

RE:                   **Proposed Amendment to  
Rules 44 and 46 of the Hawai'i Rules of Penal Procedure**

The Supreme Court of Hawai'i seeks public comment regarding a proposals to amend Rules 44 and 46 and adopt new Forms F, H, I, and J of the Hawai'i Rules of Penal Procedure. The proposed amendments are made in light of the rescission of all trial court administrative orders and the related request that appropriate rule amendments be proposed as necessary. The proposed amendments are attached hereto.

Comments about the proposed rule should be submitted, in writing, **no later than Friday, November 27, 2009**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website at [www.courts.state.hi.us](http://www.courts.state.hi.us).

Attachment

**PROPOSED AMENDMENT TO  
HAWAI'I RULES OF PENAL PROCEDURE**  
(New material is underlined)

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**Rule 44.**      **APPOINTED-COUNSEL FEES AND  
NECESSARY EXPENSES.**

**(a)**      **Itemized Bill; Copies.**

Attorneys appointed to represent indigent persons shall request fees and necessary expenses by submitting an original and 3 copies of an itemized and verified bill of fees and costs, together with a statement of authority for each category of items and, where appropriate, copies of invoices, bills, vouchers, and receipts. Requests shall be submitted on forms that substantially comply with Forms F, H, and I annexed to these rules. Each request shall be accompanied by a copy of the Findings and Recommendation of the Public Defender and Order Appointing Counsel. Failure to provide authority for the award of attorney's fees and necessary expenses may result in denial of that request.

**(b)**      **Filing and Service.**

**(1)**      **CRIMINAL CASES**

**(i)**      **Fees and necessary expenses.**

Requests for fees and necessary expenses, with proof of service, may be submitted 6 months after appointment or prior submission and approval of a request, provided that the final request, with proof of service, shall be submitted no later than 60 days after final disposition. For the purpose of this rule, final disposition includes entry of judgment, entry of an order of dismissal, or entry of an order allowing withdrawal or termination of representation.

If a prior request was submitted, a subsequent request must include a Billing Recap on a form that substantially complies with Form G annexed to these rules.

**(ii)**      **Other Litigation Expenses.**

Requests for expert witness fees, interpreter services, and transcripts (for purposes other than appeal) shall be submitted by motion, with proof of service, prior to retaining the expert or interpreter or ordering the transcript. The motion shall be supported by declaration or affidavit that show cause as to why the motion should be granted.

**(2)**      **SPECIAL PROCEEDINGS**

Requests for fees and necessary expenses in special proceedings, with proof of service, shall be submitted no later than 60 days after entry of an order granting or denying the petition.

**(c)**      **Requests under seal.**

Counsel may seek to seal any request or related order for expenses. A request to submit under seal shall be by *ex parte* motion, shall be supported by an affidavit or declaration setting forth the

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circumstances that merit submission under seal, and shall include a proposed order.

**(d) Untimely requests.**

An untimely request for fees and necessary expenses may be denied.

**(e) Objections and Reply.**

Objections to requests for fees and necessary expenses, if any, shall be filed, with proof of service, within 10 days after service of the request. A reply to the objections, if any, shall be filed within 7 days after service of the objections on the initiating party.

**(f) Multiple Cases.**

Attorneys appointed to represent a defendant in multiple cases shall submit request for fees and necessary expenses in each case; provided if time spent on each case was identical, a single request that identifies all case numbers may be submitted, with originals for each case file. All requests with regard to representation of a single defendant in multiple cases that were disposed simultaneously shall be submitted at the same time.

**Rule 44A      SETTLEMENT OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER; ENTRY  
OF ORDER.**

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**Rule 46.      BAIL; BOND.**

**(a)      Bail.**

The right to bail before conviction or upon review, the form and amount thereof, and the matters of justification of sureties, forfeiture of bail, and exoneration of obligors and sureties shall be as provided by law. (See Hawai'i Revised Statutes, Chapter 804.)

**(b)      Bond**

A party seeking release on bail by posting bond shall submit the bond in a form that substantially complies with Form J annexed to these rules. If a bail bond is secured by insurance, a copy of the bail agent's power of attorney shall be attached to the bond, and the party shall, by declaration or affidavit, identify the insurer, provide the agent's and insurer's license numbers, attest that the agent and the insurer are currently licensed and in good standing with the Insurance Commissioner of the State of Hawai'i, and attest that the agent and the insurer are in compliance with Hawai'i law governing bail bonds.

