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Supreme Court
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SCRU-11-0000083

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I RULES OF PENAL PROCEDURE

ORDER ADOPTING AND AMENDING RULES AND FORM A
OF THE HAWAI‘I RULES OF PENAL PROCEDURE

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

IT IS HEREBY ORDERED that Rules 1, 2.2, 4, 5, 7, 16, 21, 25, 28, 30, 32, 33, 41, 42, 42.2, 42.3, 44, 45, 49, 51, and 56 are amended, and Rule 2.3 is adopted, of the Hawai‘i Rules of Penal Procedure, effective June 18, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 1. SCOPE; INTERPRETATION; EFFECTS OF E-FILING AND AUTOMATION.

(a) Scope of Rules. These rules shall govern the procedure in the courts of the State in all penal proceedings, with the exceptions stated in Rule 54.

(b) Interpretation and enforcement of rules. These rules shall be read and construed with reference to each other, the Hawai‘i Electronic Filing and Service Rules, and the Hawai‘i Court Records Rules. In any conflict

amongst the Hawai'i Rules of Penal Procedure, the Hawai'i Court Records Rules, and the Hawai'i Electronic Filing and Service Rules, the Hawai'i Electronic Filing and Service Rules shall prevail.

(c) Effect of Hawai'i Electronic Filing and Service Rules. Documents filed and notices given in accordance with the Hawai'i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice and service requirements of these Hawai'i Rules of Penal Procedure.

Notwithstanding any language in these Hawai'i Rules of Penal Procedure requiring the filing or service of additional paper copies of documents, such copies are not required for documents filed through the Judiciary Electronic Filing System (JEFS).

(d) Effect of Automation on Processes and Procedures. Duties set out in these rules may be performed by automation.

Rule 2.2. FORMS OF PLEADINGS AND MOTIONS.

(a) General. All pleadings and ~~[papers]~~documents to be filed shall be in substantially the form annexed to these rules and described in particular in this rule. All documents shall be prepared to display, print, and copy in a clear and legible manner.

(b) General requirements.

(1) QUALITY AND SIZE OF PAPER, AND STYLE OF TYPE.

(i) ~~[Papers]~~Documents to be conventionally filed shall be typed or printed in black and shall be neat, clean, and legible.

(ii) Conventionally filed documents ~~[The paper]~~ shall be submitted on unruled, opaque, unglazed, ~~[and]~~ white, ~~[of]~~ standard quality[,], 8 ½ x 11 inch~~[es]~~ paper, ~~[in-size]~~, ~~[and]~~ not less than ~~[thirteen]~~ 13 pound weight, with a portrait orientation.

(iii) The type shall be standard 12 point pica or equivalent and yield no more than 14 characters to the inch. Footnotes and quotations shall be in the same font and size as the text. Twelve point Times New Roman, Courier New, or Arial fonts are deemed to satisfy the requirements of this rule. No attempt shall be made to reduce or condense the print in a manner that would increase the content of the document.

(2) MARGINS.

(i) Each page, except the first page, shall have a margin at the top and bottom of 1 inch. The first page shall have a 3 inch margin at the top and a 1 inch margin at the bottom.

(ii) The left-hand and right-hand side margin shall be not less than 1 inch.

(3) SPACING. ~~[Lines on each page shall be double-spaced or one and one-half space;]~~ Lines shall be double spaced or one and one-half spaced except in headings, quotations, citations, indexes, footnotes, and appendices; provided that descriptions of real property and quotations may be single spaced.

(4) TWO-SIDED COPIES. ~~[C]~~copies of conventionally filed documents, but not originals, may be two-sided.

(5) PAGING. All pages to a [paper]document, except the first page, shall be numbered consecutively at the bottom and shall be firmly bound together at the top.

(6) SIGNATURE. Signatures and all other handwritten entries on [papers]conventionally filed documents shall be in legible black or blue ink. The name of the signator shall be typed or printed under the signature. The page on which the signature(s) appear(s) shall contain at least 2 lines of text and/or a notation at the bottom of the page with the following information: case number, case name, and title of document.

