

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 ADOPTING AND AMENDING RULES AND FORMS  
OF THE HAWAI‘I RULES OF PENAL PROCEDURE

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

IT IS HEREBY ORDERED that Rules 44 and 46 of the  
Hawai‘i Rules of Penal Procedure, are, respectively, adopted and  
amended, effective July 1, 2011, as follows (deleted material is  
bracketed and stricken; new material is underscored):

**Rule 44. APPOINTED-COUNSEL FEES AND NECESSARY  
EXPENSES.**

**(a) Itemized Bill; Copies.**

Attorneys appointed to represent indigent persons shall request fees and  
necessary expenses by submitting an original and 3 copies of an itemized and  
verified bill of fees and costs, together with a statement of authority for each

category of items and, where appropriate, copies of invoices, bills, vouchers, and receipts. Requests shall be submitted on forms that substantially comply with Forms F, H, and I annexed to these rules. Each request shall be accompanied by a copy of the Findings and Recommendation of the Public Defender and Order Appointing Counsel. Failure to provide authority for the award of attorney's fees and necessary expenses may result in denial of that request.

**(b) Filing and Service.**

**(1) CRIMINAL CASES**

**(i) Fees and necessary expenses.**

Requests for fees and necessary expenses, with proof of service, may be submitted 6 months after appointment or prior submission and approval of a request, provided that the final request, with proof of service, shall be submitted no later than 60 days after final disposition. For the purpose of this rule, final disposition includes entry of judgment, entry of an order of dismissal, or entry of an order allowing withdrawal or termination of representation.

If a prior request was submitted, a subsequent request must include a Billing Recap on a form that substantially complies with Form G annexed to these rules.

**(ii) Other Litigation Expenses.**

Requests for expert witness fees, interpreter services, and transcripts (for purposes other than appeal) shall be submitted by motion, with proof of service, prior to retaining the expert or interpreter or ordering the transcript. The motion shall be supported by declaration or affidavit that show cause as to why the motion should be granted.

**(2) SPECIAL PROCEEDINGS**

Requests for fees and necessary expenses in special proceedings, with proof of service, shall be submitted no later than 60 days after entry of an order granting or denying the petition.

**(c) Requests under seal.**

Counsel may seek to seal any request or related order for expenses. A request to submit under seal shall be by *ex parte* motion, shall be supported by an affidavit or declaration setting forth the circumstances that merit submission under seal, and shall include a proposed order.

**(d) Untimely requests.**

An untimely request for fees and necessary expenses may be denied.

**(e) Objections and Reply.**

Objections to requests for fees and necessary expenses, if any, shall be filed, with proof of service, within 10 days after service of the request. A reply to the objections, if any, shall be filed within 7 days after service of the objections on the initiating party.

**(f) Multiple Cases.**

Attorneys appointed to represent a defendant in multiple cases shall submit a request for fees and necessary expenses in each case; provided if time spent on each case was identical, a single request that identifies all case numbers may be submitted, with originals for each case file. All requests with regard to representation of a single defendant in multiple cases that were disposed simultaneously shall be submitted at the same time.

**Rule 44A. SETTLEMENT OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ENTRY OF ORDER.**

\* \* \*

**Rule 46. BAIL; BOND.**

**(a) Bail.**

The right to bail before conviction or upon review, the form and amount thereof, and the matters of justification of sureties, forfeiture of bail, and exoneration of obligors and sureties shall be as provided by law. (See Hawai'i Revised Statutes, Chapter 804.)

**(b) Bond.**

A party seeking release on bail by posting bond shall submit the bond in a form that substantially complies with Form J annexed to these rules. If a bail bond is secured by insurance, a copy of the bail agent's power of attorney shall be attached to the bond, and shall be supported by the affidavit or declaration of the bail agent authorized to furnish bail for compensation. The declaration or affidavit shall identify the insurer, provide the agent's and insurer's license numbers, attest the agent and the insurer are currently licensed and in good standing with the Insurance Commissioner of the State of Hawai'i, and attest the agent and the insurer are in compliance with Hawai'i law governing bail bonds.

IT IS FURTHER ORDERED that Forms F, G, H, I, and J, attached hereto, are adopted and shall be appended to the Hawai'i Rules of Penal Procedure, effective July 1, 2011.

IT IS FURTHER ORDERED that the trial courts are authorized to insert circuit and court identifiers, appearance information, addresses, and contact information in the forms and to publish the forms in print or electronic format for the respective courts and circuits.

