

RE:                   **Proposed New Rule 16.1 to the District Court Rules of Civil Procedure and Proposals to Amend Rule 58 of the Hawai‘i Rules of Penal Procedure, Rule 11 of the Hawai‘i Probate Rules, and Rule 16.2 of the Hawai‘i Rules of Civil Procedure**

*THE USE OF REMOTE-HEARING TECHNOLOGY IN COURT PROCEEDINGS*

The Supreme Court of Hawai‘i seeks public comment regarding a proposal to promulgate a new Rule 16.1 of the District Court Rules of Civil Procedure, and amend Rule 58 of the Hawai‘i Rules of Penal Procedure, Rule 11 of the Hawai‘i Probate Rules, and Rule 16.2 of the Hawai‘i Rules of Civil Procedure, in order to formalize the use of remote-hearing technology in court proceedings.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, April 11, 2022**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary website](#).

Attachment

**PROPOSED *NEW RULE* TO THE  
DISTRICT COURT RULES OF CIVIL PROCEDURE**

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*NEW RULE*

**Rule 16.1. APPEARANCE BY TELEPHONIC OR  
VIDEOCONFERENCE CALL.**

**(a) Telephonic or videoconferencing call allowed.** Except as otherwise provided by statute or rule, the court shall, absent good reason, allow any party to appear by telephonic or videoconferencing call for any of the following motions, conferences, hearings, or proceedings:

- (1) Answers and returnables;
- (2) Status and pretrial conferences;
- (3) Settlement conferences; and
- (4) Non-evidentiary motions.

If, at any time during a motion, conference, hearing or proceeding conducted by telephonic or videoconferencing call, the court determines a personal appearance is necessary by one or more of the parties, the court may continue the matter and require a personal appearance by one or more of the parties.

**(b) Telephonic or videoconferencing call not allowed.** Except as otherwise provided by statute or rule of court or as permitted by the court, telephonic or videoconferencing appearances shall not be permitted for any of the following:

- (1) Trials; and
- (2) Evidentiary hearings.

***COMMENTS:***

*The intent of this rule is to promote uniformity in the practices and procedures relating to telephonic and videoconferencing calls for civil matters in the district courts of the State. To provide access to justice, promote judicial efficiency, and to reduce litigation costs, the courts of the State should permit parties, to the extent feasible, to appear by telephonic or videoconferencing calls as provided by this rule.*

**PROPOSED AMENDMENT TO THE  
HAWAII RULES OF PENAL PROCEDURE**

*(Deleted materials are bracketed and stricken; new material is underlined.)*

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**Rule 58. [COUNSEL] APPEARANCE BY TELEPHONE OR [OTHER—  
ELECTRONIC MEANS] VIDEOCONFERENCING.**

(a) **Pretrial and status conferences.** Unless otherwise provided by rules of court, the court [~~should~~] shall, absent good cause [~~reason, as determined in the court's discretion~~], allow [~~counsel~~] the parties to appear by telephone or [~~other electronic means~~] videoconferencing at any pretrial or status conference.

(b) **All other proceedings where defendant's appearance is not required.** In all other proceedings where the defendant's presence is not required by Rule 43 of these rules, the court, in its discretion, may allow counsel to appear by telephone or [~~other electronic means~~] videoconferencing.

(c) **Court may require personal appearance.** If, at any time during a conference, hearing or proceeding conducted by telephone or [~~other electronic means~~] videoconferencing, the court determines personal appearance is necessary, the court may continue the matter and require a personal appearance.

(d) **Arranging telephone conference call.** Unless otherwise directed by the court, [~~Counsel~~] a party who requests an appearance by telephone [~~or other electronic means~~] is responsible for notifying all parties prior to said call, arranging the telephone-conference call with all parties, and ensuring the call is ready for court participation at the time appointed.