(7) EXHIBITS. Exhibits may be fastened to pages of the specified size. Copies of exhibits shall be as legible as the original.

(c) No flyleaf shall be attached. No flyleaf shall be attached to any [paper]conventionally filed document, unless required by a specific rule.

(d) Form of first page of a [paper]document. Except as provided in paragraph (f), the first page of each [paper]document shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, attorney number, office address, telephone number, ~~and~~ facsimile number (if any), and electronic mail address of the attorney for the party in whose behalf the [paper]document is filed, or of the party if appearing pro se;

(2) The space at the top right of the center of the page shall be left blank for the use of the clerk of the court.

(3) The caption shall conform to the following:

(i) The name of the court shall be centered and not less than 3 inches from the top of the page;

(ii) The space to the left of the center of the page shall contain the case name;

(iii) In the space to the right of the case name, there shall be listed: the case number, the title of [paper] any document(s) attached [(if any)], and the hearing date, time, and name of the presiding judge.

(iv) In the center of the page below the caption, there shall be a title stating the character of the [paper]document.

(v) Notice that certification or acknowledgment of service is attached may be entered at the bottom margin.

(e) Contents of first paragraph. When the purpose of ~~the~~ a motion is to request the court to issue an order, the first paragraph of the motion shall contain a concise statement of the relief sought. When applicable, the first paragraph shall include a reference to any prior order, judgment or decision implicated by the relief sought.

(f) Two or more [papers or]documents filed together. Except as otherwise provided in the Hawai'i Electronic Filing and Service Rules, w[hen] ~~two~~ 2 or more [papers or]documents are filed together (such as a motion and its supporting documents), the documents following the first document need not begin on a new page and need not comply with the first page requirements of paragraph (d), except that the title of the ensuing document(s) must be centered on the page before the first paragraph of that document.

(g) Signing of pleadings and other ~~[papers]~~documents. Every pleading and other ~~[paper]~~document shall be signed by the party or the party's counsel. Where ~~[two]~~ 2 or more ~~[papers or]~~documents are filed together, the party or party's counsel need only provide one signature at the close of the ~~[papers]~~documents filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other ~~[papers]~~documents, the affidavits or declarations must be separately executed. Documents filed through JEFS shall be signed as provided by Rule 5 of the Hawai'i Electronic Filing and Service Rules.

(h) Forms furnished by the court. The court shall furnish forms approved by the supreme court, and those forms shall be used in all appropriate instances, unless otherwise permitted by the court.

Approved forms may be reproduced through photocopiers, computers, or other means. A reproduced form shall be similar in design and content to the approved form. Any person filing a form that is not identical in content to an approved form shall advise the court of the differences by attaching a short explanatory addendum to the document. The court may impose sanctions upon the filing person for failure to comply with this rule. The approved forms or any reproduction thereof permitted by this rule shall not be subject to the format requirements of this rule.

* * *

Rule 2.3 DEFINITIONS.

See Rule 1 of the Hawai'i Electronic Filing and Service Rules for definitions.

**Rule 4. ~~[RESERVED]~~ELIGIBILITY; REGISTRATION
REQUIRED.**

As provided by Rule 4 of the Hawai'i Electronic Filing and Service Rules, unless exempted by the court, each attorney representing a party to a case maintained in JIMS shall register as a JEFS user and file all documents electronically.

Rule 5. PROCEEDINGS FOLLOWING ARREST.

* * *

(b) Offenses other than felony.

* * *

(3) JURY TRIAL ELECTION. In appropriate cases, the defendant shall be tried by jury in the circuit court unless the defendant waives in writing or orally in open court the right to trial by jury. If the defendant does not waive the right to a trial by jury at or before the time of entry of a plea of not guilty, the court shall commit the defendant to the circuit court for trial by jury. Within 7 days after the district court's oral order of commitment

(i) the district court shall sign its written order of commitment,

(ii) the clerk shall enter the district court's written order, and
(iii) the clerk shall transmit to the circuit court all ~~[papers]~~documents in the proceeding and any bail deposited with the district court; provided, however, that if trial by jury is waived in the circuit court, the proceedings may be remanded to the district court for disposition.

