HAWAIʻI RULES OF PENAL PROCEDURE

(SCRU-11-0000083)

Adopted and Promulgated by the Supreme Court of the State of Hawaiʻi

Effective January 1, 1977
With Amendments as Noted

Comments and commentary are provided by the rules committee for interpretive assistance. The comments and commentary express the view of the committee and are not binding on the courts.

The Judiciary
State of Hawaiʻi

HAWAIʻI RULES OF PENAL PROCEDURE

Table of Contents

II. INITIATION OF THE CASE

III. THE CHARGE

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

VII. JUDGMENT

VIII. ORDERS

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

X. GENERAL PROVISIONS

(This page intentionally left blank.)

HAWAIʻI RULES OF PENAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

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 Hawaiʻi Electronic Filing and Service Rules, and the Hawaiʻi Court Records Rules. In any conflict amongst the Hawaiʻi Rules of Penal Procedure, the Hawaiʻi Court Records Rules, and the Hawaiʻi Electronic Filing and Service Rules, the Hawaiʻi Electronic Filing and Service Rules shall prevail.

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

Notwithstanding any language in these Hawaiʻi 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.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 2. PURPOSE AND CONSTRUCTION.

These rules are intended to provide for the just determination of every penal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 2.1. CLASSIFICATION OF PROCEEDINGS.

All criminal proceedings shall be divided into the following classes: Traffic, Criminal Traffic, Criminal, Family Criminal, Special Proceeding, and Special Proceeding - Prisoner.

Proceedings in mandamus, habeas corpus, quo warranto, prohibition, and any other proceedings not specifically included herein shall be classified under Special Proceeding.

(Added February 4, 2000, effective July 1, 2000.)

Rule 2.2. FORM OF PLEADINGS AND MOTIONS.

(a) General. All pleadings and 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) Documents to be conventionally filed shall be typed or printed in black and shall be neat, clean, and legible.

(ii) Conventionally filed documents shall be submitted on unruled, opaque, unglazed, white, standard quality 8 ½ x 11 inch paper, not less than 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 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. Copies of conventionally filed documents, but not originals, may be two-sided.

(5) PAGINATION. All pages to a 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 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 conventionally filed document, unless required by a specific rule.

(d) Form of first page of a document. Except as provided in paragraph (f), the first page of each 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, facsimile number (if any), and electronic mail address of the attorney for the party in whose behalf the 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 any document(s) attached, 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 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 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 documents filed together. Except as otherwise provided in the Hawaiʻi Electronic Filing and Service Rules, when 2 or more 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 documents. Every pleading and other document shall be signed by the party or the party's counsel. Where 2 or more documents are filed together, the party or party's counsel need only provide one signature at the close of the documents filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other documents, the affidavits or declarations must be separately executed. Documents filed through JEFS shall be signed as provided by Rule 5 of the Hawaiʻi 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.

(Added February 4, 2000, effective July 1, 2000; further amended April 23, 2012, effective June 18, 2012.)

Rule 2.3. DEFINITIONS.

See Rule 1 of the Hawaiʻi Electronic Filing and Service Rules for definitions.

(Added April 23, 2012, effective June 18, 2012.)

II. INITIATION OF THE CASE

Rule 3. APPLICATION FOR ARREST WARRANT.

(a) Form. An application for the issuance of a warrant of arrest may be in the form of: (1) declaration(s); (2) affidavit(s); (3) an information supported by declaration(s) or affidavit(s); or (4) a complaint supported by declaration(s) or affidavit(s). The application shall contain a written statement of the essential facts constituting the offense being alleged. No warrant of arrest shall issue unless it appears from the application that there is probable cause to believe that an offense has been committed by the person(s) named therein. More than one warrant may issue on the same application. The issuance and execution of warrants shall be as provided in Rule 9 of these Rules.

(b) To Whom Presented.

(1) An application for the issuance of a warrant of arrest in the form of declaration(s) or affidavit(s), or a complaint supported by declaration(s) or affidavit(s), shall be presented to a district court judge within the circuit in which the offense is alleged to have been committed or who otherwise by law has jurisdiction to issue a warrant of arrest on the application.

(2) An application for the issuance of a warrant of arrest in the form of an information supported by declaration(s) or affidavit(s) shall be presented to a judge within the circuit in which the offense is alleged to have been committed or who otherwise by law has jurisdiction to issue a warrant of arrest on the application.

(c) Warrant issuance on oral statements. In lieu of the written declaration(s) or affidavit(s) required under section (a) of this Rule, a sworn oral statement, in person, 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 the transcription. In either case, the recording and the transcribed statement shall be filed with the clerk.

(d) Duplicate warrants on oral authorization. The judge may orally authorize a police officer to sign the signature of the judge on a duplicate original warrant, which shall be deemed to be a valid arrest warrant for the purposes of this rule. The judge shall enter on the face of the original warrant the exact time of issuance and shall sign and file the original warrant and, upon its return, the duplicate original warrant with the clerk.

(Amended December 7, 2006, effective January 1, 2007; further amended October 20, 2016, effective January 1, 2017; further amended December 8, 2017, effective January 1, 2018.)

Rule 4. ELIGIBILITY; REGISTRATION REQUIRED.

As provided by Rule 4 of the Hawaiʻi 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.

(Added April 23, 2012, effective June 18, 2012.)

Rule 5. PROCEEDINGS FOLLOWING ARREST.

(a) In general.

(1) UPON ARREST. An officer making an arrest under a warrant shall take the arrested person without unnecessary delay before the court having

jurisdiction, or, for the purpose of admission to bail, before any judge or officer authorized by law to admit the accused person to bail.

