

§612-16 Grand jury. (a) The court shall order one or more grand juries to be impaneled at such times as the public interest requires; provided that there shall be an annual initial impaneling not later than January 15.

(b) For the impaneling of a grand jury, the prospective jurors on a certified list of grand jurors shall be summoned and the names of those who are present, and not disqualified, exempted, or excused, shall be placed in an appropriate container from which a drawing by lot shall be conducted in order to draw a sufficient number of names to constitute a grand jury. A sufficient number of additional names on a certified list, as determined by the court, shall be drawn so that alternate grand jurors may be designated to serve as grand jurors in case of any vacancy occurring on a grand jury. The drawing shall be made in open court in the presence of the judge, no earlier than one week after a publication of notice of the time and place of drawing in a newspaper of general circulation published within the circuit for which the grand jury is drawn; provided that if there is no such newspaper, then after at least one week's posting of such notice in at least three conspicuous places in the circuit.

(c) A certificate listing the names of the grand jurors and alternate grand jurors, and stating the essential facts of the drawing, signed by the judge and attested by the clerk, shall be filed.

(d) The grand jury, being impaneled and sworn, shall be charged by the court. The alternate grand jurors shall also be sworn and charged by the court, but shall not be impaneled. In charging the grand jurors and alternate grand jurors, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the grand jurors and alternate grand jurors from time to time, as it may deem necessary.

(e) Effective January 2, 1992, for the courts of the first circuit of the State of Hawaii, and effective January 2, 1993, for the courts of all other circuits of the State, a grand jury shall serve for a period of one year after being impaneled, unless sooner discharged by the court; provided that a grand jury may sit beyond the one-year period to complete any matter for which the grand jury was impaneled. [L 1973, c 191, pt of §1; am L 1987, c 366, §9; am L 2007, c 122, §11]

Cross References

Indictment by grand jury is required in infamous cases, except in land or naval forces, or militia in actual service in time of war or public danger: U.S. Const., 5th Am.; Const. Art. I, §10. See also §806-7.

Grand jury counsel, see §§612-51 to 612-60.

Rules of Court

Grand jury to consist of sixteen members, see HRPP rule 6(a). A sufficient number to be summoned, see HRPP rule 6(a).

Oath of grand jurors, see HRPP rule 6(h).

Foreman of grand jury, see HRPP rule 6(c).

Secrecy of proceedings, who may be present, see HRPP rule 6(d), (e).

Case Notes

Under its supervisory powers over grand jury proceedings, court may disqualify an attorney from attending the grand jury where justice requires it. 57 H. 289, 554 P.2d 1131.

Member of prosecution serving as agent of grand jury held unconstitutional. 57 H. 574, 560 P.2d 1309.

Prosecutor is not required to present to grand jury evidence which tends to negate guilt of accused unless clearly exculpatory. 60 H. 241, 589 P.2d 517.

Prosecutorial misconduct before grand jury must be extreme and clearly infringe upon jury's decision making function in order to serve as basis for quashing indictment. 62 H. 209, 614 P.2d 373.

Presentation of evidence -- prosecutor's duty; hearsay evidence. 62 H. 518, 616 P.2d 1383.

Secrecy of proceedings and disclosure. 62 H. 613, 617 P.2d 1222.

Exclusion of deputy public defender from the courtroom while impaneling the grand jury violated section. 70 H. 443, 774 P.2d 242.

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Grand jury not incompetent through omission to apportion list of persons from different precincts. 29 H. 7. When record is silent as to manner of drawing grand jury supreme court will presume that it was regularly and properly drawn. 13 H. 413. Party who neglects to claim right of challenge to grand jury, before they retire, waives it, although party may be imprisoned at time. 13 H. 413; 15 H. 139; 22 H. 618. In absence of any showing to contrary, presumption is that grand jurors who found indictment were good and lawful persons and that not less than twelve concurred in finding. 15 H. 612; 19 H. 496; 20 H. 240; 21 H. 66; 22 H. 116. A person accused of an offense has no right to appear before or to have witnesses heard in person's behalf by the grand jury. 15 H. 612.

When only twelve grand jurors appear, others of the twenty-three having been excused or not served, court may direct drawing of five additional names from appropriate jury box to fill panel. 20 H. 240. Advantage cannot be taken of an irregularity in the drawing of

trial jurors unless it clearly appears that the party objecting was injured. 19 H. 496, 497, criticized on other grounds. 33 H. 167, 172.

Objections, manner drawing and impaneling grand jury. 13 H. 413. Motion to quash indictment, defendant warned before testifying to grand jury. 24 H. 621. Right to challenge before grand jury retires. 13 H. 413; 15 H. 139; 22 H. 618. Assistance of counsel at impaneling of grand jury. 15 H. 139. Where twenty-three grand jurors had been summoned, jurors not served, excused, etc., only twelve appearing, court may draw additional names to fill panel, invalid. 20 H. 240. Objection to irregularities of drawing grand jurors. 22 H. 618.

