant shall then inform the prosecutor in writing of the specific place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. The prosecutor shall then inform the defendant in writing of the names and addresses of the witnesses upon whom the government intends to rely to establish defendant's presence at the scene of the alleged offense.

(c) Time of giving information. The court may fix the time within which the exchange of information referred to in section (b) shall be accomplished.

(d) Continuing duty to disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under section (b) of this rule, the party shall promptly notify the other party or the party's attorney of the existence and identity of such additional witness.

(e) Failure to comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from, or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in the defendant's own behalf.

(f) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of this rule.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 12.2. TRIAL SETTING UNDER SPECIAL CIRCUMSTANCES.

(a) Motion for firm trial setting. Upon written motion of a party, the court may set a firm trial when (1) a complaining or a material witness is a person with special needs, (2) a witness is from out-of-state, (3) a large number of potential jurors are needed, (4) a defendant is in pretrial custody, or (5) other special circumstances exist.

(b) Motion for advancement or continuance of trial. When ruling upon a motion for advancement or continuance of a trial under this Rule 12.2, the court shall consider the totality of the circumstances, including, but not limited to, the following:

(1) a defendant's rights to a speedy and fair trial, effective assistance of counsel, the right to confront and cross-examine witnesses and other rights guaranteed by the constitutions of the State of Hawaiʻi and the United States;

(2) any substantial adverse impact the time of trial may have on the witness.

(c) Application of term. For purposes of this rule, a person with special needs includes, but is not limited to, a child under the age of fourteen.

(Added May 18, 1995, effective June 1, 1995.)

Rule 13. CONSOLIDATION.

(a) Generally. The court may order consolidation of two or more charges for trial if the offenses, and the defendants if there are more than one, could have been joined in a single charge.

(b) Related offenses.

(1) Two or more offenses are related offenses, for the purposes of this rule and Rule 8 (c), if they are within the jurisdiction of a single court and are based on the same conduct or arise from the same episode.

(2) When a defendant has been charged with two or more related offenses in separate charges, the defendant's timely motion to consolidate them for trial shall be granted unless the court determines that because the prosecutor does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of joinder as to related offenses with which the defendant knew the defendant was charged.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 14. RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in a charge or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Rule 15. DEPOSITIONS.

(a) When taken. Whenever due to special circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but the defendant's failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken at the instance of the prosecution, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination shall be paid by the prosecutor where its witness is to be deposed and by the state public defender where a defendant's witness is to be deposed.

(d) How taken. Subject to such additional conditions as the court may provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a defendant without the defendant's consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The party moving for the deposition shall make available to the other parties or their counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the moving party and to which the other parties would be entitled at trial. Recording devices may be used for the taking of depositions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as defined in subdivision (g) of this rule, or if the witness gives testimony at the trial or hearing inconsistent with the witness' deposition. Any deposition may also be used by any party for the

purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to provide all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Unavailability. "Unavailable" as a witness includes situations in which the deponent:

(1) is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the deponent's deposition; or

(2) persists in refusing to testify concerning the subject matter of the deponent's deposition despite an order of the judge to do so; or

(3) testifies to a lack of memory of the subject matter of the deponent's deposition; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the deponent's deposition has been unable to procure the deponent's attendance by process or other reasonable means. A deponent is not unavailable as a witness if the deponent's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the deponent's deposition for the purpose of preventing the witness from attending or testifying.

(h) Deposition by agreement not precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 16. DISCOVERY.

(a) Applicability. Subject to subsection (d) of this rule, discovery under this rule may be obtained in and is limited to cases in which the defendant is charged with a felony, and may commence upon the filing in circuit court of an indictment, an information, or a complaint.

(b) Disclosure by the prosecution.

(1) DISCLOSURE OF MATTERS WITHIN PROSECUTION'S POSSESSION. The prosecutor shall disclose to the defendant or the defendant's attorney the following material and information within the prosecutor's possession or control:

(i) the names and last known addresses of persons whom the prosecutor intends to call as witnesses in the presentation of the evidence in chief, together with any relevant written or recorded statements, provided that statements recorded by the prosecutor shall not be subject to disclosure;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a co-defendant if intended to be used in a joint trial, together with the names and last known addresses of persons who witnessed the making of such statements;

(iii) any reports or statements of experts, which were made in connection with the particular case or which the prosecutor intends to introduce, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(iv) any books, papers, documents, photographs, or tangible objects which the prosecutor intends to introduce, or which were obtained from or which belong to the defendant, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel;

(v) a copy of any Hawaiʻi criminal record of the defendant and, if so ordered by the court, a copy of any criminal record of the defendant outside the State of Hawai'i;

(vi) whether there has been any electronic surveillance (including wiretapping) of conversations to which the defendant was a party or occurring on the defendant's premises; and

(vii) any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor.

(2) DISCLOSURE OF MATTERS NOT WITHIN PROSECUTION'S POSSESSION. Upon written request of defense counsel and specific designation by defense counsel of material or information which would be discoverable if in the possession or control of the prosecutor and which is in the possession or control of other governmental personnel, the prosecutor shall use diligent good faith efforts to cause such material or information to be made available to defense counsel; and if the prosecutor's efforts are unsuccessful the court shall issue suitable subpoenas or orders to cause such material or information to be made available to defense counsel.

(3) DEFINITION. The term "statement" as used in subsection (b)(1)(i) and (c)(2)(i) of this rule means:

(i) a written statement made by the witness and signed or otherwise adopted or approved by the witness; or

(ii) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement.

(c) Disclosure by the defendant.

(1) SUBMISSION TO TESTS, EXAMINATIONS OR INSPECTIONS. Upon written request of the prosecutor, the court may require the defendant:

(i) to perform reasonable acts or undergo reasonable tests for purposes of identification; and

(ii) to submit to reasonable physical or medical inspection or examination of the defendant's body.

Reasonable notice of the time and place for such tests, inspections or examinations shall be given by the prosecutor to the defendant and the defendant's counsel who shall have the right to be present.

(2) DISCLOSURE OF MATERIALS AND INFORMATION. The defendant shall disclose to the prosecutor the following material and information within the defendant's possession or control:

(i) the names and last known addresses of persons whom the defendant intends to call as witnesses, in the presentation of the evidence in chief, together with their relevant written or recorded statements, provided that discovery of alibi witnesses is governed by Rule 12.1, and provided further that statements recorded by the defendant's counsel shall not be subject to disclosure;

(ii) any reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which the defendant intends to introduce as evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

(iii) any books, papers, documents, photographs, or tangible objects which the defendant intends to introduce as evidence at the trial.

(3) DISCLOSURE OF DEFENSES. The court may require that the prosecutor be informed of the nature of any defense which defense counsel intends to use at trial; provided, that the defense of alibi is governed by Rule 12.1.

(d) Discretionary disclosure. Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure as provided for in this Rule 16 in cases other than those in which the defendant is charged with a felony, but not in cases involving violations.

(e) Regulation of discovery.

(1) PERFORMANCE OF OBLIGATIONS. Except for matters which are to be specifically designated in writing by defense counsel under this rule, the prosecution shall disclose all materials subject to disclosure pursuant to subsection (b)(1) of this rule to the defendant or the defendant's attorney within ten (10) calendar days following arraignment and plea of the defendant. The parties may perform their obligations of disclosure in any manner mutually agreeable to the parties or by notifying the attorney for the other party that material and information, described in general terms, may be inspected, obtained, tested, copied or photographed at specified reasonable times and places.

(2) CONTINUING DUTY TO DISCLOSE. If subsequent to compliance with these rules or orders entered pursuant to these rules, a party discovers additional material or information which would have been subject to disclosure pursuant to this Rule 16, that party shall promptly disclose the additional material or information, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) CUSTODY OF MATERIALS. Except as otherwise provided in this subsection, any discovery material furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody and be used only for the purposes of conducting the attorney's side of the case, and shall be subject to such other terms and conditions as the court may provide. The attorney may provide the defendant with a copy of any discovery material obtained if the attorney notifies the prosecutor in writing and files a copy of such intention with the court, and the prosecutor does not file a motion for protective order within 10 days of the receipt of the notice.

(4) PROTECTIVE ORDERS. Upon a showing of cause, the court may at any time order that specified disclosures or investigatory procedures be denied, restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit counsel to make beneficial use thereof. If a prosecution request for a protective order allowing the nondisclosure of witnesses for their personal safety is denied the prosecution shall have the right to an immediate appeal prior to trial of such denial, or in the alternative at its option, a right to take a deposition under Rule 15 of these Rules.

(5) MATTERS NOT SUBJECT TO DISCLOSURE.

(i) *Work product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of a party's attorney or members of the attorney's legal staff, provided that the foregoing shall not be construed to prohibit the disclosures required under section (c)(3) of this rule and Rule 12.1.

(ii) *Informants.* Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure shall not be denied hereunder of the identity of a witness intended to be produced at a hearing or trial.

(6) IN CAMERA PROCEEDINGS. Upon request of any person, the court may permit any showing of cause for a denial or regulation of disclosures or any portion of such a showing to be made in camera. When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall then be disclosed as is consistent with these rules. If the court enters an order granting relief following a showing in camera, the entire record of such a showing, including any material excised pursuant to court order, shall be sealed, impounded and preserved in the records of the court to be made available to the reviewing court in the event of an appeal.

(7) IMPEDING INVESTIGATIONS. Except as is otherwise provided as to matters not subject to disclosure and protective orders, a party's attorney, the attorney's staff or agents shall not advise persons having relevant material or information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(8) DUTY TO CONFER AND REQUIREMENT FOR FILING OF WRITTEN STIPULATION. Counsel are required to confer concerning all disputed issues under this rule. Counsel for the moving party shall attach a certification of compliance with this requirement to any motion filed pursuant to this rule and shall also file a written stipulation of all pertinent matters agreed to as a result of the conferral.

(9) SANCTIONS.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may order such party to permit the discovery, grant a continuance, or it may enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(Amended February 28, 1983, effective February 28, 1983; further amended July 12, 1993, effective August 26, 1993; further amended November 12, 1993, effective November 20, 1993; further amended

February 4, 2000, effective July 1, 2000; further amended June 16, 2000, effective July 1, 2000; further amended December 7, 2006, effective January 1, 2007; further amended February 10, 2011, effective July 1, 2011; further amended April 23, 2012, effective June 18, 2012.)

Rule 16.1. DISCOVERY PROCEDURES FOR NON-FELONY CRIMINAL AND CRIMINAL TRAFFIC CASES.

(a) Applicability. This rule shall apply to non-felony criminal and criminal traffic cases.

(b) Request for discovery. If discovery is sought of materials that would be discoverable in felony cases pursuant to these rules, a request for discovery shall be made to the opposing side in writing and shall list the specific materials being sought. Unless otherwise ordered, the request shall not be filed with the court.

(c) Motion to compel discovery. A party may file a motion to compel discovery if a timely request for discovery was made, unless otherwise ordered by the court.

(Added February 4, 2000, effective July 1, 2000.)

Rule 17. SUBPOENA.

(a) For attendance of witnesses; form; issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served.

(b) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(c) Service. A subpoena may be served by a police officer or by any other person who is not a defendant and who is not less than 18 years of age. Service of subpoena shall be made by delivering a copy thereof to the person named or by sending it by certified or registered mail, return receipt requested and with restricted delivery to the person named only, and by tendering to the person named the fee of 1 day's attendance and the mileage allowed by law, provided that no such tender need be made when the subpoena is issued on behalf of the prosecution or a defendant who is unable to pay for the same.

