

In the Matter of the Amendment  
of the  
HAWAI'I RULES OF PENAL PROCEDURE

CLERK, APPELLATE COURT  
STATE OF HAWAII  
ENL. ENMANDO

2006 NOV -4 AM 8:45

FILED

ORDER AMENDING RULES 5(b)(1), 7(a), (d), (e), & (h)  
AND FORM D OF THE HAWAI'I RULES OF PENAL PROCEDURE

IT IS HEREBY ORDERED that Rules 5(b)(1) and 7(a), (d), (e), & (h) of the Hawai'i Rules of Penal Procedure are amended, effective January 1, 2007, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 5. PROCEEDINGS BEFORE THE DISTRICT COURT.**

\* \* \*

**(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 [~~or the oral charge stated~~], a copy of such charge and any affidavits in support thereof, and a copy of the appropriate order, if any, shall be furnished to the defendant and proceedings shall be had in accordance with this section (b). Arraignment shall be in open court and shall consist of the reading of the complaint [~~or the statement of the oral charge~~] to the defendant, [~~or stating the substance of the charge~~] and calling on the defendant to plead thereto. The defendant may waive the reading of the complaint [~~or the statement of the oral charge~~] at arraignment [~~provided that an oral charge shall be stated at the commencement of trial or prior to entry of a guilty or no-contest plea~~]. In addition to the requirements of Rule 10.1, the court shall in appropriate cases inform the defendant of the right to jury trial in the circuit court or that the defendant may elect to be tried without a jury in the district court.

\* \* \*

**Rule 7.        ~~[THE] INDICTMENT[;] OR COMPLAINT [AND ORAL CHARGE].~~**

**(a) Use of indictment[;] or complaint[~~or oral charge~~].** The charge against a defendant is an indictment[, ] or a complaint [~~or an oral charge~~] filed in court. [~~A felony shall be prosecuted by an indictment or a complaint. Any other offense may be prosecuted by an indictment, a complaint, or an oral charge.~~]

\* \* \*

**(d) Nature and contents.** The charge shall be a plain, concise and definite written statement of the essential facts constituting the offense charged[; ~~provided that an oral charge need not be in writing~~]. An indictment shall be signed by the prosecutor and the foreperson of the grand jury. A complaint shall be signed by the prosecutor, or it shall be sworn to or affirmed in writing before the prosecutor by the complaining witness and be signed by the prosecutor; except that a complaint alleging a traffic offense may be sworn to or affirmed by a police officer before another police officer as provided by law and need not 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 error in the citation or its omission, shall not be ground for dismissal of the charge or for reversal of a conviction if the defect did not mislead the defendant to [~~his~~] the defendant's prejudice.

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

\* \* \*

**(h) Court in which charge filed.**

(1) An indictment 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 three conditions set forth in Rule 7(b) of these rules has yet occurred, or

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

~~[(3) An oral charge shall be filed initially in the district court.]~~

IT IS FURTHER ORDERED that Form D, appended to the Hawai'i Rules of Penal Procedure is amended, effective January 1,

2007, as attached hereto (deleted material is bracketed and stricken; new material is double-underlined).

DATED: Honolulu, Hawai'i, November 4, 2005.

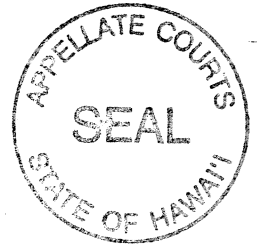
*[Handwritten signature]*

*Steven H. Levinson*

*Pamela A. Nakuliana*

*[Handwritten signature]*

*Kames E. Duggan, Jr.*



**Form D**

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

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

In accordance with Rule 43, Hawai'i 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).

The complaint(s) and/or [~~oral charge(s)~~] indictment(s) set(s) out what the State claims I did. I have read the complaint(s) and/or indictment(s) [~~was present in Court when the oral charge(s) was (were) read~~]. I know the State must prove what is stated in the [~~charge(s) or~~] 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 [~~government~~] 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 [~~an attorney~~] 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 [~~waive~~] give up my right to [~~an attorney~~] a lawyer, I [~~give up~~] will not have that assistance and will have to do these things by myself.

I understand my right to be represented by ~~[an attorney]~~ a lawyer. I can either hire my own ~~[attorney]~~ 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 ~~[the attached form]~~ 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 date is \_\_\_\_\_ (m/d/y) and I am \_\_\_\_\_ years old.  
My social security number is \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_.  
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. [If this document was interpreted, it shall include the language interpreted, the interpreter's name, and the interpreter's signature.] 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:

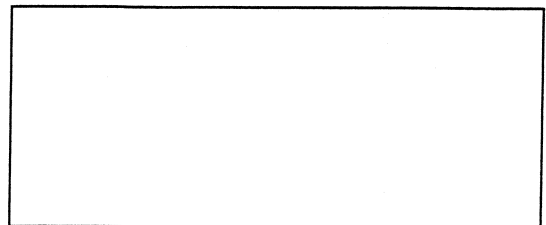
- I understand that the court is not bound by this agreement. If the court does not follow the agreement, I cannot withdraw my plea.
- No one has promised me any kind of deal or favor or leniency if I plead.

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

- I consent to the court imposing sentence without me being present and without me 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.: \_\_\_\_\_  
[Language Interpreted: \_\_\_\_\_  
Interpreter's Name: \_\_\_\_\_  
Interpreter's Signature: \_\_\_\_\_]



Defendant must affix right thumbprint  
in above box with black ink

Prosecutor

- Objects
- Does not object
- Takes no position

Approved and so ordered:

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Judge of the Above Entitled Court (Date)