DATED: Honolulu, Hawai'i, April 20, 2011.

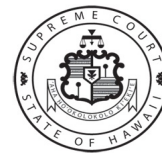
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



Counsel \_\_\_\_\_  
 Address \_\_\_\_\_  
 Atty. No. \_\_\_\_\_  
 Tel. No. \_\_\_\_\_

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, )  
 ) CR. No. \_\_\_\_\_  
 ) CHARGE(S) \_\_\_\_\_  
 vs. )  
 ) Date of Appointment: \_\_\_\_\_  
 ) (Order Attached)  
 )  
 Defendant. ) Presiding Judge: \_\_\_\_\_  
 ) Trial Date: \_\_\_\_\_

**REQUEST FOR ATTORNEY'S FEES**

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.  
 [ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_  
 [ ] Partial [ ] Final Billing

	<u>ACTIVITY</u>	<u>HOURS</u>	<u>AMOUNT</u>
1.	Client Contact . . . . .	_____	_____
2.	Investigation . . . . .	_____	_____
3.	Research . . . . .	_____	_____
4.	Conferences (Plea Bargain/Pre-Trial)	_____	_____
5.	Other: (Specify) . . . . .	_____	_____
_____			
6.	Court Appearances . . . . .	_____	_____
	<b>TOTAL:</b>	_____	_____

**TOTAL FEE FOR PROFESSIONAL SERVICES: \$ \_\_\_\_\_**

Attached hereto as Exhibit A are hourly worksheets prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of Defendant. Payment has not been received and the BILLING RECAP is attached.

I, \_\_\_\_\_, declare under penalty of law that the foregoing is true and correct.

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney Signature

\_\_\_\_\_  
 Judge of the Above-Entitled Court Date APPROVED FOR \$ \_\_\_\_\_

\_\_\_\_\_  
 Administrative Judge Date APPROVED FOR \$ \_\_\_\_\_

Counsel \_\_\_\_\_  
Address \_\_\_\_\_  
Atty. No. \_\_\_\_\_  
Tel. No. \_\_\_\_\_

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, ) CR. No. \_\_\_\_\_  
 ) CHARGE(S) \_\_\_\_\_  
 vs. ) \_\_\_\_\_  
 ) Date of Appointment: \_\_\_\_\_  
 ) (Order Attached)  
 ) \_\_\_\_\_  
 Defendant. ) Presiding Judge: \_\_\_\_\_  
 ) Trial Date: \_\_\_\_\_

**REQUEST FOR ATTORNEY'S COSTS**

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.  
[ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_  
[ ] Partial [ ] Final Billing

Summary of Expenses

Cost

**TOTAL COST: \$ \_\_\_\_\_**

Attached hereto as Appendix A are expense worksheets, prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the expenses incurred in the representation of Defendant. True and correct invoices or receipts for these necessary expenses are attached as Appendix B. Payment has not been received and the BILLING RECAP is attached.

I, \_\_\_\_\_, declare under penalty of law that the foregoing is true and correct.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Judge of the Above-Entitled Court

\_\_\_\_\_  
Date

APPROVED FOR \$ \_\_\_\_\_

\_\_\_\_\_  
Administrative Judge

\_\_\_\_\_  
Date

APPROVED FOR \$ \_\_\_\_\_

Case No. \_\_\_\_\_  
 Defendant \_\_\_\_\_

**BILLING RECAP**

(Must be completed by current attorney to reflect all prior billings)

BILLING	BILLING PERIOD	DATE SUBMITTED	ATTORNEY NAME	AMOUNT BILLED		AMOUNT APPROVED		DATE PAID	
				FEES	COSTS	FEES	COSTS	FEES	COSTS
First									
Second									
Third									
Fourth									
Final									
TOTAL									







# BAIL/BOND RECEIPT, ACKNOWLEDGMENT, AND NOTICE TO APPEAR

BBRA No.
Case No.