(d) Service by facsimile transmission. Service of a subpoena may be made by facsimile transmission. The return of service shall declare that service was accomplished by facsimile transmission to a specific phone number, on a specified date and time, and shall state that the sender obtained confirmation from the person subpoenaed that the person received the subpoena. The printed confirmation from the sender's facsimile machine shall be attached to the return of service.

(e) Place of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State.

(f) For taking deposition; place of examination.

(1) ISSUANCE. An order to take a deposition authorizes the issuance by the clerk of subpoenas for the persons named or described therein.

(2) PLACE. A resident of the State may be required to attend an examination only in the county wherein the resident resides or is employed or transacts the resident's business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the State subpoenaed within the State may be required to attend only in the county wherein the resident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of the court from which the subpoena issued.

(Amended February 4, 2000, effective July 1, 2000; further amended August 14, 2000, effective January 1, 2001; further amended December 7, 2006, effective January 1, 2007.)

Rule 17.1. PRETRIAL CONFERENCE.

At any time after the filing of the charge the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admission made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

(Amended December 7, 2006, effective January 1, 2007.)

V. VENUE

Rule 18. VENUE.

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in the circuit in which the offense or any part of it was committed. If the trial is to be had in the district court, venue is within the judicial circuit established by statute.

(Amended October 15, 1980, effective November 15, 1980; further amended June 1, 1993, effective July 1, 1993; further amended and effective December 20, 1995.)

Rule 19. RESERVED.

Rule 20. RESERVED.

Rule 21. TRANSFER FROM DISTRICT OR CIRCUIT FOR TRIAL.

(a) For prejudice in the circuit. The court upon motion of the defendant shall transfer the proceeding as to the defendant to another circuit whether or not such circuit is specified in the defendant's motion if the court is satisfied that there exists in the circuit where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in the circuit.

(b) Transfer in other cases. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to the defendant or any one or more of the counts thereof to another district or circuit, whether or not such district or circuit is specified in the defendant's motion.

(c) Proceedings on transfer. When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all documents in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district or circuit.

(Amended December 7, 2006, effective January 1, 2007; further amended April 23, 2012, effective June 18, 2012.)

Rule 22. TIME OF MOTION TO TRANSFER.

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

VI. TRIAL

Rule 23. TRIAL BY JURY OR BY THE COURT.

(a) Trial by jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court. The waiver shall be either by written consent filed in court or by oral consent in open court entered on the record.

(b) Jury of less than twelve. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) Trial without a jury. In a case tried without a jury the court shall make a general finding and shall in addition, on request made at the time of the general finding, find such facts specially as are requested by the parties. Such special findings may be orally in open court or in writing at any time prior to sentence.

Rule 24. TRIAL JURORS.

(a) Conduct of jury selection. At the discretion of the court, the parties may present a "mini-opening statement" to the jury panel prior to the commencement of jury selection. The mini-opening statement shall be limited to a brief statement of the facts expected to be proven. The court shall permit the parties or their attorneys to conduct the examination of prospective jurors or shall itself conduct the examination. In the latter event the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

(b) Peremptory challenges. If the offense charged is punishable by life imprisonment, each side is entitled to 12 peremptory challenges. If there are 2 or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed 6 peremptory challenges. In all other criminal trials by jury, each side is entitled to 3 peremptory challenges. If there are 2 or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed 2 peremptory challenges. In all cases, the prosecution shall be allowed as many peremptory challenges as are allowed to all defendants.

(c) Alternate jurors. The court may direct that not more than 4 jurors in addition to the regular jury be called and impaneled to sit as alternate jurors who shall, in the order in which they are called, replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. When the court directs that one or more alternate jurors be impaneled, each defendant shall be entitled to 1 additional peremptory challenge which may be used to challenge the alternate jurors only; and other peremptory challenges allowed to challenge the regular jurors shall not be used to challenge alternate jurors. When the regular jurors retire to begin deliberations, the alternate jurors may be held in recess until a verdict is received. If an alternate juror replaces a regular juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(d) Sequence for challenging of jurors. Challenges for cause may be made at any time prior to the exercise of peremptory challenges. The prosecutor and the defendant shall alternately state their peremptory challenges, if any, the prosecutor beginning, and the defendant ending. In case there are more than 2 defendants in any case, the order of precedence of their challenges, if not agreed upon by them, shall be determined by the court.

(e) Note taking by jurors. Except upon good cause articulated by the court, jurors shall be allowed to take notes during trial. The court's good cause finding need not be written, but must be articulated clearly in a reported proceeding.

(Amended effective February 4, 2000, effective July 1, 2000; further amended March 24, 2000, effective July 1, 2000; further amended February 10, 2011, effective July 1, 2011.)

Rule 24.1. CONDUCT OF A TRIAL.

(a) Sequence of presentation. Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for other reasons:

(1) The prosecutor in a criminal case shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the prosecutor's statement or at the beginning of defendant's case.

(2) After the opening statement or statements, the prosecutor shall produce the evidence in chief.

(3) The defendant may then open the defense and offer evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the prosecutor shall open the argument; the defendant may then reply; and the prosecutor may conclude the argument, and in conclusion shall confine himself or herself to answering any new matter or arguments presented by the defendant. In the event the defendant has presented an affirmative defense, the court may allow surrebuttal argument but shall confine counsel

to answering or otherwise responding to the arguments presented by the prosecutor on the issue of the affirmative defense.

(b) Fair argument. In addressing the jury, each party shall be allowed to fully and fairly state the party's theory of the case and the reasons that entitle the party to a verdict.

(c) Presence of counsel at verdict. Unless excused by the court, counsel for all parties shall be present upon receiving the verdict of a jury.

(d) Limitations on number of counsel. Except by leave of court, only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

(Added February 4, 2000, effective July 1, 2000.)

Rule 25. JUDGE; DISABILITY.

(a) During trial. If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he or she has become familiarized with the record of the trial, may proceed with and finish the trial.

(b) After verdict or finding of guilt. If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may grant a new trial.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 26. EVIDENCE.

(a) In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law or by these rules.

(b) At the discretion of the court, jurors may be allowed to suggest questions to be asked of witnesses. Each juror question must be in writing and delivered to the court through appropriate court personnel. Upon receipt of a question, the court shall review the propriety of submitting the question to the witness with the parties or their attorneys on the record, but outside the hearing of the jury. If the court deems the question appropriate and subject to the Hawaiʻi Rules of Evidence (HRE), the court may ask the question. The parties shall have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the HRE. Any party may object to the asking of a question, but the court may ask the question over any objection after the objection has been placed on the record. The jury shall be pre-instructed about the procedure for asking questions.

(Amended July 25, 1991, effective July 25, 1991; further amended March 24, 2000, effective July 1, 2000.)

Rule 27. PROOF OF OFFICIAL RECORD.

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. EXPERT WITNESSES AND INTERPRETERS.

(a) Expert witnesses. The court may order the defendant or the prosecution or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so appointed shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his or her findings, if any, may thereafter be called to testify by the court or by any party, and shall be subject to cross-examination by each party.

The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) Interpreters. The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of such funds as may be provided by law.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 29. MOTION FOR JUDGMENT OF ACQUITTAL.

(a) Motion before submission to jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses alleged in the charge after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecution is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of the evidence offered by the prosecution, the court shall not reserve decision thereon. If such motion is made after all parties have rested, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 10 days after the jury is discharged or within such further time as the court may fix during the 10-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

Rule 30. INSTRUCTIONS TO THE JURY.

(a) Pre-instruction. Prior to the presentation of evidence, the court may, upon agreement of the parties, pre-instruct the jury on the elements of the charged offense and claimed defenses.

(b) Requests. At such reasonable time as the court directs, the parties shall file written requests that the court instruct the jury on the law. Each instruction requested shall designate by whom it is being requested and the number of the request, e.g., STATE'S INSTRUCTION NO. 3. Each requested instruction shall be written on a separate page or group of pages. Each requested instruction shall be filed with the court and a copy served upon opposing counsel. It will be sufficient to request by number pattern instructions known as the Hawaiʻi Standard Jury Instructions Criminal (HAWJIC).

(c) Settlement. When requests are filed, counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Whenever the court refuses to give any requested instruction, the court shall write the word "refused" in the margin thereof. Whenever the court approves any requested instruction, the court shall write the word "given" in the margin thereof. Whenever the court modifies any requested instruction, the court shall mark the same in such manner that it shall distinctly appear what part is refused and what part is given. Instructions to which no objection is made shall be marked "given by agreement" and no later objection thereto may be made or allowed. Unless the court shall take action pursuant to subdivision (c) of this rule, instructions settled as above set forth shall be read to the jury.

(d) Court's instruction. The court may revise the language of any or all of the requested instructions which are approved by the court in whole or in part pursuant to subdivision (b) of this rule and of any or all of the requested instructions to which no objection is made, and may combine such instructions, with or without any additional instructions which the court shall deem appropriate, in such manner as the court believes will eliminate repetition and will afford to the jury an adequate and understandable charge. If no written requests for instructions are filed the court shall prepare its own instructions. Any revision made and any instructions prepared by the court pursuant to the foregoing provisions shall be reduced by the court to writing, and counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action with respect to any such revision made or instructions prepared by the court, and any changes thereon made by the court shall be reduced to writing and submitted to counsel prior to their arguments to the jury. Instructions settled as above set forth shall be read to the jury.

(e) Oral comment. The court shall in no case orally qualify, modify or explain to the jury any instruction, whether settled pursuant to subdivision (b) or pursuant to subdivision (c) of this rule. If, during deliberation on its verdict, the jury shall request further instructions, the court may further instruct the jury in accordance with instructions prepared by the court and reduced to writing, first submitting the same to counsel.

(f) Instructions and objections. Except upon good cause articulated by the court, the court shall instruct the jury before the arguments are begun and shall provide to each juror, including alternates, a copy of the jury instructions to follow along as instructions are read. The court's good cause findings need not be written, but must be articulated clearly in a reported proceeding. The court may, as it deems necessary or appropriate, give additional instructions after arguments are concluded and before the jury retires. No party may assign as error the giving or the refusal to give, or the modification of, an instruction, whether settled pursuant to subdivision (b) or subdivision (c), of this rule, unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury. Objections made to instructions at the time they were settled shall be deemed preserved even though not restated after the court has instructed the jury.

(g) Copy of instructions for jurors. The copy of the instructions provided for each juror shall be without citations or other identification and shall be designated as the court's instructions.

(Amended February 4, 2000, effective July 1, 2000; further amended March 24, 2000, effective July 1, 2000; further amended April 23, 2012, effective June 18, 2012.)

Rule 31. VERDICT.

(a) Return. The verdict shall be unanimous, unless otherwise stipulated to by the parties. It shall be returned by the jury to the judge in open court.

(b) Several defendants. If there are 2 or more defendants, or 2 or more counts, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants, or with respect to a count or counts, as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants, or count or counts, as to whom it does not agree may be tried again.

(c) Poll of jury. When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, or there is not concurrence by the number of jurors stipulated to as being necessary for returning a verdict, the jury may be directed to retire for further deliberations or may be discharged.

VII. JUDGMENT

Rule 32. SENTENCE AND JUDGMENT.

(a) Sentence. After adjudication of guilt, sentence shall be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter bail, subject to applicable provisions of law. Before suspending or imposing sentence, the court shall address the defendant personally and afford a fair opportunity to the defendant and defendant's counsel, if any, to make a statement and present any information in mitigation of punishment.

(b) Notification of right to appeal. After imposing sentence, the court shall advise the defendant of his or her right to appeal, of the time within which a notice of appeal must be filed, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal without paying the filing fee; provided, however, that there shall be no duty on the court to give such advice in any case in which the defendant is represented by an attorney, is convicted on a plea of guilty or nolo contendere, or is convicted of an offense not a felony or a misdemeanor. If the defendant so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(c) Judgments.