* * *

(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).

* * *

(7) TIME FOR COMMITMENT TO CIRCUIT COURT. Within 7 days after the district court's oral order of commitment

(i) the district court shall sign its written order of commitment,
(ii) the clerk shall enter the district court's written order, and
(iii) the clerk shall transmit to the circuit court all ~~[papers]~~documents in the proceeding and any bail deposited with the district court.

...

Rule 7. INDICTMENT, INFORMATION, OR COMPLAINT.

* * *

(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)]~~(1) The defendant is aware that 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)]~~(2) 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)]~~(3) 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)]~~(4) By waiving an indictment, 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 grand jury proceeding or preliminary hearing, or exhibit(s) supporting an information.

* * *

Rule 16. DISCOVERY.

...
(e) Regulation of discovery.

* * *

(4) **PROTECTIVE ORDERS.** Upon a showing of cause, the court may at any time order that specified disclosures or investigatory procedures be denied, restricted, or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit [his] counsel to make beneficial use thereof. If a prosecution request for a protective order allowing the nondisclosure of witnesses for their personal safety is denied the prosecution shall have the right to an immediate appeal prior to trial of such denial, or in the alternative at its option, a right to take a deposition under Rule 15 of these Rules.

Rule 21. TRANSFER FROM DISTRICT OR CIRCUIT FOR TRIAL.

* * *

(c) Proceedings on transfer. When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all [~~papers~~]documents in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district or circuit.

Rule 25. JUDGE; DISABILITY.

(a) During trial. If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he or she has become familiarized [~~himself~~] with the record of the trial, may proceed with and finish the trial.

(b) After verdict of finding of guilt. If by reason of absence from the State, death, sickness or other disability, including retirement or disqualification, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may [~~in his discretion~~] grant a new trial.

Rule 28. EXPERT WITNESSES AND INTERPRETERS.

(a) Expert witnesses. The court may order the defendant or the prosecution or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless [~~he~~] the expert witness consents to act. A witness so appointed shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the

clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his or her findings, if any, [~~and~~] may thereafter be called to testify by the court or by any party, and [~~He~~] shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

...

Rule 30. INSTRUCTIONS TO THE JURY.

...

(b) Requests. At such reasonable time as the court directs, the parties shall file written requests that the court instruct the jury on the law. Each instruction requested shall designate by whom it is being requested and the number of the request, e.g., STATE'S INSTRUCTION NO. 3. Each requested instruction shall be written on a separate page or group of pages. [~~The original and one copy of e~~] Each requested instruction shall be filed with the court and a copy served upon opposing counsel. It will be sufficient to request by number pattern instructions known as the Hawai'i Standard Jury Instructions Criminal (HAWJIC).

* * *

Rule 32. SENTENCE AND JUDGMENT.

...

(b) Notification of right to appeal. After imposing sentence, the court shall advise the defendant of his or her right to appeal, of the time within which a notice of appeal must be filed, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal without paying the filing fee; provided, however, that there shall be no duty on the court to give such advice in any case in which the defendant is represented by an attorney, is convicted on a plea of guilty or nolo contendere, or is convicted of an offense not a felony or a misdemeanor. If the defendant so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant.

* * *

Rule 33. NEW TRIAL

The court on motion of a defendant may grant a new trial to [~~him~~]the defendant if required in the interests of justice. If trial was by the court without a jury, the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial shall be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10-day period. The finding of guilty may be entered in writing or orally on the record.

Rule 41. SEARCH AND SEIZURE.

* * *

(c) Issuance and contents. A warrant shall issue only on an affidavit or affidavits sworn to before the judge and establishing the grounds for issuing a warrant. If the judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, ~~he~~the judge shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses ~~he~~the affiant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a police officer or some other officer authorized to enforce or assist in enforcing any law of the State of Hawai'i or any political subdivision thereof. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall contain a prohibition against execution of the warrant between 10:00 p.m. and 6:00 a.m., unless the judge permits execution during those hours in writing on the warrant. It shall designate the judge to whom it shall be returned.