Sheriff may not testify as to facts occurring in the session of the grand jury. 17 H. 126, 131. Prior to statute, oath of secrecy could not be required of a witness before a grand jury by one of the judges of circuit court of the first circuit. 17 H. 341.

Evidence presented to grand jury must be recorded. 51 H. 589, 465 P.2d 459.

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PART II. GRAND JURY COUNSEL AND PROCEEDINGS**Revision Note**

Part heading added by revisor.

§612-51 Grand jury counsel; appointment and removal. The chief justice of the state supreme court shall appoint one or more grand jury counsel for the four judicial circuits of the State, without regard to chapters 76 and 89. Right to removal shall rest with the chief justice. [L 1980, c 209, §2; am L 2002, c 148, §45]

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§612-52 Grand jury counsel; qualifications. The grand jury counsel shall be licensed to practice law before the supreme court of the State, and shall not be a public employee. [L 1980, c 209, §3]

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§612-53 Grand jury counsel; length of term; extension of term; limitation on reappointment. (a) Grand jury counsel shall serve for a term of one year following appointment.

(b) The term of a grand jury counsel may be extended when the matters for which the counsel was called to service cannot be completed before the end of the counsel's term. The extension shall be authorized by the chief justice where completion of such matters would be substantially extended or hindered by the assignment of another counsel.

(c) In no case shall grand jury counsel be reappointed to serve consecutive terms.

(d) The term of the grand jury counsel whenever practicable shall be such that it will not be coterminous with the term of the grand jury. [L 1980, c 209, §4]

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§612-54 Grand jury counsel; call to duty. Grand jury counsel shall be subject to call by the appointing authority during the counsel's term of office. Such a call for service shall include an estimate of the number of hours or days, or other reasonable approximation of the time that the grand jury shall desire counsel's services. No later than twenty-four hours after a call to service, the grand jury counsel shall notify the appointing authority whether or not the call for service is accepted. [L 1980, c 209, §5]

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§612-55 Grand jury counsel; compensation. The grand jury counsel shall be compensated on a daily basis at the same rate as per diem judges of the district court. [L 1980, c 209, §6]

Cross References

Per diem district court judges, see §604-2.

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§612-56 Grand jury counsel; disqualification. (a) Grand jury counsel shall disqualify oneself in any matter in which circumstances render substantial question upon the counsel's impartiality or which would jeopardize public confidence in the grand jury.

(b) The prosecutor may petition the court for disqualification of the grand jury counsel for cause. Upon a hearing, the court shall issue an appropriate order permitting or denying such petition. [L 1980, c 209, §7; gen ch 1985]

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§612-57 Grand jury counsel; duties. The grand jury counsel shall serve, upon request of the grand jury, as independent legal counsel to the grand jury, to be at the call of the grand jury during its proceedings in obtaining appropriate advice on matters of law after the grand jury has been sworn and charged by the court under section 612-16(d) and during the court's absence. The grand jury counsel may be present during grand jury proceedings, and if not present in the building shall be in the immediate vicinity to the building in which the grand jury meets, so that counsel will be readily available to the grand jury, but shall not participate in the questioning of the witnesses or the prosecution. The grand jury counsel's function shall be only to receive inquiries on matters of law sought by the grand jury, conduct legal research, and provide appropriate answers of law. [L 1980, c 209, §8; am L 1982, c 101, §2]

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§612-58 Grand jury proceedings. (a) Each grand jury proceeding conducted under the authority of the State shall be provided with access to grand jury counsel.

(b) The deliberation and the voting of the grand jury shall be private; provided that the grand jury may interrupt its deliberation or voting in order to call in the grand jury counsel for the purpose of making specific inquiries of counsel or may transmit written inquiries to counsel from the privacy of its deliberation or voting, but all such inquiries shall be restricted to matters of law.

(c) All inquiries made by the grand jury of the grand jury counsel and all exchanges between them shall be recorded verbatim and made part of the record of the grand jury proceedings. [L 1980, c 209, §9; am L 1982, c 101, §3]

Case Notes

At outset of each session, grand jury counsel must note presence on record and give instructions on procedures to summon for consultation; grand jury counsel need not be physically present throughout proceeding. 64 H. 197, 638 P.2d 309.

Given that appellant was indicted prior to enactment of this part, indictment was not defective for absence of grand jury counsel. 64 H. 363, 641 P.2d 320.