(1) IN THE CIRCUIT COURT. A judgment of conviction in the circuit court shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. The filing of the judgment in the office of the clerk constitutes the entry of the judgment.

(2) IN THE DISTRICT COURT. A judgment of conviction in the district court shall set forth the disposition of the proceedings and the same shall be entered on the record of the court. The filing of the written judgment, or in the event of oral judgment, the filing of the written notice of entry of judgment, in the office of the clerk constitutes entry of judgment. The judgment or notice of entry shall be signed by the judge or by the clerk, if the judge so directs.

(d) Withdrawal of Plea. A motion to withdraw a plea of guilty or of nolo contendere may be made before sentence is imposed or imposition of sentence is suspended; provided that, to correct manifest injustice the court, upon a party's motion submitted no later than ten (10) days after imposition of sentence, shall set aside the judgment of conviction and permit the defendant to withdraw the plea. At any later time, a defendant seeking to withdraw a plea of guilty or nolo contendere may do so only by petition pursuant to Rule 40 of these rules and the court shall not set aside such a plea unless doing so is necessary to correct manifest injustice.

(Amended November 22, 1994, effective December 5, 1994; further amended January 29, 2004, effective July 1, 2004, further amended May 7, 2004, effective July 1, 2004; further amended September 22, 2005, effective January 1, 2006; further amended April 23, 2012, effective June 18, 2012.)

Rule 33. NEW TRIAL.

The court on motion of a defendant may grant a new trial to the defendant if required in the interest of justice. If trial was by the court without a jury, the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial shall be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10-day period. The finding of guilty may be entered in writing or orally on the record.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 34. ARREST OF JUDGMENT.

The court on motion of a defendant shall arrest judgment if the charge does not allege an offense or if the court was without jurisdiction of the offense alleged. The motion in arrest of judgment shall be made within 10 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 10-day period. The finding of guilty or nolo contendere may be entered in writing or orally on the record.

Rule 35. CORRECTION OR REDUCTION OF SENTENCE.

(a) Correction of Illegal Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. A motion made by a defendant to correct an illegal sentence more than 90 days after the sentence is imposed shall be made pursuant to Rule 40 of these rules. A motion to correct a sentence that is made within the 90 day time period shall empower the court to act on such motion even though the time period has expired.

(b) Reduction of Sentence. The court may reduce a sentence within 90 days after the sentence is imposed, or within 90 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 90 days after entry of any order or judgment of the Supreme Court of the United States denying review of, or having the effect of upholding the judgment of conviction. A motion to reduce a sentence that is made within the time prior shall empower the court to act on such motion even though the time period has expired. The filing of a notice of appeal shall not deprive the court of jurisdiction to entertain a timely motion to reduce a sentence.

(Amended October 15, 1980, effective October 15, 1980; further amended April 25, 2003, effective July 1, 2003.)

Rule 36. CLERICAL MISTAKES.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(Amended October 15, 1980, effective October 15, 1980; further amended May 30, 2006, effective July 1, 2006.)

VIII. ORDERS

Rule 37. DELETED.

Rule 38. STIPULATIONS AND ORDERS.

(a) Forms of stipulations and orders. Unless made in open court, all stipulations shall be in writing, signed by the parties or their attorneys, and filed with the clerk. An order based upon a stipulation shall be sufficient if the words "Approved and so ordered" or their equivalent are endorsed on the stipulation at the close thereof and signed by the judge.

(b) Stipulations extending time. Stipulations extending time to act under Rule 45(b)(1) of these rules shall indicate the existing expiration date.

(Added February 4, 2000, effective July 1, 2000.)

Rule 39. TITLES TO ORDERS.

The subject of every order shall be indicated in its title.

(Added February 4, 2000, effective July 1, 2000.)

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. POST-CONVICTION PROCEEDING.

(a) Proceedings and grounds. The post-conviction proceeding established by this rule shall encompass all common law and statutory procedures for the same purpose, including habeas corpus and coram nobis; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:

(1) FROM JUDGMENT. At any time but not prior to final judgment, any person may seek relief under the procedure set forth in this rule from the judgment of conviction, on the following grounds:

(i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawaiʻi;

(ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;

(iii) that the sentence is illegal;

(iv) that there is newly discovered evidence; or

(v) any ground which is a basis for collateral attack on the judgment.

For the purposes of this rule, a judgment is final when the time for direct appeal under Rule 4(b) of the Hawaiʻi Rules of Appellate Procedure has expired without appeal being taken, or if direct appeal was taken, when the appellate process has terminated, provided that a petition under this rule seeking relief from judgment may be filed during the pendency of direct appeal if leave is granted by order of the appellate court.

(2) FROM CUSTODY. Any person may seek relief under the procedure set forth in this rule from custody based upon a judgment of conviction, on the following grounds:

(i) that sentence was fully served;

(ii) that parole or probation was unlawfully revoked; or

(iii) any other ground making the custody, though not the judgment, illegal.

(3) INAPPLICABILITY. Rule 40 proceedings shall not be available and relief thereunder shall not be granted where the issues sought to be raised have been previously ruled upon or were waived. Except for a claim of illegal sentence, an issue is waived if the petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under this rule, and the petitioner is unable to prove the existence of extraordinary circumstances to justify the petitioner's failure to raise the issue. There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

(b) Institution of proceedings. A proceeding for post-conviction relief shall be instituted by filing a petition with the clerk of the court in which the conviction took place. The clerk shall then docket the petition as a special proceeding, and in cases of pro se petitions, promptly advise the court of the petition.

(c) Form and content of petition.

(1) IN GENERAL. The petition shall be in substantially the form annexed to these rules. Petitions in the prescribed form shall be made available without charge by the clerks of the various circuit and district courts to applicants upon their request. The petition shall specify all the grounds for relief which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The petition shall be typewritten or legibly handprinted and shall be signed and sworn to by the petitioner.

(2) NONCONFORMING PETITION. Where a post-conviction petition deviates from the form annexed to these rules, it shall nevertheless be accepted for filing and shall be treated as a petition under this rule provided that the petition (i) claims illegality of a judgment or illegality of "custody" or "restraint" arising out of a judgment, (ii) is accompanied by the necessary filing fee or by a well-founded request to proceed without paying filing fees, and (iii) meets minimum standards of legibility and regularity.

When treating a nonconforming petition as a petition under this rule, the court shall promptly clarify by written order that the requirements of this rule apply and, if the information in the petition is incomplete, may require the petitioner to file a supplemental petition in the form annexed to these rules before requiring the state to respond.

(3) SEPARATE CAUSE OF ACTION. If a post-conviction petition alleges neither illegality of judgment nor illegality of post-conviction "custody" or "restraint" but instead alleges a cause of action based on a civil rights statute or other separate cause of action, the court shall treat the pleading as a civil complaint not governed by this rule. However, where a petition seeks relief of the nature provided by this rule and simultaneously pleads a separate claim or claims under a civil rights statute or other separate

cause of action, the latter claim or claims shall be ordered transferred by the court for disposition under the civil rules.

(d) Response. The State of Hawaiʻi shall be named as the respondent in the petition, and the petitioner shall serve the petition on the respondent by delivering a filed copy thereof to the prosecutor. Service may be made by the attorney for the petitioner, or the petitioner in a pro se case. If it appears that the petitioner is unable to effect prompt service of a filed copy of the petition or other pleading under this rule, the court shall direct court staff to effect service on behalf of the petitioner. Within 30 days after the service of the petition or within such further time as the court may allow, the respondent may answer or otherwise plead, but the court may require the State to answer at any time. Where the petition makes a showing of entitlement to immediate relief, the court may shorten the time in which to respond to the petition. The respondent shall file with its answer any records that are material to the questions raised in the petition which are not included in the petition.

(e) Amendment and withdrawal of petition. The court may grant leave to amend or withdraw the petition at any time. Amendment shall be freely allowed in order to achieve substantial justice. No petition shall be dismissed for want of particularity unless the petitioner is first given an opportunity to clarify the petition.

(f) Hearings. If a petition alleges facts that if proven would entitle the petitioner to relief, the court shall grant a hearing which may extend only to the issues raised in the petition or answer. However, the court may deny a hearing if the petitioner's claim is patently frivolous and is without trace of support either in the record or from other evidence submitted by the petitioner. The court may also deny a hearing on a specific question of fact when a full and fair evidentiary hearing upon that question was held during the course of the proceedings which led to the judgment or custody which is the subject of the petition or at any later proceeding.

The petitioner shall have a full and fair evidentiary hearing on the petition. The court shall receive all evidence that is relevant and necessary to determine the petition, including affidavits, depositions, oral testimony, certificate of any judge who presided at any hearing during the course of the proceedings which led to the judgment or custody which is the subject of the petition, and relevant and necessary portions of transcripts of prior proceedings. The petitioner shall have a right to be present at any evidentiary hearing at which a material question of fact is litigated.

Where the petition alleges the ineffective assistance of counsel as a ground upon which the requested relief should be granted, the petitioner shall serve written notice of the hearing upon the counsel whose assistance is alleged to have been ineffective and said counsel shall have an opportunity to be heard.

(g) Disposition.

(1) IN FAVOR OF THE PETITIONER. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding, or with respect to custody based on such judgment, and such supplementary orders as to rearraignment, retrial, custody, bail, discharge or other matters as may be necessary or proper.

(2) AGAINST THE PETITIONER. The court may dismiss a petition at any time upon finding the petition is patently frivolous, the issues have been previously raised and ruled upon, or the issues were waived. The court may deny a petition upon determining the allegations and arguments have no merit.

(3) THE JUDGMENT. The court shall state its findings of fact and conclusions of law in entering its judgment on the petition.

(h) Review. Any party may appeal from a judgment entered in the proceeding in accordance with Rule 4(b) of the Hawaiʻi Rules of Appellate Procedure.

(i) Indigents. If the petition alleges that the petitioner is unable to pay the costs of the proceedings or to afford counsel, the court shall refer the petition to the public defender for representation as in other penal cases; provided that no such referral need be made if the petitioner's claim is patently frivolous and without trace of support either in the record or from other evidence submitted by the petitioner.

(Amended July 20, 1983, effective August 1, 1983; further amended July 13, 1984, effective July 13, 1984; further amended June 3, 1985, effective June 3, 1985; further amended November 21, 1989, effective November 21, 1989; further amended April 18, 1994, effective April 28, 1994; further amended and effective June 1, 1998; further amended February 4, 2000, effective July 1, 2000; further amended April 25, 2003, effective July 1, 2003; further amended September 6, 2005, effective January 1, 2006; further amended May 30, 2006, effective July 1, 2006.)

Rule 41. SEARCH AND SEIZURE.

(a) Authority to issue warrant. Except as otherwise provided by statute, a search warrant may be issued by any district or circuit judge (1) within the circuit wherein the property sought is located; or (2) within the circuit where the property is anticipated to be located. Application therefor should be made to a district judge wherever practicable.

(b) Property which may be seized with a warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of an offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing an offense. The term "property" includes documents, books, papers, any other tangible objects, and information.

(c) Issuance and contents. A warrant shall issue only on an affidavit or affidavits sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judge shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses the affiant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a police officer or some other officer authorized to enforce or assist in enforcing any law of the State of Hawaiʻi or any political subdivision thereof. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall contain a prohibition against execution of the warrant between 10:00 p.m. and 6:00 a.m., unless the judge permits execution during those hours in writing on the warrant. A warrant may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing a warrant that authorizes the seizure of electronic storage media or the seizure or copying of electronically stored information refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review. The warrant shall designate the judge to whom it shall be returned.

