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**CIRCUIT COURT ADMINISTRATIVE ORDERS**

Volume II

**CRIMINAL ADMINISTRATIVE ORDERS**

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# CIRCUIT COURT ADMINISTRATIVE ORDERS

## Volume II CRIMINAL ADMINISTRATIVE ORDERS

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CRIMINAL ADMINISTRATIVE ORDERS**

*This Part F is reserved for future use. As of 1998, all Criminal Administrative Orders applicable to the Second Third, and Fifth Circuits apply statewide and are listed in Part D.*

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**CIRCUIT COURT ADMINISTRATIVE ORDERS**

Volume II

**CRIMINAL ADMINISTRATIVE ORDERS**

Part D

**STATEWIDE CIRCUIT COURT CRIMINAL  
ADMINISTRATIVE ORDERS**

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Part D **STATEWIDE CIRCUIT COURT CRIMINAL ADMINISTRATIVE ORDERS**

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**Criminal Administrative Order No. 1.1****RE: COURT APPOINTED ATTORNEY FEES AND LITIGATION EXPENSES****I. LENGTH OF APPOINTMENT<sup>1</sup>****A. Scope of Representation**

Court-appointed counsel "represent the person at all stages of the proceedings, including appeal, if any" [HRS §802-5]. Therefore, court-appointed counsel are responsible for pretrial, trial, and post-trial matters, and any appeals. This also includes minimum term hearings before the Hawai'i Paroling Authority.

**B. Withdrawal**

If court-appointed counsel seek to or are requested to withdraw prior to filing of an appeal, counsel are responsible for: fully apprising clients of their appeal rights; immediately notifying the Office of the Public Defender of the intended withdrawal and the deadline for filing of the appeal; immediately notifying the Office of the Public Defender upon the court's approval of the withdrawal; and, upon request, promptly forwarding all files to substitute counsel.

**II. REQUESTS FOR ATTORNEY'S FEES**

Court-appointed counsel are entitled to reasonable compensation for **necessary fees** [HRS §802-5]. The Court determines the amount of **reasonable compensation** based upon statutory limits. If a request appears unreasonable, the court may summarily reduce or deny it. Reasonable compensation for fees is based upon the following:

**A. Fee Schedule****1. Maximum Fees [HRS §802-5(b)]**

a.	Felony case <sup>2</sup>	\$ 6,000
b.	Misdemeanor case - jury trial	\$ 3,000

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<sup>1</sup>Appropriate references to statutes and case law are [bracketed].

<sup>2</sup>"Case" means "all matters within the numbered criminal case" and not each count involved in the case. [State v. Przeradzki, 6 Haw. App. 20, 23 (1985)]

c.	Misdemeanor case-jury waived	\$ 1,500
d.	Appeals	\$ 5,000 <sup>3</sup>
e.	Petty misdemeanor case	\$ 900
f.	Any other administrative/judicial proceeding, including cases arising under section 571-11(1), 571-14(a)(1), or 571-14(a)(2)	\$ 3,000

**2. Compensation Rate [HRS §802-5(b)]**

\$90 per hour

**3. In-Court Time**

- a. In court time includes time actually spent on the record and waiting time.
- b. Waiting time is calculated from the scheduled time of the hearing/trial until the case is called on the record.

**4. Payment Exceeding Maximum Fees [HRS §802-5(b)]**

Payment in excess of the statutory maximum is within the discretion of the Court. Such payment **may** be made if 1) the presiding trial judge certifies that the excess payment is **necessary** for **fair** compensation and 2) the Administrative Judge approves. Where the presiding judge or Administrative Judge determines that the excess payment is not necessary to provide fair compensation, the amount may be summarily reduced.

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<sup>3</sup>See Rule 39(d) of the Hawai'i Rules of Appellate Procedure; requests for appellate services must be filed with the appellate clerk.

### III. REQUESTS FOR ATTORNEY'S COSTS

#### A. Payment Rates

##### 1. Necessary Expenses:

Court-appointed counsel are entitled to "necessary expenses, including travel, the amount of which shall be determined by the court." [HRS §802-5(a)]. These expenses are limited to the following:

- a. **filing fees:** required for notice of appeal or post-conviction proceedings but may be waived upon motion
- b. **long distance telephone calls** (attach bill)
- c. **notary fee**
- d. **postage**
- e. **photographic expenses** (attach bill)
- f. **reproduction services:** state specific number of pages; reasonable quantity and not to exceed \$.15/copy; attach bill for other copying costs
- g. **sheriff services:** (attach bill) counsel shall include the number of subpoenas to be served and the mileage requested.
- h. **travel expenses:** (ex parte motion required) counsel's airfare, ground transportation, and per diem or cost of room and meals
- i. **interpreter services** necessary to communicate with a client (ex parte motion required)

##### 2. Other Litigation Expenses

Court-appointed counsel are also entitled to other litigation expenses [HRS §802-7]. These include:

##### a. Expert Services<sup>4</sup>

**Prior** to incurring "other litigation expenses," counsel shall submit an ex parte motion and a proposed order for the expense. The motion shall include specific relevant information regarding who is to be retained, the amount of time, hourly rate, mileage, and/or cost of the service per item. The affidavit or declaration shall state why the defendant is unable to pay and

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<sup>4</sup>See Criminal Administrative Order No. 4.1

why the expense is necessary for an adequate defense [HRS §802-7].

The Court has discretion to limit the number of hours, reject the rate, summarily reduce the total amount of costs requested or defer approval until retention is appropriate, i.e., as trial nears.

**b. Interpreter Services<sup>5</sup>**

Aside from interpreter services necessary to communicate with a client (see item III. A. 1. i above), if an interpreter is necessary outside of official court appearances (such as at the deposition of a witness with limited English proficiency), interpreter services are treated as other litigation expenses, and counsel shall follow the ex parte motion procedure outlined above. The Judiciary's Court Interpreter Payment Guidelines shall apply.

**c. Transcripts**

One copy is allowed at the following rates per page [HRS §606-13; Rules Governing Court Reporting in the State of Hawaii#, Rule 19]:

For appeal: \$ 1.75/original; \$ .60/copy;  
For trial: \$ 2.25/original; \$ .90/copy;  
For expedited: \$ 4.70/original; \$ .90/copy;  
For hourly: \$ 6.00/original; \$ .90/copy.

Note: Court appointed attorneys must bill at the government rate because the state pays the cost.

Attorneys substituting into a case should obtain copies of transcripts from the previous attorney.

**d. Witness Fees & Transportation [HRS §621-7]<sup>6</sup>**

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<sup>5</sup>See Criminal Administrative Order No. 3.1.

<sup>6</sup>See Criminal Administrative Order No. 4.1.

### 3. Requests Under Seal

In extraordinary circumstances, counsel may seek to seal a request and/or related order regarding expenses. Counsel shall submit the ex parte motion for sealing with a proposed order attached to the motion for litigation expenses. The affidavit or declaration must indicate the extraordinary circumstances.

### 4. Costs Not Permitted

Costs for parking, rental equipment, messenger or secretarial services, or computer-assisted research are not reimbursable.

### **THE FISCAL OFFICE DOES NOT ADVANCE PAYMENT OF EXPENSES.**

## IV. COMPLETING THE FORMS

### A. Requirements

#### 1. Legibility

ALL REQUESTS SHALL BE TYPED OR LEGIBLY PRINTED. Any abbreviations used should be fully explained.

#### 2. Number of Copies

Submissions shall include an **original** and **two (2) copies** on court-approved standard forms (available at the court's fiscal office) **or** on conforming computer-generated forms.

#### 3. Documents to Include

All requests shall include the REQUEST FOR ATTORNEY'S FEES or REQUEST FOR ATTORNEY'S COSTS, a BILLING RECAP, the appropriate worksheet(s), the FINDINGS AND RECOMMENDATION OF THE PUBLIC DEFENDER AND ORDER APPOINTING COUNSEL, relevant court orders, and relevant bills.

**B. Instructions for Filling Out Forms**

1. **Request for Attorney's Fees/Costs**  
(*see* Attachment "A")
2. **Billing Recap** (*see* Attachment "B")

**This form shall be submitted for all requests.** If there has been any previous billing on the "case" by **any** prior court-appointed counsel, it is the current attorney's responsibility to complete the BILLING RECAP form to reflect all prior submissions. Information may be obtained from the court file.

An accurate BILLING RECAP expedites processing of requests. Requests submitted without a BILLING RECAP will be returned to counsel as incomplete. If there has been no prior request, the BILLING RECAP shall be completed by entering a notation of "not applicable."

3. **Hourly Worksheets**

- a. **Calculating Time** (*see* Attachment "C")

Worksheets shall reflect time to the **tenth of an hour** (.1 = 6 minutes, .5 = 30 minutes, 1.0 = 60 minutes). Counsel shall specifically describe the nature of the legal service rendered and the time spent on each activity. Multiple services on a given date shall be itemized separately according to the worksheet categories. **Do not** group several activities as a single entry or consolidate the time spent, since this delays processing.

- b. **Multiple Representation**

Where present counsel represents a defendant in multiple cases and the work/time spent on each case varies, submit individual requests for each case clearly indicating how time is allotted, particularly where client contact is for more than one case or similar pleadings are filed in each case. However, if the work/time spent on each case is **identical**, requests may be submitted in one of two ways:

**i. Single Request**

One request may be submitted indicating all relevant criminal numbers and including sufficient originals for each file.

**ii. Individual Requests**

Separate requests may be submitted in each case with all services divided evenly among the cases. However, requests divided in this manner must be submitted **simultaneously** for review and approval.

**c. Impermissible Requests and Advances**

**i. Requests for services rendered prior to the effective appointment date.**

**ii. Time spent in transit, serving, filing, notarizing and/or making or obtaining copies of documents.**

**4. Other Expense Worksheet (see Attachment "D")**

The information requested on this worksheet shall be completed for each expense and appropriate bills attached.

**5. Findings and Recommendation of the Public Defender and Order Appointing Counsel**

The Fiscal Office will not process Requests without this document.

**6. Special Court Orders**

A copy of any relevant court order regarding payment of fees in the particular case shall be attached to each copy of the request.

**7. Checklist (see Attachment "E")**

## V. SUBMISSION OF REQUESTS

### A. Where To Submit Requests

Each request shall include the order appointing counsel and shall be submitted to and approved by the judge who presided over the case. If the case was dismissed through the motions court, submit requests there. If the presiding judge is no longer sitting in a criminal division, submit requests to the Administrative Judge. There are two exceptions:

#### 1. Parole Matters

Submit any Requests concerning proceedings before the Hawai`i Paroling Authority directly to:

Hawai`i Paroling Authority  
1177 Alakea Street, Ground Floor  
Honolulu, Hawai`i 96813

#### 2. Criminal Appeals

All requests for appellate fees/costs shall be filed with the appellate clerk in accordance with Rule 39(d) of the Hawai`i Rules of Appellate Procedure.

### B. When To Submit Requests

The order appointing counsel indicates the "effective date" of appointment. The Fiscal Office accepts requests covering 1) **at least a six-month billing period** (180 days) from the date of appointment or previous billing **or** 2) upon a **final disposition of the case**.