(2) PROBABLE CAUSE DETERMINATION UPON ARREST WITHOUT A WARRANT. As soon as practicable, and, Rule 45 notwithstanding, not later than 48 hours after the warrantless arrest of a person held in custody, a district judge shall determine whether there was probable cause for the arrest. No judicial determination of probable cause shall be made unless there is before the judge, at the minimum, an affidavit or declaration of the arresting officer or other person making the arrest, setting forth the specific facts to find probable cause to believe that an offense has been committed and that the arrested person has committed it. If probable cause is found as aforesaid, an appropriate order shall be filed with the court as soon as practicable. If probable cause is not found, or a proceeding to determine probable cause is not held within the time period provided by this subsection, the arrested person shall be ordered released and discharged from custody.

(3) CONSOLIDATION WITH OTHER PROCEEDINGS. The probable cause determination may, in the discretion of the judge, be combined with a bail hearing under subsection (a)(1) of this rule, an arraignment, a preliminary hearing or any other preliminary proceeding in the criminal case so long as the probable cause determination takes place in the time period provided under subsection (a)(2) of this rule. A probable cause determination shall not constitute an initial appearance unless it is combined with another preliminary proceeding in the same case.

(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 Hawaiʻi 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.

(2) PLEA. The plea shall be entered in accordance with the provisions of Rule 11. The defendant shall not be entitled to a preliminary hearing; provided that if a defendant, having been arrested without a warrant, is held in custody for a period of more than 48 hours, Rule 45 notwithstanding, after the defendant's initial appearance in court without a commencement of trial, the defendant shall be released to appear on the defendant's own recognizance unless the court finds from a sworn complaint or from an affidavit or affidavits filed with the complaint or pursuant to subsection (a)(2) of this rule that there is probable cause to believe that an offense has been committed and that the defendant has committed it; provided further that if the defendant demands a jury trial under subsection (b)(3) of this rule, the court shall, upon the defendant's motion, discharge the defendant unless probable cause is found as aforesaid.

(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 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.

(4) TRIAL. A defendant who pleads not guilty and is not entitled to or has waived the right to trial by jury shall be tried in the district court.

(5) SENTENCE. If the defendant is adjudged guilty after trial or plea, sentence shall be imposed without unreasonable delay.

(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).

(1) INITIAL APPEARANCE; SCHEDULING OF PRELIMINARY HEARING. At the initial appearance the court shall, in addition to the requirements under Rule 10(e), furnish the defendant with a copy of the complaint and affidavits in support thereof, if any, together with a copy of the appropriate order of judicial determination of probable cause, if any, and inform the defendant of the right to a preliminary hearing. If the defendant waives preliminary hearing pursuant to subsection (c)(2) of this rule, the court shall forthwith commit the defendant to answer in the circuit court. If the defendant does not waive such hearing, the court shall schedule a preliminary hearing, provided that such hearing shall not be held if the defendant is indicted or charged by information before the date set for such hearing.

(2) WAIVER OF PRELIMINARY HEARING. The defendant may in open court waive preliminary hearing, provided that the court shall accept such waiver only after the defendant has signed a written statement acknowledging:

(i) The defendant is aware of the defendant's constitutional right to require the State to establish probable cause before the State can begin formal felony prosecution in circuit court;

(ii) 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) That the State has the choice of establishing probable cause at a public preliminary hearing in front of a judge, at a closed proceeding before the grand jury, or through an information with supporting exhibit(s) presented to a judge;

(iv) That if a judge or the grand jury concludes that the State has established probable cause and if formal charges are then filed in circuit court, a defendant then has the right to obtain written transcripts of the grand jury proceeding or preliminary hearing, or a copy of the exhibit(s) supporting the information and the transcript or exhibit(s) that might help the defendant in preparing for trial;

(v) That if a defendant waives preliminary hearing, the State may then prosecute the defendant immediately in circuit court, without waiting for a grand jury indictment or finding of probable cause by a judge based on an information and supporting exhibit(s); and

(vi) By waiving a preliminary hearing, 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 preliminary hearing or grand jury proceeding and exhibit(s) supporting the information.

(3) TIME FOR PRELIMINARY HEARING; RELEASE UPON FAILURE OF TIMELY DISPOSITION. The court shall conduct the preliminary hearing within 30 days of initial appearance if the defendant is not in custody; however, if the defendant is held in custody for a period of more than 2 days after initial appearance without commencement of a defendant's preliminary hearing, the court, on motion of the defendant, shall release the defendant to appear on the defendant's own recognizance, unless failure of such determination or commencement is caused by the request, action or condition of the defendant, or occurred with the defendant's consent, or is attributable to such compelling fact or circumstance which would preclude such determination or commencement within the prescribed period, or unless such compelling fact or circumstance would

render such release to be against the interest of justice.

(4) EVIDENCE. The prosecution and the defendant may introduce evidence and produce witnesses, who shall be subject to cross-examination. The defendant may testify, subject to cross-examination. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing. Motions to suppress must be made to the trial court as provided in Rule 12.

(5) DURATION OF HEARING; CONTINUANCE. Once the preliminary hearing has commenced, the court, for good cause shown, may continue it.

(6) DISPOSITION. If from the evidence it appears that there is probable cause to believe that the felony charged, or an included felony, has been committed and that the defendant committed it, the court shall commit the defendant to answer in the circuit court; otherwise, the court shall discharge the defendant. The finding of probable cause may be based in whole or in part upon hearsay evidence when direct testimony is unavailable or when it is demonstrably inconvenient to summon witnesses able to testify to facts from personal knowledge. If the defendant is held to answer in the circuit court, the court shall transmit to the circuit court all papers and articles received in evidence at the preliminary hearing and any bail received by it.

(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 documents in the proceeding and any bail deposited with the district court.