Counsel \_\_\_\_\_  
 Address \_\_\_\_\_  
 Atty. No. \_\_\_\_\_  
 Tel. No. \_\_\_\_\_

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, )  
 ) CR. No. \_\_\_\_\_  
 ) CHARGE(S) \_\_\_\_\_  
 vs. )  
 ) Date of Appointment: \_\_\_\_\_  
 ) (Order Attached)  
 )  
 Defendant. ) Presiding Judge: \_\_\_\_\_  
 ) Trial Date: \_\_\_\_\_

**REQUEST FOR ATTORNEY'S FEES**

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.  
 [ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_  
 [ ] Partial [ ] Final Billing

	<u>ACTIVITY</u>	<u>HOURS</u>	<u>AMOUNT</u>
1.	Client Contact . . . . .	_____	_____
2.	Investigation . . . . .	_____	_____
3.	Research . . . . .	_____	_____
4.	Conferences (Plea Bargain/Pre-Trial)	_____	_____
5.	Other: (Specify) . . . . .	_____	_____
	_____		
6.	Court Appearances . . . . .	_____	_____
	<b>TOTAL:</b>	_____	_____

**TOTAL FEE FOR PROFESSIONAL SERVICES: \$ \_\_\_\_\_**

Attached hereto as Exhibit A are hourly worksheets prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of Defendant. Payment has not been received and the BILLING RECAP is attached.

I, \_\_\_\_\_, declare under penalty of law that the foregoing is true and correct.

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney Signature

\_\_\_\_\_  
 Judge of the Above-Entitled Court Date APPROVED FOR \$ \_\_\_\_\_

\_\_\_\_\_  
 Administrative Judge Date APPROVED FOR \$ \_\_\_\_\_

Counsel \_\_\_\_\_  
Address \_\_\_\_\_  
Atty. No. \_\_\_\_\_  
Tel. No. \_\_\_\_\_

IN THE [CIRCUIT][DISTRICT][FAMILY] COURT OF THE [FIRST][SECOND][THIRD][FIFTH] CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, ) CR. No. \_\_\_\_\_  
 ) CHARGE(S) \_\_\_\_\_  
 vs. ) \_\_\_\_\_  
 ) Date of Appointment: \_\_\_\_\_  
 ) (Order Attached)  
 ) \_\_\_\_\_  
 Defendant. ) Presiding Judge: \_\_\_\_\_  
 ) Trial Date: \_\_\_\_\_

**REQUEST FOR ATTORNEY'S COSTS**

PURPOSE: [ ] Felony [ ] Misd. Jury Tr. [ ] Misd. Jury Waived [ ] Petty Misd.  
[ ] Other Administrative Judicial Proceeding

BILLING PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_  
[ ] Partial [ ] Final Billing

Summary of Expenses

Cost

**TOTAL COST: \$ \_\_\_\_\_**

Attached hereto as Appendix A are expense worksheets, prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the expenses incurred in the representation of Defendant. True and correct invoices or receipts for these necessary expenses are attached as Appendix B. Payment has not been received and the BILLING RECAP is attached.

I, \_\_\_\_\_, declare under penalty of law that the foregoing is true and correct.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Judge of the Above-Entitled Court

\_\_\_\_\_  
Date

APPROVED FOR \$ \_\_\_\_\_

\_\_\_\_\_  
Administrative Judge

\_\_\_\_\_  
Date

APPROVED FOR \$ \_\_\_\_\_

Case No. \_\_\_\_\_  
 Defendant \_\_\_\_\_

**BILLING RECAP**

(Must be completed by current attorney to reflect all prior billings)

BILLING	BILLING PERIOD	DATE SUBMITTED	ATTORNEY NAME	AMOUNT BILLED		AMOUNT APPROVED		DATE PAID	
				FEES	COSTS	FEES	COSTS	FEES	COSTS
First									
Second									
Third									
Fourth									
Final									
TOTAL									





**Form J**

(Sample Standard Form for Bail Bonds)

**BAIL BOND**

(Name of Surety)

(Name of Surety)  
(Address)  
(Telephone Number)

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**CIRCUIT OR DISTRICT COURT OF THE STATE OF HAWAII**

Police Rep. Nos. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Criminal No. \_\_\_\_\_

**VOID**

**DEFENDANT** \_\_\_\_\_, having been admitted to bail and ordered to appear in court in the State of Hawaii.

**KNOW ALL MEN BY THESE PRESENTS:**

THAT THE UNDERSIGNED SURETY, OR SURETIES, AS SURETY, HEREBY UNDERTAKE THAT THE SAID DEFENDANT WILL APPEAR AND ANSWER ALL CHARGES MENTIONED IN WHATEVER COURT IT MAY BE PROSECUTED WITHIN THE STATE OF HAWAII, AND WILL AT ALL TIMES BE AMENABLE TO THE ORDERS AND PROCESS OF THE COURT, AND, IF CONVICTED, WILL APPEAR FOR JUDGMENT, AND RENDER SELF IN EXECUTION THEREOF, OR FAILING TO PERFORM EITHER OF THESE CONDITIONS WILL PAY TO THE STATE OF HAWAII, AS PROVIDED IN SECTION 804-51 HAWAII REVISED STATUTES

THE SUM OF \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

BOND VALID ONLY FOR THOSE CHARGES LISTED UNDER THE ABOVE REPORT AND OR CRIMINAL NUMBERS AS OF THE DATE STATED HEREIN. BOND IS CANCELLED AND SURETY EXONERATED UPON SENTENCING, DAG PLEA OR DISMISSAL.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_.

BY: \_\_\_\_\_  
\_\_\_\_\_