A billing is considered "**final**" if it involves the following:

1. **Completion of the Trial**  
(sentencing, acquittal, dismissal)
2. **Termination of Representation**  
(withdrawal or termination of representation)

**3. Post-Conviction**

(revocation of probation, Rule 40, or matters other than parole hearings are final upon entry of an order reflecting final disposition of the matter)

**4. Appeal**

- a. appeals taken from an administrative agency or as a civil appeal requires prior permission to be billable
- b. criminal appeals are filed with the appellate clerk.

**5. Special Appointment**

Billings for appointment to special proceedings (e.g. representation of a witness, extradition) shall be submitted upon completion of rendered services.

**ALL REQUESTS SHOULD BE SUBMITTED NO LATER THAN 60 DAYS AFTER A "FINAL" DISPOSITION, INCLUDING WITHDRAWAL FROM OR TERMINATION OF APPOINTMENT.**

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

FORM CAO:1.1A  
(Page 1 of "Attachment A")

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

STATE OF HAWAI'I

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

**REQUEST FOR ATTORNEY'S FEES**  
(See Crim. Admin. Order No. 1.1 for Instructions)

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. \_\_\_\_\_

FORM CAO:1.1B  
(Page 2 of "Attachment A")

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

STATE OF HAWAI'I

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

**REQUEST FOR ATTORNEY'S COSTS**

(See Crim Admin. Order No. 1.1 for Instructions)

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									

**(Attachment "B")**



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**REQUESTS FOR ATTORNEY'S FEES AND COSTS  
CHECKLIST**

The following checklist is designed to assist court-appointed attorneys in completing billing requests, based on the instructions/information in CRIMINAL ADMINISTRATIVE ORDER NO. 1.1.

- \_\_\_\_\_ TYPED OR WRITTEN LEGIBLY.
  
- \_\_\_\_\_ ONE (1) ORIGINAL and TWO (2) COPIES.
  
- \_\_\_\_\_ ORDER OF APPOINTMENT ATTACHED.
  
- \_\_\_\_\_ BILLING RECAP COMPLETED.
  
- \_\_\_\_\_ TIMING:
  - 1. Six (6) months (180 DAYS) elapsed since appointment or previous billing; OR
  - 2. Final disposition of case, i.e. within 60 days.
  
- \_\_\_\_\_ CRIMINAL APPEAL  
Submit directly to the appellate clerk pursuant to HRAP Rule 39.
  
- \_\_\_\_\_ PAROLE MATTERS  
Submit directly to Hawaii Paroling Authority.
  
- \_\_\_\_\_ COSTS FOR LITIGATION EXPENSES  
Attach order approving expenses and related bills.

**(Attachment "E")**

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**Criminal Administrative Order No. 2.1****RE: QUALIFICATIONS FOR INDIVIDUALS AND/OR ENTITIES ISSUING BAIL BONDS; PROCEDURES REGARDING THE FILING OF BAIL BONDS**

All individuals and/or entities issuing bail bonds to secure the release of any person from confinement shall comply with the following requirements:

**A. Qualifications**

1. Must comply with HRS sections 804-10.5, 804-11 and/or 804-11.5.
2. Must be licensed by the state insurance commissioner and in good standing.
3. Must satisfy the requirements of HRS chapter 431.

**B. Procedures for Filing Bail Bonds**

1. Each and every bail bond shall conform to the "Sample Standard Form for Bail Bonds" attached to this order.
2. Individuals and/or entities issuing bail bonds shall be responsible for ensuring that all information appearing on a bond is correct.
3. Each and every bail bond shall clearly reflect the applicable agency<sup>7</sup> report number(s) and, except as provided in paragraph B6, shall be filed with the Court before it is presented to any agency to obtain the release of any person from confinement.
4. Each and every bail bond shall have attached to it a power of attorney indicating the insurance company that is insuring the bond.
5. Except as provided in paragraph B6, an agency having custody of a person may not accept a bail bond unless it has been file-stamped by the Court.

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<sup>7</sup>"Agency" includes the department of the attorney general, the department of public safety, including all of its correctional facilities and the law enforcement division, and all county police departments.

6. Whenever bail has been set pursuant to HRS section 804-5 and the Court is closed for business, a bail bond that has not been filed with the Court may be accepted by the agency having custody of a person to secure the person's release from confinement; provided that the individual offering the bond:
- (a) is licensed to sell, solicit, and negotiate surety insurance in this state;
  - (b) presents to the agency the individual's insurance producer license, the notice of appointment appointing the individual as an agent of a surety insurer, and personal identification satisfactory to the agency; and
  - (c) certifies in writing under penalty of perjury that all information furnished to the agency is true and correct, and that the individual is, or is authorized to represent an individual or entity that is:
    - (1) authorized to act as a surety insurer pursuant to HRS chapter 431; and
    - (2) in compliance with all applicable provisions of HRS chapters 431 and 804.

An agency accepting a bail bond pursuant to this paragraph B6 shall file the bail bond with the Court no later than 4:00 p.m. on the first business day thereafter.

(Sample Standard Form for Bail Bonds)

# BAIL BOND

(Name of Surety)

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

**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 \_\_\_\_\_ 19 \_\_\_\_.

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

**Criminal Administrative Order No. 3.1****RE: SPOKEN LANGUAGE INTERPRETER SERVICES****Court Proceedings**

Whenever an interpreter is required for any court proceeding (other than for a prosecution witness), the court is responsible for arranging for an interpreter and the Judiciary is responsible for paying the fees of the interpreter. Counsel are responsible for notifying the court that an interpreter is necessary not later than 3 working days prior to the commencement of the proceeding.

**Prosecution**

Where the prosecution requires an interpreter for their witness(es), the prosecution is responsible for arranging for and paying the fees of the interpreter.

**Selection and Rates of Pay for Interpreters**

When the Judiciary provides an interpreter, preference should be given, to the extent possible, to persons on the Judiciary Court Interpreters Master List, and the Court Interpreter Payment Guidelines shall apply.

**Criminal Administrative Order No. 3.2**

**RE: CIVILIAN CLOTHES FOR DEFENDANTS IN CUSTODY FOR JURY TRIAL**

For jury trials, defense counsel shall be responsible for ensuring that civilian clothing is provided for defendants who are in custody.

**Criminal Administrative Order No. 3.3**

**RE: NON-APPEARANCE OF DEFENDANTS**

---

If Defendants fail to appear at evidentiary hearings in which defense is the Movant, the motions will be denied and a bench warrant will issue for the Defendant.

Defense counsel is responsible for informing the Court if a bench warrant is already outstanding for the same case.

---

**Criminal Administrative Order No. 4.1**

---

**RE: EXPERT WITNESS FEES**

---

The court may direct expenses to be paid from available court funds for expert witnesses retained by court-appointed counsel if such services are necessary for an adequate defense. (See, HRS §802-7).

Court-appointed counsel must obtain prior approval for payment from the court (through the Criminal Administrative Judge's office) before retaining expert witnesses.

An ex-parte motion must specify a general reason for the retention, the expert's qualifications, the suggested in-court/out-of-court rates and a maximum "cap" for the expert's services.

Fees for Court-Appointed Mental Examinations

The fee for court-ordered mental examination payable to psychiatrists, psychologists and physicians is \$500.00 plus applicable general excise tax for each defendant examined. State employed psychiatrists and psychologists shall not be paid any fees.

Fees for psychiatrists, psychologists and physicians who have performed a mental examination and who are required to testify:

1. \$40.00 per hour for all work done out-of-court;
2. \$90.00 per hour for the first two hours of court testimony;
3. \$60.00 per hour for court testimony in excess of two hours;
4. No allowances for travel or wait time.

Counsel shall retain experts who agree to charge no more than the above rates. In extraordinary circumstances, the court may consider approval of monies exceeding these rates. The ex-parte motion requesting this must specify the extraordinary circumstances in addition to all of the other information noted above.

Fees for all other experts are subject to approval by the Court. Counsel who incur expenses for any experts without a court order or who incur expenses in excess of the rates and "cap" allowed by a prior court order shall be personally liable for said expenses.

---

**Criminal Administrative Order No. 5.5**

---

**RE: RELEASE OF DEFENDANTS**

---

**I. Release of Acquitted Defendants and Defendants in Cases Dismissed by Nolle Prosequi**

The Court shall immediately release in-court acquitted defendants and defendants in cases dismissed by nolle prosequi who are not being held on any other matter(s).

The holding facility has agreed to conduct daily hold checks of all defendants in custody who are being transported to court. Each defendant in custody who is transported to court will be accompanied by a note and/or memo indicating whether the defendant is being held on matters other than the calendared case.

A court issued document confirming release of the defendant on the calendared case will be provided to the Department of Public Safety.

**II. Other Court Dispositions Authorizing Release of Defendants**

Subject to the defendant being held in custody on other matters:

**A. Judgment of Acquittal**

## 1. Department of Health jurisdiction

In cases where the defendant is not discharged and the Department of Health has acquired jurisdiction, the defendant will be released to the custody of the Director of Health.

## 2. Discharge

The defendant shall be released immediately pursuant to the Release of Acquitted Defendants and Defendants in Cases Dismissed by Nolle Prosequi.

**B. Release When Court Retains Jurisdiction (Supervised Release, Own Recognizance, Probation)**

Orders to include sufficient and reasonable time to return to the holding facility for processing for release.

**C. Time Served Without Court Retaining Jurisdiction**

"Time served" (stand alone jail sentence) includes sufficient and reasonable time to return to the holding facility for processing for release.

**D. Release on Dismissal Pursuant to Pretrial Motion**

In appropriate cases, orders to include sufficient and reasonable time to return to the holding facility for processing for release.

A court issued document authorizing release of the defendant on the calendared case will be provided to the Department of Public Safety.

**Criminal Administrative Order No. 6.1****RE: REQUIRED INFORMATION IN CAPTIONS AND FACE SHEET**

1. The following information shall be included on the face sheet of all pretrial motions (an example is attached as Exhibit A):
  - Trial Week
  - Pretrial Motions Deadline
  - Bail Status (e.g., OCCC, Cash, Bond, SR, ER)
  - Approximate Time = Length of Hearing
  - Hearing Date and Time
2. If the motion requires consideration of any prior order/decision/etc., the motion must identify the prior document by name, date of filing (or oral ruling if not yet reduced to writing) and the presiding judge.
3. The caption title must contain the names of all defendants exactly and in the same order as reflected in the Indictment/Complaint.
4. The hearing date of the motion shall be stated within the caption on the face sheet on any memorandum in opposition and all subsequent pleadings related to the particular motion.

JANE A. COUNSEL, 0000-0  
123 Aloha Street  
Honolulu, Hawaii 96813  
Telephone: (808) 000-0000

Attorney for Defendant  
JOHN DOE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	)	CRIMINAL NO. 00-000
	)	
vs.	)	ASSAULT IN THE SECOND DEGREE
	)	[H.R.S. 701-711(1)(a)]
JOHN DOE,	)	
	)	MOTION TO DISMISS INDICTMENT;
Defendant.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION; DECLARATION OF
)	)	COUNSEL; EXHIBIT A; STATEMENT
	)	OF PROPOSED WITNESSES
	)	AND/OR EXHIBITS; NOTICE OF
	)	MOTION AND CERTIFICATE OF
	)	SERVICE
	)	
	)	Trial Week: June 15, 1997
	)	PTM Deadline: May 15, 1997
	)	Bail Status: OCCC
	)	Approx. Time: 45 minutes
	)	Hearing Date: May 1, 1997
	)	Time: 9:00 a.m.
_____	)	

MOTION TO DISMISS INDICTMENT

EXHIBIT A

**Criminal Administrative Order No. 6.3**

**RE: AGREEMENTS REGARDING MOTIONS TO COMPEL  
AND MOTIONS FOR BILL OF PARTICULARS**

---

1. Prior to filing a Motion to Compel or a Motion for Bill of Particulars, counsel shall confer and attempt in good faith to reach an agreement with respect to any disputed matters.  
  