* * *

(f) Return of ~~papers~~documents to clerk. The judge before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other ~~papers~~documents in connection therewith and shall file them with the clerk of the court having jurisdiction of the case.

(g) Warrant issuance in oral statements. In lieu of the written affidavit required under section (c) of this rule, a sworn oral statement, in person or by telephone, may be received by the judge, which statement shall be recorded and transcribed, and such sworn oral statement shall be deemed to be an affidavit for the purposes of this rule. Alternatively to receipt by the judge of the sworn oral statement, such statement may be recorded by a court reporter who shall transcribe the same and certify ~~his~~the transcription. In either case, the recording and the transcribed statement shall be filed with the clerk.

* * *

Rule 42. FILING PROCEDURE BY THE CLERK.

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

(b) Stamp by clerk. The clerk shall promptly stamp the time and date upon all ~~papers~~conventionally filed documents ~~filed~~.

(c) Docket entry and filing.

~~[(1) — IN THE CIRCUIT COURT.]~~ Upon the filing of any ~~[papers]~~document, an appropriate entry shall be made in the docket kept for each case. The docket may be an electronic record within a court-maintained computer. Each case shall be filed separately and its file shall contain an index ~~[sheet]~~ identifying particularly each ~~[paper]~~document in such file and stating the date of filing.

~~[(2) — IN THE DISTRICT COURT. Upon the filing of any papers, an appropriate entry shall be made in the court calendar kept for each case. Each case shall be filed separately and the court calendar shall contain a case history identifying particularly each paper filed in the case and stating the date of filing. In the alternative, any district court may docket its records in accordance with subdivision (c)(1) of this Rule.]~~

(d) Original kept on file. The original of any document maintained in a paper file shall be kept ~~[on file]~~ by the clerk. Documents maintained in JIMS are deemed original documents for all purposes under any of the Hawai‘i Rules of Court.

(e) No rejection of ~~[papers]~~documents for filing. Notwithstanding any other rule to the contrary, the clerk shall not refuse to file any ~~[paper]~~document presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) Receipt or filing of proposed orders.

(1) PAPER RECORD. Proposed findings, conclusions or orders submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and shall be transmitted to the court for consideration.

(2) JIMS RECORD. Proposed findings, conclusions, orders, or judgments shall be submitted in accordance with Rule 9 of the Hawai‘i Electronic Filing and Service Rules.

Rule 42.2. WITHDRAWAL OF ~~[PAPERS]~~DOCUMENTS.

The clerk shall not permit any ~~[papers]~~ documents to be taken from the clerk’s custody except as ordered by the court.

Rule 42.3. PROCEDURES FOR PROCESSING POST-CONVICTION ~~[PAPERS]~~ DOCUMENTS.

(a) Processing post-conviction ~~[papers]~~ documents. All post-conviction ~~[papers]~~ documents received by any court shall be transmitted to a judge for processing. All such ~~[papers]~~ documents shall be received as public documents and shall not be considered or treated as “confidential,” “private,” “personal,” etc. A judge shall determine whether each ~~[paper]~~ document shall be handled as a civil matter, filed and docketed under the applicable criminal case number, or filed and docketed under a new or existing SPP (Special Proceeding - Prisoner) number. A separate file shall be established for each SPP number.

(b) Disposition. All [~~papers~~] documents filed and docketed under a new or existing [~~SPP (Special Proceeding - Prisoner)~~] special proceeding number shall be governed by Rule 40 of these rules.

* * *

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. Attorneys whose cases are not subject to electronic filing shall file an original and 3 copies of all submissions.

* * *

Rule 45. TIME.

* * *

(d) Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other [~~paper~~] document upon [~~him~~] the party, and the notice or other [~~paper~~] document is served upon [~~him~~] the party by mail, 2 days shall be added to the prescribed period.

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

...

(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.

...

(2) SERVICE OF OTHER [~~PAPERS~~] DOCUMENTS. Unless served in accordance with Rule 6 of the Hawai'i Electronic Filing and Service Rules, [~~S~~] service of [~~papers~~] documents 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.