(d) Execution and return with inventory. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request cause to be delivered a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. In a case involving the seizure of

electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(e) Motion to return property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move the court having jurisdiction to try the offense for the return of the property. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned unless otherwise subject to lawful detention, but the judge may impose reasonable conditions to protect access to the property and its use in later proceedings.

(f) Motion to suppress. A person aggrieved by an unlawful search and seizure of property may move the court having jurisdiction to try the offense to suppress for use as evidence by the State anything unlawfully obtained. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall not be admissible in the State's evidence at any hearing or trial.

(g) Return of documents to clerk. The judge before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other documents in connection therewith and shall file them with the clerk of the court having jurisdiction of the case.

(h) Warrant issuance on oral statements. In lieu of the written affidavit required under section (c) of this rule, a sworn oral statement, in person or by telephone, may be received by the judge, which statement shall be recorded and transcribed, and such sworn oral statement shall be deemed to be an affidavit for the purposes of this rule. Alternatively to receipt by the judge of the sworn oral statement, such statement may be recorded by a court reporter who shall transcribe the same and certify the transcription. In either case, the recording and the transcribed statement shall be filed with the clerk.

(i) Duplicate warrants on oral authorization. The judge may orally authorize a police officer to sign the signature of the judge on a duplicate original warrant, which shall be deemed to be a valid search warrant for the purposes of this rule. The judge shall enter on the face of the original warrant the exact time of issuance and shall sign and file the original warrant and, upon its return, the duplicate original warrant with the clerk.

(j) Scope. This rule does not modify any statute or ordinance, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made.

(Amended May 12, 1995, effective June 1, 1995; amended effective January 1, 1999; further amended October 19, 2011, effective January 1, 2012; further amended April 23, 2012, effective June 18, 2012, further amended May 7, 2012, effective June 18, 2012; further amended June 14, 2013, effective July 1, 2013.)

Rule 42. FILING PROCEDURE BY THE CLERK.

(a) Classification. Upon the filing of the complaint, indictment, information, petition, pleading, or other similar documents, the clerk of the court shall classify and assign a number to the proceeding. All subsequent documents to be filed in the proceeding shall bear the same number, which shall appear on the first page of the document.

(b) Stamp by clerk. The clerk shall promptly stamp the time and date upon all conventionally filed documents.

(c) Docket entry and filing.

Upon the filing of any document, an appropriate entry shall be made in the docket kept for each case. The docket may be an electronic record within a court-maintained computer. Each case shall be filed separately and its file shall contain an index identifying particularly each document in such file and stating the date of filing.

(d) Original kept on file. The original of any document maintained in a paper file shall be kept by the clerk. Documents maintained in JIMS are deemed original documents for all purposes under any of the Hawaiʻi Rules of Court.

(e) No rejection of documents for filing. Notwithstanding any other rule to the contrary, the clerk shall not refuse to file any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) Receipt or filing of proposed orders.

(1) PAPER RECORD. Proposed findings, conclusions or orders submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and shall be transmitted to the court for consideration.

(2) JIMS RECORD. Proposed findings, conclusions, orders, or judgments shall be submitted in accordance with Rule 9 of the Hawaiʻi Electronic Filing and Service Rules.

(Added February 4, 2000, effective July 1, 2000; amended December 7, 2006, effective January 1, 2007; further amended April 23, 2012, effective June 18, 2012.)

Rule 42.1. EX OFFICIO FILING.

The respective clerks of the circuit and district courts shall be ex officio clerks of all the courts of record for the purpose of filing and shall forward to the appropriate court all documents submitted for filing.

(Added February 4, 2000, effective July 1, 2000.)

Rule 42.2. WITHDRAWAL OF DOCUMENTS.

The clerk shall not permit any documents to be taken from the clerk's custody except as ordered by the court.

(Added February 4, 2000, effective July 1, 2000; further amended April 23, 2012, effective June 18, 2012.)

Rule 42.3. PROCEDURES FOR PROCESSING POST-CONVICTION DOCUMENTS.

(a) Processing post-conviction documents. All post-conviction documents received by any court shall be transmitted to a judge for processing. All such documents shall be received as public documents and shall not be considered or treated as "confidential," "private," "personal," etc. A judge shall determine whether each document shall be handled as a civil matter, filed and docketed under the applicable criminal case number, or filed and docketed under a new or existing SPP (Special Proceeding - Prisoner) number. A separate file shall be established for each SPP number.

(b) Disposition. All documents filed and docketed under a new or existing special proceeding number shall be governed by Rule 40 of these rules.

(Added February 4, 2000, effective July 1, 2000; further amended April 23, 2012, effective June 18, 2012.)

X. GENERAL PROVISIONS

Rule 43. PRESENCE OF THE DEFENDANT.

(a) Presence required. The defendant shall be present at the arraignment, at the time of the plea, at evidentiary pretrial hearings, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this Rule.

(b) Continued presence not required. The further progress of a pretrial evidentiary hearing or of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present,

(1) is voluntarily absent after the hearing or trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) engages in conduct which is such as to justify exclusion from the courtroom.

(c) Presence not required. A defendant need not be present either physically or by video conference if:

(1) the defendant is a corporation and appears by counsel; or

(2) the proceeding is a conference or argument upon a question of law; or

(3) the proceeding is a reduction of sentence under Rule 35.

(d) Presence may be waived for non-felony offenses. In prosecutions for offenses other than a felony, the court may:

(1) conduct an arraignment, wherein a plea of not guilty is accepted, or conduct an evidentiary pretrial hearing in the defendant's absence, provided the defendant consents in writing or the defendant's counsel orally represents that the defendant consents.

(2) conduct an arraignment in the defendant's absence, if the defendant's residence is out-of-state or on another island, the defendant consents in writing, and a plea of guilty or no contest is

(A) accepted and sentence is imposed; or

(B) offered and acceptance is deferred. Except for the requirement of addressing the defendant personally in open court, the court shall otherwise comply with the requirements of Rule 11 and Rule 32 of these Rules.

(3) in the case of a violation, conduct an arraignment, accept a plea of guilty or no contest, and impose a sentence in the defendant's absence, provided the defendant consents in writing.

(e) Presence may be by video conference.

(1) The court may conduct by video conference, without the consent of the defendant, an arraignment wherein it accepts a plea of not guilty;

(2) The court may conduct by video conference, with the oral or written consent of the defendant,

(A) an arraignment wherein it accepts, or takes under advisement, a plea of guilty or no contest,

(B) a pre-trial evidentiary or non-evidentiary proceeding, or

(C) a post-conviction evidentiary or non-evidentiary proceeding, other than a sentencing hearing.

(3) The court may conduct a sentencing hearing and impose sentence by video conference with the oral or written consent of both the prosecution and the defendant.

(Amended July 24, 1996, effective August 26, 1996; further amended December 21, 2007, effective January 1, 2008; further amended July 19, 2011, effective July 19, 2011; further amended May 21, 2012, effective July 1, 2012; further amended March 25, 2015; effective July 1, 2015; further amended October 22, 2015; effective January 1, 2016.)

Rule 44. APPOINTED-COUNSEL FEES AND NECESSARY EXPENSES.

(a) Itemized Bill; Copies.

Attorneys appointed to represent indigent persons shall request fees and necessary expenses by submitting an itemized and verified bill of fees and costs, together with a statement of authority for each category of items and, where appropriate, copies of invoices, bills, vouchers, and receipts. Requests shall be submitted on forms that substantially comply with Forms F, H, and I annexed to these rules. Each request shall be accompanied by a copy of the Findings and Recommendation of the Public Defender and Order Appointing Counsel. Failure to provide authority for the award of attorney's fees and necessary expenses may result in denial of that request. Attorneys whose cases are not subject to electronic filing shall file an original and 3 copies of all submissions.

(b) Filing and Service.

(1) CRIMINAL CASES

(i) Fees and necessary expenses.

Requests for fees and necessary expenses, with proof of service, may be submitted 6 months after appointment or prior submission and approval of a request, provided that the final request, with proof of service, shall be submitted no later than 60 days after final disposition. For the purpose of this rule, final disposition includes entry of judgment, entry of an order of dismissal, or entry of an order allowing withdrawal or termination of representation.

If a prior request was submitted, a subsequent request must include a Billing Recap on a form that substantially complies with Form G annexed to these rules.

(ii) Other Litigation Expenses.

Requests for expert witness fees, interpreter services, and transcripts (for purposes other than appeal) shall be submitted by motion, with proof of service, prior to retaining the expert or interpreter or ordering the transcript. The motion shall be supported by declaration or affidavit that show cause as to why the motion should be granted.

(2) SPECIAL PROCEEDINGS

Requests for fees and necessary expenses in special proceedings, with proof of service, shall be

submitted no later than 60 days after entry of an order granting or denying the petition.

(c) Requests under seal.

Counsel may seek to seal any request or related order for expenses. A request to submit under seal shall be by *ex parte* motion, shall be supported by an affidavit or declaration setting forth the circumstances that merit submission under seal, and shall include a proposed order.

(d) Untimely requests.

An untimely request for fees and necessary expenses may be denied.

(e) Objections and Reply.

Objections to requests for fees and necessary expenses, if any, shall be filed, with proof of service, within 10 days after service of the request. A reply to the objections, if any, shall be filed within 7 days after service of the objections on the initiating party.

(f) Multiple Cases.

Attorneys appointed to represent a defendant in multiple cases shall submit a request for fees and necessary expenses in each case; provided if time spent on each case was identical, a single request that identifies all case numbers may be submitted, with originals for each case file. All requests with regard to representation of a single defendant in multiple cases that were disposed simultaneously shall be submitted at the same time.

(Added April 20, 2011, effective July 1, 2011; further amended April 23, 2012, effective June 18, 2012.)

Rule 44A. SETTLEMENT OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ENTRY OF ORDER.

(a) In the circuit court.

(1) PREPARATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER. Unless otherwise ordered by the court, within 10 days after decision or ruling of the court following a hearing on a motion, the prevailing party shall prepare and deliver to the parties the findings of fact, conclusions of law and order, in accordance with the decision or ruling.

(2) SECURING APPROVAL FROM OPPOSING PARTY. The party preparing the findings, conclusions and order shall attempt to secure approval as to form from the opposing party. Upon approval, which shall be made not later than 5 days after delivery, the document shall be returned to the originating party who shall promptly deliver it to the court. If the document is not approved as to form within 5 days after delivery, the originating party shall promptly deliver the proposed findings, conclusions and order to the court along with certificate of service to all parties.

(3) OBJECTION AS TO FORM. If any party objects to the form of the document prepared, that party, within 5 days of delivery, or other such time as authorized by the court, shall serve upon the party who prepared the document and deliver to the court a statement of that party's objections and the reasons therefore or proposed findings, conclusions and order. Failure to file and serve objections or proposed findings, conclusions, or order shall constitute approval as to form of the document prepared.

(4) SETTLEMENT. The court shall timely settle the objections, if any, and issue the findings of fact, conclusions of law, and order as it deems proper.

(5) NO EFFECT ON RIGHT TO APPEAL. Approval as to form shall not affect the right of any party to appeal from the decision or ruling of the court and shall not be deemed as a waiver of disputed findings or conclusions.

(6) ENTRY. The filing of the findings of fact, conclusions of law and order in the office of the clerk shall constitute entry of the order.

(b) In the District Court.

(1) After the decision or ruling of the court following a hearing on a motion, the clerk shall note the decision or ruling on the docket. The filing of the written decision or ruling, or in the event of an oral decision or ruling, the filing of the written notice of entry of the decision or ruling, in the office of the clerk constitutes entry of the order. The decision or ruling or notice of entry shall be signed by the judge or by the clerk, if the judge so directs, provided that for purposes of this rule, an oral order granting an oral motion is entered when the court's oral order is entered by the clerk on the electronic docket.