Be advised that leaving one telephone message is not considered a "conference."
2. The movant shall attach a certification (in the form attached hereto as Exhibit A) before the Notice of Hearing.
3. Any stipulations regarding these matters can be filed either before or after the motions have been filed. These matters may be taken off the docket by informing the Court that an agreement has been reached and that a written stipulation is forthcoming.

CERTIFICATION REGARDING MOTION TO COMPEL  
AND/OR MOTION FOR BILL OF PARTICULARS

[ ]. The undersigned certifies that he/she conferred with \_\_\_\_\_, the attorney for \_\_\_\_\_, on \_\_\_\_\_, 199\_\_\_\_, in an attempt to reach an agreement with respect to the matters set forth in the attached motion.

[ ]. The undersigned certifies that good faith attempts have been made to confer with opposing counsel but have been unable to reach him/her.

DATED: Honolulu, Hawaii, \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Attorney for:

EXHIBIT A

**Criminal Administrative Order No. 6.4**

**RE: MOTIONS TO DISMISS FOR PREINDICTMENT DELAY**

---

Defense counsel shall follow the format of the sample motion attached hereto and complete all of the information requested for Motions to Dismiss for Preindictment Delay.

If all of the essential information is not included, the Motion will be summarily denied without prejudice. If the pretrial motions deadline has run, counsel must seek an extension of that deadline from the Presiding Judge before filing a more adequate motion.



The Defendant's essential contentions are as follows:

I. Date(s) of alleged offense(s):

A. Count: I \_\_\_\_\_

B. Count: II \_\_\_\_\_

II. Date of Indictment: \_\_\_\_\_

III. Length of preindictment delay:

Year(s)      Month(s)      Day(s)

A. Count I      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_

B. Count II      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_

IV. Specific bases for prejudice to the Defendant are:

A. Count I      \_\_\_\_\_

B. Count II      \_\_\_\_\_

This Motion is based upon the records and files herein, the Memorandum, Affidavits and Exhibits attached hereto and the evidence which may be adduced at the hearing on this Motion.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

**Criminal Administrative Order No. 6.5**

**RE: MOTIONS TO DISMISS FOR VIOLATION OF RIGHT TO SPEEDY TRIAL**

Defense counsel shall follow the format of the sample Motion attached hereto and complete all of the information outlined.

If all of the essential information is not included, the Motion will be summarily denied without prejudice. If the pretrial motions deadline has run, counsel must seek an extension of that deadline from the Presiding Judge before filing a more adequate motion.



Defendant, JANE DOE, by and through the undersigned counsel, moves the Court for an order dismissing the charges herein for violation of Defendant's right to a speedy trial.

The Defendant's essential contentions are as follows:

- I. Defendant was accused on: \_\_\_\_\_.
- Defendant was charged/indicted on: \_\_\_\_\_.
- Date of arrest: \_\_\_\_\_.
- Date of re-arrest (if released after initial arrest): \_\_\_\_\_.

- II. First motion to dismiss on speedy trial grounds was filed/heard on:  
\_\_\_\_\_.

- III. Length of delay claimed:

	<u>Year(s)</u>	<u>Month(s)</u>	<u>Day(s)</u>
Count I	_____	_____	_____
Count II	_____	_____	_____

- IV. Specific bases for prejudice to the Defendant are:

NOTE: Prejudice to the Defendant should be specifically stated in light of the interests involved: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and, (3) to limit the possibility that the defense would be impaired.

COUNT I: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

COUNT II: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This Motion is based upon the records and files herein, the Memorandum in Support of Motion, Affidavits and Exhibits attached hereto and the evidence which may be adduced at the hearing on this Motion.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

**Criminal Administrative Order No. 6.6**

**RE: REQUIRED ATTACHMENTS FOR RULE 48 MEMORANDA**

EXHIBIT A = "Statement Regarding Motion to Dismiss Under Rule 48" must be attached to all motions and memoranda in opposition as Exhibit A.

EXHIBIT B = "Statement Claiming Excluded Periods" must be attached as Exhibit B if any excluded periods are claimed.

The relevant sub-section of HRPP Rule 48 must be identified for each excluded period claimed.

## STATEMENT REGARDING MOTION TO DISMISS UNDER RULE 48

DEFENDANT'S CLAIM	STATE'S CLAIM	
		Date of ARREST or FILING OF CHARGE
		Date Rule 48 Motion filed
		Total number of days elapsed to date of Rule 48 filing
-180	-180	Subtract 180 days
=	=	Balance
-	-	Subtract total number of excluded days claimed ( <b>Exhibit B <u>must be</u> attached if any excluded days are claimed</b> )
=	=	Balance

## EXHIBIT A

## STATEMENT CLAIMING EXCLUDED PERIODS

This Statement must include the subsection of HRPP Rule 48 relied upon, the exhibit number of the exhibit attached which supports the exclusion, and a brief description of or reason for the exclusion. Count actual calendar days.

ITEM NO.	DATES	NO. OF DAYS	REQUIRED INFORMATION
	to		Rule 48 ( ) ( ) Exhibit No. B-1 Explanation:  Defendant [ ] agrees [ ] disagrees
	to		Rule 48 ( ) ( ) Exhibit No. B-2 Explanation:  Defendant [ ] agrees [ ] disagrees
	to		Rule 48 ( ) ( ) Exhibit No. B-3 Explanation:  Defendant [ ] agrees [ ] disagrees
	to		Rule 48 ( ) ( ) Exhibit No. B-4 Explanation:  Defendant [ ] agrees [ ] disagrees
	to		Rule 48 ( ) ( ) Exhibit No. B-5 Explanation:  Defendant [ ] agrees [ ] disagrees

## EXHIBIT B

**Criminal Administrative Order No. 6.7**

**RE: MOTIONS TO SUPPRESS STATEMENTS AND EVIDENCE**

1. Defense counsel **shall** state with particularity the specific statements and/or items of evidence which they are seeking to suppress. The first paragraph of any motion to suppress shall contain the specific information in the following form:

[ ] STATEMENT(S)

1. Date:\_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_

Made to:

Statement:

2. Date:\_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_

Made to:

Statement:

[ ] ITEM(S) OF EVIDENCE

1. Date:\_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_

Item(s):

2. Date:\_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_

Item(s):

2. Defense counsel shall attach as exhibits to the motion all transcripts, relevant warning of rights forms, applicable search warrants and supporting affidavits.

**Criminal Administrative Order No. 6.8**

**RE: NOTICE ATTACHED TO SUBPOENA DUCES TECUM**

The attached "Notice" must be attached to all subpoenas duces tecum served on nonparties. The "Notice" is intended to aid nonparties in preparing for and responding to a subpoena duces tecum and to save time for all involved.

NOTICE TO A PERSON OR ENTITY SERVED WITH A  
SUBPOENA DUCES TECUM WHO IS NOT A PARTY TO THIS CASE

The Subpoena attached hereto should specifically set forth the materials sought to be subpoenaed.

Any person and/or entity or their attorney objecting to the Subpoena or to disclosure of any materials subpoenaed shall appear on the date and at the time and place for return indicated on the Subpoena and state their objections. Failure to object on the return date may be considered a waiver of any objections.

The person or entity subpoenaed or their counsel may submit a written statement of objections to the court. If a person or entity objects to disclosure of only part of the material, the pages or sections of material considered confidential and/or nondisclosable shall be tabbed or marked for the court.

Matters presented at the return may be continued from time to time without further notice except as announced at the time of return.

BY ORDER OF THE COURT  
FIRST CIRCUIT COURT

**Criminal Administrative Order No. 8.2**

**RE: ORDER GRANTING MOTION FOR A MENTAL EXAMINATION OF DEFENDANT  
(PRETRIAL)**

---

1. Defense counsel shall prepare an Order Granting Motion for a Mental Examination, Appointing Examiners and Setting Hearing in the form attached hereto as Exhibit A.
2. Information required to complete the Order will be provided to defense counsel on the form attached hereto as Exhibit B (Information Sheet).
3. The time frame provided by the Rules of Court shall apply to these orders once the information has been transmitted to defense counsel.
4. Defense counsel must serve a filed copy of the Order on the Adult Probation Division as soon as possible so they can begin collecting defendant's records.

ATTORNEY CAPTION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	)	CR. NO.
	)	
vs.	)	CHARGE(S)
	)	
	)	
	)	ORDER GRANTING MOTION
	)	FOR A MENTAL EXAMINATION,
	)	APPOINTING EXAMINERS AND
	)	SETTING HEARING
Defendant.	)	(PRETRIAL); CERTIFICATE OF
	)	SERVICE
_____	)	

ORDER GRANTING MOTION FOR A MENTAL EXAMINATION,  
APPOINTING EXAMINERS AND SETTING HEARING (PRETRIAL)

Defendant having moved for a mental examination pursuant to H.R.S. Chapter 704-404, and,

[ ] there being no objection by the State of Hawaii;  
[ ] a hearing having been held on \_\_\_\_\_, at \_\_\_\_\_ .m., before the Honorable \_\_\_\_\_; and, good cause appearing therefore,

**EXHIBIT A**

**IT IS HEREBY ORDERED** that the Motion For A Mental Examination is granted, and

1. The following three qualified persons are appointed to examine and report upon the Defendant's physical and mental condition as set forth herein:

Dr.  
Department of Health  
Courts and Correction Division  
3627 Kilauea Ave., Room 405  
Honolulu, HI 96816  
Telephone: 735-5414

Dr.

Dr.

2. The report of each examiner shall include the following:
- a) a description of the nature of the examination, a list of records reviewed which are not included in the materials collected by the Adult Probation Division, and persons contacted for further information regarding Defendant, if any.
  - b) a diagnosis of the condition of the Defendant at the present time with respect to any physical or mental disease, disorder or defect.

**(Page 2 of EXHIBIT A)**

- c) an opinion as to the extent, if any, to which any physical or mental disease, disorder, or defect impairs his/her capacity to understand the proceedings against him/her, to assist in his/her own defense at the present time, and to consult with his/her attorney with a reasonable degree of rational understanding.
- d) an opinion as to whether the capacity of the defendant to appreciate the wrongfulness of his/her conduct (cognitive capacity) or to conform his/her conduct to the requirements of law (volitional capacity) was substantially impaired by any such physical or mental disease, disorder, or defect at the time of the alleged conduct.
- e) a statement that the diagnosis and opinion rendered were arrived at independently of the other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
- f) if the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

The terms "physical or mental disease, disorder or defect" as used herein, do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

3. Any examiner is permitted to make a separate explanation reasonably serving to clarify his/her diagnosis or opinion.

**(Page 3 of EXHIBIT A)**

4. If in the opinion of an examiner the defendant is not presently fit to proceed or that the defendant was substantially lacking in cognitive capacity, volitional capacity or both capacities at the time of the alleged offense, the examination and the report thereon shall further advise the Court of

- a) the examiner's opinion as to the risk of danger which the defendant currently presents to himself/herself or to the person or property of others as a result of his/her present mental condition; and
- b) if such risk of danger is present, the examiner's opinion as to whether the defendant should be committed to the authority of the Director of Health or should be released (if release is recommended, state the conditions which should be imposed upon release).