* * *

(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]~~documents 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.

* * *

(f) Filing. The conventional filing of motions and other ~~[papers]~~documents with the court ~~[as required by these rules]~~ shall be made by filing them with the clerk of the court, except that the judge may permit the ~~[papers]~~documents to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. When ~~[papers]~~documents to be conventionally filed are presented for filing, the original shall be accompanied with a sufficient number of copies.

Rule 51. EXCEPTIONS UNNECESSARY.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which ~~[he]~~the party desires the court to take or ~~[his]~~the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him or her.

Rule 56. COURTS AND CLERKS.

All courts shall be deemed always open for the purpose of filing any proper ~~[paper]~~document, of issuing and returning process and of making motions and orders. The clerk's office with a clerk or deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and holidays as defined in Rule 45(a). Documents filed through JEFS or JIMS are deemed filed with the clerk of the court.

IT IS FURTHER ORDERED that Form A attached hereto, shall be substituted for the current Form A and appended to the Hawai'i Rules of Penal Procedure, effective June 18, 2012.

IT IS FURTHER ORDERED that the trial courts are authorized to insert circuit and court identifiers, appearance

information, addresses, and contact information in the form and to publish the form in print or electronic format for the respective courts and circuits.

DATED: Honolulu, Hawai'i, April 23, 2012.

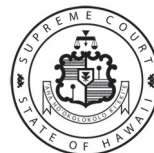
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



Form A

PETITION FOR POST-CONVICTION RELIEF
(Rule 40, HRPP)

Name _____
Prison Number _____
Place of Confinement _____
SPP No. _____ (to be supplied by Clerk of the Court)

[Insert appropriate court]

_____,)
(full name of petitioner))
)
Petitioner,)
)
vs.)
)
STATE OF HAWAII,)
)
Respondent.)
_____)

**PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT
OR TO RELEASE PETITIONER FROM CUSTODY**

- (1) This petition must be legibly handprinted or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) If briefs or arguments or citation of authorities are submitted, they must be in a separate memorandum.
- (3) You must submit either the appropriate filing fees, or a Request to Proceed Without Paying Filing Fees (Form B) with this petition. Upon receipt, your petition will be filed. Your Request to Proceed Without Paying Filing Fees (Form B) will be either approved or denied after consideration by the court. If your Request to Proceed Without Paying Filing Fees (Form B) is denied, you will be notified that you must pay the filing fees in order to proceed with your petition and that, if you fail to pay, your petition will be dismissed.

- (4) The Request to Proceed Without Paying Filing Fees (Form B) must be signed, setting forth information establishing your inability to pay. If you are in custody and you wish to proceed without paying filing fees, you must also have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit in your account in the institution.
- (5) You may challenge only one judgment of conviction in this petition. If you seek to challenge judgments entered by different judges or divisions either in the same court or in different courts, you must file separate petitions as to each such judgment.
- (6) You must include all grounds for relief and all facts supporting the grounds for relief in this petition.
- (7) Unless filed electronically pursuant to the Hawai'i Electronic Filing and Service Rules, when the petition is fully completed, the original and 2 copies must be mailed to the Clerk of the Court where the conviction was entered and whose address is

_____.

(to be stamped by the Clerk)

**PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT
OR TO RELEASE PETITIONER FROM CUSTODY**

- 1. Name and location of court that entered the judgment of conviction that you are challenging in this petition _____

- (a) Case Number (for example, "Cr. No."; "FCCr. No."; etc.) _____
- (b) Trial judge _____
- 2. Date of judgment of conviction _____
- 3. Length of sentence _____
- 4. Nature of offense involved (all counts) _____

- 5. What was your plea? (Check one)
 - (a) Not guilty _____
 - (b) Guilty _____
 - (c) No Contest _____

If you changed your plea, what did you change it to?