(8) BAIL. The district court, as authorized by Hawaiʻi Revised Statutes, chapter 804, may admit the defendant to bail or modify bail any time prior to the filing of the written order committing the case to circuit court.

(Amended February 28, 1983, effective February 28, 1983; amended effective September 2, 1988; further amended November 22, 1994, effective December 5, 1994; further amended April 11, 1995, effective April 26, 1995; further amended September 5, 1996, effective October 1, 1996; further amended effective September 17, 1997; further amended February 4, 2000, effective July 1, 2000; further amended November 17, 2000, effective January 1, 2001; further amended December 7, 2006, effective January 1, 2007; further amended December 17, 2007, effective July 1, 2008; further amended December 21, 2007, effective January 1, 2008; further amended April 23, 2012, effective June 18, 2012; further amended January 31, 2014, effective July 1, 2014.)

Rule 6. GRAND JURY.

(a) Summoning grand juries. Each circuit court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of 16 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(b) Objections to grand jury and grand jurors.

(1) CHALLENGES. The prosecutor may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be heard by the court.

(2) MOTION TO DISMISS. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section (c) of this rule that, after deducting the number not legally qualified, not less than three-fourths but in no event less than 8 of the jurors present concurred in finding the indictment.

(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson and may remove either of them for cause. The foreperson shall have the power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the

finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(d) Who may be present. The prosecutor, the independent grand jury counsel, the witness under examination, and interpreters when needed, may be present while the grand jury is in session. An official reporter or operator of a recording device shall be present and shall fully record all evidence presented to and all statements made before the grand jury. No person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Secrecy of proceedings and disclosure.

(1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecutor for use in the performance of the prosecutor's duties. Otherwise, a juror, prosecutor, interpreter, reporter or operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, subject, however, to the provisions of subsection (e)(2) of this rule. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(2) After indictment is returned against a defendant, the defendant shall, on motion to the court and subject to payment therefor, have the right to a transcript of that portion of the grand jury proceedings which relates to the offense charged in the indictment; subject, however, to regulation by the court under Rule 16 (e)(4).

(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 fewer than 8 of the jurors present. The indictment shall be returned by the grand jury through its 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 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.

(g) Discharge and excuse. The grand jury shall serve for a term as provided by law. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(h) Oath or affirmation. Substantially the following oath shall be administered to the grand jurors:

"You, and each of you, do solemnly swear or affirm that you will diligently inquire and make true determinations of all matters and things presented to you or which shall otherwise come to your knowledge; that you will indict no one through envy, hatred, or malice, nor leave anyone unindicted through fear, favor, affection, gain, reward or hope therefor, but will determine all things truly, as they come to your knowledge, according to the best of your understanding; and that you will keep secret matters occurring before you, except as you may be permitted to disclose the same by law or order of the court."

(Amended January 6, 1982, effective January 6, 1982; amended effective September 2, 1988; further amended December 7, 2006, effective January 1, 2007; further amended February 10, 2011, effective July 1, 2011.)

III. THE CHARGE

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 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 Hawaiʻi 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 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.

(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:

(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;

(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;

(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

(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.

(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.

(e) Surplusage. The court, on motion or agreement of the defendant, may strike surplusage from the charge.

(f) Amendment.

(1) The court may permit a charge other than an indictment to be amended at any time before trial commences if substantial rights of the defendant are not prejudiced.

(2) The court may permit a charge other than an indictment to be amended after trial commences and before verdict or finding if the defendant personally, knowingly, and voluntarily agrees to the amendment on the record.

(g) Bill of particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such other later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(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 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.

(Amended February 28, 1983, effective February 28, 1983; further amended July 20, 1983, effective July 20, 1983; further amended November 17, 2000, effective January 1, 2001; further amended March 9, 2005, effective July 1, 2005; further amended December 7, 2006, effective January 1, 2007; further amended December 17, 2007, effective July 1, 2008; further amended February 10, 2011, effective July 1, 2011; further amended April 23, 2012, effective June 18, 2012.)

Rule 8. JOINDER OF OFFENSES AND DEFENDANTS.

(a) Joinder of offenses. Two or more offenses may be joined in one charge, with each offense stated in a separate count, when the offenses:

(1) are of the same or similar character, even if not part of a single scheme or plan; or

(2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

(b) Joinder of defendants. Two or more defendants may be joined in the same charge:

(1) when each of the defendants is charged with accountability for each offense included in the charge;

(2) when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy; or

(3) when, even if conspiracy is not charged and all of the defendants are not charged in each count, the several offenses charged:

(i) were part of a common scheme or plan; or

(ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to join related offenses.

(1) A defendant who has been tried for one offense may thereafter move to dismiss a charge in a subsequent trial for any related offense, as defined in Rule 13(b)(1), unless the related offense is one which was pending in court prior to the commencement of the first trial. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecutor did not have sufficient evidence to warrant trying the offense charged in the second trial at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(2) Entry of a plea of guilty or nolo contendere to one offense does not bar the subsequent prosecution of a related offense.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 9. OBTAINING THE APPEARANCE OF DEFENDANT.

(a) Methods.

(1) SUMMONS. Upon request of the prosecutor, the clerk shall issue a summons for a defendant named:

(i) in the complaint;

(ii) in the indictment; or

(iii) in the information.

When a defendant is a corporation or any legal entity other than a natural person, a summons instead of a warrant shall issue to an authorized representative of the entity.

(2) WARRANT. The court may order issuance of a warrant instead of a summons upon request of the prosecutor; provided however, that no warrant shall issue:

(i) Upon a complaint unless it appears from the sworn complaint, or from affidavit(s) or declaration(s) filed with the complaint, that there is probable cause to believe that an offense has been

committed and that the defendant has committed it; or

(ii) Upon an information unless it appears from the information and the exhibit(s) filed with the information that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(3) DELIVERY FOR SERVICE.