5. The examiners shall have access to all existing medical, social, police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies as provided by section 704-404(8) of the Hawaii Revised Statutes, notwithstanding any other statute and Rule 16 of the Hawaii Rules of Penal Procedure. Pursuant to section 704-404(8) of the Hawaii Revised Statutes, the court orders that all existing medical, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, including the Department of Health and the Hawaii State Hospital, be provided to the Adult Probation Division for review by the examiners.

6. The Defendant shall be examined at:
- the Oahu Community Correctional Center (OCCC).
  - the Hawaii State Hospital.
  - the offices of the examiners at such time or times as the examiners may set. Defense counsel shall immediately set appointments with the examiners.

**(Page 4 of EXHIBIT A )**

The Defendant shall NOT set any appointments. Defense counsel shall immediately notify the Court in writing if the Defendant fails to keep appointments.

Other

\_\_\_\_\_  
\_\_\_\_\_

7. The examiners shall submit an **original and three (3) copies** of their report (and any supporting material if appropriate), as well as, an **original and three (3) copies** of their billing to the appointing Court by \_\_\_\_\_.

8. A hearing to determine the Defendant's fitness to proceed (or any other matters related to this Order) is set on:

DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_  
JUDGE: \_\_\_\_\_

Kaahumanu Hale  
777 Punchbowl Street  
Honolulu, Hawaii

Any examiner served with a subpoena requiring his or her presence at the said hearing is required to attend. Otherwise, the examiner's presence is not required.

9. The proceedings against the Defendant herein are suspended from \_\_\_\_\_ until a determination of Defendant's fitness or until further order of the Court.

**(Page 5 of EXHIBIT A)**

10. The trial week of \_\_\_\_\_ is set  
aside. The new trial week is \_\_\_\_\_.

DATED: Honolulu, Hawaii \_\_\_\_\_.

\_\_\_\_\_  
Judge of the above-entitled Court

**(Page 6 of EXHIBIT A)**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by mailing the same, postage prepaid, or by personal service on \_\_\_\_\_:

Office of the Prosecuting Attorney  
City and County of Honolulu  
1164 Bishop Street  
Honolulu, Hawaii 96813

Department of Health  
Mental Health Team  
Courts & Corrections Division  
3627 Kilauea Ave., Rm. 405  
Honolulu, Hawaii 96816

First Circuit Court  
Criminal Administrative Judge  
ATTN: CRIMINAL ASSIGNMENTS CLERK  
P.O. Box 619  
Honolulu, Hawaii 96813

Adult Probation Division  
First Circuit Court  
Kaahumanu Hale, First Floor  
777 Punchbowl Street  
Honolulu, Hawaii 96813

Dr.  
Courts and Corrections Division  
3627 Kilauea Ave., Room 405  
Honolulu, HI 96816

Dr.

Dr.

**(Page 7 of EXHIBIT A)**

[ ] Oahu Community Correctional Center ("OCCC")  
2199 Kamehameha Highway  
Honolulu, Hawaii 96819

OR

[ ] Hawaii State Hospital  
45-719 Keaahala Road  
Kaneohe, Hawaii 96744

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

**(Page 8 of EXHIBIT A)**

**INFORMATION SHEET**  
(for) ORDER GRANTING MOTION  
FOR MENTAL EXAMINATION OF THE DEFENDANT

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

FROM: \_\_\_\_\_, Law Clerk  
for Criminal Motions Division

RE: Cr. No. \_\_\_\_\_ / \_\_\_\_\_ (*defendant*)  
EXAMINATION RE: *Choose From*  
FITNESS AND PENAL RESPONSIBILITY  
CONDITIONAL RELEASE  
FITNESS TO PROCEED  
PENAL RESPONSIBILITY ONLY  
OTHER

---

- Hearing no objections from the State of Hawaii, the Court has granted, WITHOUT HEARING, your \_\_\_\_\_.

Please prepare and submit an Order granting \_\_\_\_\_. Said Order shall include the appropriate authority, the information noted above, Defendant's current address and telephone number, as well as the information and instructions provided below.

OR

- Pursuant to the hearing held on \_\_\_\_, your \_\_\_\_\_ was granted over the objections of the State of Hawaii.

Please prepare and submit an Order granting \_\_\_\_\_. Said Order shall include the appropriate authority, the information noted above, Defendant's current address and telephone number, as well as the information and instructions provided below.

- The appointed examiners are:
 

Dr. _____	Psychiatrist/Psychologist
_____	
_____	
Dr. _____	Psychiatrist/Psychologist
_____	
_____	
Dr. _____	Psychiatrist/Psychologist
_____	
_____	

- Examinations shall be held at \_\_\_\_\_. Immediately report any change in Defendant's bail status to the appointed examiners.
- Submit an original plus 13 copies of proposed Order to our office for review and approval by the Court. If approved, the original and all copies will be returned to you for filing with the Court.

*Choose one or more of the following options:*

- Submit reports and billings by \_\_\_\_\_.
- Hearing on the issue of \_\_\_\_\_ : \_\_\_\_\_ at \_\_\_\_\_.
- Proceedings are suspended: \_\_\_\_\_ through \_\_\_\_\_.
- No hearing is required on the issue of Penal Responsibility only.
- A status conference has been scheduled to follow up on the timely submission of report(s) from Dr(s). \_\_\_\_\_.
- Trial Week is set for: \_\_\_\_\_.
- After filing, please distribute as follows:
  - (1) Opposing Counsel
  - (1) Adult Probation Division
  - (5) Criminal Motions Division
  - (1) Criminal Assignments Clerk
  - (3) Each Examiner - Certified
  - (1) DOH Mental Health Team - Certified  
(Court and Corrections Division)
  - (1) Place of custody - Certified

Check with the doctors to assure that all examiner's reports have been sent to the Court by \_\_\_\_\_.

If you have any questions, please call one of the law clerks in the Criminal Motions Division.

**Criminal Administrative Order No. 8.3****RE: ORDER GRANTING MOTION FOR A MENTAL EXAMINATION OF DEFENDANT  
(POST-ACQUITTAL)**

---

1. Defense counsel shall prepare an Order Granting the Motion for a Mental Examination, Appointing Examiners and Setting Hearing in the form attached hereto as Exhibit A.
2. For First Circuit ONLY, information required to complete the Order will be provided to defense counsel on the form attached hereto as Exhibit B (Information Sheet).
3. The time frames provided by the Rules of Court shall apply to these orders once the information has been transmitted to defense counsel.
4. Defense counsel must serve a copy of the Order on the Adult Probation Division as soon as possible so they can begin collecting defendant's records.

ATTORNEY CAPTION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	)	CR. NO.
	)	
vs.	)	CHARGE(S)
	)	
	)	ORDER GRANTING MOTION
	)	FOR A MENTAL EXAMINATION,
	)	APPOINTING EXAMINERS AND
	)	SETTING HEARING
Defendant.	)	(POST-ACQUITTAL);
	)	CERTIFICATE OF SERVICE
_____	)	

ORDER GRANTING MOTION FOR A MENTAL EXAMINATION,  
APPOINTING EXAMINERS AND SETTING HEARING (POST ACQUITTAL)

Defendant having moved for a mental examination pursuant to H.R.S.

Section 704-414, and,

[ ] there being no objection by the State of Hawaii;

[ ] a hearing having been held on \_\_\_\_\_, at

\_\_\_\_\_ .m., before the Honorable \_\_\_\_\_; and,

The Defendant having applied for

[ ] discharge from the Hawaii State Hospital pursuant to Section 704-

412(2) of the Hawaii Revised Statutes, and ninety (90) days having passed since  
commitment was ordered,

**EXHIBIT A**

[ ] conditional release pursuant to Section 704-412(2) of the Hawaii Revised Statutes, and ninety (90) days having passed since commitment was ordered,

[ ] discharge from the Order Granting Application for Conditional Release filed on \_\_\_\_\_, pursuant to Section 704-413(2) of the Hawaii Revised Statutes,

[ ] modification of the Order Granting Application for Conditional Release filed on \_\_\_\_\_, pursuant to Section 704-413(2) of the Hawaii Revised Statutes, as set forth in Exhibit "A" attached hereto;

**IT IS HEREBY ORDERED** that:

1. The following three qualified persons are appointed to examine and report upon the Defendant's physical and mental condition as set forth herein:

Dr.  
Department of Health  
Courts and Correction Division  
3627 Kilauea Ave., Room 405  
Honolulu, HI 96816  
Telephone: 735-5414

Dr.

Dr.

**(Page 2 of EXHIBIT A)**

2. The report of each examiner shall include the following:
  - a) a description of the nature of the examination, a list of records reviewed which are not included in the materials collected by the Adult Probation Division, and persons contacted for further information regarding Defendant, if any.
  - b) a diagnosis of the condition of the Defendant at the present time with respect to any physical or mental disease, disorder or defect.
  - c) an opinion as to the risk of danger, if any, which the Defendant currently presents to himself/herself or to the person or property of others as a result of such condition, and if there is such a danger, whether the Defendant may still be released on conditions under which he/she can be controlled adequately and given proper care, supervision and treatment or whether the Defendant may be discharged because he/she is no longer affected by a physical or mental disease, disorder or defect, or if so affected, he/she no longer presents a danger to himself or others and is not in need of care, supervision or treatment.
  - d) a statement that the diagnosis and opinion rendered were arrived at independently of the other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.

The terms “physical or mental disease, disorder or defect” as used herein, do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

3. Any examiner is permitted to make a separate explanation reasonably serving to clarify his/her diagnosis or opinion.

**(Page 3 of EXHIBIT A)**

4. The examiners shall have access to all existing medical, social, police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies as provided by section 704-404(8) of the Hawaii Revised Statutes, notwithstanding any other statute and Rule 16 of the Hawaii Rules of Penal Procedure. Pursuant to section 704-404(8) of the Hawaii Revised Statutes, the court orders that all existing medical, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, including the Department of Health and the Hawaii State Hospital, be provided to the Adult Probation Division for review by the examiners.

5. The Defendant shall be examined at:

- the Oahu Community Correctional Center (OCCC).
- the Hawaii State Hospital.
- the offices of the examiners at such time or times as the examiners may set. Defense counsel shall immediately set appointments with the examiners. The Defendant shall **NOT** set any appointments. Defense counsel shall immediately notify the Court in writing if the Defendant fails to keep appointments.

Other \_\_\_\_\_  
\_\_\_\_\_

6. The examiners shall submit an **original and three (3) copies** of their report (and any supporting material if appropriate), as well as, an **original and three (3) copies** of their billing to the appointing Court by \_\_\_\_\_.