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§612-59 Dismissal of indictment. Any indictment which is based upon a grand jury proceeding in which a violation of section 612-56, 612-57, or 612-58 has occurred may be subject to dismissal without prejudice by an appropriate state court in the exercise of its discretion. Motion for such dismissal may be made by either party or the court. [L 1980, c 209, §10]

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§612-60 Grand jury counsel; court review. If the court finds that the grand jury counsel has provided the grand jury erroneous counsel or has acted improperly, the court may require that the grand jury be given the corrected advice or shall be advised as to improper action, and shall then continue the case. [L 1982, c 101, §4]

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§612-26 Use of electronic or other means for drawing grand and trial juries. Selections of citizens who are subject to jury duty and drawings of jury lists, may be made by electronic data processing or any other method to ensure random selection of jurors and implement the purposes of this chapter. [L 1973, c 191, pt of §1; am L 1993, c 159, §6; am L 2007, c 122, §17]

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HAWAI'I RULES OF PENAL PROCEDURE

Adopted and Promulgated by
the Supreme Court
of the State of Hawai'i

Effective January 1, 1977
With Amendments as Noted

*Comments and commentary are provided by the rules committee
for interpretive assistance. The comments and commentary express
the view of the committee and are not binding on the courts.*

The Judiciary
State of Hawai'i

HAWAI'I RULES OF PENAL PROCEDURE

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- (c) For motions; affidavits or declarations
- (d) Additional time after service by mail

Rule 46. BAIL; BOND

- (a) Bail
- (b) Bond

Rule 47. MOTIONS, AFFIDAVIT OR DECLARATION, AND RESPONSES

- (a) Form
- (b) Required notice of no opposition
- (c) Filings in opposition
- (d) Declaration in lieu of affidavit

Rule 48. DISMISSAL

- (a) By prosecutor
- (b) By court
- (c) Excluded periods
- (d) Per se excludable and includable periods of time for purposes of subsection (c)(1) of this rule

Rule 49. SERVICE OF PAPERS ON PARTIES AND PROOF THEREOF; NOTICE OF ENTRY OF ORDERS AND JUDGMENTS; FILING OF PAPERS

- (a) Service: When required
- (b) Service: How made
 - (1) Service of complaint, indictment, bench warrant, summons, or subpoena
 - (2) Service of other papers
 - (3) Delivery and facsimile transmission: how made
 - (4) Service: when completed
- (c) Proof of service
- (d) Relief upon failure to receive due notice
- (e) Notice of entry of orders and judgments
- (f) Filing

Rule 50. CALENDARS**Rule 50.1. PREPARATION OF CLERK'S MINUTES AND EXHIBIT LISTS; WITHDRAWAL OF EXHIBITS**

- (a) Minutes
- (b) Exhibits
 - (1) Circuit court
 - (2) District court

Rule 51. EXCEPTIONS UNNECESSARY**Rule 52. HARMLESS ERROR AND PLAIN ERROR**

- (a) Harmless error
- (b) Plain error

Rule 53. REGULATION OF CONDUCT IN COURTROOM

- (a) Required notice
- (b) Effect of failure to appear or prepare

Rule 54. APPLICATION AND EXCEPTIONS

- (a) Courts
- (b) Proceedings
- (c) Application of terms
- (d) Conflict

Rule 55. RECORDING OF TESTIMONY AND PROCEEDINGS**Rule 56. COURTS AND CLERKS****Rule 57. WITHDRAWAL OF COUNSEL****Rule 58. RESERVED****Rule 59. EFFECTIVE DATE****Rule 60. TITLE****Form A** Petition for Post-Conviction Relief (Rule 40, HRPP)
Petition to Vacate, Set Aside, or Correct Judgment
or to Release Petitioner From Custody**Form B** Request to Proceed Without Paying Filing Fees**Form C** Waiver of Physical Presence; Submission of Plea**Form D** Waiver of Physical Presence; Submission of Plea;
Pro Se Defendant**Form E** Waiver of Physical Presence; Submission of Plea;

Pro Se Defendant; Attachment "A"**Form F Request for Attorney's Fees
Request for Attorney's Costs****Form G Billing Recap****Form H Hourly Worksheet****Form I Other Expense Worksheet****Form J Bail/Bond Receipt, Acknowledgment, and Notice to Appear****HAWAII RULES OF
PENAL PROCEDURE****I. SCOPE, PURPOSE AND CONSTRUCTION****Rule 1. SCOPE.**

These rules shall govern the procedure in the courts of the State in all penal proceedings, with the exceptions stated in Rule 54.

Rule 2. PURPOSE AND CONSTRUCTION.

These rules are intended to provide for the just determination of every penal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 2.1. CLASSIFICATION OF PROCEEDINGS.