(i) *Warrant*. The clerk shall deliver the warrant to the chief of police or other person authorized by law to execute it.

(ii) *Summons*. The clerk shall deliver the summons to the chief of police, prosecutor or other person authorized by law to serve it.

(4) NUMBER OF COPIES. More than one copy of a warrant or summons may be issued on the same complaint, information, or indictment.

(5) FAILURE TO APPEAR. If a defendant fails to appear in response to a summons, a warrant may issue. If a corporation or any legal entity other than a natural person fails to appear in response to a summons, a plea of not guilty may be entered by the court, and the court may proceed to trial and judgment.

(b) Form.

(1) WARRANT. The warrant shall be in such form as may be prescribed by the issuing court and shall

(i) be signed by a judge;

(ii) contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(iii) describe the offense alleged in the charge;

(iv) state the date when issued and the court from which it is issued;

(v) command that the defendant be arrested and brought before the issuing court;

(vi) specify the amount of bail;

(vii) contain a prohibition against execution of the warrant between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit court permits execution during those hours in writing on the warrant; and

(viii) specify such other conditions as to time, place or manner of arrest as the judge may deem appropriate.

A designated judge of the district court shall be available at all times to consider requests to permit execution during the hours specified in subsection (vii), but any judge of the district or circuit court may authorize such execution.

(2) SUMMONS. The summons shall be in such form as may be prescribed in the issuing court and shall

(i) contain the name of the defendant;

(ii) describe the offense alleged in the charge;

(iii) command the defendant to appear before the court at a stated place and at a stated time, which shall be not less than 5 days from the time of service of the summons unless waived by the defendant;

(iv) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits personal delivery during those hours in writing on the summons.

(v) contain a warning to the person summoned that failure to obey the summons will render the person subject to prosecution for contempt;

(vi) state the date when issued and the court from which it is issued; and

(vii) be signed by the clerk.

(c) Execution or service and return.

(1) BY WHOM. A warrant shall be executed by a police officer or by some other officer authorized by law. A summons may be served by a police officer or by any person who is not the complaining witness and who is not less than 18 years of age.

(2) TERRITORIAL LIMITS. The warrant may be executed or the summons served at any place within the State.

(3) MANNER.

(i) *Warrant.* The warrant shall be executed without unnecessary delay by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of arrest, but upon request, the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The officer executing the warrant shall bring the arrested person promptly before the court.

(ii) *Summons.* A summons shall be served upon the defendant without unnecessary delay by delivering a copy to the defendant personally, or by

mailing it, delivery to the defendant only with return receipt requested. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also sending a copy by certified or registered mail to the corporation's last known address within the State or at its principal place of business elsewhere.

(4) RETURN.

(i) *Warrant.* On or before the date of the defendant's initial appearance after service of the warrant, the officer executing a warrant shall make return thereof to the court. At the request of the prosecutor any unexecuted warrant shall be returned and cancelled. A warrant returned unexecuted may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for execution.

(ii) *Summons.* On or before the date set for the defendant's appearance, the officer or other person to whom a summons was delivered for service shall make return thereof to the court if personally served or of the return receipt if served by mail. At the request of the prosecutor any unserved summons shall be returned and cancelled. A summons returned unserved may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for service.

(Amended September 14, 1983, effective October 1, 1983; further amended effective April 28, 1994; further amended December 7, 2006, effective January 1, 2007; further amended October 20, 2016, effective January 1, 2017.)

Rule 10. ARRAIGNMENT IN CIRCUIT COURT.

(a) A defendant who has been held by district court to answer in circuit court shall be arraigned in circuit court within 14 days after the district court's oral order of commitment following (i) arraignment and plea, where the defendant elected jury trial or did not waive the right to jury trial or (ii) initial appearance or preliminary hearing, whichever occurs last.

(b) Following service of grand jury warrant, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following arrest or return.

(c) Following service of an information charging warrant of arrest, a defendant arrested in the jurisdiction or returned to the jurisdiction shall be arraigned not later than 7 days following arrest or return.

(d) Arraignment in the circuit court shall be conducted in open court or by video conference when permitted by Rule 43. The arraignment shall consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the charge before the defendant is called upon to plead. In felony cases charged by written information, the defendant shall be furnished with a copy of the information and all attached exhibits at the initial court appearance and the custody of the materials shall be governed by Rule 16.

(e) Upon the initial appearance of the defendant before the court, the court shall:

(1) be satisfied that the defendant is informed of the charge;

(2) inform the defendant that there is no requirement to make a statement and that any statement made may be used against the defendant;

(3) advise the defendant of the right to counsel;

(4) inform the defendant of the potential for immigration consequences by reading the advisement in §802E-2, Hawaiʻi Revised Statutes, at the commencement of the arraignment and plea hearing to all defendants present;

(5) allow the defendant reasonable time and opportunity to consult counsel; and

(6) admit the defendant to bail as provided by law or in these rules.

(Amended December 5, 1995, effective February 1, 1995; further amended February 2, 1996, effective March 1, 1996; further amended September 5, 1996, effective October 1, 1996; further amended December 7, 2006, effective January 1, 2007; further amended December 21, 2007, effective January 1, 2008; further amended January 31, 2014, effective July 1, 2014.)

Rule 10.1. DELETED.

Rule 10.2. REPEALED.

Rule 11. PLEAS.

(a) Alternatives.