**(Page 4 of EXHIBIT A)**

7. A hearing on Defendant's Application for Conditional Release or Discharge (or any other matters related to this Order) is set on:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

JUDGE: \_\_\_\_\_

Kaahumanu Hale  
777 Punchbowl Street  
Honolulu, Hawaii

Any examiner served with a subpoena requiring his or her presence at the said hearing is required to attend. Otherwise, the examiner's presence is not required.

DATED: Honolulu, Hawaii \_\_\_\_\_.

\_\_\_\_\_  
Judge of the above-entitled Court

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by mailing the same, postage prepaid, or by personal service on \_\_\_\_\_:

Office of the Prosecuting Attorney  
City and County of Honolulu  
1164 Bishop Street  
Honolulu, Hawaii 96813

Department of Health  
Mental Health Team  
Courts & Corrections Division  
3627 Kilauea Ave., Rm. 405  
Honolulu, Hawaii 96816

First Circuit Court  
Criminal Administrative Judge  
ATTN: CRIMINAL ASSIGNMENTS CLERK  
P.O. Box 619  
Honolulu, Hawaii 96813

Adult Probation Division  
First Circuit Court  
Kaahumanu Hale, First Floor  
777 Punchbowl Street  
Honolulu, Hawaii 96813

Dr.  
Courts and Corrections Division  
3627 Kilauea Ave., Room 405  
Honolulu, HI 96816

Dr.

Dr.

**(Page 6 of EXHIBIT A)**

[ ] Oahu Community Correctional Center ("OCCC")  
2199 Kamehameha Highway  
Honolulu, Hawaii 96819

OR

[ ] Hawaii State Hospital  
45-719 Keaahala Road  
Kaneohe, Hawaii 96744

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

**(Page 7 of EXHIBIT A)**

**Criminal Administrative Order No. 8.4****RE: CONDITIONAL RELEASE OF DEFENDANTS (PRE- AND POST-ACQUITTAL)  
----SUPERVISION BY ADULT PROBATION DIVISION**

The following procedure shall be followed for all applications for conditional release pursuant to Chapter 704 in order to effectuate Adult Probation Division's (APD) supervisory responsibility over both pre- and post-acquittal defendants under Section 704-416.5.

1. If the Court grants the application for conditional release or desires further information before the final decision is made, the court will set a hearing date no less than 6 weeks thereafter for the purpose of making a final decision or setting final terms of conditional release.
2. During this period while APD prepares its report, the Court may commit Defendant to or continue Defendant in the custody of the Director of Health or grant temporary conditional release.
3. The Defendant shall be immediately referred to the APD for preparation of the report and for supervision (if temporary conditional release was granted).
4. Copies of APD's final report shall be distributed to the court, prosecution, defense counsel and the Director of Health.
5. The standard general terms and conditions, as shown in Attachment A, shall be used in both temporary and permanent orders for conditional release.
6. The court may also order other appropriate terms and conditions such as those found in Attachment B.

**STANDARD TERMS AND CONDITIONS FOR CONDITIONAL RELEASE**

1. You are placed under the supervision of a probation officer of this court and are to report as directed to your probation officer.
2. You shall continue to receive psychological or psychiatric treatment and care until your discharge from conditional release.
3. You shall follow the treatment plan and take all prescribed medications according to the instructions of your treating mental health professional.

Any mental health professional treating you shall promptly notify your probation officer if you are not complying with your treatment plan or you need hospitalization.

4. You must submit quarterly reports to your probation officer from your mental health treating professional regarding your progress.
5. Your probation officer shall have the right to ask your mental health treating professional about your progress at any time.
6. Your probation officer may order you temporarily hospitalized for 72 hours for any violation of the terms and conditions of your conditional release.
7. You must notify your probation officer of any change in your address prior to changing your address.
8. You cannot leave Oahu without first obtaining permission from your probation officer.
9. You shall follow all reasonable instructions and directions given to you by your probation officer.
10. If your whereabouts become unknown to your probation officer, the court may order your arrest. If you do not comply with any terms or conditions of your conditional release, your conditional release can be revoked and you can be arrested or hospitalized.
11. You cannot own or possess any firearm or ammunition or any dangerous instrument as defined by law.

**ATTACHMENT A**

**SPECIAL TERMS AND CONDITIONS FOR CONDITIONAL RELEASE**

- \_\_\_\_\_. You shall obtain professional mental health and case management services from \_\_\_\_\_ or from the community mental health center nearest your current residence.
- \_\_\_\_\_. You shall reside at \_\_\_\_\_ or in a residence deemed appropriate and approved by your treating mental health professional and your probation officer.
- \_\_\_\_\_. You shall participate in educational/vocational/employment training and/or related activities as deemed appropriate and approved by your treating mental health professional.
- \_\_\_\_\_. You shall not possess or consume alcohol and/or illegal drugs and substances and/or prescription medicines not prescribed to you.
- \_\_\_\_\_. You shall submit to drug and/or alcohol testing at your own expense as directed by your probation officer. A positive finding and/or failure to provide a specimen within two hours of instruction may be considered prima facie evidence of a violation of your conditional release order.
- \_\_\_\_\_. You shall obtain and maintain outpatient and/or residential drug/alcohol treatment at \_\_\_\_\_ or as directed by your probation officer, including medication and/or tests (including blood tests) if ordered, until clinically discharged with the concurrence of your probation officer.
- \_\_\_\_\_. You shall attend \_\_\_\_\_ Alcoholics Anonymous/Narcotics Anonymous meetings a week and submit verification slips for attendance to your probation officer.
- \_\_\_\_\_. You are to be under curfew and/or travel restrictions as directed by your probation officer.
- \_\_\_\_\_. You shall submit at reasonable times to a search of your person, residence, vehicle, or other sites and property under your control by any probation officer, with or without a warrant, based on reasonable suspicion that illicit substance(s) or other contraband (which may include firearms and/or ammunition; and/or inappropriate materials as clinically defined by your therapist), may be in the place(s) of a search. Any illicit substance(s) or contraband found or observed in such a search may be seized.

**ATTACHMENT B**

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**CIRCUIT COURT ADMINISTRATIVE ORDERS**

Volume II

**CRIMINAL ADMINISTRATIVE ORDERS**

Part E

**FIRST CIRCUIT COURT  
CRIMINAL ADMINISTRATIVE ORDERS**

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Part E     **FIRST CIRCUIT COURT CRIMINAL ADMINSTRATIVE ORDERS**

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**Criminal Administrative Order No. 2.2****RE: MOTIONS RELATING TO SUPERVISED RELEASE, BAIL AND/OR OWN  
RECOGNIZANCE (BAIL MOTIONS)**

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1. The movant filing a bail motion shall state whether any bail motion had been previously filed or presented on behalf of the accused and the outcome of the said motion(s).
2. Movants submitting a bail motion for hearing will seek all appropriate requests for relief in one motion and assert them as an alternative.  
(Example: "Motion for Supervised Release and/or Reduction of Bail.")
3. All bail motions shall be submitted to the Criminal Administrative Division for a hearing date. If, however, the case is already set before a trial court for purpose of plea, trial, post-trial matters, sentencing, or probation revocation proceedings, or assigned to a judge who is on an individual calendar, then such bail motions shall be submitted to the respective trial court.
4. The movant shall serve a file-marked copy of the bail motion upon the **Intake Service Center (ISC)** in order to initiate their reporting process.
5. Unless the Court directs otherwise, the ISC shall prepare and file a Pretrial Bail Report within two weeks from receipt of the motion and forward a filed copy to the Court no later than 48 hours prior to the hearing date. The ISC does NOT need to prepare more than one report relating to an accused unless the Court directs otherwise.

If the Court does not receive the Report before the hearing due to Defendant's delayed service of the motion on ISC, the Court may deny the motion without a hearing and without prejudice.

6. No later than 48 hours after the Court's ORAL ruling, the prevailing party shall submit an appropriate order (see below) conforming with the Court's ruling for signature. The signature of the non-prevailing party approving as to form is not needed unless requested by that party or ordered by the Court. A filed copy of the order shall be served upon ISC and the non-prevailing party.
7. The Court may dispose of motions for reconsideration relating to a bail motion without a hearing.

8. If the Motion is granted, the form (attached hereto) ORDER SETTING ASIDE BAIL AND ESTABLISHING TERMS AND CONDITIONS OF RELEASE will be the standard format used.
- A. Counsel may prepare the Order in advance of the hearing. If no additions or corrections are required, the Court will sign the order after the hearing.
  - B. Itemized charges with corresponding Agency report number(s) are REQUIRED in the caption. Missing or incorrect numbers may cause delays in defendant's release because agencies use these numbers for their record keeping.
  - C. Counsel is responsible for conforming all copies, filing and distribution of the Order.
  - D. Distribution of the file-stamped copy of the Order shall include the Department of the Prosecuting Attorney, Intake Service Center (ISC) and OCCC.
  - E. Using the attached form without modifications will greatly assist the court staff as they attempt to expedite processing these orders. Number all special conditions with letters, "A", "B", etc.

Prosecuting Attorney  
Defense Counsel  
Defendant  
OCCC  
Intake Service Center

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAI'I**

STATE OF HAWAI'I	)	CR. NO. _____
	)	
vs.	)	<u>CHARGES:</u>
	)	CTS I & II: THEFT IN THE FIRST
	)	DEGREE (Agency No. _____ &
	)	Agency No. _____)
	)	CT III: ASSAULT IN THE THIRD
	)	DEGREE (Agency No. _____)
	)	
	)	ORDER SETTING ASIDE BAIL
	)	AND ESTABLISHING TERMS AND
	)	CONDITIONS OF RELEASE;
Defendant.	)	EXHIBIT A
	)	
	)	JUDGE:
	)	HEARING DATE:
_____	)	TIME:

**ORDER SETTING ASIDE BAIL AND  
ESTABLISHING TERMS AND CONDITIONS OF RELEASE**

Good cause appearing therefore,

It is hereby ordered that bail in the above-entitled matter of \$ \_\_\_\_\_

is hereby set aside and the Defendant is released:

- |  |                             |
|--|-----------------------------|
| _____ On Supervised Release to Sponsor               | _____ On Supervised Release |
| _____ On Supervised Release to Program               | _____ On Own Recognizance   |
| _____ On Supervised Release to Intake Service Center |                             |

It is further ordered that you will, during your release, comply with the following terms and conditions:

- 1. Follow all of the "Standard Terms and Conditions of Supervised Release/Bail Reduction " attached to this order as Exhibit A and incorporated herein by reference.
- 2. Follow all of the "**Special Conditions**" indicated below:  
*(All conditions ordered must be indicated by alphabet)*

\_\_\_\_. Upon your release, you must reside with:  
\_\_\_\_\_

at \_\_\_\_\_  
telephone [\_\_\_\_\_]\_\_\_\_\_. Any intended change of address and the reasons therefore must be reported immediately to your attorney and to the Intake Service Center (telephone #:[808] #848-2544).

\_\_\_\_. You are required to obtain a local residence within \_\_\_\_\_ days and to immediately report the address and telephone number to the Intake Service Center and your attorney.

\_\_\_\_. You must seek and maintain mental health treatment, at your own expense, until clinically discharged, at the discretion of the Intake Service Center.