(2) Where the court orders preparation of findings of fact, conclusions of law and order, the findings, conclusions and order shall be prepared and settled as provided for in subsection (a) of this rule. The filing of the findings, conclusions and order in the office of the clerk shall constitute entry of the order.

(Added February 4, 2000, effective July 1, 2000; further amended May 7, 2004, effective July 1, 2004; further amended June 2, 2005, effective July 1, 2005; further amended April 20, 2011, effective July 1, 2011.)

Rule 45. TIME.

(a) Computation. In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. When a period of time prescribed or allowed is less than 10 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. Computation of the period set forth in Rule 5(a) shall be based on the actual time elapsed without regard to the exceptions set forth in this rule. As used in these rules, "holiday" includes any day designated as such pursuant to Section 8-1 of Hawaiʻi Revised Statutes.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35 of these rules and Rule 4(b) of the Hawaiʻi Rules of Appellate Procedure, except to the extent and under the conditions stated in them.

(c) For motions; affidavits or declarations. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 48 hours before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit or declaration, the affidavit or declaration shall be served with the motion; and opposing affidavits or declarations may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

Where a written motion is filed 14 or more days before the time specified for the hearing, all opposing memoranda, together with affidavits or declarations, if any, must be served not less than 72 hours before the hearing unless the court permits them to be served at a later time. All memoranda replying to the opposing memoranda shall be served not later than 24 hours before the hearing unless the court permits them to be served at a later time.

(d) Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other document upon the party, and the notice or other document is served upon the party by mail, 2 days shall be added to the prescribed period.

(Amended January 6, 1982, effective January 6, 1982; further amended April 23, 1985, effective April 23, 1985; further amended November 22, 1994, effective December 5, 1994; further amended February 4, 2000, effective July 1, 2000; further amended November 17, 2000, effective January 1, 2001; further amended April 23, 2012, effective June 18, 2012.)

Rule 46. BAIL; BOND.

(a) Bail.

The right to bail before conviction or upon review, the form and amount thereof, and the matters of justification of sureties, forfeiture of bail, and exoneration of obligors and sureties shall be as provided by law. (See Hawaiʻi Revised Statutes, Chapter 804.)

(b) Bond.

A party seeking release on bail by posting bond shall submit the bond in a form that substantially complies with Form J annexed to these rules. If a bail bond is secured by insurance, a copy of the bail agent's power of attorney shall be attached to the bond, and shall be supported by the affidavit or declaration of the bail agent authorized to furnish bail for compensation. The declaration or affidavit

shall identify the insurer, provide the agent's and insurer's license numbers, attest the agent and the insurer are currently licensed and in good standing with the Insurance Commissioner of the State of Hawaiʻi, and attest the agent and the insurer are in compliance with Hawaiʻi law governing bail bonds.

(Amended April 20, 2011, effective July 1, 2011.)

Rule 47. MOTIONS, AFFIDAVIT OR DECLARATION, AND RESPONSES.

(a) Form. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. A motion involving a question of law shall be accompanied by a memorandum in support of the motion. If a motion requires the consideration of facts not appearing of record, it shall be supported by affidavit or declaration. Written motions, other than ex parte motions, shall be noticed as provided by Rule 2.2(d)(3)(iii) of these rules.

(b) Required notice of no opposition. A party who does not oppose or who intends to support a motion shall promptly give written notification to the court and opposing counsel.

(c) Filings in opposition. An opposing party may serve and file counter affidavits, declarations or memoranda in opposition to the motion, which shall be served and filed in accordance to Rules 45 and 49 of these rules, except as otherwise ordered by the court.

(d) Declaration in lieu of affidavit. In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

> "I, _____, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.
>
> Dated:
>
> _____
> (Signature)"

(Amended February 4, 2000, effective July 1, 2000.)

Rule 48. DISMISSAL.

(a) By prosecutor. The prosecutor may by leave of court file a dismissal of a charge and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By court. Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months:

(1) from the date of arrest if bail is set or from the filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made; or

(2) from the date of re-arrest or re-filing of the charge, in cases where an initial charge was dismissed upon motion of the defendant; or

(3) from the date of mistrial, order granting a new trial or remand, in cases where such events require a new trial.

Clauses (b)(1) and (b)(2) shall not be applicable to any offense for which the arrest was made or the charge was filed prior to the effective date of the rule.

(c) Excluded periods. The following periods shall be excluded in computing the time for trial commencement:

(1) periods that delay the commencement of trial and are caused by collateral or other proceedings concerning the defendant, including but not limited to penal irresponsibility examinations and periods during which the defendant is incompetent to stand trial, pretrial motions, interlocutory appeals and trials of other charges;

(2) periods that delay the commencement of trial and are caused by congestion of the trial docket when the congestion is attributable to exceptional circumstances;

(3) periods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel;

(4) periods that delay the commencement of trial and are caused by a continuance granted at the request of the prosecutor if:

(i) the continuance is granted because of the unavailability of evidence material to the prosecution's case, when the prosecutor has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(ii) the continuance is granted to allow the prosecutor additional time to prepare the prosecutor's case and additional time is justified because of the exceptional circumstances of the case;

(5) periods that delay the commencement of trial and are caused by the absence or unavailability of the defendant;

(6) the period between a dismissal of the charge by the prosecutor to the time of arrest or filing of a new charge, whichever is sooner, for the same offense or an offense required to be joined with that offense;

(7) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance; and

(8) other periods of delay for good cause.

(d) Per se excludable and includable periods of time for purposes of subsection (c)(1) of this rule.

(1) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions filed by a defendant, shall be deemed to be periods of delay resulting from collateral or other proceedings concerning the defendant: motions to dismiss, to suppress, for voluntariness hearing heard before trial, to sever counts or defendants, for disqualification of the prosecutor, for withdrawal of counsel including the time period for appointment of new counsel if so ordered, for mental examination, to continue trial, for transfer to the circuit court, for remand from the circuit court, for change of venue, to secure the attendance of a witness by a material witness order, and to secure the attendance of a witness from without the state.

(2) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions or court papers, shall be deemed not to be excluded in computing the time for trial commencement: notice of alibi, requests/motions for discovery, and motions in limine, for voluntariness hearing heard at trial, for bail reduction, for release pending trial, for bill of particulars, to strike surplusage from the charge, for return of property, for discovery sanctions, for litigation expenses and for depositions.

(3) The criteria provided in section (c) shall be applied to motions that are not listed in subsections (d)(1) and (d)(2) in determining whether the associated periods of time may be excluded in computing the time for trial commencement.

(Amended November 22, 1994, effective December 5, 1994; further amended February 4, 2000, effective July 1, 2000.)

Rule 49. SERVICE OF DOCUMENTS ON PARTIES AND PROOF THEREOF; NOTICE OF ENTRY OF ORDERS AND JUDGMENTS; FILING OF DOCUMENTS.

(a) Service: When required. All written submissions to the court, including ex parte motions, shall be served upon each of the parties promptly after filing, unless otherwise ordered by the court.

(b) Service: How made. Whenever under these Rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court.

(1) SERVICE OF COMPLAINT, INDICTMENT, INFORMATION, BENCH WARRANT, SUMMONS, OR SUBPOENA. Service of the complaint, indictment, information, bench warrant, or summons shall be governed by Rule 9 of these Rules. Service of a subpoena shall be governed by Rule 17 of these Rules.

(2) SERVICE OF OTHER DOCUMENTS. Unless served in accordance with Rule 6 of the Hawaiʻi Electronic Filing and Service Rules, service of documents other than complaint, indictment, information, bench warrant, summons or subpoena shall be made (a) by delivering a copy to the attorney or party; (b) by mailing it to the attorney or party at the attorney's or party's last known address; (c) if no address is known, by leaving it with the clerk of the court; or (d) if service is to be upon the attorney, by

facsimile transmission to the attorney's business facsimile receiver.

(3) SERVICE OF ORDERS AND JUDGMENTS IN DISTRICT COURT JIMS CRIMINAL CASES. Notwithstanding the provisions of subsections (b)(2) and (e) of this Rule, in a District Court JIMS criminal case, the clerk may serve the defendant with any Order and Notice of Entry of Order or Judgment and Notice of Entry of Judgment without necessity of serving the defendant thereafter with a filed-stamped copy of the Order and Notice of Entry of Order or Judgment and Notice of Entry of Judgment; provided, however, that parties other than the named defendant in such cases shall be served with filed-stamped copies of any Order and Notice of Entry of Order or Judgment and Notice of Entry of Judgment as otherwise provided in these Rules.

(4) DELIVERY AND FACSIMILE TRANSMISSION: HOW MADE. Delivery of a copy within this Rule means: handing it to the attorney or to the party; leaving it at the attorney's or party's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Facsimile transmission means transmission and receipt of the entire document without error between the hours of 8:00 a.m. and 5:00 p.m. Hawaiʻi Standard Time on a court day with a cover sheet that states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document.

(5) SERVICE: WHEN COMPLETED. Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the receiving party's facsimile machine. Service by facsimile transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next court day.

(c) Proof of service. Proof of service of complaint, indictment, information, bench warrant, and penal summons shall be governed by Rule 9 of these Rules. Proof of service of documents other than the complaint, indictment, information, bench warrant or summons may be made by written acknowledgment of service, by affidavit or declaration of the person making service, or by any other proof satisfactory to the court, unless otherwise provided by law.

Proof of service by facsimile transmission shall be made by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date and time, and which either (a) attaches the written confirmation from the sender's facsimile machine that confirms the document was received in its entirety and without error; or (b) certifies that the sender called the office being served and obtained verbal confirmation that the document was received.

(d) Relief upon failure to receive due notice. A party who has failed to receive due notice or to be served, or who has been prejudiced by reason that service was made by mail or facsimile transmission, may apply to the court for appropriate relief.

(e) Notice of entry of orders and judgments. Immediately upon the entry of:

(1) an order prepared by a party, the party shall serve notice of such entry, unless otherwise ordered by the court;

(2) an order prepared by the court, the clerk shall deliver or serve notice of such entry, unless otherwise ordered by the court; or

(3) a judgment, the clerk shall deliver or mail to each party the judgment and shall make a note in the docket of the delivery or mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Hawaiʻi Rules of Appellate Procedure.

(f) Filing. The conventional filing of motions and other documents with the court shall be made by filing them with the clerk of the court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. When documents to be conventionally filed are presented for filing, the original shall be accompanied with a sufficient number of copies.

(Amended April 23, 1985, effective April 23, 1985; further amended February 4, 2000, effective July 1, 2000; further amended December 7, 2006, effective January 1, 2007; further amended April 23, 2012, effective June 18, 2012; further amended December 2, 2014, effective December 5, 2014.)

Rule 50. CALENDARS.

The district and circuit courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

Rule 50.1. PREPARATION OF CLERK'S MINUTES AND EXHIBIT LISTS; WITHDRAWAL OF EXHIBITS.

(a) Minutes. The court shall cause minutes to be prepared for its own use and retained.

(b) Exhibits.

(1) CIRCUIT COURT. The court shall cause an exhibit list to be prepared that shall indicate exhibits marked and received. Upon notice and written order of the court, an exhibit may be withdrawn.

(2) DISTRICT COURT. All exhibits received shall be filed and noted on the court docket. Upon notice and approval of the court, an exhibit may be withdrawn.

(Added February 4, 2000, effective July 1, 2000; amended June 2, 2005, effective July 1, 2005.)

Rule 51. EXCEPTIONS UNNECESSARY.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him or her.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 52. HARMLESS ERROR AND PLAIN ERROR.