(1) IN GENERAL. A defendant may plead not guilty, guilty or no contest. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or no contest or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) CONDITIONAL PLEAS. With the approval of the court and the consent of the State, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specific pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) No contest. A defendant may plead no contest only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advice to defendant. The court shall not accept a plea of guilty or no contest without first addressing the defendant personally in open court and determining that the defendant understands the following:

(1) the nature of the charge to which the plea is offered; and

(2) the maximum penalty provided by law, and the maximum sentence of extended term of imprisonment, which may be imposed for the offense to which the plea is offered; and

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made; and

(4) that if the defendant pleads guilty or no contest there will not be a further trial of any kind, so that by pleading guilty or no contest the right to a trial is waived.

(d) Advisement concerning alien status. Prior to entry of a plea of guilty or no contest, or admission of guilt or sufficient facts to any offense punishable as a crime under state law, except those offenses designated as infractions, the court shall read the advisement in §802E-2, Hawaiʻi Revised Statutes, on the record to the defendant.

(e) Insuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first addressing the defendant personally in open court and determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or no contest results from any plea agreement.

(f) Plea agreement.

(1) IN GENERAL. The prosecutor and counsel for the defendant, or the defendant when acting pro se, may enter into plea agreements that, upon the entering of a plea of guilty or no contest to a charged offense or to an included or related offense, the prosecutor will take certain actions or adopt certain positions, including the dismissal of other charges and the recommending or not opposing of specific sentences or dispositions on the charge to which a plea was entered. The court may participate in discussions leading to such plea agreements and may agree to be bound thereby.

(2) NOTICE OF PLEA AGREEMENT. Any plea agreement shall be disclosed by the parties to the court at the time the defendant tenders the defendant's plea. Failure by the prosecutor to comply with such agreement shall be grounds for withdrawal of the plea.

(3) WARNING TO DEFENDANT. Upon disclosure of any plea agreement, the court shall not accept the tendered plea unless the defendant is informed that the court is not bound by such agreement, unless the court agreed otherwise.

(4) INADMISSIBILITY OF PLEA DISCUSSIONS. Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or of a plea of no contest, or of an offer to plead guilty or no contest to the offense charged or any other offense, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or penal proceeding against the person who made the plea or offer.

However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of no contest, or an offer to plead guilty or no contest to the offense charged or any other offense is admissible in a penal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(g) Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the court shall not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(Amended September 2, 1988, effective September 2, 1988; further amended July 12, 1993, effective August 26, 1993; further amended October 28, 1993, effective November 15, 1993; further amended December 7, 2006, effective January 1, 2007; further amended January 31, 2014, effective July 1, 2014; further amended June 24, 2014, effective July 1, 2014.)

Rule 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS.

(a) Pleadings and motions. Pleadings in penal proceedings shall be the charge, and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) defenses and objections based on defects in the institution of the prosecution;

(2) defenses and objections based on defects in the charge (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

(3) motions to suppress evidence or for return of property;

(4) requests for discovery under Rule 16;

(5) requests for consolidation or severance of charges or defendants under Rules 13 and 14;

(6) motions to dismiss under Rule 8(c) for failure to join related offenses; and

(7) motions to transfer under Rule 21.

(c) Motion date. Pretrial motions and requests must be made within 21 days after arraignment unless the court otherwise directs.

(d) Notice by the prosecution of the intention to use evidence.

(1) AT THE DISCRETION OF THE PROSECUTION. At the arraignment or as soon thereafter as is practicable, the prosecution may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subsection (b)(3) of this rule.

(2) AT THE REQUEST OF THE DEFENDANT. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the prosecution's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on motion. A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict; provided that a motion to suppress made before trial shall be determined before trial. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of failure to raise defenses or objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, within the time set by the court pursuant to section (c), or within any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Effect of determination. If the court grants a motion based on a defect in the institution of the prosecution or in the charge, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new charge. Nothing in this rule shall be deemed to affect provisions of any statute relating to periods of limitations.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 12.1. NOTICE OF ALIBI.

(a) Notice by defendant. If a defendant intends to rely upon the defense of alibi, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the prosecutor in writing of such intention and file a copy of such notice with the court.

(b) Disclosure of information and witnesses. Upon receipt of notice that the defendant intends to rely upon an alibi defense, the prosecutor shall inform the defendant in writing of the specific time, date, and place at which the offense is alleged to have been committed. The defendant shall then inform the prosecutor in writing of the specific place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. The prosecutor shall then inform the defendant in writing of the names and addresses of the witnesses upon whom the government intends to rely to establish defendant's presence at the scene of the alleged offense.

(c) Time of giving information. The court may fix the time within which the exchange of information referred to in section (b) shall be accomplished.

(d) Continuing duty to disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under section (b) of this rule, the party shall promptly notify the other party or the party's attorney of the existence and identity of such additional witness.

(e) Failure to comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from, or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in the defendant's own behalf.

(f) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of this rule.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 12.2. TRIAL SETTING UNDER SPECIAL CIRCUMSTANCES.

(a) Motion for firm trial setting. Upon written motion of a party, the court may set a firm trial when (1) a complaining or a material witness is a person with special needs, (2) a witness is from out-of-state, (3) a large number of potential jurors are needed, (4) a defendant is in pretrial custody, or (5) other special circumstances exist.

(b) Motion for advancement or continuance of trial. When ruling upon a motion for advancement or continuance of a trial under this Rule 12.2, the court shall consider the totality of the circumstances, including, but not limited to, the following:

(1) a defendant's rights to a speedy and fair trial, effective assistance of counsel, the right to confront and cross-examine witnesses and other rights guaranteed by the constitutions of the State of Hawai'i and the United States;

(2) any substantial adverse impact the time of trial may have on the witness.

(c) Application of term. For purposes of this rule, a person with special needs includes, but is not limited to, a child under the age of fourteen.

(Added May 18, 1995, effective June 1, 1995.)

Rule 13. CONSOLIDATION.