\_\_\_\_. You are prohibited from being at or in the vicinity of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_. You are required to abide by the following daily curfew hours: \_\_\_\_\_  
\_\_\_\_\_

unless otherwise authorized by the Intake Service Center. Curfew may be subject to electronic monitoring as deemed appropriate by the Intake Service Center.

\_\_\_\_. You are required to surrender your passport to the Intake Service Center before your release.

\_\_\_\_. Other conditions:

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Your failure to comply with any of the foregoing Terms and Conditions of Release or with any additional conditions as deemed necessary by the Intake Service Center could result in the Court revoking your release and issuing a Bench Warrant for your arrest.

Dated at Honolulu, Hawai`i: \_\_\_\_\_

\_\_\_\_\_  
Judge of the above-entitled Court

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**STANDARD TERMS AND CONDITIONS OF  
SUPERVISED RELEASE/BAIL REDUCTION**

1. You shall not commit a federal, state or local offense during the period of release.
2. You must appear at all court hearings and at your trial.
3. You must keep in contact with your attorney at all times so that you are aware of the dates and times of your court appearances.
4. You must not leave the island of Oahu without first obtaining the approval of the Court.
5. You must report to the Intake Service Center as directed.
6. You shall not contact, approach or communicate with any witness or any possible witness, except that no such order should be deemed to prohibit any lawful and ethical activity of your lawyer.
7. You shall not consume and/or possess any alcoholic beverages and/or illicit drugs or substances and you are required, at your own expense, to submit to drug/alcohol testing at the discretion of the Intake Service Center.
8. You must seek and maintain substance abuse treatment, at your own expense, until clinically discharged, at the discretion of the Intake Service Center.
9. You must seek and maintain gainful employment and/or be attending an educational/vocational institution during the pendency of your case (get a job or go to school), unless otherwise authorized by the Court or by the Intake Service Center.
10. You must sign a Waiver of Extradition in accordance with HRS section 832-25.
11. You are prohibited from possessing any dangerous weapons, firearms or ammunition.

**EXHIBIT A**

**Criminal Administrative Order No. 5.1****RE: PRACTICE AND PROCEDURES FOR FELONY JURY TRIAL CASES****I. ARRAIGNMENT AND PLEA (A&P):**

- A. Felony cases via preliminary hearing are given a Circuit Court A&P hearing date by the District Court Judge/Staff at preliminary hearing.
- B. Felony cases via Grand Jury Indictment are set for A&P upon execution of the Grand Jury bench warrant. A&P hearing date is set by:
  - 1. Honolulu Police Department (HPD) if bail is posted while in HPD custody;
  - 2. Circuit Court (Criminal Assignments Office) via issuance of an Order Pertaining to Bail reflecting bail status and A&P setting if defendant in custody of the Department of Public Safety (DPS).

**C. ARRAIGNMENT & PLEA HEARING:**

- 1. Defendant is required to be present to enter plea.
- 2. ASSIGNMENT OF JUDGE:
  - a. **PRETRIAL JUDGE:** A trial division judge on the master calendar system is assigned:
    - L to preside over pretrial conference;
    - L to assist with COP discussions;
    - L may be assigned to preside over matters involving defendant's bail/release status.
  - b. **TRIAL JUDGE:** A trial division judge on the individual trial calendar system is assigned:
    - L to preside over ALL matters and proceedings from time of A&P through case disposition.

3. ASSIGNMENT OF “TRIAL WEEK”:

- a. Assigned week that case is set to commence trial (See, Section V, “Trial Call”).

4. ASSIGNMENT OF “PRETRIAL MOTIONS DEADLINE”:

- a. Deadline to file any substantive pretrial motions;

D. DEFENDANT’S RELEASE STATUS:

1. The Court does not entertain motions for bail reduction, supervised release, release on own recognizance, etc. for setting/hearing on the A&P calendar.

II. PRE-TRIAL MOTIONS (MASTER CALENDAR SYSTEM):

- A. All **substantive and/or evidentiary** pre-trial motions shall be submitted to the **Criminal Motions Judge** for setting. Substantive motions include, but are not limited to, motions to/for: discovery; dismiss; suppress; mental examination; conditional release; bill of particulars; return on subpoenas (duces tecum); extradition hearings, etc.
- B. All **procedural and/or non-evidentiary** pre-trial motions shall be submitted to the **Criminal Administrative Judge** for setting. Procedural motions include, but are not limited to, motions to/for: continue trial; advance trial; firm trial; extend pre-trial motions deadline; consolidate; sever (counts/charges/defendants); amend complaint; withdraw as counsel; commit defendant without bail; leave jurisdiction; revocation of release status (supervised release; own recognizance, bail, etc.), etc.

The **Criminal Administrative Judge** also handles ex parte motions for: litigation expenses; temporary release on own recognizance or supervised release (pending hearing on motion); writs of habeas corpus (ad prosequendum, etc.); remands; etc.

**III. MOTIONS TO CONTINUE TRIAL (MASTER CALENDAR SYSTEM):**

- A. The Criminal Administrative Judge hears ALL motions to continue trial up through the week preceding “trial call”.
- B. CO-DEFENDANT CASES: Counsel are responsible for providing notice of motion to all parties in the case, i.e., if one defendant files a motion/continue, notice of motion must be given to all co-defendants.
- C. If a motion to continue trial is submitted for setting just prior to “trial call”, motions are to be submitted to the “trial call” judge for setting on the same date/time of “trial call”.
  - 1. NOTE: Ex parte motions to shorten time for hearing are to be submitted, if applicable.
- D. All motions to continue trial which are made orally or in writing after the “trial call” must be heard by the Criminal Administrative Judge.
- E. If counsel are scheduled to commence trial during the same week in more than one case and no plea agreement has been reached, then it is incumbent upon counsel to file a motion to continue, with defendant ready to waive speedy trial/Rule 48.
- F. DEFENSE MOTIONS TO CONTINUE: Defendant must have executed a written waiver of speedy trial and Rule 48 or defendant must be present at the hearing.
  - 1. Waiver should specify that the defendant waives speedy trial and Rule 48 for the period from the filing date of the motion until trial starts (or until the new trial date plus a reasonable time thereafter to accommodate the resetting of trial) (See, HRPP Rule 48(c)(3) and (d)(1).

**IV. CHANGE OF PLEA (COP) (MASTER CALENDAR SYSTEM):  
(STD FORM No.000122)**

- A. COP hearings may be set before the assigned criminal pre-trial judge, motions judge, administrative judge or trial judge.

1. Counsel and Defendants are required to be present.
2. COP hearing should be set no later than the “trial call” date.
3. Counsel is responsible for having appropriate standard forms prepared in advance and for having any appropriate written motions prepared and filed in advance of the COP hearing date (i.e., motion for DAG/DANCP).
4. Sentencing date will be set based on recommended timetable established by the Adult Probation Division and the Judge’s schedule.

V: **TRIAL CALL (MASTER CALENDAR SYSTEM):**

- A. Criminal trial division judges will conduct “Trial Call” hearings during the week preceding trial week, on a date/time selected by each trial division. **Counsel and Defendants are required to be present for trial call, unless otherwise informed by the presiding judge.** Changes of plea, continuances and waivers of speedy trial/Rule 48 will occur when necessary or appropriate, prior to or at trial call.
- B. Cases with pending substantive motions are not exempt from trial call. After establishing the case status on record, the trial call judge may consider, determine and *sua sponte* set new trial week if applicable.
- C. Cases with pending procedural motions are not exempt from trial call. After establishing the case status on record, the trial call judge shall defer the case to Criminal Administrative Judge for disposition on procedural motion. Case will not be categorized as a “trial ready” case until disposition of procedural motion.
- D. Cases identified as “trial ready” will be placed on a 5-day “standby”, commencing:
  1. Monday of the assigned trial week; or,
  2. A specific day within the assigned trial week when counsel represent they will be available to commence trial, i.e., if counsel is “in trial” in another case estimated to end on Tuesday of the assigned trial week, standby will commence on Tuesday through Tuesday of the following week.

**"Standby" requires counsel and all defendants to be ready to commence trial within one (1) hour notice in any trial division and counsel is required to contact Master Calendar daily by 10:00 a.m.**

- E. Cases with assigned "Firm Trial Week" setting will be assigned out for trial call to establish case status on the record. Firm trial week cases shall be ready to proceed to trial on **any** day of the firm trial week.
- F. Criminal trial divisions will report disposition of "trial call" hearings (trial ready cases, continuances, "copped" cases, etc.) to Master Calendar, at their earliest opportunity, but no later than 11:00 a.m. on the Friday preceding trial week.
- G. Master Calendar will inform criminal trial divisions of ready trial cases assigned as priority<sup>1</sup> and back-up cases for the designated trial week, at their earliest opportunity, but no later than 2:00 p.m. on the Friday preceding trial week. The priority and back-up cases for each criminal trial division may change due to priority determination/activity upon completion of all trial call hearings. Upon receiving case assignments, each criminal trial division shall inform respective counsel of "trial ready" cases relating to their respective division.

VI. **JURY WAIVED TRIAL (MASTER CALENDAR SYSTEM):**  
(STD FORM NO. 000109)

- A. Upon hearing on defendant's waiver of jury trial before the Court, defendant shall execute a written Waiver of Trial By Jury via standard form prior to commencement of jury waived trial.

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<sup>1</sup>"Priority" means case is first in line. "Firm Set" means case will definitely commence trial during the "firm set" trial week and can only be secured through the Criminal Administrative Judge.

<b>STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT</b>	<input type="checkbox"/> <b>GUILTY PLEA</b> <input type="checkbox"/> <b>NO CONTEST PLEA</b> <input type="checkbox"/> <b>MOTION TO DEFER</b>	CASE NUMBER:
STATE OF HAWAI'I vs. (Defendant)		
Date of Birth:	Defendant's Age:	Education (Last Grade Completed):
CHARGE(S)/HRS:	MAXIMUM IMPRISONMENT/FINE:	REPORT NUMBER(S):
Extended Term of Imprisonment:		
Mandatory Minimum Term of Imprisonment:		
1. My mind is clear. I have not taken any medication, alcohol, or illegal drugs within the last 48 hours. I am not sick. I speak, read, write, and understand the English language or this document has been read to me or has been interpreted for me.		
2. I have received a written copy of the original charge(s) in this case. The charge(s) has/have been explained to me. I understand the original charge(s) against me. I told my lawyer all of the facts I know about the case. My lawyer explained the government's evidence against me, my possible defense(s), and the facts which the government must prove in order to convict me.		
3. I understand the reduced charge(s) with which the government has agreed to charge me, instead of the original charge(s). (Applicable only if original charge has been reduced.)		
4. I plead of my own free will. No one is pressuring me or threatening me or any other person to force me to plead. I am not taking the blame or pleading to protect another person from prosecution.		
5. I know I have the right to plead not guilty and have a speedy and public trial by jury or by the court. I know in a trial the government is required to prove my guilt beyond a reasonable doubt. I know I can see, hear, and question witnesses who testify against me, and that I may call my own witnesses to testify for me at trial. I understand I have the right to take the stand to testify and I have the right not to testify at trial. I know by pleading I give up the right to file any pre-trial motions, and I give up the right to a trial and may be found guilty and sentenced without a trial of any kind. I also give up the right to appeal anything that has happened in this case to date.		
6. I understand that the court may impose any of the following penalties for the offense(s) to which I now plead: the maximum term of imprisonment, any extended term of imprisonment, and any mandatory minimum term of imprisonment specified above; consecutive terms of imprisonment (if more than one charge); restitution; a fine; a fee and/or assessment; community service; probation with up to one year of imprisonment and other terms and conditions.		
<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Defense Counsel <input type="checkbox"/> Adult Probation Division		

