

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the
HAWAII RULES OF PENAL PROCEDURE

ORDER CONCERNING RULES 5(b)(1) AND 7(a), 7(d), AND 7(h)
OF THE HAWAII RULES OF PENAL PROCEDURE
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

In consideration of the amendments adopted November 4, 2005 and subsequent orders: (a) extending the effective dates of the November 4, 2005 amendments; and (b) amending Rules 5(b)(1), 10(a), and 43(c) of the Hawaii Rules of Penal Procedure, filed December 17, 2007, effective January 1, 2008; and other modifications included herein,

IT IS HEREBY ORDERED that, effective July 1, 2008, Rules 5(b)(1) and 7(a), 7(d), and 7(h) are amended to read as follows:

Rule 5. PROCEEDINGS FOLLOWING ARREST.

* * *

(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 and proceedings shall be had in accordance with this section (b). A copy of the complaint, including any affidavits in support thereof, and a copy of the appropriate order, if any, shall be furnished to the defendant. If a defendant is issued a citation in lieu of physical arrest pursuant to Section 803-6(b) of the Hawaii Revised Statutes and summoned to be orally charged as authorized by Rule 7(a) of these rules, a copy of the citation shall be filed and proceedings shall be had in accordance with this section (b). When the offense is charged by complaint, arraignment shall be in open court, or by video conference when permitted by Rule 43. The

arraignment shall consist of the reading of the complaint to the defendant and calling upon the defendant to plead thereto. When the offense is charged by a citation and the defendant is summoned to be orally charged, arraignment shall be in open court or by video conference when permitted by Rule 43. The arraignment shall consist of a recitation of the essential facts constituting the offense charged to the defendant and calling upon the defendant to plead thereto. The defendant may waive the reading of the complaint or the recitation of the essential facts constituting the offense charged at arraignment, provided that, in any case where a defendant is summoned to be orally charged by a citation as authorized by Rule 7(a), the recitation of the essential facts constituting the offense charged shall be made prior to commencement of trial or entry of a guilty or no contest plea. In addition to the requirements of Rule 10(e), the court shall, in appropriate cases, inform the defendant of the right to jury trial in the circuit court and that the defendant may elect to be tried without a jury in the district court.

Rule 7. THE INDICTMENT, INFORMATION, OR COMPLAINT.

(a) Use of indictment, information, or complaint. The charge against a defendant is an indictment, an information, or a complaint filed in court, provided that, in any case where a defendant is accused of an offense that is subject to a maximum sentence of less than six months in prison (other than Operating a Vehicle Under the Influence of an Intoxicant) and is issued a citation in lieu of physical arrest pursuant to Section 803-6(b) of the Hawai i Revised Statutes and summoned to appear in court, the citation and an oral recitation of the essential facts constituting the offense charged as set forth in Rule 5(b)(1), shall be deemed the complaint, notwithstanding any waiver of the recitation. The prosecutor s signature upon the citation shall not be required.

* * *

(d) Nature and contents. The charge shall be a plain, concise and definite statement of the essential facts constituting the offense charged. 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. 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 erroneous reference to the statute, rule, regulation or other provision of law, or the omission of such reference, shall not be ground for dismissal of the charge or for reversal of a conviction if the defect did not prejudice the defendant.

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(h) Court in which charge filed.

(1) An indictment or information 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.

DATED: Honolulu, Hawaii, December 17, 2007.