

RE: **Proposed Amendment to Rules 5.1 and 5.2 and
Adoption of Rule 5.3 of the Rules of the Supreme Court of
the State of Hawai'i**

USE OF ELECTRONIC DEVICES IN THE COURTROOM

The Supreme Court of Hawai'i seeks public comment regarding a *revised* proposal to amend Rules 5.1 and 5.2 and adopt Rule 5.3 of the Rules of the Supreme Court of the State of Hawai'i. The proposal will allow the use of electronic devices in public court proceedings, subject to certain limits. The proposed rules are attached hereto.

Comments about the proposed rules should be submitted, in writing, **no later than Monday, November 17, 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.

Attachment

**PROPOSED AMENDMENT AND ADOPTION OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(Deleted material is bracketed and stricken; new material is underlined)

Rule 5.1. ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS.

(a) Reserved.

(b) Reserved.

(c) Definitions. As used in these Rules 5.1, 5.2, and 5.3, unless the context otherwise requires:

(1) “Proceeding” or “Proceedings” means any trial, hearing, motion, hearing on an order to show cause or petition, appellate argument, or any other matter held in open court which the public is entitled to attend.

* * *

(15) “Juror” means any person who is a member of any jury, including a grand jury, impaneled by any court of this State or by any public servant authorized by law to impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror.

(16) “Bar” means a member of the Hawai‘i State Bar Association who is licensed and in good standing.

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Rule 5.2. TECHNICAL GUIDELINES TO BE FOLLOWED WHEN EXTENDED COVERAGE IS PERMITTED UNDER RULE 5.1.

(a) Equipment and personnel.

(1) Equipment from one television station or network - designated as the pooling station or network - shall be permitted access to a courtroom proceeding at one time. The pooling station or network shall use only portable electronic cameras which, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. One television camera, operated by one camera person, shall be admitted to record a proceeding. A second camera may be admitted for live coverage in the discretion of the judge.

(2) Not more than one audio system shall be permitted in the courtroom for extended coverage of a proceeding. Audio pickup for extended coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Any changes in existing audio systems shall be approved by the judge or [his] the judge’s representative. No modifications of existing systems shall be made at public expense. Microphones, wiring, and recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding. Where possible, electronic recording equipment and any operating personnel shall be located outside of the courtroom. Notwithstanding the provisions of this Rule 5.2(a)(2), a judge may, in the judge's sole discretion and whether or not extended coverage has been otherwise allowed, grant a timely request by a party, a member of the public, or an individual member of the

media, to tape record, record, or communicate proceedings by means of a small, hand-held recorder with a built-in microphone and operated from the seat of the person who made the request or through the use of electronic devices, such as laptops, tablets, cell phones, smartphones, or similarly functioning devices having wireless communication capacity, subject to the conditions in Rule 5.3(b) of these Rules.

(3) One still photographer, using not more than ~~[two]~~ 2 still cameras with not more than ~~[two]~~ 2 lenses for each camera, shall be permitted in a proceeding subject to extended coverage. A second still photographer, using not more than ~~[two]~~ 2 still cameras with not more than ~~[two]~~ 2 lenses for each camera, may be admitted in the discretion of the judge.

(4) No equipment or clothing of any extended coverage personnel shall bear any insignia or identification of the individual media or network involved in extended coverage.

(5) Sufficient video and audio tape capacities should be provided to obviate tape changes except during court recess.

(b) Sound and light criteria. Only television video and audio equipment and still camera equipment that does not produce distracting sound or light shall be employed to cover proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera or still camera.

Rule 5.3. USE OF ELECTRONIC DEVICES IN COURTROOMS.

(a) Application. This ~~[r]~~Rule applies to the use of electronic devices by the bar, judiciary personnel, ~~[media, and general public]~~ and self-represented litigants and does not apply to the use of electronic devices by jurors. This ~~[r]~~Rule applies in all courtrooms, and in or during proceedings~~;~~ as defined in Rule 5.1(c) of these ~~[r]~~Rules, that are open to the public. This ~~[r]~~Rule also applies ~~[to]~~ [all other places at which] when a court holds proceedings in locations outside a courthouse, including spaces in public schools, law schools, and other locations, unless otherwise specified by the court.

Within the locations specified above, the bar, judiciary personnel, and self-represented litigants may carry and use electronic devices as set out in this Rule. Except as provided by this Rule or Rule 5.2 of these Rules, the use of electronic devices in courtrooms is prohibited.

(b) ~~[General Rules.] Requirements for use.~~

(1) Use of electronic devices under this Rule is restricted to law and court related business purposes and is subject to the requirements of subsections (2) through (5) below. In addition, the presiding judge of a proceeding may prohibit or further restrict the use of any electronic devices prior to or during proceedings to protect the interests of security, safety, and privacy of parties, jurors, witnesses, attorneys, court personnel, or the public, or to ensure the integrity, decorum, or orderly conduct of proceedings. If prohibiting or further restricting the use of electronic devices, the judge shall state on the record the reason(s) prohibition or further restriction is deemed necessary. Failure to adhere to these requirements, prohibitions, or restrictions may result in removal of the person or device from the courtroom or courthouse or the imposition of other sanctions.

(2) Electronic devices, such as laptops, tablets, cell phones, smartphones, or similarly functioning devices having wireless communication capacity may be used in courtrooms and during proceedings by members of the bar using the member's own electronic device power source.~~[the bar, media, and the general public].~~ Members of the bar seated in the gallery must visibly display their HSBA picture identification cards to utilize electronic devices. Electronic devices may be used by self-represented litigants only with prior permission of the presiding judge and only at counsel table during a proceeding in which the self-represented litigant is participating. However, electronic devices may not be used to photograph or for audio or video recording, or for audio or video streaming, except as authorized by Rules 5.1 and 5.2 of these [r]Rules.

~~[(2)]~~ (3) Within the courtroom, [K]keyboards must be [quiet] silent. Texting, e-mailing, [and] accessing the internet, and other forms of electronic communication are acceptable uses if conducted without being audibly or visually distracting to others.

~~[(3)]~~ Cell phones, smartphones or other wireless electronic devices may be brought inside the courtroom, but ring tones and other sounds produced by these devices must be disabled or silenced. The electronic devices brought into the courtroom cannot be used to make or receive calls inside the courtroom.

(4) The presiding judge ~~[of a proceeding may, in his or her discretion, prohibit or further restrict use of any electronic devices prior to or during a proceeding to protect the interests of security and safety of parties, jurors, witnesses, attorneys, court personnel, or the public, or to ensure the integrity, decorum, or orderly conduct of judicial proceedings.]~~ may designate a portion of the courtroom for use of electronic devices.

(5) ~~[Failure to adhere to this rule may result in removal of the person or device from the courtroom or courthouse or other sanctions.]~~ Electronic devices may be brought inside the courtroom, but ring tones and other sounds produced by these devices shall be disabled or silenced. Electronic devices brought into the courtroom cannot be used to make or receive calls inside the courtroom.