(a) Generally. The court may order consolidation of two or more charges for trial if the offenses, and the defendants if there are more than one, could have been joined in a single charge.

(b) Related offenses.

(1) Two or more offenses are related offenses, for the purposes of this rule and Rule 8 (c), if they are within the jurisdiction of a single court and are based on the same conduct or arise from the same episode.

(2) When a defendant has been charged with two or more related offenses in separate charges, the defendant's timely motion to consolidate them for trial shall be granted unless the court determines that because the prosecutor does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of joinder as to related offenses with which the defendant knew the defendant was charged.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 14. RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in a charge or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Rule 15. DEPOSITIONS.

(a) When taken. Whenever due to special circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but the defendant's failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken at the instance of the prosecution, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination shall be paid by the prosecutor where its witness is to be deposed and by the state public defender where a defendant's witness is to be deposed.

(d) How taken. Subject to such additional conditions as the court may provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a defendant without the defendant's consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The party moving for the deposition shall make available to the other parties or their counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the moving party and to which the other parties would be entitled at trial. Recording devices may be used for the taking of depositions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as defined in subdivision (g) of this rule, or if the witness gives testimony at the trial or hearing inconsistent with the witness' deposition. Any deposition may also be used by any party for the

purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to provide all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Unavailability. "Unavailable" as a witness includes situations in which the deponent:

(1) is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the deponent's deposition; or

(2) persists in refusing to testify concerning the subject matter of the deponent's deposition despite an order of the judge to do so; or

(3) testifies to a lack of memory of the subject matter of the deponent's deposition; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the deponent's deposition has been unable to procure the deponent's attendance by process or other reasonable means. A deponent is not unavailable as a witness if the deponent's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the deponent's deposition for the purpose of preventing the witness from attending or testifying.

(h) Deposition by agreement not precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(Amended December 7, 2006, effective January 1, 2007.)

Rule 16. DISCOVERY.

(a) Applicability. Subject to subsection (d) of this rule, discovery under this rule may be obtained in and is limited to cases in which the defendant is charged with a felony, and may commence upon the filing in circuit court of an indictment, an information, or a complaint.

(b) Disclosure by the prosecution.

(1) DISCLOSURE OF MATTERS WITHIN PROSECUTION'S POSSESSION. The prosecutor shall disclose to the defendant or the defendant's attorney the following material and information within the prosecutor's possession or control:

(i) the names and last known addresses of persons whom the prosecutor intends to call as witnesses in the presentation of the evidence in chief, together with any relevant written or recorded statements, provided that statements recorded by the prosecutor shall not be subject to disclosure;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a co-defendant if intended to be used in a joint trial, together with the names and last known addresses of persons who witnessed the making of such statements;

(iii) any reports or statements of experts, which were made in connection with the particular case or which the prosecutor intends to introduce, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(iv) any books, papers, documents, photographs, or tangible objects which the prosecutor intends to introduce, or which were obtained from or which belong to the defendant, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel;

(v) a copy of any Hawaiʻi criminal record of the defendant and, if so ordered by the court, a copy of any criminal record of the defendant outside the State of Hawai'i;

(vi) whether there has been any electronic surveillance (including wiretapping) of conversations to which the defendant was a party or occurring on the defendant's premises; and

(vii) any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor.

(2) DISCLOSURE OF MATTERS NOT WITHIN PROSECUTION'S POSSESSION. Upon written request of defense counsel and specific designation by defense counsel of material or information which would be discoverable if in the possession or control of the prosecutor and which is in the possession or control of other governmental personnel, the prosecutor shall use diligent good faith efforts to cause such material or information to be made available to defense counsel; and if the prosecutor's efforts are unsuccessful the court shall issue suitable subpoenas or orders to cause such material or information to be made available to defense counsel.

(3) DEFINITION. The term "statement" as used in subsection (b)(1)(i) and (c)(2)(i) of this rule means:

(i) a written statement made by the witness and signed or otherwise adopted or approved by the witness; or

(ii) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement.

(c) Disclosure by the defendant.

(1) SUBMISSION TO TESTS, EXAMINATIONS OR INSPECTIONS. Upon written request of the prosecutor, the court may require the defendant:

(i) to perform reasonable acts or undergo reasonable tests for purposes of identification; and

(ii) to submit to reasonable physical or medical inspection or examination of the defendant's body.

Reasonable notice of the time and place for such tests, inspections or examinations shall be given by the prosecutor to the defendant and the defendant's counsel who shall have the right to be present.

(2) DISCLOSURE OF MATERIALS AND INFORMATION. The defendant shall disclose to the prosecutor the following material and information within the defendant's possession or control:

(i) the names and last known addresses of persons whom the defendant intends to call as witnesses, in the presentation of the evidence in chief, together with their relevant written or recorded statements, provided that discovery of alibi witnesses is governed by Rule 12.1, and provided further that statements recorded by the defendant's counsel shall not be subject to disclosure;

(ii) any reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which the defendant intends to introduce as evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

(iii) any books, papers, documents, photographs, or tangible objects which the defendant intends to introduce as evidence at the trial.

(3) DISCLOSURE OF DEFENSES. The court may require that the prosecutor be informed of the nature of any defense which defense counsel intends to use at trial; provided, that the defense of alibi is governed by Rule 12.1.

(d) Discretionary disclosure. Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure as provided for in this Rule 16 in cases other than those in which the defendant is charged with a felony, but not in cases involving violations.

(e) Regulation of discovery.

(1) PERFORMANCE OF OBLIGATIONS. Except for matters which are to be specifically designated in writing by defense counsel under this rule, the prosecution shall disclose all materials subject to disclosure pursuant to subsection (b)(1) of this rule to the defendant or the defendant's attorney within ten (10) calendar days following arraignment and plea of the defendant. The parties may perform their obligations of disclosure in any manner mutually agreeable to the parties or by notifying the attorney for the other party that material and information, described in general terms, may be inspected, obtained, tested, copied or photographed at specified reasonable times and places.

