

SCRU-11-0000083

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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

ORDER AMENDING RULES 3, 9 AND 17 OF THE
HAWAI‘I RULES OF PENAL PROCEDURE

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 3, 9, and 17 of the
Hawai‘i Rules of Penal Procedure, are amended, effective January
1, 2017, as follows (deleted material is bracketed and stricken;
new material is underscored):

Rule 3. APPLICATION FOR ARREST WARRANT.

(a) ~~[In General.]~~**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). ~~[It]~~ 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 ~~[and that the defendant has committed it]~~ 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) ~~[Application by Information.]~~ **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) **Application by Affidavit or Complaint.** An application for the issuance of a warrant of arrest in the form of affidavit(s), or a complaint supported by affidavit(s) shall be subscribed by the complainant under oath or affirmation before the prosecutor and shall forthwith 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.]~~

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 ~~[an affidavit or affidavits]~~ 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.

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Rule 17. SUBPOENA.

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(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 ~~[specified]~~ 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.

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DATED: Honolulu, Hawai'i, October 20, 2016.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