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. REGULATION OF CONDUCT IN COURTROOM.

(a) Required notice. Attorneys shall advise the court promptly if a case is settled or a matter will not proceed as scheduled. An attorney who fails to give the court and opposing counsel such prompt advice may be subject to sanctions as the court deems appropriate.

(b) Effect of failure to appear or prepare. An attorney who, without just cause, fails to appear when required or unjustifiably fails to prepare for a presentation to the court necessitating a continuance may be subject to sanctions as the court deems appropriate.

(Added February 4, 2000, effective July 1, 2000.)

Rule 54. APPLICATION AND EXCEPTIONS.

(a) Courts. These rules apply to all penal proceedings in all courts of the State of Hawaiʻi, except as provided in subsection (b) of this rule.

(b) Proceedings. These rules shall not apply to extradition and rendition of fugitives; forfeiture of property for violation of law; the collection of fines and penalties; contempt proceedings which are treated by the court as petty misdemeanors; family court proceedings under section 571-11 of Hawaiʻi Revised Statutes; and statutory proceedings in which a specific procedure is provided for as part of the statute creating the offense.

(c) Application of terms. As used in these rules the following definitions shall apply:

(1) "civil action" refers to a civil action in the circuit court.

(2) "prosecutor" means the State attorney general, the county prosecutor or county attorney, and any of their respective assistants or deputies, who are authorized to prosecute defendants in the courts.

(3) "demurrer," "motion to quash," "plea in abatement," "plea in bar," "special plea in bar," and other words to the same effect in any statute shall be construed to mean the motion raising a defense or objection as provided in Rule 12.

(d) Conflict. If there is any conflict between these rules and the Rules of the District Courts of the State of Hawaiʻi or the Rules of the Circuit Courts of the State of Hawaiʻi, then the Hawaiʻi Rules of Penal Procedure shall govern.

Rule 55. RECORDING OF TESTIMONY AND PROCEEDINGS.

It shall be the responsibility of the court to insure that a complete record is kept of all court proceedings in a form that is sufficiently clear to permit transcription of proceedings. A log shall be kept of all such records.

(Added February 4, 2000, effective July 1, 2000.)

Rule 56. COURTS AND CLERKS.

All courts shall be deemed always open for the purpose of filing any proper document, of issuing and returning process and of making motions and orders. The clerk's office with a clerk or deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and holidays as defined in Rule 45 (a). Documents filed through JEFS or JIMS are deemed filed with the clerk of the court.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 57. WITHDRAWAL OF COUNSEL.

Withdrawal of counsel shall require the approval of the court and shall be subject to Rule 1.16 of the Hawaiʻi Rules of Professional Conduct. Where the defendant is or may be indigent, substitution of counsel shall comply with the procedure established in Hawaiʻi Revised Statutes, chapter 802. Unless otherwise ordered, withdrawal of counsel shall not become effective until substitute counsel appears or is appointed, the defendant appears pro se or the defendant is deemed to have waived counsel.

(Added February 4, 2000, effective July 1, 2000.)

Rule 58. COUNSEL APPEARANCE BY TELEPHONE OR OTHER ELECTRONIC MEANS.

(a) Pretrial and status conferences. Unless otherwise provided by rules of court, the court should, absent good reason, as determined in the court's discretion, allow counsel to appear by telephone or other electronic means at any pretrial or status conference.

(b) All other proceedings where defendant's appearance is not required. In all other proceedings where the defendant's presence is not required by Rule 43 of these rules, the court, in its discretion, may allow counsel to appear by telephone or other electronic means.

(c) Court may require personal appearance. If, at any time during a conference, hearing or proceeding conducted by telephone or other electronic means, the court determines personal appearance is necessary, the court may continue the matter and require a personal appearance.

(d) Arranging telephone conference call. Unless otherwise directed by the court, Counsel who requests an appearance by telephone or other electronic means is responsible for notifying all parties prior to said call, arranging the telephone conference call with all parties, and ensuring the call is ready for court participation at the time appointed.

(Added July 29, 2013, effective January 1, 2014; adopted and amended November 20, 2014, effective January 1, 2015.)

COMMENTARY:

The intent of this rule is to promote uniformity in the practices and procedures for appearance of counsel by telephone or other electronic means for criminal matters in the courts of the State. To provide access to justice, promote judicial efficiency and to reduce litigation costs, the courts of the State should permit counsel, to the extent feasible, to appear by telephone or other electronic means as provided by this rule.

Rule 59. EFFECTIVE DATE.

These rules take effect on January 1, 1977. They govern all penal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Rule 60. TITLE.

These rules may be known and cited as the Hawaiʻi Rules of Penal Procedure.

Form A

PETITION FOR POST-CONVICTION RELIEF
(Rule 40, HRPP)

Name _____
Prison Number _____
Place of Confinement _____
SPP No. _____ (to be supplied by Clerk of the Court)

_____
[Insert appropriate court]

_____,	)
(full name of petitioner)	)
	)
Petitioner,	)
	)
vs.	)
	)
STATE OF HAWAIʻI,	)
	)
Respondent.	)
_____	)

PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT OR TO RELEASE PETITIONER FROM CUSTODY

(1) This petition must be legibly handprinted or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) If briefs or arguments or citation of authorities are submitted, they must be in a separate memorandum.

(3) You must submit either the appropriate filing fees, or a Request to Proceed Without Paying Filing Fees (Form B) with this petition. Upon receipt, your petition will be filed. Your Request to Proceed Without Paying Filing Fees (Form B) will be either approved or denied after consideration by the court. If your Request to Proceed Without Paying Filing Fees (Form B) is denied, you will be notified that you must pay the filing fees in order to proceed with your petition and that, if you fail to pay, your petition will be dismissed.

(4) The Request to Proceed Without Paying Filing Fees (Form B) must be signed, setting forth information establishing your inability to pay. If you are in custody and you wish to proceed without paying filing fees, you must also have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit in your account in the institution.

(5) You may challenge only one judgment of conviction in this petition. If you seek to challenge judgments entered by different judges or divisions either in the same court or in different courts, you must file separate petitions as to each such judgment.

(6) You must include all grounds for relief and all facts supporting the grounds for relief in this petition.

(7) Unless filed electronically pursuant to the Hawaiʻi Electronic Filing and Service Rules, when the petition is fully completed, the original and 2 copies must be mailed to the Clerk of the Court where the conviction was entered and whose address is

_____.

(*to be stamped by the Clerk*)

PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT OR TO RELEASE PETITIONER FROM CUSTODY

1. Name and location of court that entered the judgment of conviction that you are challenging in this petition _____

   _____

   (a) Case Number (for example, "Cr. No."; "FCCr. No."; etc.) _____

   _____

   (b) Trial judge _____
2. Date of judgment of conviction _____
3. Length of sentence _____
4. Nature of offense involved (all counts) _____

   _____

   _____

   _____
5. What was your plea? (Check one)

   (a) Not guilty _____

   (b) Guilty _____

   (c) No Contest _____

If you changed your plea, what did you change it to?
(a) Guilty _____
(b) No Contest _____

If you entered a guilty plea to one count of the charge, complaint, information, or indictment, and a not guilty plea or no contest plea to another count of the charge, complaint, information, or indictment, give details: _____
_____
_____
_____

6. Type of trial: (Check one)
(a) Jury _____
(b) Judge only _____
7. Did you testify at the trial?
Yes _____ No _____
8. Did you appeal from the judgment of conviction?
Yes _____ No _____
9. If you did appeal, answer the following:
(a) Appeal Number _____
(b) Result _____
(c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court?
Yes _____ No _____
11. If your answer to 10 is "yes," give the following information:
(a) (1) Name of court _____
(2) Case Number (for example, “Cr. No.”; “FCCr. No.”; etc.) _____
(3) Name of judge _____
(4) Nature of proceeding _____
_____
_____
(5) Grounds raised _____
_____
_____
(6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____
(7) Result _____
(8) Date of result _____
(b) As to any second petition, application or motion give the same information:
(1) Name of court _____
(2) Case Number (for example, “Cr. No.”; “FCCr. No.”; etc.) _____
(3) Name of judge _____

(4) Nature of proceeding _____
_____
_____

(5) Grounds raised _____
_____
_____

(6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____

(7) Result _____

(8) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Case Number (for example, "Cr. No."; "FCCr. No."; etc.) _____

(3) Name of judge _____

(4) Nature of proceeding _____
_____
_____

(5) Grounds raised _____
_____
_____

(6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____

(7) Result _____

(8) Date of result _____

(d) Did you appeal the action taken on any petition, application or motion?

(1) First petition, etc.
Yes _____ Appeal Number _____
No _____

(2) Second petition, etc.
Yes _____ Appeal Number _____
No _____

(3) Third petition, etc.
Yes _____ Appeal Number _____
No _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.
_____
_____

12. State every ground on which you claim you are being held unlawfully. State the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the supporting **facts**.

CAUTION: If you fail to state all grounds in this petition, you may be prohibited from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. You may raise any grounds in addition to those listed. However, **you should raise all grounds** relating to this conviction in this petition.

If you select any of these grounds for relief, you must state the supporting facts. The petition will be denied if you merely check any of the listed grounds or if you fail to provide supporting facts.

(a) A plea of guilty that was unlawfully induced or not made knowingly, intelligently, or voluntarily or with an understanding of the nature of the charge(s) and the consequences of the plea.
(b) Use of a coerced confession.
(c) Use of evidence obtained pursuant to an unconstitutional search and seizure.
(d) Use of evidence obtained pursuant to an unlawful arrest.
(e) A violation of the privilege against self-incrimination.
(f) Failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Violation of the protection against double jeopardy.
(h) Unconstitutionally selected and impanelled grand or trial jury.
(i) Ineffective assistance of counsel.
(j) Prosecutorial misconduct.
(k) Violation of Rule 48 (Right to a speedy trial).
(l) Lack of jurisdiction of the court that entered the judgment.

A. Ground one: _____

_____

State supporting FACTS (do not cite cases or law):

_____

_____

B. Ground two: _____

_____

State supporting FACTS (do not cite cases or law):

_____

_____

C. Ground three: _____

_____

State supporting FACTS (do not cite cases or law):

_____

_____

D. Ground four: _____

_____

State supporting FACTS (do not cite cases or law):

_____

_____

(ATTACH ADDITIONAL PAGES, IF NEEDED)

13. If you are raising any of the grounds in number 12 for the first time, state why. (Attach additional pages, if needed.): _____

_____

_____

14. Do you have any petition or appeal now pending in any court concerning the judgment you are challenging in this petition?

Yes ____ If so, give court name, court location and case number: _____

_____

_____

No _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the proceeding that resulted in the judgment being challenged:

(a) At preliminary hearing _____

_____

(b) At arraignment and plea _____

_____

(c) At trial _____

_____

(d) At sentencing _____

_____

(e) On appeal _____

_____

(f) In any post-conviction proceeding _____

_____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

_____

_____

16. Were you sentenced on more than one count of a charge, complaint, information or indictment?
Yes _____ No _____

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging in this petition?
Yes _____ No _____

(a) If so, give the case number and the name and location of the court that imposed the sentence to be served in the future: _____
_____
_____

(b) Give date and length of the sentence to be served in the future: _____
_____
_____

(c) Have you filed, or do you contemplate filing any petition challenging the judgment that imposed the sentence to be served in the future?
Yes _____ No _____

Petitioner requests that the Court grant all relief to which the petitioner may be entitled in this proceeding.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Signed on _____.
(date)

_____
Signature of Petitioner

(This page intentionally left blank)

FORM B

REQUEST TO PROCEED WITHOUT PAYING FILING FEES

_____
[Insert appropriate court]

_____
(*Petitioner)*

vs.