(2) CONTINUING DUTY TO DISCLOSE. If subsequent to compliance with these rules or orders entered pursuant to these rules, a party discovers additional material or information which would have been subject to disclosure pursuant to this Rule 16, that party shall promptly disclose the additional material or information, and if the additional material or information is discovered during trial, the court shall also be notified.

(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 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 10 days of the receipt of the notice.

(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 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.

(5) MATTERS NOT SUBJECT TO DISCLOSURE.

(i) *Work product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of a party's attorney or members of the attorney's legal staff, provided that the foregoing shall not be construed to prohibit the disclosures required under section (c)(3) of this rule and Rule 12.1.

(ii) *Informants.* Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure shall not be denied hereunder of the identity of a witness intended to be produced at a hearing or trial.

(6) IN CAMERA PROCEEDINGS. Upon request of any person, the court may permit any showing of cause for a denial or regulation of disclosures or any portion of such a showing to be made in camera. When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall then be disclosed as is consistent with these rules. If the court enters an order granting relief following a showing in camera, the entire record of such a showing, including any material excised pursuant to court order, shall be sealed, impounded and preserved in the records of the court to be made available to the reviewing court in the event of an appeal.

(7) IMPEDING INVESTIGATIONS. Except as is otherwise provided as to matters not subject to disclosure and protective orders, a party's attorney, the attorney's staff or agents shall not advise persons having relevant material or information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(8) DUTY TO CONFER AND REQUIREMENT FOR FILING OF WRITTEN STIPULATION. Counsel are required to confer concerning all disputed issues under this rule. Counsel for the moving party shall attach a certification of compliance with this requirement to any motion filed pursuant to this rule and shall also file a written stipulation of all pertinent matters agreed to as a result of the conferral.

(9) SANCTIONS.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may order such party to permit the discovery, grant a continuance, or it may enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(Amended February 28, 1983, effective February 28, 1983; further amended July 12, 1993, effective August 26, 1993; further amended November 12, 1993, effective November 20, 1993; further amended

February 4, 2000, effective July 1, 2000; further amended June 16, 2000, effective July 1, 2000; further amended December 7, 2006, effective January 1, 2007; further amended February 10, 2011, effective July 1, 2011; further amended April 23, 2012, effective June 18, 2012.)

Rule 16.1. DISCOVERY PROCEDURES FOR NON-FELONY CRIMINAL AND CRIMINAL TRAFFIC CASES.

(a) Applicability. This rule shall apply to non-felony criminal and criminal traffic cases.

(b) Request for discovery. If discovery is sought of materials that would be discoverable in felony cases pursuant to these rules, a request for discovery shall be made to the opposing side in writing and shall list the specific materials being sought. Unless otherwise ordered, the request shall not be filed with the court.

(c) Motion to compel discovery. A party may file a motion to compel discovery if a timely request for discovery was made, unless otherwise ordered by the court.

(Added February 4, 2000, effective July 1, 2000.)

Rule 17. SUBPOENA.

(a) For attendance of witnesses; form; issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served.

(b) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(c) Service. A subpoena may be served by a police officer or by any other person who is not a defendant and who is not less than 18 years of age. Service of subpoena shall be made by delivering a copy thereof to the person named or by sending it by certified or registered mail, return receipt requested and with restricted delivery to the person named only, and by tendering to the person named the fee of 1 day's attendance and the mileage allowed by law, provided that no such tender need be made when the subpoena is issued on behalf of the prosecution or a defendant who is unable to pay for the same.

(d) Service by facsimile transmission or electronic mail. Service of a subpoena may be made by facsimile transmission. The return of service shall declare that service was accomplished by facsimile transmission to a specific phone number, on a specific date and time, and shall state that the sender obtained confirmation from the person subpoenaed that the person received the subpoena. The printed confirmation from the sender's facsimile machine shall be attached to the return of service.

Service may also be made by electronic mail. The return of service shall declare that service was accomplished by electronic mail to a specific electronic mail address, on a specific date and time, and shall state that the sender obtained confirmation from the person subpoenaed that the person received the subpoena. A copy of the electronic mail confirming the person's receipt of the subpoena shall be attached to the return of service.

(e) Place of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State.

(f) For taking deposition; place of examination.

(1) ISSUANCE. An order to take a deposition authorizes the issuance by the clerk of subpoenas for the persons named or described therein.

(2) PLACE. A resident of the State may be required to attend an examination only in the county wherein the resident resides or is employed or transacts the resident's business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the State subpoenaed within the State may be required to attend only in the county

wherein the resident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of the court from which the subpoena issued.

(Amended February 4, 2000, effective July 1, 2000; further amended August 14, 2000, effective January 1, 2001; further amended December 7, 2006, effective January 1, 2007; further amended October 20, 2016, effective January 1, 2017.)

Rule 17.1. PRETRIAL CONFERENCE.

At any time after the filing of the charge the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admission made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

(Amended December 7, 2006, effective January 1, 2007.)

V. VENUE

Rule 18. VENUE.

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in the circuit in which the offense or any part of it was committed. If the trial is to be had in the district court, venue is within the judicial circuit established by statute.

(Amended October 15, 1980, effective November 15, 1980; further amended June 1, 1993, effective July 1, 1993; further amended and effective December 20, 1995.)

Rule 19. RESERVED.

Rule 20. RESERVED.

Rule 21. TRANSFER FROM DISTRICT OR CIRCUIT FOR TRIAL.