Arresting Agency:	State ID (SID)/Booking No. (if applicable):	Date:			
Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount	Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount
_____	_____	\$ _____	_____	_____	\$ _____
_____	_____	\$ _____	_____	_____	\$ _____
_____	_____	\$ _____	_____	_____	\$ _____
_____	_____	\$ _____	_____	_____	\$ _____
_____	_____	\$ _____	_____	_____	\$ _____

Release Based On: <input type="checkbox"/> ROR <input type="checkbox"/> CASH deposited by DEFENDANT <input type="checkbox"/> CASH deposited by THIRD PARTY SURETY <input type="checkbox"/> PAPER BOND posted by LICENSED SURETY INSURANCE COMPANY/AGENT (Attach Copy of Paper Bond and Copy of Agent's Power of Attorney)	(For Judiciary Use Only)
BAIL/BOND FOR (Defendant's Name) _____ DOB: _____ LAST 4 DIGITS OF SSN: XXX-XX-____ PHONE: _____ ADDRESS: _____ AMOUNT RECEIVED: \$ _____ <input type="checkbox"/> ROR CERTIFIED/CASHIER'S CHECK NO. OR POWER OF ATTORNEY NO. _____	
APPEARANCE INFORMATION: YOU ARE TO APPEAR IN THE FOLLOWING COURT CHECKED BELOW (address on back):  <b>COURT DATE AND TIME:</b> _____ / _____ <b>AM/PM</b> (circle one)	

**DEFENDANT'S ACKNOWLEDGMENT OF TERMS AND CONDITIONS FOR RELEASE ON BAIL OR RECOGNIZANCE**

In order to be admitted to bail and released from custody or released on recognizance, I agree to comply with the terms and conditions of release on bail or recognizance set forth herein, all conditions imposed by law, and any additional conditions that a court may later impose on me. I specifically understand and agree that:

- I must appear in person for all court hearings, including the hearing set forth above. If I fail to appear, my release will be revoked, a bench warrant will be issued for my arrest, and I may be charged for bail jumping or contempt of court.
- I will remain in the State of Hawaii unless I obtain court approval to leave the jurisdiction.
- I will not commit a federal, state or local offense during the period of release.
- The court may **REVOKE MY RELEASE** if any term or condition of release is violated.
- If, at any time, I fail to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, any cash or bond posted for my release **WILL BE FORFEITED** to the State and **NOT RETURNED**.

I have \_\_\_\_\_

Date	Print Name of Defendant	Defendant's Signature
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**NOTIFICATION TO THIRD-PARTY SURETY OF BAIL BOND CONDITIONS/OBLIGATIONS**

I have read and understand the terms and conditions of bail signed by defendant. I understand that this is a continuing bond that will remain in full force and effect, unless otherwise ordered by the court, until final determination of all proceedings in this case, including appeal. If I wish earlier discharge from liability on this bond, I must surrender Defendant to the custody of any sheriff, chief of police, or their authorized subordinates. I understand that if Defendant fails to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, judgment for the full amount of this bail bond shall be entered in favor of the State. Any request to show good cause why the court should vacate the judgment of forfeiture must be filed within thirty (30) days from the date notice of the entry of judgment in favor of the state is given via personal service or certified mail, return receipt requested.

If cash was deposited as security for the full amount of this bond, the full amount will be forfeited to the State and not returned to me.

If a paper bond was filed, surety is required to pay the full amount of the bond to the State in execution of the judgment unless a) the court sustains the surety's motion or application submitted pursuant to HRS § 804-51 and vacates the judgment based on a showing of good cause or b) defendant is surrendered to law enforcement officials pursuant to HRS §§ 804-14, 804-41, and 804-51.

Telephone No.	Print Name of Third Party Surety or Agent	Driver License/Other ID No.
Date	Signature of Third-Party Surety or Agent	Preferred Mailing Address of Third-Party Surety

**NOTE: COPY OF PAPER BOND AND COPY OF AGENT'S POWER OF ATTORNEY MUST BE ATTACHED IF PAPER BOND FILED.**

LAW ENFORCEMENT OFFICER/CLERK			
Date	Print Name/ID No.	Officer/Clerk's Signature	Agency

(BAR CODE)

COURT ADDRESSES - \_\_\_\_\_ CIRCUIT

CIRCUIT COURT

FAMILY COURT

DISTRICT COURT

**COURT USE ONLY**

BAIL POSTED	\$
BAIL APPLIED TO FINES	\$
TOTAL REFUND	\$

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**Bailor's Signature (person who posted bail)**



In accordance with state and federal disability laws, if you require an accommodation for a disability when working with a court program, service, or activity, please contact the District Court Administration Office at PHONE NO. (808) 538-5121, FAX (808) 538-5233, or TTY (808) 539-4853 at least ten (10) working days before your proceeding, hearing or appointment date.