All criminal proceedings shall be divided into the following classes: Traffic, Criminal Traffic, Criminal, Family Criminal, Special Proceeding, and Special Proceeding - Prisoner. Proceedings in mandamus, habeas corpus, quo warranto, prohibition, and any other proceedings not specifically included herein shall be classified under Special Proceeding.
(Added February 4, 2000, effective July 1, 2000.)

Rule 2.2. FORM OF PLEADINGS AND MOTIONS.

(a) **General.** All pleadings and papers to be filed shall be in substantially the form annexed to these rules and described in particular in this rule.

(b) General requirements.**(1) QUALITY AND SIZE OF PAPER, AND STYLE OF TYPE.**

- (i) Papers to be filed shall be typed or printed in black and shall be neat, clean, and legible.
- (ii) The paper shall be unruled, opaque, unglazed and white of standard quality, 8 1/2 x 11 inches in size, and not less than thirteen pound weight.
- (iii) The type shall be standard 12 point pica or equivalent.

(2) MARGINS.

- (i) Each page shall have a margin at the top and bottom of 1 inch.
- (ii) The left-hand and right-hand side margin shall be not less than 1 inch.
- (3) **SPACING.** Lines on each page shall be double-spaced or one and one-half spaced; provided that descriptions of real property and quotations may be single spaced.

(4) TWO-SIDED COPIES. Copies, but not originals, may be two-sided.**(5) PAGINATION.** All pages to a paper, except the first page, shall be numbered consecutively at the bottom and shall be firmly bound together at the top.**(6) SIGNATURE.** Signatures and all other handwritten entries on papers shall be in legible black or blue ink. The name of the signator shall be typed or printed under the signature.**(7) EXHIBITS.** Exhibits may be fastened to pages of the specified size. Copies of exhibits shall be as legible as the original.**(c) No flyleaf shall be attached.** No flyleaf shall be attached to any paper.**(d) Form of first page of a paper.** Except as provided in paragraph (f), the first page of each paper shall be in the following form:

- (1) The space at the top left of the center of the page shall contain the name, attorney number, office address, telephone number, and facsimile number (if any) of the attorney for the party in whose behalf the paper is filed, or of the party if appearing pro se;
- (2) The space at the top right of the center of the page shall be left blank for the use of the clerk of the court;
- (3) The caption shall conform to the following:
 - (i) The name of the court shall be centered and not less than 3 inches from the top of the page;
 - (ii) The space to the left of the center of the page shall contain the case name;
 - (iii) In the space to the right of the case name, there shall be listed: the case number, the title of paper(s) attached (if any), and the hearing date, time, and name of the presiding judge.
 - (iv) In the center of the page below the caption, there shall be a title stating the character of the paper.
 - (v) Notice that certification or acknowledgment of service is attached may be entered at the bottom margin.

(e) Contents of first paragraph. When the purpose of the motion is to request the court to issue an order, the first paragraph of the motion shall contain a concise statement of the relief sought. When applicable, the first paragraph shall include a reference to any prior order, judgment or decision implicated by the relief sought.

(f) Two or more papers or documents filed together. When two or more papers or documents are filed together (such as a motion and its supporting documents), the documents following the first document need not begin on a new page and need not comply with the first page requirements of paragraph (d), except that the title of the ensuing document(s) must be centered on the page before the first paragraph of that document.

(g) Signing of pleadings and other papers. Every pleading and other paper shall be signed by the party or the party's counsel. Where two or more papers or documents are filed together, the party or party's counsel need only provide one signature at the close of the papers filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other papers, the affidavits or declarations must be separately executed.

(h) Forms furnished by the court. The court shall furnish forms approved by the supreme court, and those forms shall be used in all appropriate instances, unless otherwise permitted by the court.

Approved forms may be reproduced through photocopiers, computers, or other means. A reproduced form shall be similar in design and content to the approved form. Any person filing a form that is not identical in content to an approved form shall advise the court of the differences by attaching a short explanatory addendum to the document. The court may impose sanctions upon the filing person for failure to comply with this rule. The approved forms or any reproduction thereof permitted by this rule shall not be subject to the format requirements of this rule.

(Added February 4, 2000, effective July 1, 2000.)

II. INITIATION OF THE CASE**Rule 3. APPLICATION FOR ARREST WARRANT.**

(a) In General. An application for the issuance of a warrant of arrest may be in the form of affidavit(s), an information supported by declaration(s) or affidavit(s), or a complaint supported by affidavit(s). It shall contain a written statement of the essential facts constituting the offense being alleged. No warrant of arrest shall issue unless it appears from the application that there is probable cause to believe that an offense has been committed and that the defendant has committed it. More than one warrant may issue on the same application. The issuance and execution of warrants shall be as provided in Rule 9.

(b) Application by Information. An application for the issuance of a warrant of arrest in the form of an information supported by declaration(s) or affidavit(s) shall be presented to a