(a) For prejudice in the circuit. The court upon motion of the defendant shall transfer the proceeding as to the defendant to another circuit whether or not such circuit is specified in the defendant's motion if the court is satisfied that there exists in the circuit where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in the circuit.

(b) Transfer in other cases. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to the defendant or any one or more of the counts thereof to another district or circuit, whether or not such district or circuit is specified in the defendant's motion.

(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 documents in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district or circuit.

(Amended December 7, 2006, effective January 1, 2007; further amended April 23, 2012, effective June 18, 2012.)

Rule 22. TIME OF MOTION TO TRANSFER.

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

VI. TRIAL

Rule 23. TRIAL BY JURY OR BY THE COURT.

(a) Trial by jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court. The waiver shall be either by written consent filed in court or by oral consent in open court entered on the record.

(b) Jury of less than twelve. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) Trial without a jury. In a case tried without a jury the court shall make a general finding and shall in addition, on request made at the time of the general finding, find such facts specially as are requested by the parties. Such special findings may be orally in open court or in writing at any time prior to sentence.

Rule 24. TRIAL JURORS.

(a) Conduct of jury selection. At the discretion of the court, the parties may present a "mini-opening statement" to the jury panel prior to the commencement of jury selection. The mini-opening statement shall be limited to a brief statement of the facts expected to be proven. The court shall permit the parties or their attorneys to conduct the examination of prospective jurors or shall itself conduct the examination. In the latter event the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

(b) Peremptory challenges. If the offense charged is punishable by life imprisonment, each side is entitled to 12 peremptory challenges. If there are 2 or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed 6 peremptory challenges. In all other criminal trials by jury, each side is entitled to 3 peremptory challenges. If there are 2 or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed 2 peremptory challenges. In all cases, the prosecution shall be allowed as many peremptory challenges as are allowed to all defendants.

(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. 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 2 defendants in any case, the order of precedence of their challenges, if not agreed upon by them, shall be determined by the court.

(e) Note taking by jurors. Except upon good cause articulated by the court, jurors shall be allowed to take notes during trial. The court's good cause finding need not be written, but must be articulated clearly in a reported proceeding.

(Amended effective February 4, 2000, effective July 1, 2000; further amended March 24, 2000, effective July 1, 2000; further amended February 10, 2011, effective July 1, 2011.)

Rule 24.1. CONDUCT OF A TRIAL.

(a) Sequence of presentation. Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for other reasons:

(1) The prosecutor in a criminal case shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the prosecutor's statement or at the beginning of defendant's case.

(2) After the opening statement or statements, the prosecutor shall produce the evidence in chief.

(3) The defendant may then open the defense and offer evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the prosecutor shall open the argument; the defendant may then reply; and the prosecutor may conclude the argument, and in conclusion shall confine himself or herself to answering any new matter or arguments presented by the defendant. In the event the defendant has presented an affirmative defense, the court may allow surrebuttal argument but shall confine counsel

to answering or otherwise responding to the arguments presented by the prosecutor on the issue of the affirmative defense.

(b) Fair argument. In addressing the jury, each party shall be allowed to fully and fairly state the party's theory of the case and the reasons that entitle the party to a verdict.

(c) Presence of counsel at verdict. Unless excused by the court, counsel for all parties shall be present upon receiving the verdict of a jury.

(d) Limitations on number of counsel. Except by leave of court, only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

(Added February 4, 2000, effective July 1, 2000.)

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 with the record of the trial, may proceed with and finish the trial.

(b) After verdict or 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 grant a new trial.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 26. EVIDENCE.

(a) In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law or by these rules.

(b) At the discretion of the court, jurors may be allowed to suggest questions to be asked of witnesses. Each juror question must be in writing and delivered to the court through appropriate court personnel. Upon receipt of a question, the court shall review the propriety of submitting the question to the witness with the parties or their attorneys on the record, but outside the hearing of the jury. If the court deems the question appropriate and subject to the Hawaiʻi Rules of Evidence (HRE), the court may ask the question. The parties shall have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the HRE. Any party may object to the asking of a question, but the court may ask the question over any objection after the objection has been placed on the record. The jury shall be pre-instructed about the procedure for asking questions.

(Amended July 25, 1991, effective July 25, 1991; further amended March 24, 2000, effective July 1, 2000.)

Rule 27. PROOF OF OFFICIAL RECORD.

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

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 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, may thereafter be called to testify by the court or by any party, and 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.

(b) Interpreters. The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of such funds as may be provided by law.

(Amended April 23, 2012, effective June 18, 2012.)

Rule 29. MOTION FOR JUDGMENT OF ACQUITTAL.

(a) Motion before submission to jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses alleged in the charge after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecution is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of the evidence offered by the prosecution, the court shall not reserve decision thereon. If such motion is made after all parties have rested, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 10 days after the jury is discharged or within such further time as the court may fix during the 10-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

Rule 30. INSTRUCTIONS TO THE JURY.

(a) Pre-instruction. Prior to the presentation of evidence, the court may, upon agreement of the parties, pre-instruct the jury on the elements of the charged offense and claimed defenses.

(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. 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 Hawaiʻi Standard Jury Instructions Criminal (HAWJIC).

(c) Settlement. When requests are filed, counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Whenever the court refuses to give any requested instruction, the court shall write the word "refused" in the margin thereof. Whenever the court approves any requested instruction, the court shall write the word "given" in the margin thereof. Whenever the court modifies any requested instruction, the court shall mark the same in such manner that it shall distinctly appear what part is refused and what part is given. Instructions to which no objection is made shall be marked "given by agreement" and no later objection thereto may be made or allowed. Unless the court shall take action pursuant to subdivision (c) of this rule, instructions settled as above set forth shall be read to the jury.

(This page intentionally left blank)