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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 RULES 6, 7, 16, AND 24  
OF THE HAWAI‘I RULES OF PENAL PROCEDURE

(By: Recktenwald, C.J., Nakayama, Acoba, and Duffy, JJ., and  
Intermediate Court of Appeals Chief Judge Nakamura,  
assigned by reason of vacancy)

IT IS HEREBY ORDERED that Rules 6, 7, 16, and 24 of the  
Hawai‘i Rules of Penal Procedure, are amended, effective July 1,  
2011, as follows (deleted material is bracketed and stricken; new  
material is underscored):

**Rule 6. GRAND JURY.**

\* \* \*

**(f) Finding and return of indictment.** Eight members shall constitute a quorum. An indictment may be found only upon the concurrence of three-fourths, but in no event ~~[less]~~ fewer than 8 of the jurors present. The indictment shall be returned by the grand jury through its ~~[foreman]~~ foreperson to a judge in open court. If the defendant is in custody or has given bail and the required number of jurors do not concur in finding an indictment, the grand jury through its ~~[foreman]~~ foreperson shall so report to the court in writing forthwith. Evidence supporting a superseding indictment shall be considered by the same grand jury panel that returned the original indictment, and shall be found only upon the concurrence of three-fourths, but in no event fewer than 8 of the jurors who considered the original indictment. A grand jury panel considering a superseding indictment may consider any evidence presented to support its original indictment. In regard to both an original indictment and a superseding indictment, evidence of a clearly exculpatory nature known to the prosecution shall be disclosed to the grand jury. In the event that the term of the grand jury that returned the original indictment has expired, a new indictment may be presented to another grand jury.

\* \* \*

**Rule 7. INDICTMENT, INFORMATION, OR COMPLAINT.**

**(a) Use of indictment, information, or complaint.** The charge against a defendant is an indictment, a superseding 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]~~ 6 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.

**(b) When felony may be prosecuted by complaint.** A felony may be prosecuted by a complaint under any of the following ~~[three]~~ 3 conditions:

(1) if with respect to that felony the district judge has found probable cause at a preliminary hearing and has committed the defendant to answer in the circuit court pursuant to Rule 5(c) of these rules;

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

(3) if, pursuant to Rule 7(c) of these rules, the defendant has waived in open court the right to an indictment.

\* \* \*

**(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]~~ 3 conditions set forth in Rule 7(b) of these rules has yet occurred, or

(ii) only an offense or offenses other than a felony.

**Rule 16. DISCOVERY.**

\* \* \*

**(e) Regulation of discovery.**

\* \* \*

(3) CUSTODY OF MATERIALS. Except as otherwise provided in this subsection, any discovery material furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody and be used only for the purposes of conducting the attorney's side of the case, and shall be subject to such other terms and conditions as the court may provide. The attorney may provide the defendant with a copy of any discovery material obtained if the attorney ~~[gives the prosecutor written notice of the attorney's intent to do so]~~ notifies the prosecutor in writing and files a copy of such intention with the court, and the prosecutor does not file a motion for protective order within ~~[ten~~ {10}] days of the receipt of the notice.

\* \* \*

**Rule 24. TRIAL JURORS.**

\* \* \*

**(c) Alternate jurors.** The court may direct that not more than 4 jurors in addition to the regular jury be called and impaneled to sit as alternate jurors who shall, in the order in which they are called, replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. ~~[An alternate juror who does not replace a regular juror shall be discharged when the jury retires to consider its verdict.]~~ When the court directs that one or more alternate jurors be impaneled, each defendant shall be entitled to 1 additional peremptory challenge which may be used to challenge the alternate jurors only; and other peremptory challenges allowed to challenge the regular jurors shall not be used to challenge alternate jurors. When the regular jurors retire to begin deliberations, the alternate jurors may be held in recess until a verdict is received. If an alternate juror replaces a regular juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

**(d) Sequence for challenging of jurors.** Challenges for cause may be made at any time prior to the exercise of peremptory challenges. The prosecutor and the defendant shall alternately state their peremptory challenges, if any, the prosecutor beginning, and the defendant ending. In case there are more than ~~two~~ 2 defendants in any case, the order of precedence of their challenges, if not agreed upon by them, shall be determined by the court.

\* \* \*

DATED: Honolulu, Hawai'i, February 10, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Craig H. Nakamura