_____
State of Hawaiʻi

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
WITHOUT PAYING FILING FEES

I, _____, declare that I am the petitioner in the above entitled case. I ask to proceed without paying filing fees. In support of my request, I state that, because of my poverty, I am unable to pay the filing fees and that I believe I am entitled to relief.

1. Are you presently employed?
   Yes _____ No _____
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.
      _____
      _____
      _____
   b. If the answer is "no," state the date of last employment and the amount of the salary or wages per month that you received.
      _____
      _____
      _____
2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or other employment?
      Yes _____ No _____
   b. Rent payments, interest or dividends?
      Yes _____ No _____
   c. Pensions, annuities or life insurance payments?
      Yes _____ No _____
   d. Gifts or inheritances?
      Yes _____ No _____
   e. Any other sources?
      Yes _____ No _____
      If the answer to any of the above is “yes,” describe each source of money and state the amount received from each during the past twelve months.
      _____
      _____
      _____

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts.)
   Yes _____ No _____

   If the answer is "yes," state the total value of the items owned.
   _____
   _____
   _____

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes _____ No _____

   If the answer is "yes," describe the property and state its approximate value.
   _____
   _____
   _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.
   _____
   _____
   _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Signed on _____ .
(date)

_____
Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $_____ on account to his/her credit at the _____ institution where he/she is confined. I further certify that petitioner likewise has the following securities to his/her credit according to the records of said institution _____
_____
_____
_____
_____

_____
Authorized Officer of Institution

Form C

WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA	Case Number:
STATE OF HAWAIʻI vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawaiʻi Rules of Penal Procedure:

1. I understand that I have the right to be present at the arraignment, at pretrial proceedings, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be present at all of these proceedings. I authorize my lawyer to represent me in all of these proceedings without my presence. I also give up my right to be questioned in open court.

2. I plead: [ ] GUILTY OR [ ] NO CONTEST
   to the: [ ] ORIGINAL OR [ ] AMENDED charge(s) listed above.

3. My birth year is _____ and I am _____ years old.
   The last four digits of my social security number are XXX-XX-_____.
   I have completed _____ years of education.
   I speak, read, write, and understand the English language. If this document was interpreted, it shall include the language interpreted, the interpreter's name, and the interpreter's signature.

4. My mind is clear. I am not ill. I did not take any unprescribed medication, alcohol or any illegal drugs within 48 hours prior to signing this document, except _____ which does not affect my ability to understand this document.

5. My lawyer explained the charge(s) against me. I understand the charge(s). I told my lawyer everything I know about the case. My lawyer explained the government's evidence against me, the facts which the government must prove in order to convict me and my possible defenses.

6. I understand that by pleading I give up my right to a trial by a jury or by the court. I know that in a trial, the government is required to prove my guilt beyond a reasonable doubt, that I can see, hear and question the witnesses who testify against me, and that I can call my own witnesses to testify for me, and that I also understand that I have the right to take the stand to testify or I have the right not to testify at trial.

7. I understand that the maximum penalties are: $_____ fine or _____ days/months/year in jail or both.

8. INITIAL ONE:
   [ ] After discussing all the evidence and receiving advice from my lawyer, I plead GUILTY because (give a brief factual statement of what the Defendant did):

   [ ] After discussing all the evidence and receiving advice from my lawyer, I plead NO CONTEST because I do not wish to contest the charge(s) against me.

9. I plead of my own free will. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.

10. I have reached the following agreement with the Prosecuting Attorney (give a brief statement):

INITIAL ONE:
[ ] I understand that the court is not bound by this agreement. If the court does not follow the agreement, I cannot withdraw my plea.
[ ] No one has promised me any kind of deal or favor or leniency if I plead.

11. I understand that the court is not required to grant any request for a deferred acceptance of a guilty or no contest plea.

12. I consent to the court imposing sentence without my being present. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to being arrested and having to appear in court.

13. I understand that if I am not a citizen of the United States, a conviction of this or these offenses may result in deportation, exclusion from admission to the United States, or denial of naturalization.

14. I declare under penalty of perjury, that I am the person charged with these offenses and affix my fingerprint hereto. I further acknowledge that I signed this form after reviewing it with my attorney. I am satisfied with my attorney's advice and representation.

DATED this _____ day of _____, 20 ___.

Defendant's Signature: _____
Address: _____
_____
Phone No.: _____
Language Interpreted: _____
Interpreter's Name: _____
Interpreter's Signature: _____

Defendant must affix right thumbprint
in above box with black ink

DECLARATION OF COUNSEL

As counsel for the defendant and as an officer of the Court, I certify the following:

1. I explained the defendant's right to be present.
2. The defendant represented to me that he/she does not wish to be present and that he/she wishes the proceedings to be conducted in his/her absence.
3. I read and explained this document to the defendant.
4. The statements contained herein conform with my understanding of the defendant's position.
5. I believe the defendant understands the document in its entirety.
6. The defendant's plea is voluntary.
7. The defendant understands the nature of the charge and the possible consequences.

DATED this _____ day of _____, 20___.

Approved and so ordered:

_____ _____
Attorney for the Defendant Judge of the Above Entitled Court

Form D

WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA; PRO SE DEFENDANT

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA; PRO SE DEFENDANT	Case Number:
STATE OF HAWAIʻI vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawaiʻi Rules of Penal Procedure:

1. I am proceeding without an attorney and I have full knowledge of the following: (Each box must be initialed by Defendant).

   [ ] I understand that I have a right to representation by counsel. I also understand that if I am financially unable to afford counsel the court will appoint one at no cost to me.

   [ ] The complaint(s) and/or indictment(s) set(s) out what the State claims I did. I have read the complaint(s) and/or indictment(s). I know the State must prove what is stated in the complaint(s) or indictment(s) in order to convict me.

   [ ] I understand the charge(s) against me.

   [ ] I understand that I have the right to be present at the arraignment, at pretrial proceedings, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be present at all of these proceedings. I also give up my right to be questioned in open court.

   [ ] I understand that by pleading I give up my right to a speedy and public trial by the court or by a jury, if the law so provides. I know that, in a trial, the State is required to prove my guilt beyond a reasonable doubt, that I can see, hear and question witnesses who testify against me, and that I can call my own witnesses to testify for me. I also understand that I have the right to take the stand to testify or I have the right not to testify at trial.

[ ] I understand that a lawyer can help me: (a) investigate my case, call witnesses, and obtain evidence; (b) research the law and present legal issues on my behalf and present defenses to the charge(s); (c) know and explain courtroom procedures and argue my case; and (d) negotiate with the Prosecuting Attorney for a reduced charge or lesser sentence. I understand that, if I give up my right to a lawyer, I will not have that assistance and will have to do these things by myself.

[ ] I understand my right to be represented by a lawyer. I can either hire my own lawyer or ask the court to appoint one if so required. I choose to give up my right to a lawyer and I desire to represent myself.

[ ] My mind is clear. I am not ill. I did not take any unprescribed medication, alcohol or any illegal drugs within 48 hours prior to signing this document, except _____ which does not affect my ability to understand this document.

[ ] I understand that the maximum penalties are: $_____ fine or _____ days/months/year in jail or both. (If you are being prosecuted for multiple offenses, complete Form E.)

2. (INITIAL ONE) I plead: [ ] GUILTY OR [ ] NO CONTEST
(INITIAL ONE) to the: [ ] ORIGINAL OR [ ] AMENDED charge(s) listed above.

3. My birth year is _____ and I am _____ years old.
The last four digits of my social security number are XXX-XX-_____.
I have completed _____ years of education.

[ ] I speak, read, write, and understand the English language.

[ ] I do not speak, read, write, and understand the English language. This document was interpreted as indicated below:

a. Language Interpreted: _____
b. Interpreter's Name (print): _____
c. Interpreter's Signature: _____

4. INITIAL ONE: I [ ] am [ ] am not on probation or parole; I know that this plea might provide a basis for revocation of my probation or parole.

5. I offer my plea freely and voluntarily and with full understanding of all the matters set forth in the complaint. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.

6. INITIAL ONE:
   [ ] I plead GUILTY because (Give a brief factual statement of what you did):

   [ ] I plead NO CONTEST because I do not wish to contest the charge(s) against me.

7. I understand that the Prosecuting Attorney may provide reports or information to establish a factual basis for the plea and/or for sentencing recommendations.

8. I have reached the following agreement with the Prosecuting Attorney (give a brief statement):

INITIAL ONE:
[ ] I understand that the court is not bound by this agreement. If the court does not follow the agreement, I cannot withdraw my plea.
[ ] No one has promised me any kind of deal or favor or leniency if I plead.

9. I have full knowledge of the following: (Each box must be initialed)

[ ] I consent to the court imposing sentence without my being present and without my making a statement. I waive (give up) the right to have a presentence report presented to the court, if required by law. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to being arrested and having to appear in court.

[ ] I understand that if I am not a citizen of the United States, a conviction of this offense or these offenses may result in deportation, exclusion from admission to the United States, or denial of naturalization.

[ ] I declare under penalty of perjury, that I am the person charged with the offense(s) listed above and affix my fingerprint hereto.

DATED this _____ day of _____, 20 ___.

Defendant's Signature: _____
Address: _____
_____
Phone No.: _____

Defendant must affix right thumbprint
in above box with black ink

Prosecutor
[ ] Objects
[ ] Does not object
[ ] Takes no position

Approved and so ordered:

_____
Judge of the Above Entitled Court (Date)

Form E

WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA; PRO SE DEFENDANT; ATTACHMENT "A"

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA; PRO SE DEFENDANT; ATTACHMENT "A"	Case Number:
STATE OF HAWAIʻI vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawaiʻi Rules of Penal Procedure:

[ ] I understand that the maximum possible penalties are:

OFFENSE # 1: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 2: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 3: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 4: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 5: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 6: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 7: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 8: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE # 9: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

OFFENSE #10: _____ H.R.S. Section: _____
$_____ Fine or _____ days/months/year in jail or both.

DATED this _____ day of _____, 20___.

_____
Signature of Defendant

Counsel _____ **(Page 1 of Form F)**

Address _____
Atty. No. _____
Tel. No. _____

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI`I

STATE OF HAWAI`I,	)	CR. No. _____
	)	CHARGE(S)_____
vs.	)	_____
	)	Date of Appointment:_____
	)	(Order Attached)
	)	
Defendant.	)	Presiding Judge:_____
_____	)	Trial Date: _____

REQUEST FOR ATTORNEY'S FEES

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.
[ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: _____ TO: _____
[ ] Partial [ ] Final Billing

	ACTIVITY	HOURS	AMOUNT
1.	Client Contact	_____	_____
2.	Investigation	_____	_____
3.	Research	_____	_____
4.	Conferences (Plea Bargain/Pre-Trial)	_____	_____
5.	Other: (Specify)	_____	_____
	_____		
6.	Court Appearances	_____	_____
	TOTAL:	_____	_____

TOTAL FEE FOR PROFESSIONAL SERVICES: **$ _____**

Attached hereto as Exhibit A are hourly worksheets prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of Defendant. Payment has not been received and the BILLING RECAP is attached.

I, _____, declare under penalty of law that the foregoing is true and correct.

DATED: _____. _____
Attorney Signature

_____ _____ APPROVED FOR $_____
Judge of the Above-Entitled Court Date

_____ _____ APPROVED FOR $_____
Administrative Judge Date

Counsel _____
Address _____
Atty. No. _____
Tel. No. _____

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI`I

STATE OF HAWAI`I,	)	CR. No. _____
	)	CHARGE(S)_____
vs.	)	_____
	)	Date of Appointment:_____
	)	(Order Attached)
	)	
Defendant.	)	Presiding Judge:_____
_____	)	Trial Date: _____

REQUEST FOR ATTORNEY'S COSTS

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.
[ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: _____ TO: _____
[ ] Partial [ ] Final Billing

Summary of Expenses Cost

TOTAL COST: $_____

Attached hereto as Appendix A are expense worksheets, prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the expenses incurred in the representation of Defendant. True and correct invoices or receipts for these necessary expenses are attached as Appendix B. Payment has not been received and the BILLING RECAP is attached.