- (a) Guilty _____
- (b) No Contest _____

If you entered a guilty plea to one count of the charge, complaint, information, or indictment, and a not guilty plea or no contest plea to another count of the charge, complaint, information, or indictment, give details: _____

- 6. Type of trial: (Check one)
 - (a) Jury _____
 - (b) Judge only _____
- 7. Did you testify at the trial?
Yes _____ No _____
- 8. Did you appeal from the judgment of conviction?
Yes _____ No _____
- 9. If you did appeal, answer the following:
 - (a) Appeal Number _____
 - (b) Result _____
 - (c) Date of result _____
- 10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court?
Yes _____ No _____
- 11. If your answer to 10 is "yes," give the following information:
 - (a)
 - (1) Name of court _____
 - (2) Case Number (for example, "Cr. No.;" "FCCr. No.;" etc.) _____
 - (3) Name of judge _____
 - (4) Nature of proceeding _____

 - (5) Grounds raised _____

 - (6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____
 - (7) Result _____
 - (8) Date of result _____
 - (b) As to any second petition, application or motion give the same information:
 - (1) Name of court _____
 - (2) Case Number (for example, "Cr. No.;" "FCCr. No.;" etc.) _____
 - (3) Name of judge _____

(4) Nature of proceeding _____

(5) Grounds raised _____

(6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____

(7) Result _____

(8) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Case Number (for example, "Cr. No."; "FCCr. No."; etc.) _____

(3) Name of judge _____

(4) Nature of proceeding _____

(5) Grounds raised _____

(6) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No _____

(7) Result _____

(8) Date of result _____

(d) Did you appeal the action taken on any petition, application or motion?

(1) First petition, etc.
Yes _____ Appeal Number _____
No _____

(2) Second petition, etc.
Yes _____ Appeal Number _____
No _____

(3) Third petition, etc.
Yes _____ Appeal Number _____
No _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

12. State every ground on which you claim you are being held unlawfully. State the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the supporting **facts**.

CAUTION: If you fail to state all grounds in this petition, you may be prohibited from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. You may raise any grounds in addition to those listed. However, **you should raise all grounds** relating to this conviction in this petition.

If you select any of these grounds for relief, you must state the supporting facts. The petition will be denied if you merely check any of the listed grounds or if you fail to provide supporting facts.

- (a) A plea of guilty that was unlawfully induced or not made knowingly, intelligently, or voluntarily or with an understanding of the nature of the charge(s) and the consequences of the plea.
- (b) Use of a coerced confession.
- (c) Use of evidence obtained pursuant to an unconstitutional search and seizure.
- (d) Use of evidence obtained pursuant to an unlawful arrest.
- (e) A violation of the privilege against self-incrimination.
- (f) Failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Violation of the protection against double jeopardy.
- (h) Unconstitutionally selected and impanelled grand or trial jury.
- (i) Ineffective assistance of counsel.
- (j) Prosecutorial misconduct.
- (k) Violation of Rule 48 (Right to a speedy trial).
- (l) Lack of jurisdiction of the court that entered the judgment.

A. Ground one: _____

State supporting FACTS (do not cite cases or law):

B. Ground two: _____

State supporting FACTS (do not cite cases or law):

C. Ground three: _____

State supporting FACTS (do not cite cases or law):

D. Ground four: _____

State supporting FACTS (do not cite cases or law):

(ATTACH ADDITIONAL PAGES, IF NEEDED)

13. If you are raising any of the grounds in number 12 for the first time, state why. (Attach additional pages, if needed.): _____

14. Do you have any petition or appeal now pending in any court concerning the judgment you are challenging in this petition?

Yes _____ If so, give court name, court location and case number: _____

No _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the proceeding that resulted in the judgment being challenged:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of a charge, complaint, information or indictment?
Yes _____ No _____
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging in this petition?
Yes _____ No _____
- (a) If so, give the case number and the name and location of the court that imposed the sentence to be served in the future: _____

- (b) Give date and length of the sentence to be served in the future: _____

- (c) Have you filed, or do you contemplate filing any petition challenging the judgment that imposed the sentence to be served in the future?
Yes _____ No _____

Petitioner requests that the Court grant all relief to which the petitioner may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Signed on _____.
(date)

Signature of Petitioner