<b>GUILTY/NO CONTEST PLEA (Continued)</b>	<b>CASE NUMBER:</b>	
<p>7.     <input type="checkbox"/>     I plead no contest because, after discussing all the evidence and receiving advice on the law from my lawyer, I do not want to contest the charge(s) against me.</p> <p>          <input type="checkbox"/>     I plead guilty because, after discussing all the evidence and receiving advice on the law from my lawyer, I believe that I am guilty. (Give a brief statement of the facts that establish the defendant's guilt as to each offense to which the defendant is entering a plea pursuant to the requirements of HRS §§ 701-114, 701-115, 702-205, and 702-206, as amended.)</p> <p>          <input type="checkbox"/>     I move to defer acceptance of my plea. I understand that if the Court denies my motion, the Court will then find and adjudge me guilty upon this plea, and impose sentence.</p> <p>8.     I have not been promised any kind of deal or favor or leniency by anyone for my plea, except that I have been told that the government has agreed as follows (if none, write "None"):</p> <p>          <input type="checkbox"/>     I know that the court is not required to follow any deal or agreement between the Government and me. I know that the court has not promised me leniency.</p> <p>          <input type="checkbox"/>     The court has agreed to follow the plea agreement pursuant to Rule 11, Hawai'i Rules of Penal Procedure.</p> <p>9.     I further state that (if none, write "None"):</p> <p>10.    I know that, if I am not a citizen of the United States, a conviction or a plea of guilty or no contest, whether acceptance of my plea is deferred or not, may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.</p> <p>11.    I am signing this Guilty/No Contest Plea form after I have gone over all of it with my lawyer. I know I will not be permitted to withdraw my plea. I am signing this form in the presence of my lawyer. I have no complaints about my lawyer and I am satisfied with what he/she has done for me.</p>		
<b>DATE</b>	<b>DEFENDANT'S SIGNATURE</b>	
<b>CERTIFICATE OF COUNSEL</b>		
<p>I certify that I have read and explained fully this Guilty/No Contest Plea document to the defendant and believe he/she understands this document in its entirety. The statements contained in this document conform with my understanding of the defendant's position. I believe the defendant's plea is made voluntarily and with an intelligent understanding of the nature of the charge(s) and possible consequences. The defendant signed this Guilty/No Contest Plea form in my presence.</p>		
<b>DATE</b>	<b>ATTORNEY FOR DEFENDANT</b>	<b>SIGNATURE</b>
<p>I acknowledge that the Judge questioned me personally in open court to make sure that I knew what I was doing in pleading guilty or no contest and understood this form before I signed it.</p>		
<b>DATE</b>	<b>SIGNATURE OF DEFENDANT</b> (signed in open court after questioning)	
<b>NAME OF JUDGE</b>		

<b>STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT</b>	<b>SEX OFFENDER ADDENDUM</b>	CASE NUMBER:
STATE OF HAWAI'I vs. (Defendant)		
<ol style="list-style-type: none"> <li>1. I understand that following the entry of my plea to the offenses set forth above, I am required to provide two blood samples to the appropriate authorities and I further understand that upon conviction, the law requires me to register as a sex offender with the attorney general and county chief of police for the rest of my life.</li>   <li>2. My lawyer has also informed me that I must provide:                     <ol style="list-style-type: none"> <li>a. A recent photograph;</li> <li>b. Verified fingerprints;</li> <li>c. My name(s), alias(es), date of birth, Social Security Number, sex, race, height, weight, and hair and eye color;</li> <li>d. My current legal address and telephone number(s);</li> <li>e. Other legal addresses and telephone numbers where I am staying for a period of time more than ten (10) days (if different from my current legal address and telephone numbers);</li> <li>f. My future addresses and telephone numbers where I am planning to reside (if different from my current legal address and telephone numbers);</li> <li>g. My employer's or employers' name(s), dates of employment, and current locations;</li> <li>h. Vehicle registration information for vehicles I own or operate; and</li> <li>i. My signature on a summary of the criminal offenses 1) against victims who were minors and 2) sexually violent offenses, of which I have been convicted.</li> </ol> </li>   <li>3. I understand that within three (3) working days of placement on probation, release from prison or confinement, release on furlough, parole, or arrival in a county where I plan to stay for more than ten (10) days, I must register in person with the county chief of police.</li>   <li>4. I understand that if I change my legal address I must inform the attorney general within three (3) working days. If the new address is in another state, I must register with the attorney general and county chief of police in that state within ten (10) days.</li>   <li>5. My lawyer has explained that if I do not register as required, or do not inform the attorney general of any change in my address, I may be subject to criminal charges.</li> </ol>		
DATE	DEFENDANT'S SIGNATURE	

[Form: Waiver of Indictment; Waiver of Trial by Jury]

[Defendant's Grand Jury Rights]  
[Back of Form: Waiver of Indictment; Waiver of Trial by Jury]

**Criminal Administrative Order No. 5.2****RE: PRACTICE AND PROCEDURES FOR MISDEMEANOR AND DUI/TRAFFIC  
JURY DEMAND/FELONY TRIAL CASES****I. ARRAIGNMENT AND PLEA (A&P):**

- A. Jury demand misdemeanor/dui/traffic cases from an initial appearance hearing at District Court are set for A&P via:
1. Hearing date issued by District Court at point of demand for jury trial.
- B. DUI/Traffic Felony cases via preliminary hearing are given a Circuit Court A&P hearing date by the District Court Judge/Staff at the preliminary hearing.
- C. DUI/Traffic Felony cases via Grand Jury Indictment are set for A&P upon execution of the Grand Jury bench warrant via.
1. Honolulu Police Department (HPD) if bail is posted while in HPD custody; or,
  2. Order Pertaining to Bail issued by Circuit Court (Criminal Assignments) reflecting bail status and A&P setting if defendant in custody of Department of Public Safety (DPS).
- D. ARRAIGNMENT & PLEA HEARING:
1. MISDEMEANOR/DUI/TRAFFIC JURY DEMAND CASES:
    - a. Defendant is required to be present to enter plea.
    - b. ASSIGNMENT OF JUDGE:
      - 1) PRETRIAL JUDGE: A criminal trial division judge on the Master Calendar System is assigned.
    - c. ASSIGNMENT OF “TRIAL WEEK”:
      - 1) Assigned week that case is set to commence trial (See, Section III, “Trial Call”).

d. ASSIGNMENT OF “TRIAL CALL” DATE:

- 1) Designated day of week preceding assigned “Trial Week”, set at discretion of presiding judge of the misdemeanor or DUI/Traffic calendar.

2. DUI/TRAFFIC FELONY CASES:

- a. Defendant is required to be present to enter plea.

b. ASSIGNMENT OF JUDGE:

1. PRETRIAL JUDGE: A criminal trial division judge on the Master Calendar System is assigned;

- ☞ to preside over pretrial conference;
- ☞ to assist with COP discussions;
- ☞ may be assigned to preside over matters involving defendant’s bail/release status;

c. ASSIGNMENT OF “TRIAL WEEK”:

1. Assigned week that case is set to commence trial (See, Section III, “Trial Call”).

d. ASSIGNMENT OF “PRETRIAL MOTIONS DEADLINE”:

1. Deadline to file any substantive pretrial motions.

e. ASSIGNMENT OF “TRIAL CALL DATE”:

1. Designated day of week preceding assigned Trial Week, set at discretion of presiding judge of the misdemeanor or DUI/Traffic calendar.

**II. PRETRIAL MOTIONS:**

- A. All pretrial motions (substantive and procedural) are to be referred/submitted/set before and heard by the appropriate presiding JUDGE.
1. Motions to continue trial week: If granted, case will be assigned a new trial week based on availability on the respective trial court as determined by the JUDGE with trial call set on the designated day preceding new assigned trial week.

**III. TRIAL CALL:****A. TRIAL READY CASES:**

1. Cases will be identified as “trial ready” and placed on a 5-day “standby”<sup>1</sup>, commencing:
  - a. Monday of assigned trial week; or,
  - b. Specific day within assigned trial week when counsel represent they will be available to commence trial, i.e., if counsel is “in trial” in another case estimated to end on Tuesday of assigned trial week, standby will commence on Tuesday through Tuesday of following week.
2. All trial ready misdemeanor/DUI/traffic jury demand and DUI/traffic felony cases will also be assigned new trial week and trial call dates (based on availability on the respective trial court as determined by the JUDGE) in the event that the case does not go to trial during the assigned trial week/standby period.
3. All trial ready misdemeanor/DUI/traffic jury demand and DUI/traffic felony cases shall be identified to Master Calendar at the earliest opportunity, but no later than 11:00 a.m., the Friday preceding assigned trial week.

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<sup>1</sup>STANDBY: Counsel and all defendants must be ready to commence trial within an hours (1 hour) notice. Counsel whose cases are on “Standby” shall contact Master Calendar daily.

4. Misdemeanor/DUI/traffic jury demand and DUI/traffic felony cases will be priority ranked together with trial ready felony cases by Master Calendar.
5. Master Calendar will inform divisions of assigned “priority”<sup>2</sup> and “back-up” cases at the earliest opportunity, but no later than 2:00 p.m. the Friday preceding assigned trial week for trial commencing Monday.

V. **MOTION FOR REMAND TO DISTRICT COURT:**

1. Court will conduct a waiver of jury trial hearing at A&P or trial call upon oral or written motion for remand.
2. Counsel must have advised defendants that an inquiry will be made regarding the waiver of jury trial.
3. If the defendant is not present at A&P or trial call, a signed waiver of jury trial must accompany the order of remand.
4. ORDER OF REMAND (SEE ATTACHED EXAMPLES “A” and “B”):
  - a. Defense counsel shall prepare and submit the Order Of Remand for the court’s approval.
  - b. The Order of Remand shall include a space for the date, time and courtroom, which the clerk of the Circuit Court will provide for the parties to appear in the District Court.
  - c. The Order of Remand shall indicate whether the matter is remanded for change of plea or for trial.
  - d. The Order of Remand will be forwarded to the Legal Documents Branch for filing by the Circuit Court Division after approval by the Judge. The Order of Remand will not be returned to counsel for filing.

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<sup>2</sup>PRIORITY: Means case is first in line. “Firm Set” means case will definitely commence trial during the “firm set” trial week and can only be secured through the Criminal Administrative Judge.

- e. The Legal Documents Branch will file the Order of Remand and retain the original order and two copies. All extra copies will be returned to counsel for service.
- f. Counsel will be responsible for providing enough copies of the Order of Remand for Legal Documents and appropriate parties. It will not be the responsibility of the Legal Documents Branch or the Administrative Division to make extra copies for service.

