

RE: **Proposal to Amend Rule 49 of the Hawai'i Rules of Penal Procedure and Rules 1.3 and 6.2 of the Hawai'i Electronic Filing and Service Rules**

IN-COURT PROCESSING OF DISTRICT COURT CRIMINAL CASES

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend Rule 49 of the Hawai'i Rules of Penal Procedure and Rules 1.3 and 6.2 of the Hawai'i Electronic Filing and Service Rules. The proposed amendments will allow district court clerks to serve a defendant with copies of orders that do not contain a file-stamp. The proposed rule amendments are attached hereto.

Comments about the proposed rules should be submitted, in writing, **no later than Tuesday, September 23, 2014**, 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**

(Deleted material is bracketed and stricken; new material is underlined)

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 [r]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 [r]Rules. Service of a subpoena shall be governed by Rule 17 of these [r]Rules.

(2) SERVICE OF OTHER DOCUMENTS. Unless served in accordance with Rule 6 of the Hawai'i 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.

~~(3)~~(4) DELIVERY AND FACSIMILE TRANSMISSION: HOW MADE. Delivery of a copy within this [r]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. Hawai'i Standard Time on a court day with a cover

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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.

~~[(4)]~~(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 ~~[r]~~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 Hawai'i 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.

**PROPOSED AMENDMENTS TO
HAWAII ELECTRONIC FILING AND SERVICE RULES**
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Rule 1. DEFINITIONS.

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1.3. Document means pleading, motion, exhibit, order, judgment, notice, decree, or other form of written communication or memorialization whether prepared on paper or electronically, including electronic documents, electronic forms, electronic templates, and electronic reports.

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Rule 6. SERVICE OF DOCUMENTS.

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6.2. Conventional Service of Electronically Filed Documents.

(a) BY THE FILING PARTY. A filing party shall provide conventional service of electronically filed documents that are required to be served to parties who are not JEFS Users or who have not consented to electronic service. The paper copy of the document served shall be accompanied by a copy of the Notice of Electronic Filing showing the date and time of filing. The filing party shall file a certificate of conventional service.

(b) BY THE CLERK.

(1) The clerk shall provide conventional service of any order, decree, or judgment to parties who are not JEFS Users or who have not consented to electronic service. The clerk shall note the service by a text-only entry on the docket or by filing a certificate of conventional service.

(2) The clerk may provide conventional service of any Order and Notice of Entry of Order or Judgment and Notice of Entry of Judgment upon a defendant in a District Court JIMS criminal case 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.