

**Electronically Filed  
Supreme Court  
SCRU-11-0000083  
19-JUL-2011  
08:08 AM**

SCRU-11-0000083

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Amendment  
of the  
HAWAI'I RULES OF PENAL PROCEDURE

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ORDER AMENDING RULE 43 OF THE  
HAWAI'I RULES OF PENAL PROCEDURE

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that Rule 43 of the Hawai'i Rules of Penal Procedure, is amended, effective upon the filing of this order, as follows (deleted material is bracketed and stricken; new material is underscored) :

**Rule 43. PRESENCE OF THE DEFENDANT.**

**(a) Presence required.** The defendant shall be present at the arraignment, at the time of the plea, at evidentiary pretrial hearings, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

**(b) Continued presence not required.** The further progress of a pretrial evidentiary hearing or of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present,

(1) is voluntarily absent after the hearing or trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) engages in conduct which is such as to justify exclusion from the courtroom.

**(c) Presence not required.** A defendant need not be present either physically or by video conference if:

(1) the defendant is a corporation and appears by counsel; or

(2) the proceeding is a conference or argument upon a question of law; or

(3) the proceeding is a reduction of sentence under Rule 35.

**(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 [accept] 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, wherein [accept] a plea of guilty or no contest is accepted and impose sentence in the defendant's absence when the defendant's permanent residence is out-of-state or on an island other than where the offense was committed, provided the defendant consents in writing. 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.

**(e) Presence may be by video conference.**

(1) The court may conduct [arraignment, a non-evidentiary pre-trial hearing, or a non-evidentiary post conviction proceeding by video conference, provided the defendant consents in writing or the defendant's counsel orally represents that the defendant consents.] by video conference, without the consent of the accused, an arraignment wherein it accepts a plea of not guilty;

(2) The court may conduct [a pre-trial evidentiary proceeding] by video conference, with the oral or written consent of the accused, [with the defendant's written consent.]

(i) an arraignment wherein it accepts a plea of guilty or no contest,

- (ii) a pre-trial evidentiary or non-evidentiary proceeding or
- (iii) a post-conviction evidentiary or non-evidentiary proceeding.

DATED: Honolulu, Hawai‘i, July 19, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

