

RE: **Proposal to Amend Rule 43 of the Hawai'i Rules of Penal Procedure**

PRESENCE OF THE DEFENDANT

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend Rule 43 of the Hawai'i Rules of Penal Procedure. The proposed amendment will allow the court to conduct, in cases of a violation, general provisions in the defendant's absence provided the defendant consents in writing. The proposed rule amendments are attached hereto.

Comments about the proposed rules should be submitted, in writing, **no later than Wednesday, February 11, 2015**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website at www.courts.state.hi.us.

Attachment

**PROPOSED AMENDMENT TO
HAWAI'I RULES OF PENAL PROCEDURE**
(New material is underlined)

Rule 43. PRESENCE OF THE DEFENDANT.

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(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.

(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.

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