I, _____, declare under penalty of law that the foregoing is true and correct.

DATED: _____. _____
Attorney Signature

_____ _____ APPROVED FOR $_____
Judge of the Above-Entitled Court Date

_____ _____ APPROVED FOR $_____
Administrative Judge Date

BILLING RECAP
(Must be completed by current attorney to reflect all prior billings)

BILLING	BILLING PERIOD	DATE SUBMITTED	ATTORNEY NAME	AMOUNT BILLED		AMOUNT APPROVED		DATE PAID	
				FEES	COSTS	FEES	COSTS	FEES	COSTS
First									
Second									
Third									
Fourth									
Final									
TOTAL									

HOURLY WORKSHEET (TIME CALCULATED IN TENTHS/HOUR)

Date	Brief Description of Services	Out-of-Court					In-Court
		Client Contact	Investigation	Research	Conferences	Other	

OTHER EXPENSE WORKSHEET

Date	Brief Description of Services (include number of pages, etc.)	Dollar Amount Per Item				
		Notary	Copying	Postage	Toll Calls	Other

(Page 1 of Form J)

BAIL/BOND RECEIPT, ACKNOWLEDGMENT, AND NOTICE TO APPEAR

BBRA No.
Case No.

Arresting Agency:	State ID (SID)/Booking No. (if applicable):	Date:

Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount	Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount
		$			$
		$			$
		$			$
		$			$
		$			$

Release Based On: ❑ ROR ❑ CASH deposited by **DEFENDANT** ❑ CASH deposited by **THIRD PARTY SURETY**
❑ PAPER BOND posted by **LICENSED SURETY INSURANCE COMPANY/AGENT (Attach Copy of Paper Bond and Copy of Agent's Power of Attorney**)

(For Judiciary Use Only)

BAIL/BOND FOR (Defendant's Name)_____
DOB: _____ **LAST 4 DIGITS OF SSN: XXX-XX-** ___ ___ ___ ___ **PHONE:** _____
ADDRESS: _____
AMOUNT RECEIVED: $ _____ ❑ ROR
CERTIFIED/CASHIER'S CHECK NO. OR POWER OF ATTORNEY NO. _____

APPEARANCE INFORMATION: YOU ARE TO APPEAR IN THE FOLLOWING COURT CHECKED BELOW (address on back):

COURT DATE AND TIME: _____ / _____ **AM/PM** (circle one)

DEFENDANT'S ACKNOWLEDGMENT OF TERMS AND CONDITIONS FOR RELEASE ON BAIL OR RECOGNIZANCE

In order to be admitted to bail and released from custody or released on recognizance, I agree to comply with the terms and conditions of release on bail or recognizance set forth herein, all conditions imposed by law, and any additional conditions that a court may later impose on me. I specifically understand and agree that:

- I must appear in person for all court hearings, including the hearing set forth above. If I fail to appear, my release will be revoked, a bench warrant will be issued for my arrest, and I may be charged for bail jumping or contempt of court.
- I will remain in the State of Hawaii unless I obtain court approval to leave the jurisdiction.
- I will not commit a federal, state or local offense during the period of release.
- The court may **REVOKE MY RELEASE** if any term or condition of release is violated.
- If, at any time, I fail to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, any cash or bond posted for my release **WILL BE FORFEITED** to the State and **NOT RETURNED**.
- Any cash I have deposited as security for this bond may be applied to pay any fines, restitution, costs and/or fees that I may be ordered to pay in this case.

Date	Print Name of Defendant	Defendant's Signature

NOTIFICATION TO THIRD-PARTY SURETY OF BAIL BOND CONDITIONS/OBLIGATIONS

I have read and understand the terms and conditions of bail signed by defendant. I understand that this is a continuing bond that will remain in full force and effect, unless otherwise ordered by the court, until final determination of all proceedings in this case, including appeal. If I wish earlier discharge from liability on this bond, I must surrender Defendant to the custody of any sheriff, chief of police, or their authorized subordinates. I understand that if Defendant fails to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, judgment for the full amount of this bail bond shall be entered in favor of the State. Any request to show good cause why the court should vacate the judgment of forfeiture must be filed within thirty (30) days from the date notice of the entry of judgment in favor of the state is given via personal service or certified mail, return receipt requested.

❑ If cash was deposited as security for the full amount of this bond, the full amount will be forfeited to the State and not returned to me.
❑ If a paper bond was filed, surety is required to pay the full amount of the bond to the State in execution of the judgment unless a) the court sustains the surety's motion or application submitted pursuant to HRS § 804-51 and vacates the judgment based on a showing of good cause or b) defendant is surrendered to law enforcement officials pursuant to HRS §§ 804-14, 804-41, and 804-51.

Telephone No.	Print Name of Third Party Surety or Agent	Driver License/Other ID No.
Date	Signature of Third-Party Surety or Agent	Preferred Mailing Address of Third-Party Surety

NOTE: COPY OF PAPER BOND AND COPY OF AGENT'S POWER OF ATTORNEY MUST BE ATTACHED IF PAPER BOND FILED.

LAW ENFORCEMENT OFFICER/CLERK

Date	Print Name/ID No.	Officer/Clerk's Signature	Agency

(BAR CODE)

(Rev. May 2010) Distribution: Original + 1 copy -= Court, Yellow - Defendant, Pink - Third-Party/Surety, Blue - Law Enforcement 1D-V-153

(Page 2 of Form J)

COURT ADDRESSES - _____ CIRCUIT

CIRCUIT COURT

FAMILY COURT

DISTRICT COURT

COURT USE ONLY

BAIL POSTED	$
BAIL APPLIED TO FINES	$
TOTAL REFUND	$

_____

Bailor's Signature (person who posted bail)

In accordance with state and federal disability laws, if you require an accommodation for a disability when working with a court program, service, or activity, please contact the District Court Administration Office at PHONE NO. (808) 538-5121, FAX (808) 538-5233, or TTY (808) 539-4853 at least ten (10) working days before your proceeding, hearing or appointment date.

Reprographics (05/10)1D 1D-V-153

Form K

STATE OF HAWAI'I CIRCUIT COURT OF THE _____ CIRCUIT	**[ ] GUILTY PLEA** **[ ] NO CONTEST PLEA** **[ ] MOTION TO DEFER**	CASE NUMBER:

STATE OF HAWAI'I vs. (Defendant)

Year of Birth: Defendant's Age: Education (Last Grade Completed):

CHARGE(S)/HRS: MAXIMUM IMPRISONMENT/FINE: REPORT NUMBER(S):

Extended Term of Imprisonment: Mandatory Minimum Term of Imprisonment:

1. My mind is clear. I have not taken any medication, alcohol, or illegal drugs within the last 48 hours. I am not sick. I speak, read, write, and understand the English language or this document has been read to me or has been interpreted for me.

2. I have received a written copy of the original charge(s) in this case. The charge(s) has/have been explained to me. I understand the original charge(s) against me. I told my lawyer all of the facts I know about the case. My lawyer explained the government's evidence against me, my possible defense(s), and the facts which the government must prove in order to convict me.

3. I understand the reduced charge(s) with which the government has agreed to charge me, instead of the original charge(s). (Applicable only if original charge has been reduced.)

4. I plead of my own free will. No one is pressuring me or threatening me or any other person to force me to plead. I am not taking the blame or pleading to protect another person from prosecution.

5. I know I have the right to plead not guilty and have a speedy and public trial by jury or by the court. I know in a trial the government is required to prove my guilt beyond a reasonable doubt. I know I can see, hear, and question witnesses who testify against me, and that I may call my own witnesses to testify for me at trial. I understand I have the right to take the stand to testify and I have the right not to testify at trial. I know by pleading I give up the right to file any pre-trial motions, and I give up the right to a trial and may be found guilty and sentenced without a trial of any kind. I also give up the right to appeal anything that has happened in this case to date.

6. I understand that the court may impose any of the following penalties for the offense(s) to which I now plead: the maximum term of imprisonment, any extended term of imprisonment, and any mandatory minimum term of imprisonment specified above; consecutive terms of imprisonment (if more than one charge); restitution; a fine; a fee and/or assessment; community service; probation with up to 2 years of imprisonment and other terms and conditions.

[ ] Prosecutor [ ] Defendant [ ] Defense Counsel [ ] Adult Probation Division

GUILTY/NO CONTEST PLEA (Continued)	CASE NUMBER:

7. [ ] I plead no contest because, after discussing all the evidence and receiving advice on the law from my lawyer, I do not want to contest the charge(s) against me.

   [ ] I plead guilty because, after discussing all the evidence and receiving advice on the law from my lawyer, I believe that I am guilty. (Give a brief statement of the facts that establish the defendant's guilt as to each offense to which the defendant is entering a plea pursuant to the requirements of HRS §§ 701-114, 701-115, 702-205, and 702-206, as amended.)

   [ ] I move to defer acceptance of my plea. I understand that if the court denies my motion, the court will then find and adjudge me guilty upon this plea, and impose sentence.

8. I have not been promised any kind of deal or favor or leniency by anyone for my plea, except that I have been told that the government has agreed as follows (if none, write "None"):

   [ ] I know that the court is not required to follow any deal or agreement between the Government and me. I know that the court has not promised me leniency.

   [ ] The court has agreed to follow the plea agreement pursuant to Rule 11, Hawaiʻi Rules of Penal Procedure.

9. I further state that (if none, write "None"):

10. I understand that:

    [ ] If I am not a citizen of the United States, whether or not I have lawful immigration status, I have the right to receive advice from my lawyer about the specific impact that this case will have, if any, on my immigration status.

    [ ] The entry of a guilty or no contest plea, admission of guilt or sufficient facts, or conviction, deferred judgment, or deferred sentence may have the consequence of my immediate detention, deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

    [ ] In some cases, detention and deportation from the United States will be required.

    [ ] My lawyer must investigate and advise me about the aforementioned issues prior to the commencement of trial, entry of a guilty or no contest plea, or admission of guilt or sufficient facts to any offense punishable as a crime under state law, other than those offenses designated as infractions, **and I acknowledge that I have been so advised**.

    [ ] I am not required to disclose my immigration status or citizenship status to the court.

11. I am signing this Guilty/No Contest Plea form after I have gone over all of it with my lawyer. I know I will not be permitted to withdraw my plea. I am signing this form in the presence of my lawyer. I have no complaints about my lawyer and I am satisfied with what he/she has done for me.

DATE	DEFENDANT'S SIGNATURE

CERTIFICATE OF COUNSEL

I certify that I have read and explained fully this Guilty/No Contest Plea document to the defendant and believe he/she understands this document in its entirety. The statements contained in this document conform with my understanding of the defendant's position. I believe the defendant's plea is made voluntarily and with an intelligent understanding of the nature of the charge(s) and possible consequences. The defendant signed this Guilty/No Contest Plea form in my presence. I further certify that I have complied with Rules 1.2(a) and 1.4 of the Hawaiʻi Rules of Professional Conduct.

DATE	ATTORNEY FOR DEFENDANT	SIGNATURE

I acknowledge that the Judge questioned me personally in open court to make sure that I knew what I was doing in pleading guilty or no contest and understood this form before I signed it.

DATE	SIGNATURE OF DEFENDANT (signed in open court after questioning)
NAME OF JUDGE	