IN THE SUPREME COURT OF THE STATE OF HAWAI I

In the Matter of the Amendment

of the

HAWAI I RULES OF PENAL PROCEDURE

ORDER AMENDING HAWAI I RULES OF PENAL PROCEDURE

___(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rules 3, 5, 6, 7, 9, 10, 10.1, 11, 12, 12.1, 13, 15, 16, 17, 17.1, 21, 42, and 49 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):

II. [~~PROCEEDINGS IN THE DISTRICT COURT~~] 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 [~~a complaint, an affidavit or affidavits,~~] affidavit(s), an information supported by declaration(s) or affidavit(s), or a complaint supported by [~~an affidavit or affidavits~~] affidavit(s). It shall contain a written statement of the essential facts constituting the offense being alleged. [~~It 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.~~] 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.

Rule 5. PROCEEDINGS [~~BEFORE THE DISTRICT COURT~~] 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 [~~district~~] 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.

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(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~~] 10(e), 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.

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(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 [~~10.1~~] 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:

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(iii) That the State has the choice of establishing probable cause at [~~either~~] 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[~~sc~~] transcript[s] 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.

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(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 the defendant committed it, the court shall commit [~~him~~] the defendant to answer in the circuit court; otherwise, the court shall discharge [~~him~~] 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.

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[~~**III. THE CHARGE**~~]

Rule 6. GRAND JURY.

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(c) [~~Foreman~~] Foreperson and Deputy [~~Foreman~~] Foreperson. The court shall appoint one of the jurors to be [~~foreman~~] foreperson and another to be deputy [~~foreman~~] foreperson and may remove either of them for cause. The [~~foreman~~] foreperson shall have the power to administer oaths and affirmations and shall sign all indictments. [~~He~~] The foreperson or another juror designated by [~~him~~] 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 [~~foreman~~] foreperson, the deputy [~~foreman~~] foreperson shall act as [~~foreman~~] foreperson.

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(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 [~~his~~] 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.

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III. THE CHARGE

Rule 7. INDICTMENT, INFORMATION, OR COMPLAINT.

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

(b) When Felony May Be Prosecuted by Complaint. A felony may be prosecuted by a complaint under any of the following three conditions:

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

(3) if, pursuant to Rule 7(c) of these rules, the defendant has waived in open court [~~his~~] 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:

(i) [~~He~~] The defendant is aware that [~~he has a~~] there is the 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 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

(iv) By waiving an indictment, the defendant is giving up [~~his~~] the right to a probable cause determination and is also giving up [~~his~~] 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 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. An information shall be signed by the prosecutor. 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 prejudice~~] prejudice the defendant.

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(h) Court in Which Charge Filed.

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

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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; [~~or~~]

(ii) in the indictment; or

(iii) in the information.

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 [~~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 [~~and~~] indictment [~~or for the same defendant~~].

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[~~**IV. ARRAIGNMENT AND PREPARATION FOR TRIAL**~~]

Rule 10. ARRAIGNMENT IN CIRCUIT COURT.

(a) [~~Arraignment in the circuit court shall be conducted in open court and 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. Video teleconferencing may be used to arraign a defendant not physically present in court, if the defendant waives the right to be arraigned in open court.~~] 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) [~~A defendant who has been held by district court to answer in circuit court shall be arraigned in circuit court within fourteen (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.~~] 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 grand jury warrant, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than seven days following arrest or return.~~] 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 and 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.

Video teleconferencing may be used to arraign a defendant not physically present in court, if the defendant waives the right to be arraigned in open court.

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

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

RULE 10.1 ~~INITIAL APPEARANCE BEFORE THE COURT~~ [DELETED]

[~~Upon the initial appearance of the defendant before the court, the court shall:~~

~~(a) be satisfied that he is informed of the charge against him;~~

~~(b) inform him that he is not required to make a statement and that any statement made by him may be used against him;~~

~~(c) advise him of his right to counsel;~~

~~(d) allow him reasonable time and opportunity to consult counsel; and~~

~~(e) admit him to bail as provided by law or in these rules.~~]

Rule 11. PLEAS.

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(c) Advice to Defendant. The court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and determining that [~~he~~] the defendant understands the following:

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(3) that [~~he~~] 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 [~~he~~] the defendant pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere [he waives] the right to a trial is waived; and

(5) that if [~~he~~] the defendant is not a citizen of the United States, [~~a conviction of the~~] entry of a plea to an offense for which [~~he~~] the defendant has been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

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(e) Plea agreement.

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

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

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(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 [~~his~~] 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.

Rule 12.1. NOTICE OF ALIBI.

(a) Notice by Defendant. If a defendant intends to rely upon the defense of alibi, [~~he~~] 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 [~~he~~] the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom [~~he~~] 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 [~~his~~] 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 [~~his~~] 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.

Rule 13. CONSOLIDATION.

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(b) Related offenses.

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(2) When a defendant has been charged with two or more related offenses in separate charges, [~~his~~] 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 [~~he~~] the defendant was charged.

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 [~~his~~] 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 [~~him~~] the defendant at the examination and keep [~~him~~] 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 [~~his~~] 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 [~~his~~] 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 [~~party~~] defendant without [~~his~~] 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 [~~his~~] 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 [~~him~~] the offering party to [~~offer~~] 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 [~~his~~] the deponent s deposition; or

(2) persists in refusing to testify concerning the subject matter of [~~his~~] 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 [~~his~~] 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 [~~his~~] the deponent s deposition has been unable to procure [~~his~~] the deponent s attendance by process or other reasonable means. A deponent is not unavailable as a witness if [~~his~~] the deponent s exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of [~~his~~] the deponent s deposition for the purpose of preventing the witness from attending or testifying.

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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.

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Rule 17. SUBPOENA.

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(f) For Taking Deposition; Place of Examination.

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(2) PLACE. A resident of the State may be required to attend an examination only in the county wherein [~~he~~] the resident resides or is employed or transacts [~~his~~] 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 [~~he~~] 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 [~~him~~] the person may be deemed a contempt of the court from which the subpoena issued.

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 [~~his~~] 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 [~~his~~] the defendant s attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

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 [~~him~~] 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 [~~he~~] 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 [~~him~~] 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.

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Rule 42. FILING PROCEDURE BY THE CLERK.

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

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

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(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 PAPERS. Service of papers 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.

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(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 papers 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.

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DATED: Honolulu, Hawai i, December 7, 2006.