**VI. CHANGE OF PLEA:**

- A. Defendant's change of plea will not be accepted on a misdemeanor case at the First Circuit Court unless the defendant is:
  1. already pending trial or sentencing before the First Circuit Court; or,
  2. on probation at the Circuit Court level and the misdemeanor case is to be consolidated with the felony case(s).
- B. Although not a standard practice, the presiding First Circuit Court Judge has the discretion to accept a defendant's change of plea pursuant to a HRPP Rule 11 agreement. If applicable, defendants will be remanded to District Court for supervision, monitoring and for all further proceedings via the issuance of a "Post-Judgment Order of Remand To the District Court (SEE EXAMPLE "C") based on the following guidelines:
  1. Post-Judgment Orders of Remand shall include the HRS section codes for each charge of which Defendant has pled.
  2. Remands shall be to the Honolulu District Court, regardless of the district of offense.
  3. Defendant shall be ordered to appear in the District Court of the First Circuit at 1111 Alakea Street for execution of Judgment (Initial hearing) on a date as ordered by the Sentencing Court, in the following appropriate courtrooms:
    - a. Courtroom 7C: Misdemeanor cases;
    - b. Courtroom 4B : DUI/Traffic cases;

Appearance date for execution of Judgment at District Court may be set for any weekday, Monday through Friday, at 8:30 a.m. with an allowance of at least 3 weeks for remand process;

3. At conclusion of initial hearing, Defendant will be ordered to immediately report to the Counseling and Probation Division of the District Court of the First Circuit.
4. Case will then be transferred for “Proof of Compliance” to the appropriate District.

ATTORNEY CAPTION

Please provide an original + 6 copies

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII

vs.

Defendant.

CR. NO. \_\_\_\_\_

COUNT I: THEFT IN THE THIRD DEGREE (§708-832, H.R.S.)

COUNT II: CRIMINAL PROPERTY DAMAGE IN THE THIRD DEGREE (§708-822, H.R.S.)

HONORABLE \_\_\_\_\_

ORDER OF REMAND

ORDER OF REMAND

Defendant, \_\_\_\_\_, having voluntarily waived and relinquished his/her right to trial by jury in open court on \_\_\_\_\_, and having elected to be tried in the District Court of the First Circuit, \_\_\_\_\_ Division.

IT IS HEREBY ORDERED that the above-captioned cases be remanded to the District Court of the First Circuit, \_\_\_\_\_ Division for [trial] [change of plea] on \_\_\_\_\_ at the hour of \_\_\_\_\_, in courtroom \_\_\_\_\_. Hawaii Rules of Penal Procedure Rule 48 and speedy trial rights are tolled from the date of waiver of jury trial to the date of the remanded hearing to allow for processing time by the Court. Any bail posted in the above-captioned cases is to be transferred to the District Court with the case-in-chief.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

HONORABLE \_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

EXAMPLE "A"





**Criminal Administrative Order No. 5.3**

**RE: PRACTICE AND PROCEDURES FOR FELONY JURY TRIAL CASES ASSIGNED TO FELONY TRIAL DIVISIONS ON THE INDIVIDUAL CALENDAR SYSTEM**

- I. **ALL PROVISIONS SET FORTH IN SECTION I OF Criminal Administrative Order No. 5.1, RE: PRACTICE AND PROCEDURES FOR FELONY JURY TRIAL CASES APPLY.**
- II. **AFTER ARRAIGNMENT AND PLEA:**
- A. Cases shall remain with the assigned trial judge from A&P through disposition of all charges.
  - B. ALL motions (pre- and post-trial; substantive and procedural) are to be submitted to and heard by the presiding judge of the assigned “individual” calendar division; EXCEPT, motions for litigation expenses shall be submitted to and be heard/disposed by the Criminal Administrative Judge.
- III. **PRACTICE AND PROCEDURES:**
- A. Standard practice and procedures may vary, therefore, counsel are required to follow procedures and guidelines applicable to each respective individual calendar division(s).

**Criminal Administrative Order No. 5.4****RE: PRACTICE AND PROCEDURES FOR FAMILY COURT FELONY JURY TRIAL  
CASES****I. ARRAIGNMENT AND PLEA (A&P):**

- A. Family Court Felony cases via preliminary hearing are set for A&P before the SENIOR FAMILY COURT JUDGE upon:
1. Oral or written request to the SENIOR FAMILY COURT JUDGE by either State or Defense Counsel.
- B. Family Court Felony cases via Grand Jury Indictment are set for A&P before the CRIMINAL ADMINISTRATIVE JUDGE upon execution of the Grand Jury bench warrant via:
1. Honolulu Police Department (HPD) if bail is posted while in HPD custody;
  2. Order Pertaining to Bail issued by SENIOR FAMILY COURT JUDGE'S division reflecting bail status and A&P setting if defendant in custody of Department of Public Safety (DPS).
- C. ARRAIGNMENT & PLEA HEARING:
1. Refer to Criminal Administrative Order No. 5.1, Re: Practice and Procedures For Felony Jury Trial Cases, Section I, Procedures C & D apply in their entirety;
- D. PRE-TRIAL MOTIONS:
1. All substantive and procedural motions are to be submitted to and heard by the CRIMINAL MOTIONS JUDGE, except if case is assigned to a trial judge on the individual trial calendar system;
    - a. MOTIONS TO CONTINUE TRIAL: Procedures identified in Criminal Administrative Order No. 5.1 Section III: Motions to Continue Trial (Master Calendar System), Items B thru F applies;

- E. CASES SHALL PROCEED FOLLOWING PRACTICE AND PROCEDURES OUTLINED IN:
1. Criminal Administrative Order No. 5.1, RE: PRACTICE AND PROCEDURES FOR FELONY JURY TRIAL CASES, SECTIONS IV; V and VI; or,
  2. Criminal Administrative Order No. 5.3, RE: PRACTICE AND PROCEDURES FOR FELONY JURY TRIAL CASES ASSIGNED TO FELONY TRIAL DIVISIONS ON THE INDIVIDUAL CALENDAR SYSTEM.

**Criminal Administrative Order No. 6.2****RE: FILING AND SERVICE OF MOTIONS, MEMORANDA, SUBPOENAS**

1. Filing deadlines (e.g., pretrial motions deadlines) are satisfied only by **actual filing** of the document with the Legal Documents Branch. Documents that are time stamped and received or just dropped off with the Motions Division will no longer be "filed".
2. Defense counsel must clearly identify their own client. In cases involving multiple defendants, the attorney identification in the upper left corner of the face sheet must indicate which co-defendant they represent.
3. Applicable sanctions include, but are not limited to, denial without hearing, monetary sanction of counsel, and disallowance of court appointment fees.

**MOTIONS:**

4. Hearing dates are obtained by leaving the motion (original with copies) at the office of the Motions Division. Upon assignment of a hearing date, the original and all copies will be returned to counsel via Court Jacket. Counsel will conform all copies and file said motion by the first business day following assignment of a hearing date. A filed copy shall be delivered to the Motions Division that same day or left in the Criminal Motions Division's Court Jacket on the 1st floor.

Motions shall be served by the end of the first business day following the "FILED" stamped date of the motion.

**MEMORANDA:**

5. A filed copy of the memorandum in opposition shall be delivered to the Motions Division immediately following filing.

**SUBPOENA DUCES TECUM (SDT):**

6. Counsel shall complete all pertinent information on the SDT-leaving the date and time blank - and submit one copy to the Motions Division. Counsel will be informed of the return date and time via telephone by the Court's Staff.

A copy of the completed SDT must be delivered to the opposing counsel and the Court as soon as possible. If the Motions Division does not receive a copy of the SDT, the Division will not know to docket the return date. If opposing counsel is not served, they will likewise not be informed. In either case, the Court may not allow the matter to be heard.

**Criminal Administrative Order No. 7.1****RE: CONFERENCES AND HEARING DATES FOR PETITIONS FOR FORFEITURE**

1. All Petitions for Forfeiture shall have attached a "Notice of Conferences and Hearing" which shall be submitted to the court in place of a Notice of Hearing (example attached as Exhibit A).
2. This Notice will schedule a "status conference" and a "prehearing conference" prior to the hearing on the Petition for Forfeiture to enable the Court to determine whether the parties are able to reach an agreement. The Court may require the presence of "interested parties" at these conferences.
3. After all respective hearing dates have been assigned by the Motions Division, the Petition and Notice will be returned to the Office of the Prosecuting Attorney for filing and distribution.



If there is no agreement, a prehearing conference is set before the Honorable \_\_\_\_\_, Judge of the above-entitled court, in the courtroom of said Judge at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii, on \_\_\_\_\_, 19\_\_, at the hour of \_\_\_\_\_ o'clock, \_\_.m. The Respondent's presence is required unless excused by the Court.

If all Parties further fail to reach an agreement, the State's Petition for Forfeiture shall come for hearing before the Honorable \_\_\_\_\_, Judge of the above-entitled court, in the courtroom of said Judge at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii, on \_\_\_\_\_, 19\_\_, at the hour of \_\_\_\_\_ o'clock, \_\_.m., of said day, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, \_\_\_\_\_, 19\_\_.

STATE OF HAWAII  
Petitioner

By PETER B. CARLISLE  
Prosecuting Attorney

By \_\_\_\_\_  
Deputy Prosecuting Attorney  
City and County of Honolulu

**Criminal Administrative Order No. 8.1****RE: MOTION FOR MENTAL EXAMINATION OF DEFENDANT, PRETRIAL AND  
POST-ACQUITTAL**

1. Defense counsel shall forward any Motion for mental examination to the Office of the Prosecuting Attorney prior to submitting the Motion to court.
2. The deputy prosecuting attorney (DPA) shall promptly complete and sign the Certification regarding motion attached hereto as Exhibit A and return it to defense counsel.
3. Upon receipt of the completed Certification, defense counsel shall insert the Certification before the Notice Of Motion and deliver the Motion to the Motions Division.
4. In most cases, if there are no objections, the motion will be granted without hearing. However, the Court may set a hearing date even if no objections are stated if the Motion fails to state cogent reasons for the examination or if related issues require that a hearing be held.
5. If the Certification reflects an objection by the State, a hearing shall be set.
6. The motion may be submitted directly to the court for a hearing date if Defense Counsel or Defendant certifies that an emergency or exceptional circumstance exists.

CERTIFICATION REGARDING MOTION FOR MENTAL EXAMINATION

\_\_\_\_\_ The State does not object to the attached Motion.

\_\_\_\_\_ The State objects to the attached Motion and requests a hearing.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_ A hearing date for the attached Motion is requested without prior submission to the Office of the Prosecuting Attorney because of an emergency and/or exceptional circumstances, to wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant

**EXHIBIT A**

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**CIRCUIT COURT ADMINISTRATIVE ORDERS**

Volume II

**CRIMINAL ADMINISTRATIVE ORDERS**

Part F

**SECOND, THIRD AND FIFTH CIRCUIT COURT  
CRIMINAL ADMINISTRATIVE ORDERS**

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Part F **SECOND, THIRD AND FIFTH CIRCUIT COURT  
CRIMINAL ADMINISTRATIVE ORDERS**

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*This Part F is reserved for future use. As of 1998, all Criminal Administrative Orders applicable to the Second, Third, and Fifth Circuits apply statewide and are included in Part D.*