**COMMENTARY:**

*The intent of this rule is to promote uniformity in the practices and procedures for appearance of [~~counsel~~] the parties by telephone or [~~other electronic means~~] videoconferencing for criminal matters in the courts of the State. To provide access to justice, promote judicial efficiency and to reduce litigation costs, the courts of the State should permit counsel, to the extent feasible, to appear by telephone or [~~other electronic means~~] videoconferencing as provided by this rule.*

**PROPOSED AMENDMENT TO THE  
HAWAI‘I PROBATE RULES**

*(Deleted materials are bracketed and stricken; new material is underlined.)*

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**Rule 11. [~~TELEPHONE~~] TELEPHONIC OR VIDEOCONFERENCE  
CALL HEARINGS.**

**(a) Permissibility.** The court, at its discretion, may allow a petition or other pleadings to be heard by telephone conference call or videoconferencing.

**(b) Arranging Conference Call.** The party who requests the telephone conference call shall be responsible for arranging the telephone conference call with all parties and the telephone conference call operator and ensuring that the call is arranged and ready for court participation at the time appointed for the hearing.

**(c) Procedure.** Prior to the start of the conference call, the clerk shall call the case in the courtroom and outside the courtroom or by public address system and direct anyone appearing for the hearing to the appropriate location for the hearing.

***COMMENTARY:***

*These rules formalize the procedures already in use in the Second, Third, and Fifth Circuits, and make them available to the First Circuit, in the court's discretion. Their goal is to decrease costs of proceedings and improve efficiency by avoiding having parties and attorneys from other islands, or remote areas of an island, fly to the island where court is in session or drive long distances for simple matters. The person who requested the conference call shall be responsible for all arrangements with a conference operator and the parties and attorneys to ensure that the call is made to the court with all parties on line at the appropriate time.*

**PROPOSED AMENDMENTS TO THE  
HAWAI‘I RULES OF CIVIL PROCEDURE**

(Deleted material is bracketed and stricken; new material is underlined)

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**Rule 16.2. APPEARANCE BY TELEPHONIC OR VIDEO  
CONFERENCE CALL.**

**(a) Telephonic or videoconferencing call presumptively allowed.**

Except as otherwise provided by statute or rule, the court ~~shall~~should, absent good ~~cause~~reason, as determined in the court’s discretion, allow any party~~;~~ to appear by telephonic or videoconferencing call for any of the following motions, conferences, hearings, or proceedings:

- (1) Scheduling and trial setting conferences;
- (2) Status conferences;
- (3) Uncontested motions; and
- (4) Such other conferences or hearings which the trial court approves.

If, at any time during a motion, conference, hearing or proceeding conducted by telephonic or videoconferencing call, the court determines a personal appearance is necessary by one or more of the parties, the court may continue the matter and require a personal appearance by one or more of the parties.

**(b) Telephonic or videoconferencing call presumptively not allowed.**

Except as otherwise provided by statute or rule of court or as permitted by the court, telephonic or videoconferencing appearance shall not be permitted for any of the following:

- (1) Trials;
- (2) Evidentiary hearings;
- (3) Contested motions or matters;
- (4) Dispositive motions; and
- (5) Settlement conferences.

**(c) Arranging telephonic or videoconferencing call.**

(1) Any party granted leave to appear by a telephonic or videoconferencing call shall, not less than 48 hours prior to the scheduled hearing or conference, notify all other parties.

(2) Unless otherwise directed by the court, the party who first obtains permission to appear by telephonic or videoconferencing call shall be responsible for arranging the ~~[telephone]~~ conference call with all parties and the ~~[telephone]~~ conference-call operator, if applicable, and ensuring that the call is arranged and ready for court participation at the time appointed for the hearing.

**COMMENTS:**

*The intent of this rule is to promote uniformity in the practices and procedures relating to telephonic and videoconferencing calls for civil matters in the courts of the State. To provide access to justice, promote judicial efficiency and to reduce litigation costs, the courts of the State should permit parties, to the extent feasible, to appear by telephonic or videoconferencing calls as provided by this rule.*