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SCRU-11-0000083

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the

HAWAI‘I RULES OF PENAL PROCEDURE

ORDER AMENDING THE HAWAI‘I RULES OF PENAL PROCEDURE
(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

IT IS HEREBY ORDERED that Rules 24.1, 25, 28, 32 and 51 of the Hawai‘i Rules of Penal Procedure are amended, effective January 1, 2026, as follows (deleted material is bracketed and stricken; new material is underscored):

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]~~ the argument 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.

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]~~ the judge 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]~~ the judge cannot perform those duties because ~~[he or she]~~ the judge did not preside at the trial or for any other reason, ~~[he or she]~~ the judge may grant a new trial.

Rule 28. EXPERT WITNESSES AND INTERPRETERS.

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

Rule 32. SENTENCE AND JUDGMENT.

(a) **Sentence.** After adjudication of guilt, sentence shall be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter bail, subject to applicable provisions of law. Before suspending or imposing sentence, the court shall address the defendant personally and afford a fair opportunity to the defendant and defendant's counsel, if any, to make a statement and present any information in mitigation of punishment.

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

(c) **Judgments.**

(1) **IN THE CIRCUIT COURT.** A judgment of conviction in the circuit court shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. The filing of the judgment in the office of the clerk constitutes the entry of the judgment.

(2) IN THE DISTRICT COURT. A judgment of conviction in the district court shall set forth the disposition of the proceedings and the same shall be entered on the record of the court. The filing of the written judgment, or in the event of oral judgment, the filing of the written notice of entry of judgment, in the office of the clerk constitutes entry of judgment. The judgment or notice of entry shall be signed by the judge or by the clerk, if the judge so directs.

(d) **Withdrawal of Plea.** A motion to withdraw a plea of guilty or of *nolo contendere* may be made before sentence is imposed or imposition of sentence is suspended; provided that, to correct manifest injustice the court, upon a party's motion submitted no later than ten (10) days after imposition of sentence, shall set aside the judgment of conviction and permit the defendant to withdraw the plea. At any later time, a defendant seeking to withdraw a plea of guilty or *nolo contendere* may do so only by petition pursuant to Rule 40 of these [x]Rules and the court shall not set aside such a plea unless doing so is necessary to correct manifest injustice.

Rule 51. EXCEPTIONS UNNECESSARY.

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

DATED: Honolulu, Hawai'i, July 9, 2025.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens

