

THE SUPREME COURT OF HAWAI'I SEEKS PUBLIC COMMENT ON THE FINAL REPORT OF THE TASK FORCE ON CIVIL JUSTICE IMPROVEMENTS

The Supreme Court of Hawai'i is seeking public comment on recommendations contained in the Final Report of the Task Force on Civil Justice Improvements, chaired by Chief Judge Craig H. Nakamura (ret.).

Comments must be submitted in writing **no later than Monday, December 2, 2019**, to the Judiciary Communications & Community Relations Office, by mail to 417 S. King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary's website](#).

For your convenience, the Judiciary has created a web page with links to key sections of the report, including red-lined versions of the proposed rule changes.

Here is the link to the web page:

<https://www.courts.state.hi.us/final-report-of-the-task-force-on-civil-justice-improvement>

FINAL REPORT OF THE TASK FORCE ON CIVIL JUSTICE IMPROVEMENTS

**Submitted to the Chief Justice of the
Supreme Court of the State of Hawai‘i on
July 24, 2019**

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I. EXECUTIVE SUMMARY

It is the mission of the Hawai‘i Judiciary, as an independent branch of government, "to administer justice in an impartial, efficient and accessible manner in accordance with the law." In furtherance of this mission, the Judiciary has continually sought ways to improve the administration of justice and to meet the needs of the public. On June 18, 2018, Chief Justice Mark E. Recktenwald established the Task Force on Civil Justice Improvements (Task Force) as part of the Judiciary's ongoing efforts to enhance, update, and improve our civil justice system.^{1/}

A. *National Reform Studies*

The court system has long been recognized as the best and most reliable forum for resolving civil disputes in a fair, impartial, and transparent manner. National surveys, however, reflect serious concerns that resolving disputes through the court system costs too much and takes too long. Unconstrained and disproportionate discovery is often identified as a major cause of this problem. Excessive costs and delay, in turn, deny access to justice, not only by discouraging people from bringing disputes to court, but by making it too expensive to resolve disputes brought to court on the merits.

^{1/} The Chief Justice's Order establishing the Task Force and his Order of extension are attached as Appendix 1.

In 2007, the American College of Trial Lawyers (ACTL) and the Institute for the Advancement of the American Legal System (IAALS) embarked on a two-year joint project to evaluate the condition of the civil justice system in the United States. Their report, published in 2009,^{2/} concluded that: (1) the civil justice system, while not broken, is in serious need of repair; (2) in many jurisdictions, cases are not filed, or are not resolved on the merits, due to litigation costs and delay; (3) the existing rules structure does not promote efficiency in discovery or in identifying contested issues; and (4) early and active case management by judges is a key factor in containing costs. See 2009 ACTL/IAALS Report at 2.

At the state level, the Conference of Chief Justices ("CCJ") formed the Civil Justice Improvements Committee (Committee) to develop guidelines and best practices for civil justice reform to meet the needs of litigants in the 21st century. In formulating its recommendations, the CCJ Committee studied the current landscape of civil litigation by analyzing approximately one million cases that were resolved in 2012-2013 in state courts across the nation. The CCJ Committee's report, published in

^{2/} The American College of Trial Lawyers Task Force on Discovery and The Institute for the Advancement of the American Legal System, Final Report (March 2009), referred to herein as the "2009 ACTL/IAALS Report."

2016,^{3/} confirmed the criticism that the civil justice system takes too long and costs too much. See 2016 CCJ Committee Report at 10. It observed that the one-size-fits-all approach is not working and advocated "right-sizing" the litigation process to match the needs of a case. See id. at 12, 18. The CCJ Committee issued a "Call to Action" to state courts for civil justice reform and provided cogent recommendations for reducing costs and delay.

B. The Purpose and Work of the Task Force

In establishing the Task Force, Chief Justice Recktenwald directed that we consider the recommendations of the national studies and the reform efforts undertaken in other jurisdictions. The purpose of the Task Force is "to develop recommendations, including rule amendments, on ways to reduce the costs of and delays in civil litigation, and to streamline the litigation process, in Hawaii's circuit courts."

The Task Force is comprised of eight current and retired judges and nineteen lawyers with a broad range of civil litigation experience and expertise. The Task Force includes circuit judges from each circuit; lawyers who reside and practice in each circuit; lawyers who represent plaintiffs, defendants, individuals, businesses, and the government; lawyers with

^{3/} Conference of Chief Justices, Civil Justice Improvements Committee, CALL TO ACTION: Achieving Civil Justice For All (2016), referred to herein as the "2016 CCJ Committee Report."

experience working at private law firms of all sizes, at non-profit, public interest law firms, and for the government; a law professor; and three former presidents of the Hawai‘i State Bar Association (HSBA).

Beginning in July 2018, the Task Force met at least once a month for the next year, usually in three-hour sessions. In all, the Task Force met fifteen times. The Task Force was also organized into four substantive committees, who met on their own to formulate proposals for the Task Force's consideration. The four committees are: (1) Case Triage/Tiering and Other Case Differentiation Measures; (2) Case Management; (3) Discovery; and (4) Expedited Trial and Other Innovations.^{4/}

In developing our recommendations, the Task Force drew upon the collective experience of our members, considered the 2009 ACTL/IAALS and 2016 CCJ Committee Reports, examined the Federal Rules of Civil Procedure, and studied reform efforts and best practices to reduce costs and delay from other jurisdictions. We also sought input and recommendations from members of the Hawai‘i bar. Among other things, we participated in panel discussions at the October 2018 Civil Law Forum, and we circulated an extensive survey to all HSBA members to obtain their views and suggestions.

^{4/} A roster of the Task Force showing the members of each committee is attached as Appendix 2.

C. The Task Force's Recommendations

After much work, consultation, debate, and deliberation, the Task Force is pleased to offer our recommendations on ways to reduce costs and delay, and to streamline the litigation process, in Hawaii's circuit courts. In recommending ways to achieve these goals, our proposals focus on right-sizing discovery, procedures, and case management so that they are proportional to the needs of a case; providing more certainty in the litigation process through early judicial involvement; and simplifying discovery. Our proposals embrace the following principles:

1. The one-size-fits-all approach creates inefficiencies. To reduce costs and delay, cases should be right-sized so that discovery, procedures, and case management are aligned with the needs of the case.
2. Discovery is a means to achieve the just resolution of the case; it is not an end in itself. Discovery should be right-sized with proportionality as its guiding principle. As another means of right-sizing, cases should be separated into tiers or pathways based on their characteristics, with appropriate standards applied to each tier.
3. Litigation proceeds more efficiently, with less costs and delay, if clear deadlines and "ground rules" are established early in the case and discovery is simplified and effectively managed. Judges should take an early and active role in setting deadlines and managing discovery. Rules and procedures should

also be implemented to simplify discovery and streamline the resolution of discovery disputes.

Many of our proposals are based on the Federal Rules of Civil Procedure (FRCP) and the Local Rules of Practice (LR) for the United States District Court for the District of Hawai‘i (Hawai‘i federal court). In the experience of Task Force members, the rules and procedures utilized by the Hawai‘i federal court have worked well to reduce costs and delay. In addition, respondents to the Task Force survey strongly endorse the federal rules and concepts we use as models. Incorporating the language of the federal rules has many built-in advantages: the federal rules are already familiar to many Hawai‘i practitioners; they are supported by research and have been used in practice; and they provide a body of federal precedents that, while not binding on a Hawai‘i court, offer guidance on how the rules have been interpreted and applied.

1. With respect to right-sizing, we propose to infuse the principle of proportionality into the scope of discovery by adopting FRCP Rule 26(b)(1). Under this proposal, discovery must not only be relevant to a party's claim or defense, but must be "proportional to the needs of the case," considering the proportionality factors set forth in the federal rule.^{5/}

^{5/} These factors are: "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." FRCP Rule 26(b)(1).

2. To further achieve right-sizing, we propose to establish a tiering system to align discovery and the trial date with the needs of the case. Under our proposal, the trial judge, through an early scheduling conference, will assign cases based on their characteristics to different pathways. After considering a variety of factors, the judge will assign a case either to Tier 1 for relatively straightforward cases that do not require significant discovery and can be expedited to resolution, or to Tier 2 for more complicated cases. Tier 1 cases will be subject to greater discovery limitations and receive an earlier trial date than Tier 2 cases.

3. Foreclosure actions represent the largest category of cases classified as civil filed in circuit court, approximately 40 percent, and they take more time than other types of civil cases to resolve. Foreclosure actions would greatly benefit from specialized rules and procedures because they share distinctive characteristics that differentiate them from other cases. We recommend that a foreclosure task force be formed, to include judges and lawyers who specialize in foreclosures, to develop recommendations to reduce costs and delay that are tailored to foreclosure actions.

4. To secure the early and active involvement by judges in case management, we propose to adopt early scheduling

conference/order requirements patterned after FRCP Rule 16(b) and LR Rules 16.2 and 16.3. We note that under the current circuit court rules, ten months or more may elapse before a judge becomes actively involved in setting deadlines and managing a case. In the meantime, the case may languish due to inaction or become bogged down by unresolved discovery disputes.

Under our proposals, the trial judge will be required to hold a scheduling conference and issue a scheduling order in the early stages of the case. Prior to the scheduling conference, the parties must confer and submit their positions on discovery planning and other case management issues. Through the early scheduling conference and scheduling order, the judge will be able to establish a roadmap for resolving the case by setting the trial date and other significant deadlines, addressing discovery issues, and establishing prerequisites for trial.

5. We propose to simplify discovery, improve discovery planning and management, and provide a streamlined procedure for resolving discovery disputes by: (a) imposing mandatory initial disclosure obligations similar to FRCP Rule 26(a)(1); (b) requiring parties to confer on discovery and discovery planning similar to FRCP Rule 26(f); (c) establishing mandatory expert disclosure obligations and expert discovery requirements similar to FRCP Rule 26(a)(2) and (b)(4); and (d) offering parties the

option of using a streamlined letter-briefing procedure, instead of a formal motion, to resolve discovery disputes similar to LR Rule 37.1.

6. While the federal rules have worked well to improve efficiency in Hawai'i federal court, we recognize that state circuit court judges carry a heavier caseload than their federal counterparts. To address caseload concerns and to facilitate the implementation of our proposals, we propose to exempt, from a number of our proposals, a group of actions that in our view would derive the least benefit from the proposals. The exempted actions are: foreclosures, cases in the Court Annexed Arbitration Program (CAAP), agency appeals, consumer debt collection actions, quiet title actions, and mechanic's and materialman's lien cases.

Exempting these actions from the early scheduling conference/order requirements will serve to avoid placing an undue burden on state judges by significantly reducing the number of cases subject to those requirements. At the same time, the exempted cases would benefit the least from the early scheduling conference procedures for a variety of reasons, including that they typically involve limited discovery, are resolved by default or summary judgment, or are already governed by specialized procedures, such as CAAP cases and agency appeals. Based on similar considerations regarding diminished benefit, and to apply the exemptions consistently, we exempt the same group of actions

from our proposals for initial disclosure and early conferral on discovery plans, expert disclosure and expert discovery requirements, and tier assignments.^{6/}

D. Appreciation

The Task Force would like to acknowledge and express our heartfelt gratitude to the members of the Hawai'i Judiciary staff who provided invaluable assistance and support to the Task Force. The names of these conscientious and hard-working women and men are set forth in Appendix 4.

^{6/} Task Force member Roy K.S. Chang disagrees with the Task Force's decision to exempt CAAP cases from a number of our proposals. Mr. Chang's dissent to the exemption of CAAP cases is attached as Appendix 3.

II. BACKGROUND

National studies reveal that civil litigation for many has become too costly and prolonged, compromising its essential function of providing an effective means of resolving disputes. The CCJ Committee, based on comprehensive case-analysis data, concluded that the costs of litigating cases in court commonly exceed their economic value. See 2016 CCJ Committee Report at 9. Litigation costs, especially those associated with discovery, are disproportionately high, and these costs, more than the merits of a dispute, are driving how a case is resolved. As a result of excessive costs and delay, more people cannot afford to hire a lawyer and must represent themselves; more meritorious cases cannot be bought to court, or if brought, cannot be resolved on the merits; and more people are turning to private alternative dispute resolution services, outside of court, to resolve their disputes.

The implications of these trends are profound. Reducing costs and delay are critical to ensuring access to justice. The CCJ Committee warned that without necessary reforms, the public may lose its trust and confidence in the courts as a fair and effective forum for resolving disputes. See id. at 10-11.

III. WORK OF THE TASK FORCE

Chief Justice Mark Recktenwald established the Task Force to provide recommendations, including rule amendments, on ways to

improve the civil justice system by reducing costs and delay and streamlining the litigation process. Because of the differences in the types of cases typically brought in circuit court and district court, and the difficulty of proposing specific rule amendments applicable to both courts, the Chief Justice directed the Task Force to focus on developing recommendations for circuit court. In developing our recommendations, we concentrated on actions classified as "civil" under the Rules of the Circuit Courts of the State of Hawai'i (RCCH).^{1/} Accordingly, our recommendations do not encompass cases filed in family court, probate court, land court, or tax appeal court, to which rules separate from, or in addition to, the Hawai'i Rules of Civil Procedure (HRCP) and the RCCH apply, and our recommendations do not encompass cases classified as special proceedings. By focusing our attention on circuit court cases classified as "civil," the Task Force was able to go beyond recommending general principles for improvement, and to offer specific rule amendments to show how principles for improvement can be implemented.

^{1/} Under the RCCH, the following types of cases are classified as "civil" and given a "Civil No." designation by the clerk upon filing: agency appeal, agreement of sale foreclosure, assault and battery, condemnation, construction defects, contract, declaratory judgment, environmental court, foreclosure, legal malpractice, medical malpractice, motor vehicle tort, product liability, other civil action, other non-vehicle tort. RCCH Rule 1, 2(a), 3(c)(5).

A. Resources Consulted

The Task Force considered a variety of resource materials in developing our recommendations. These include: the 2009 ACTL/IAALS Report and the 2015 update to that report;^{8/} the 2016 CCJ Committee Report; reports and proposals from task forces and committees on civil justice reform formed in other jurisdictions; reform proposals implemented by other jurisdictions; the Federal Rules of Civil Procedure and Advisory Committee Notes; the Local Rules of the Hawai‘i federal court; and reports of Civil Bench Bar Conferences and Civil Law Forums sponsored by the HSBA Judicial Administration Committee as well as the Chief Justice's response to the reports.

During Task Force meetings, we heard presentations by Chief Justice Mark Recktenwald on the circumstances leading to the formation of the Task Force; Chief Judge J. Michael Seabright and Magistrate Judges Barry M. Kurren (ret.) and Kevin S.C. Chang (ret.) of the United States District Court for the District of Hawai‘i on federal court rules and practices;^{9/} Associate Judge Keith K. Hiraoka, a Task Force member, on civil justice reforms in other state jurisdictions; Brandon M. Kimura, Deputy

^{8/} American College of Trial Lawyers Task Force on Discovery and Civil Justice and the Institute for the Advancement of the American Legal System, *Reforming Our Civil Justice System: Report on Progress and Promise* (April 2015), referred to as "2015 ACTL/IAALS Update Report."

^{9/} Magistrate Judge Chang retired a short time after his presentation to the Task Force. Although retired, Magistrate Judges Kurren and Chang are on recall status and continue to hear cases in Hawai‘i federal court.

Administrative Director of the Courts, on civil case filings and terminations in the circuit courts; and Frances A. Yamada, CAAP Administrator for the First Circuit, Bert S. Sakuda, Esq., and Lyle Y. Harada, Esq., on the CAAP.

In considering civil justice reforms in other jurisdictions, the Task Force asked: Are these reforms necessary for Hawai‘i? Will they work in Hawai‘i circuit courts? To answer these questions, we sought input and feedback from the Hawai‘i bar to inform and supplement the collective knowledge and experience of Task Force members. Through the gracious cooperation of the HSBA Committee on Judicial Administration, the 2018 Civil Law Forum, held on October 16, 2018, was largely devoted to discussing issues facing the Task Force. The Forum came at a favorable time for the Task Force because we were still in the early stages of gathering information and ideas and formulating our recommendations. During the Forum, the Task Force's four committees gave presentations on the preliminary proposals on which they were working, followed by open and lively discussion by Forum participants on these proposals and related issues. The Forum provided the Task Force with valuable insights, ideas, and suggestions.

B. Task Force Survey

The Task Force also prepared and circulated a survey to obtain input and recommendations from HSBA members with civil

litigation experience in the circuit courts.^{10/} The survey was distributed in paper form at the 2018 Civil Law Forum, the 2018 Fall Judicial Conference, and a meeting of per-diem judges. Through the generous assistance of the HSBA, the survey was also emailed (to be completed online) to all members of the HSBA.^{11/} The survey was extensive, with over 80 questions, including subparts, and contained several open-ended questions asking respondents to provide suggestions and recommendations on how to improve the civil justice system in our circuit courts.

The survey results show a total of 330 lawyers and judges as answering "yes" to the survey's first question which asked whether the respondent has past or present civil litigation experience in the Hawai'i circuit courts.^{12/} Of those who

^{10/} In developing the survey, the Task Force received assistance from Brittany K.T. Kauffman, J.D., Senior Director, IAALS, and Shelley C. Spacek Miller, J.D., Court Research Associate, National Center for State Courts, who both reviewed a draft survey and provided feedback.

^{11/} A copy of the survey distributed in paper form and the survey that was emailed for online completion are attached as Appendix 5a and 5b, respectively. A compilation of the survey results is attached as Appendix 6.

^{12/} Among the 330 respondents counted in the survey results as answering "yes" to the first question, there is one respondent to the written survey who did not answer the first question, but whose responses to the other questions clearly indicated that the respondent has past or present civil litigation experience in circuit court. Among the 78 respondents counted in the survey results as answering "no" to the first question, there is one respondent who submitted a written survey that was completely blank. The respondents who answered "no" to the first question were not permitted to proceed further in the online version of the survey and were informed in the paper form of the survey that they "may stop here" after the first question. There was no response beyond the first question received from any of the respondents who answered "no" to the first question. Therefore, the survey results after the first question are based only on responses from respondents who affirmed, and the one respondent who indicated, that they are an attorney or a judge with past or present civil litigation experience in the circuit courts of Hawai'i.

described their current position, 62 percent are lawyers in law firms or solo practitioners, 15 percent are judges, and 12 percent are government lawyers.^{13/} Approximately 55 percent of respondents have 20 years or more of civil litigation experience, and 75 percent have 10 years or more. The respondents are almost evenly split between those who predominantly or more frequently represent plaintiffs and those who predominantly or more frequently represent defendants. The respondents identified the most common areas of their practice as contract (56%), other non-vehicle tort (40%), motor vehicle tort (34%), and foreclosure (23%).

Consistent with national surveys, the Task Force survey reveals that the Hawai'i bar has serious concerns regarding the costs of and delays in civil litigation in our circuit courts. Over 80 percent of respondents agree or strongly agree that the civil justice system in circuit court is too expensive and takes too long. Over 75 percent agree or strongly agree that fundamental changes need to be made to reduce costs and delay and to streamline the litigation process in circuit court.

^{13/} Not all of the 330 survey respondents who affirmed or indicated they have civil litigation experience in the Hawai'i circuit courts answered every survey question. For example, 287 respondents provided an answer to the multiple-choice question asking for a description of their current position, and 253 respondents provided an answer to the question asking how often are litigation costs proportional to the value of the case. In discussing survey questions, we use "respondents" to refer to the people who answered the particular question, and the percentages we cite are based on the respondents for that question. The survey results attached as Appendix 6 include the number of respondents for each question and percentages that are based on their answers.

Accordingly, the Task Force survey reflects a broad consensus that significant changes to improve the efficiency of the civil justice system in circuit court are necessary.

The survey indicates that litigation costs have significant access-to-justice implications. Among respondents who describe their current position as "[l]aw firm lawyer or solo practitioner," 35 percent said that their firm would refuse to file or defend a case based on the amount in controversy. The median threshold amount for accepting a case cited by this 35 percent group is \$25,000. Most respondents (57%) believe that litigation costs are almost never or only occasionally proportional to the value of the case in circuit court. Sixty percent of respondents agree or strongly agree that cases in circuit court are resolved based on considerations unrelated to the merits of the parties' claims or defenses. Sixty-four percent of respondents reported that almost always, often, or 50 percent of the time the costs of litigation force cases to settle that should not settle based on the merits. Forty-two percent of respondents reported that almost always, often, or 50 percent of the time cases are forced to settle, that should not settle based on the merits, because of the length of time it takes to get a case to trial.

With respect to right-sizing, 74 percent of respondents agree or strongly agree that Hawai'i should incorporate

considerations of proportionality in defining the scope of discovery (which the FRCP did through 2015 amendments to FRCP Rule 26(b) (1)). Seventy-nine percent of respondents agree or strongly agree that efficiency and cost savings would be enhanced by separating cases into different pathways based on criteria such as amount in controversy and complexity, and then applying appropriate levels of discovery and judicial resources to each pathway.

The survey demonstrates strong support for early judicial involvement in scheduling and case management similar to the procedures used in Hawai‘i federal court. The overwhelming majority of respondents agree or strongly agree that: (1) Hawai‘i should adopt procedures to facilitate early judicial involvement in a case (83%) and the early establishment of the trial date and pretrial deadlines (83%); (2) Hawai‘i should adopt procedures similar to the scheduling conference provisions of FRCP Rule 16 (79%); (3) judges should take a more active role in imposing deadlines and managing the progress of a case (79%); and (4) early judicial involvement helps to narrow the issues (82%) and narrow discovery to the information necessary for case resolution (75%).

The survey also demonstrates strong support for the adoption of federal discovery rules and reforms beyond incorporating considerations of proportionality. The overwhelming majority of

respondents agree or strongly agree that: (1) Hawai‘i should adopt mandatory initial disclosure requirements, such as the ones imposed by the federal rules (80%); (2) Hawai‘i should adopt a mandatory requirement that parties confer on discovery and a discovery plan, such as the one imposed by the federal rules (81%); (3) Hawai‘i should adopt rules similar to the federal rules (a) imposing specific deadlines for disclosure of expert witnesses and expert reports (82%), (b) regarding what an expert's report must contain (79%), and (c) regarding the extent to which communications between counsel and an expert are discoverable (76%); and (4) judges should be more willing and available to resolve discovery disputes on an informal (non-motion) and expedited basis (90%).^{14/}

Included in the survey were several open-ended questions asking respondents for their suggestions, recommendations, and comments on how to reduce costs and delay, streamline the litigation process, and improve the civil justice system in the circuit courts. We received over 500 responses to these

^{14/} We note that respondents were evenly split when asked the general question of whether they prefer to litigate in Hawai‘i circuit courts or in Hawai‘i federal court. However, those who preferred litigating in Hawai‘i circuit courts generally gave reasons unrelated to the efficiency of the litigation process, such as the inconvenience of travel from the neighbor islands and greater familiarity with state rules, whereas those who preferred litigating in Hawai‘i federal court frequently cited efficiency, including faster resolution of cases and better pretrial, discovery, and case management rules and procedures. When asked specifically about whether Hawai‘i should adopt rules similar to the federal rules on scheduling conferences, initial disclosure, conferral on discovery planning, and expert disclosure and discovery, the vast majority of respondents agreed or strongly agreed that Hawai‘i should adopt such rules.

questions, which are shown in the survey results attached as Appendix 6.

C. Developing Our Recommendations

The Task Force used the following process in developing our recommendations. The Task Force was organized into four substantive committees: (1) Case Triage/Tiering and Other Case Differentiation Measures; (2) Case Management; (3) Discovery; and (4) Expedited Trial and Other Innovations. Each committee prepared proposals that it presented to the Task Force for consideration at Task Force meetings. The Task Force discussed and debated the committee's proposals, voted in favor of certain proposals, suggested revisions to others, and voted against certain proposals. Often the Task Force would agree with the concept or principle underlying a proposal, but ask that the proposal be revised to address concerns or to incorporate suggestions of the Task Force. Based on the Task Force's request, the proposal would be revised, and the revised proposal presented to the Task Force for further consideration, voting, and revision (if necessary). Through this process, the Task Force reached consensus on the recommendations presented in this report.^{15/}

^{15/} The voting was not unanimous on all of the proposals approved by the Task Force. Certain objections or concerns regarding several of the approved proposals are noted in this report.

IV. TASK FORCE RECOMMENDATIONS

Central to the Task Force's recommendations is our belief that litigation costs and delay in Hawai'i circuit courts can be reduced by: (1) right-sizing discovery, procedures, and case management to fit the needs of a case; (2) providing more certainty in the litigation process; and (3) simplifying discovery. Our proposals encompass all these means of reducing costs and delay.

Right-sizing discovery, procedures, and case management is critical to reducing costs and delay. The current rules in Hawai'i are generally one-size-fits-all, in that they typically permit the same level of discovery and provide the same procedures and case management for every case. For many cases, the one-size-fits-all approach leads to inefficiencies. Parties engage in disproportionate discovery; cases receive too much or too little process and are not managed to meet their particular needs.

Requiring that discovery be proportional to the needs of the case is an essential element of right-sizing. Proportionality requires the parties to consider, among other things, the amount in controversy, the parties' resources, and whether the costs of discovery will likely outweigh its benefits before seeking discovery. Another means of right-sizing is to use a tiering

system to separate cases into different pathways based on their characteristics and to apply discovery and trial-setting limitations appropriate to that tier. Foreclosure actions constitute a significant portion of the circuit court's civil caseload. The development of specialized rules and procedures to address the particular issues presented by foreclosure litigation would serve to reduce costs and expedite the resolution of foreclosure cases.

The court can establish greater certainty in the litigation process and make it more efficient by holding a scheduling conference and issuing a scheduling order early in the case. Through an early scheduling conference and scheduling order, the court can establish clear deadlines and requirements that the parties must satisfy, and it can address disputes before they escalate. An early scheduling order establishes a roadmap for resolving the litigation, motivates the parties to prioritize their activities, and sets standards that prevent disputes over collateral issues.

Discovery is a major contributor to the costs and delay in litigation. The burdens of discovery can be reduced by simplifying the discovery process -- requiring the early exchange of basic information without the need for a discovery request; compelling parties to confer on discovery planning;

requiring expert disclosures and clarifying expert discovery; and streamlining resolution of discovery disputes.

The FRCP and the LR have worked well to increase efficiency in Hawai‘i federal court. The federal rules and concepts we have used as models for our proposals are strongly endorsed by respondents to our survey and provide the benefits that flow from familiarity and uniformity. We recognize, however, that state circuit court judges carry a larger caseload than Hawai‘i federal court judges and that the benefits derived from our proposals may be less in certain types of cases than others. To alleviate caseload concerns and facilitate the implementation of our proposals, we exempt a group of actions that would benefit the least from a number of our proposals.

What follows is a description of our specific proposals. As we have come to realize, amending rules is a difficult process. Where we believe it may be helpful, we have included our reasons for proposing the rule amendments to provide guidance, beyond the words themselves, of our intent. Should the Hawai‘i Supreme Court determine that our proposals for rule amendments are worthy of circulation for public comment, we suggest that our report be included to provide relevant background, explanation, and commentary.

A clean version of the proposed amendments to the HRCP and the RCCH is attached as Appendix 7. A red-line version, showing

how our proposals will change the existing HRCP and RCCH, is attached as Appendix 8.^{16/}

A. *Right-sizing to secure proportionality in discovery, procedures, and case management*

1. Proposed Amendments to HRCP Rule 26(b)(1)

"Discovery is not the purpose of litigation." 2009

ACTL/IAALS Report at 7. Discovery is not an end in itself; it is a means of obtaining evidence relevant to the parties' claims and defenses to facilitate the fair resolution of a case. National studies cite unchecked discovery as a major cause of excessive costs and emphasize the need for discovery reform.

Proportionality is an essential principle for right-sizing discovery and preventing excessive discovery costs. See 2015 ACTL/IAALS Update Report at 17 ("Proportionality should be the most important principle applied to all discovery."); 2016 CCJ Committee Report at 24. The Task Force survey reflects strong support for incorporating considerations of proportionality in defining the scope of discovery.

The Task Force proposes to amend HRCP Rule 26(b)(1) to track the language of FRCP Rule 26(b)(1). The proposed amendment infuses the principle of proportionality into the definition of

^{16/} Our proposed rule amendments are intended to apply only to cases classified as "civil" under the RCCH. See RCCH Rules 1, 2(a), 3(c)(5). We have not attempted to assess the impact of our proposed rule amendments on cases outside the "civil" classification, or on cases not completely governed by the HRCP and the RCCH, such as cases subject to rules separate from, or in addition to, the HRCP and the RCCH.

the scope of discovery by requiring that discovery be "proportional to the needs of the case." Therefore, proportionality becomes a touchstone for discovery that is applicable in all cases. As in the federal rule, the revised HRCP Rule 26(b) (1) adopts the following factors to consider in determining whether discovery is proportional: "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." FRCP Rule 26(b) (1). The revised rule thus not only identifies the proportionality principle, but provides factors to consider in applying it.

We note that proportionality considerations are not entirely new to the HRCP; they are reflected in the existing HRCP Rule 26. The current HRCP Rule 26(b) (2) (iii) directs the court to limit discovery if it determines that "the burden or expense of the proposed discovery outweighs its likely benefit" based on almost the same proportionality factors set forth in the federal rule. The current HRCP Rule 26(g) also authorizes the court to impose sanctions for discovery abuse based on several of the proportionality factors. However, expressly incorporating proportionality into the scope of discovery is vital to developing the proper mind-set in litigants, lawyers, and judges.

It will definitively establish that proportionality is integral to discovery and must always be considered.

The revised HRCP Rule 26(b) (1) also replaces: (1) "relevant to the subject matter involved in the pending action" with "relevant to any party's claim or defense"; and (2) "It is not ground for objection that the information sought will be inadmissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence" with "Information within this scope of discovery need not be admissible in evidence." Similar changes were made to FRCP 26(b) (1) through a combination of amendments made in 2000 and 2015. As to the first change, the Advisory Committee Notes to FRCP Rule 26 indicate that the "relevant to the subject matter" language was rarely invoked after a good cause requirement was imposed in 2000, and that the "relevant to any party's claim or defense" language permits discovery that is sufficiently broad, "given a proper understanding of what is relevant to a claim or defense." FRCP Rule 26(b) (1), Advisory Committee's Note (2015 Amendment). As to the second change, the Advisory Committee Notes indicate that the "reasonably calculated" language had been incorrectly used to define the scope of discovery, and that if used for this purpose, the phrase "might swallow any other limitation on the scope of discovery." Id. (internal quotations marks omitted).

2. Proposed New HRCP 16.1 -- Assignment of Cases to an Appropriate Tier

An important means of right-sizing is to separate cases into tiers or pathways based on their characteristics, with each tier subject to discovery and trial-setting limitations appropriate to that tier. This type of tiering system enhances efficiency by enabling courts to match cases more closely with their discovery and trial-setting needs. Separating cases into tiers with different discovery limitations reinforces proportionality and prevents unnecessary costs by imposing discovery limits based upon the characteristics of the case. Applying specific discovery limits to a tier serves to curtail discovery disputes, which lessens the need for court involvement, and enhances discovery planning by informing parties in that tier, from the outset of the case, what the ceiling is on their discovery. Delay is also reduced by linking the standards for setting a trial date with the characteristics of the case.

The Task Force proposes a new HRCP Rule 16.1 (with the current HRCP Rule 16.1 renumbered as HRCP Rule 16.2) to help right-size discovery, procedures, and case management by assigning cases to one of two tiers. In deciding on a two-tier system, the Task Force observed that Hawai'i already practices certain forms of case tiering. For example, civil actions involving an amount in controversy not exceeding \$10,000 generally fall within the exclusive jurisdiction of the district

court. Hawaii Revised Statutes (HRS) § 604-5. The district court also has concurrent jurisdiction with the circuit court over civil actions involving claims that exceed \$10,000 but do not exceed \$40,000, id.; HRS § 603-21.5, and such actions are frequently filed in district court, which uses procedures that are more streamlined and usually less costly than circuit court. In addition, tort cases with a probable jury award value of \$150,000 or less are generally resolved by arbitration through the CAAP. See HRS § 601-20.

Under the new HRCP Rule 16.1, the court will assign a case based on its characteristics into one of two tiers: Tier 1 for more straightforward cases and Tier 2 for the remaining cases. As set forth in the new rule, "[t]he purpose of the tier assignment is to secure the just, speedy, and efficient resolution of cases by placing them into an appropriate pathway based on considerations of proportionality, fairness, cost-effectiveness, and expedition." The new rule directs the court to consider a variety of factors in assigning a case to a tier, such as the degree of readiness of the case for resolution, the number of parties involved, whether any party is self-represented, and whether the amount in controversy is greater or less than \$150,000. However, no factor is dispositive, and the court has the discretion to consider any factor relevant to fulfilling the purpose of the tier assignment. The Task Force

considered tiering systems from other jurisdictions, such as Utah, which establishes tiers based solely on the amount in controversy. The Task Force believes that this type of system is too restrictive and has opted to give the court greater discretion in assigning the case to a tier.

The new HRCP Rule 16.1 establishes limitations on discovery for Tier 1 cases. For these cases, each party shall be limited to: (1) no more than four oral depositions with a cumulative time of sixteen hours on the record; and (2) no more than a total of thirty-five, in any combination, of interrogatories, requests for documents, and requests for admissions. Other jurisdictions impose specific numerical limitations for each method of written discovery, but the Task Force decided to give parties more flexibility to decide how to allocate their discovery among the various methods. We reasoned, for example, that it may be more helpful in one case to use more interrogatories and less requests for documents than in another case. A party in a Tier 1 case may seek discovery beyond Tier 1 limits by motion or stipulation upon a showing that such discovery is necessary and proportional.^{17/}

For Tier 2 cases, the new HRCP Rule 16.1 does not impose discovery limitations beyond those contained in other discovery

^{17/} In conjunction with imposing discovery limitations for Tier 1 cases, the Task Force proposes to amend HRCP Rule 29 to make clear that parties cannot modify Tier 1 discovery limitations just by their own stipulation, but must comply with the requirements for modification set forth in the new HRCP Rule 16.1.

rules. The Task Force feels that the principle of proportionality set forth in our proposed amendment to HRCP Rule 26(b) (1) will serve to impose necessary constraints on discovery in Tier 2 cases.

The new HRCP Rule 16.1 imposes trial-setting limitations for each tier. The court is required to assign a tier and set the trial date at the initial scheduling conference.^{18/} For Tier 1 cases, the court must set trial to commence within nine months of the initial scheduling conference. For Tier 2 cases, trial shall be set within twelve months of the initial scheduling conference, unless a party requests a later trial date. If such a request is made, the court may set the trial between twelve and eighteen months from the date of the initial scheduling conference.

For Tier 1 cases, continuances of the trial date will only be granted based on extraordinary circumstances. Imposing a high standard for trial continuances is consistent with the benefits of establishing a firm trial date. Cases are resolved more quickly and at less cost when courts adhere to trial dates and keep continuances to a minimum. A firm trial date motivates the parties to prioritize their work and to focus on what is necessary to resolve the case. For Tier 1 cases, matters that must be accomplished to prepare the case for trial should be

^{18/} As discussed below, the Task Force's proposed amendments to HRCP Rule 16(b) and RCCH Rule 12 provide for the court to hold a scheduling conference during the early stages of the case.

relatively straightforward, and a firm trial date will help expedite the case to resolution.

For Tier 2 cases, the less stringent standard of good cause is applicable to continuance requests. The greater complexity associated with Tier 2 cases makes them more unpredictable and warrants granting parties more leeway in obtaining a trial continuance.^{19/}

3. Establishing a Foreclosure Task Force

Foreclosure actions not only represent the largest category, approximately 40 percent, of cases classified as civil filed in the circuit courts, but the median time to resolve foreclosure cases is higher than for other types of civil cases. Foreclosure actions are a prime candidate for specialized rules and procedures. They share distinctive characteristics that differentiate them from other cases. Foreclosure cases typically involve the same type of documents, are often resolved through summary judgment, and frequently have parties who represent themselves. Foreclosure cases also have been the subject of recent appellate decisions that have articulated requirements a foreclosing plaintiff must satisfy to prevail.

For these reasons, the Task Force recommends the formation of a foreclosure task force, to include judges and lawyers who

^{19/} The Task Force kept intact the RCCH Rule 12 provision for designation of a case as complex litigation, which gives the court discretion to establish deadlines and right-size the management of cases designated as complex.

specialize in foreclosures, to develop recommendations for rule amendments and procedures specifically designed to reduce costs and delay in foreclosure cases. These recommendations, for example, could include proposals for the automatic early disclosure of documents routinely used in foreclosure cases, the early exchange of information pertinent to the alleged default or relevant to the potential for loan modification, and the establishment of deadlines for dispositive motions. We believe that a foreclosure task force, a group with particular expertise in foreclosure litigation, can best develop recommendations to right-size foreclosure cases so that they can be resolved with less costs and greater speed.

B. *Creating Greater Certainty in Litigation and Improving the Court's Management of Cases*

1. Proposed Amendments to HRCP Rule 16 and RCCH Rule 12

The early and active involvement of the trial judge in establishing a trial date and other significant deadlines, and in managing discovery, creates greater certainty in the litigation process. It establishes standards and provides direction to the parties, which serves to contain costs and avoid unnecessary delay.

Empirical studies reveal that when a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices.

FRCP Rule 16(b), Advisory Committee's Note (1983 Amendment).

Delays in setting a trial date are correlated with a longer time to resolve the case.^{20/} "Without a firm trial date, cases tend to drift and discovery takes on a life of its own." 2009 ACTL/IAALS Report at 20.

Under Hawaii's existing circuit court rules, there is a significant, built-in time lag between the filing of a complaint and the court's involvement in setting a trial date. RCCH Rule 12 currently uses the filing of a pretrial statement to trigger a judge's involvement in setting a trial date. However, the pretrial statement is not due until eight months after a complaint has been filed, and the plaintiff has an additional two months to schedule a trial setting status conference or file a trial setting document with the court.^{21/} Therefore, ten months may elapse before a judge's first involvement in a case in setting the trial date or addressing other case management issues.^{22/} The elapsed time may even be longer if continuances are granted and depending on when the judge holds the trial setting status conference or otherwise rules on the trial date.

^{20/} See Institute for the Advancement of the American Legal System, Civil Case Processing in the Federal Courts: A Twenty-First Century Analysis, 3, 30-32 (2009).

^{21/} A plaintiff in the First Circuit is required to schedule a trial setting status conference within 60 days of the filing of the initial pretrial statement. RCCH Rule 12(c)(1). In the Second, Third, and Fifth Circuits, unless the court adopts the First Circuit procedures, a plaintiff, within 60 days of the filing of the initial pretrial statement, is required to file a document providing three agreed-upon weeks for trial or requesting a trial setting status conference. RCCH Rule 12(c)(2).

^{22/} The current rules do not require the parties to appear for any case scheduling or management conference prior to the court's holding of a trial setting status conference or otherwise ruling on the setting of a trial date.

The Task Force believes that amending the rules to promote the judge's active involvement at a much earlier stage in setting a trial date and other deadlines and in managing discovery will make the litigation process more efficient. By holding a scheduling conference with the parties and issuing a scheduling order early in the case, the court will be able to establish a framework and timetable for completing the case, address troublesome issues, encourage parties to establish priorities, and help narrow discovery to what is necessary to resolve the case.^{23/}

Task Force members find that the early scheduling conference/order requirements set forth in FRCP Rule 16(b) and LR Rules 16.2 and 16.3 have been effective in expediting cases to resolution and reducing costs and delay in Hawai'i federal court. Respondents to the Task Force survey apparently concur in this assessment as 79 percent agree or strongly agree that Hawai'i should adopt procedures similar to the scheduling conference provisions of FRCP Rule 16. The Task Force also heard from Magistrate Judges Kurren and Chang who strongly endorsed the federal rules' early scheduling requirements and reported that

^{23/} Respondents to the Task Force survey overwhelmingly agree that judges should take a more active role in imposing deadlines and managing the progress of a case, and that early judicial involvement helps to narrow the issues and narrow discovery to the information necessary for case resolution. They also overwhelmingly agree that Hawai'i should adopt procedures to facilitate early judicial involvement in a case and early establishment of deadlines.

these requirements have enhanced their ability to effectively manage cases. The early scheduling conferences allow the Magistrate Judges to learn about the case from the parties and to be more proactive in managing the case. It gives them the opportunity to address discovery disputes before they grew into larger battles, identify cases that would benefit from an early settlement conference or mediation, establish deadlines for motions that must be heard for the case to progress, and set a schedule that meets the particular needs of the case.

The Task Force proposes to amend HRCP 16(b) to incorporate provisions of FRCP Rule 16(b) and to amend RCCH Rule 12 to, among other things, incorporate provisions of LR Rules 16.2 and 16.3. Like the federal rules, the revised HRCP Rule 16(b) and RCCH Rule 12 provide that, unless the judge finds good cause for delay, the judge must issue a scheduling order within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. Accordingly, the revised rules require judicial involvement and the issuance of a scheduling order at a much earlier stage in the litigation than the current rules.

Working backward from the judge's deadline to issue the scheduling order, the revised rules impose deadlines and obligations on the parties to maximize the effectiveness of the scheduling conference with the judge and the scheduling order.

Within fourteen days after any defendant is served with the complaint or enters an appearance, the plaintiff must file a notice requesting a scheduling conference to be set by the court. After the court issues an order or a notice setting the scheduling conference date, the plaintiff must promptly serve that order or notice on parties who were served with the complaint but have not yet appeared (with the court serving parties who have appeared). At least twenty-one days before the scheduling conference, the parties must confer on a variety of issues, including settlement possibilities, initial disclosures, discovery planning, and tier assignment.^{24/} At least seven days before the scheduling conference, the parties must submit a discovery plan and file a scheduling conference statement covering issues on which they were required to confer. Requiring the parties to confer and submit reports on matters critical to discovery and case management, including matters on which they agree, will reduce costs by narrowing the scope of the litigation and enabling the court to set deadlines and impose limitations that are tailored to the needs of the case.

^{24/} As further discussed in subsequent sections, the Task Force is recommending the adoption of initial disclosure requirements similar to FRCP Rule 26(a)(1), discovery planning requirements similar to FRCP Rule 26(f), and expert disclosure and discovery requirements similar to FRCP Rule 26(a)(2) and 26(b)(4). The revised RCCH Rule 12 incorporates provisions of FRCP Rule 26(f) that require parties to confer on discovery planning and submit a discovery plan to the court before a scheduling conference.

Under the revised rules, the court must issue a scheduling order that sets the date for trial; assigns the case to a tier; and governs and addresses initial and expert disclosures, the extent of permitted discovery, the discovery completion date, and deadlines for motions to be filed and heard, to join other parties, and to amend pleadings. The court is also permitted to include other appropriate requirements and deadlines in the scheduling order, such as those pertaining to the exchange and submission of trial materials. The revised rules will empower the court to issue scheduling orders designed to ensure that the case progresses to resolution in an expeditious and cost-effective manner.

2. Proposed New RCCH Rule 12.1

The Task Force proposes a new RCCH Rule 12.1 (which will require the renumbering of the current RCCH Rules 12.1 and 12.2 to 12.2 and 12.3, respectively). The new RCCH Rule 12.1 sets forth requirements for a pretrial statement to be filed shortly before trial. Under the existing rules, the filing of the pretrial statement, which triggers the setting of the trial date, comes too late in the process for scheduling and case management purposes. But, it also frequently comes too early before trial to provide an effective means of narrowing the issues for trial and addressing disputes likely to arise at trial. The new RCCH Rule 12.1 requires the filing of the pretrial statement no later than seven days before any final pretrial conference set by the

court or, if no final pretrial conference is set, no later than fourteen days before trial. Thus, the pretrial statement required under the new RCCH Rule 12.1 will be due at a time when the parties should be familiar with their trial strategy and provide a more effective vehicle for narrowing trial issues and resolving trial disputes. The new RCCH Rule 12.1 requires parties to address in their pretrial statement matters that will allow the trial to proceed efficiently, with a minimum of disruption.^{25/}

3. Proposed Amendments to the Renumbered RCCH Rule 12.2

The Task Force believes that improving the effectiveness of settlement conferences will serve to reduce costs and delay. In this regard, the Task Force proposes to amend RCCH Rule 12.2 (formerly RCCH Rule 12.1) to generally require the judge to set a settlement conference date at the scheduling conference held pursuant to the revised HRCP Rule 16(b) and RCCH Rule 12.^{26/} The revised RCCH Rule 12.2 also requires that alternative dispute resolution (ADR) be discussed at the scheduling conference, and it encourages the court to include orders scheduling and

^{25/} We note that by including deadlines in the scheduling order for the exchange and submission of trial materials, such as exhibits, stipulations, and deposition testimony, the court can help the parties better prepare and plan for trial, which will allow the case to proceed to trial in a more orderly fashion.

^{26/} The revised RCCH Rule 12.2 creates an exception to this requirement in situations where there are concerns about the trial judge also serving as the settlement judge, in which case the court is given an additional 30 days to issue the settlement conference date.

facilitating ADR processes, where appropriate, in the scheduling order. The Task Force believes that a settlement conference should be held in every case that is proceeding to trial, and that where ADR is appropriate, including orders addressing ADR processes in the scheduling order will make ADR more effective.

The Task Force believes that staggered settlement offers generally make settlement negotiations more productive. Therefore, the revised RCCH Rule 12.2 provides that, unless otherwise ordered by the court, the plaintiff's offer shall be made before the defendant's offer. To enhance the opportunity for settlement, the revised rule requires that the timing of settlement offers be discussed at the scheduling conference and encourages the court to include deadlines for offers in the scheduling order.

The revised RCCH Rule 12.2 eliminates the provision in the current rule that requires the filing of a settlement conference statement, which both lawyers and judges on the Task Force felt was not helpful. Instead, the revised rule provides that much of the information currently required for the settlement conference statement be included in the confidential settlement conference letter submitted to the court.^{27/}

^{27/} The Task Force proposes to amend RCCH Rule 12.3 (formerly RCCH Rule 12.2) to provide that the court may order parties to participate in a non-binding ADR process upon "request" as well as upon motion or sua sponte. This revision is to clarify that a party may seek the court's assistance regarding ADR without having to file a formal motion.

C. Simplifying and Streamlining Discovery

Discovery should be simplified and streamlined to avoid unnecessary expense. In addition to incorporating the principle of proportionality, the FRCP and the LR have implemented discovery reforms directed at simplifying and streamlining discovery. The federal rules have reformed discovery by imposing initial disclosure and discovery planning and conferral obligations on parties; establishing expert disclosure requirements and clarifying and simplifying expert discovery; and providing a cost-effective letter-briefing procedure for resolving discovery disputes. The Task Force survey shows strong support for these federal discovery rules, with 76 percent or more of respondents agreeing or strongly agreeing that Hawai‘i should adopt rules, or judges should engage in practices, similar to the federal provisions. The Task Force recommends amendments to the HRCP and the RCCH that are patterned after these federal discovery rules. Magistrate Judge Kurren informed the Task Force that the mandatory initial disclosure and expert disclosure rules, in particular, have served to decrease discovery disputes by reducing "friction" between the parties over discovery and have made managing discovery easier.

1. Proposed New HRCP Rule 26(a)(1) and Proposed New HRCP Rule 26(f)

The Task Force proposes a new HRCP Rule 26(a)(1) to impose initial disclosure requirements, without the need for a discovery

request, similar to FRCP Rule 26(a)(1). We also propose a new HRCP Rule 26(f) that requires the parties, prior to the scheduling conference, to confer, to make or arrange for initial disclosures and discuss discovery planning, and to submit a discovery plan, similar to FRCP Rule 26(f).

The initial disclosure requirement accelerates the exchange of basic information about the case and eliminates the need to request such information. Providing the parties with relevant information early in the case helps them to determine the critical issues, the discovery that is necessary, and whether an early resolution is possible. The requirements that the parties confer, make or arrange for initial disclosures, engage in discovery planning, and submit a discovery plan prior to the scheduling conference helps to identify and narrow discovery issues and avoid protracted discovery disputes. It provides parties with the opportunity to work out problems on their own without court intervention. It also provides the court with information necessary to address discovery disputes early in the case, tailor discovery deadlines to the circumstances of the case, and use the scheduling conference and scheduling order to manage the case more effectively.

Under the new HRCP Rule 26(a)(1), a party, without awaiting a discovery request, must disclose: (1) the identity of all witnesses, except retained or employee experts, the disclosing

party reasonably expects to call at trial and a general statement concerning the nature of the expected testimony, unless the witness's use would be solely for impeachment; (2) a copy, or description by category and location, of documents, electronically stored information, and tangible things that may be used to support the disclosing party's claims or defenses, unless the use would be solely for impeachment; (3) a computation of each category of damages claimed by the disclosing party as well as documents and other evidentiary materials, unless privileged or protected, on which each computation is based; and (4) the declaration page of relevant insurance agreements and any reservation of rights letter received by the disclosing party.^{28/}

The Task Force, for Item 4, decided to only require initial disclosure of the declaration page and reservation of rights letter, rather than the entire insurance agreement as required by the federal rule. The reasons for this decision are that: (1) the declaration page and reservation of rights letter typically contain the information needed by a plaintiff; (2) it may be difficult for defense counsel to secure the entire insurance

^{28/} A Task Force member objected to the "solely for impeachment" exception in Items 1 and 2 on the ground that the exception allows a party to conceal potentially critical evidence, which is inconsistent with the purpose of discovery to facilitate early resolution of a case and avoid trial by ambush. It was noted, however, that this exception is contained in the corresponding federal provisions; that it applies to initial disclosure and does not preclude discovery of impeachment evidence; and that some courts have explained the exception as necessary to preserve the value of impeachment evidence in attacking a witness's credibility. The Task Force decided to include the "solely for impeachment" exception in Items 1 and 2.

agreement, especially for multi-line policies or for policies covering operations in several jurisdictions; and (3) a party may request production of the entire insurance agreement through discovery if desired.

The timing for the initial disclosures, the conferral of the parties on discovery planning, and the parties' scheduling conference with the court pursuant to the revised HRCP Rule 16(b) and RCCH Rule 12 are all linked together. Under the new HRCP Rule 26(f), the parties in general must confer on discovery planning and make or arrange for initial disclosures at least twenty-one days before the scheduling conference, and they must submit their discovery plan to the court within fourteen days after their HRCP Rule 26(f) discovery-planning conference. The new HRCP Rule 26(a)(1) provides in general that a party must make the initial disclosures at or within fourteen days after the parties' HRCP Rule 26(f) conference, unless a different time is set by stipulation or court order, or unless the party objects during the HRCP Rule 26(f) conference. The court must rule on any such objection during the scheduling conference. Therefore, under the revised rules, the parties ordinarily will confer on discovery planning and initial disclosures at least twenty-one days before the scheduling conference and will make initial disclosures and submit their discovery plan at least seven days before the scheduling conference.

2. Proposed New HRCP Rule 26(a)(2) and Proposed Amendments to HRCP Rule 26(b)(5)

The Task Force proposes a new HRCP Rule 26(a)(2) that is based on FRCP Rule 26(a)(2) and an amended HRCP Rule 26(b)(5) that is based on FRCP Rule 26(b)(4). Under the new HRCP Rule 26(a)(2), a party, without awaiting a discovery request, must disclose information regarding experts the party expects to call at trial. The new HRCP Rule 26(a)(2) divides experts the party expects to call at trial into two categories: (1) experts who are retained or specially employed by the disclosing party, or whose duties as the disclosing party's employee regularly involve the giving of expert testimony (Category 1 experts); and (2) experts who do not fall within the first category, such as the plaintiff's treating physician in a personal injury case (Category 2 experts). For Category 1 experts, the party calling the expert must disclose a written report, prepared and signed by the expert, which contains specified information, including the expert's opinions, the basis for the opinions, and the facts and data considered by the expert in forming the opinions. For Category 2 experts, the party calling the expert must disclose the subject matter on which the expert is expected to present evidence and a summary of the facts and opinions to which the expert is expected to testify. Unless otherwise stipulated or ordered by the court, the party having the burden of proof on a claim or affirmative defense must serve the related disclosures no later than 120 days before the trial date; the opposing party

must serve the related disclosures no later than 90 days before the trial date; and a party intending to present evidence solely to rebut the opposing party's disclosure must serve the related disclosures no later than 60 days before the trial date.^{29/}

The amended HRCP Rule 26(b)(5) provides that the deposition of a Category 1 expert may only be conducted after the expert's written report is disclosed. It also provides trial-preparation-materials protection for drafts of any required expert report or disclosure and for communications between a party's attorney and a Category 1 expert, except for communications that relate to compensation, that identify facts or data provided by the attorney and considered by the expert in forming the expert's opinions, and that identify assumptions provided by the attorney and relied upon by the expert in forming the expert's opinions.^{30/}

Mandating expert disclosures without the need for a discovery request, and clarifying the protection provided for draft expert reports and disclosures and attorney-expert communications,^{31/} will help to prevent disputes and simplify the

^{29/} The Task Force also proposes a new HRCP Rule 26(a)(3) to impose an obligation on parties to supplement or correct disclosures made under the new HRCP Rule 26(a)(1) and (a)(2).

^{30/} The revised HRCP Rule 26(b)(5)(A) and (D) include language stating that they are "subject to the provisions of Rule 16.1 in Tier 1 cases" to incorporate the limitations on depositions and interrogatories in Tier 1 cases set forth in the new HRCP Rule 16.1.

^{31/} The 2015 ACTL/IAALS Update Report specifically endorses the federal provisions on which the revised HRCP Rule 26(b)(5) protections for draft expert reports and disclosures and attorney-expert communications are based. 2015 ACTL/IAALS Update Report at 28.

discovery process. Requiring Category 1 experts to prepare a written report, permitting the deposition of such experts only after the report is disclosed, and requiring disclosure of a Category 2 expert's opinion will all serve to reduce costs by obviating the need to depose the expert in certain cases or by reducing the time necessary for the expert's deposition.

3. Proposed New RCCH Rule 15.1

The Task Force proposes a new RCCH Rule 15.1 to provide for streamlined discovery assistance, which is similar to the letter-briefing procedure for resolving discovery disputes under LR Rule 37.1. Discovery disputes can cause the progress of a case to grind to a halt. Frequently, the parties do not want to incur the time and expense of resolving the dispute through a formal motion. Rather, their primary interest is to obtain an answer from the court on their dispute so they can move forward with the case.

The new RCCH Rule 15.1 provides the parties with the option of seeking to resolve discovery disputes through a procedure that is more streamlined than a formal motion. Under the streamlined procedure, the parties simultaneously submit letter briefs to the court. The letter briefs must be five pages or less, including all exhibits, unless otherwise ordered by the court. Upon receipt of the letter briefs, the court determines the procedure for resolving the dispute. The court, for example, may issue an

order based upon the letter briefs, set a conference with the parties, or require the parties to file a formal motion. If the court rules without requiring a formal motion, the court will issue an order of its decision and attach the letter briefs, for purposes of appellate review.^{32/}

The streamlined letter-briefing procedure does not remove current methods for resolving discovery disputes, but provides an additional tool for the parties to use. Parties still retain the option of resolving discovery disputes by filing a formal motion. The streamlined procedure may only be used if all parties involved in the discovery dispute agree. In addition, before seeking the court's assistance, the parties must confer and attempt to resolve or minimize the scope of the dispute in a good faith effort to eliminate the need for the court's assistance, and each party must certify that it complied with these requirements.

D. Exempting Certain Actions

1. The Exempted Actions

We recognize that state circuit court judges carry a larger caseload than Hawai'i federal court judges. Thus, while the federal rules have worked well in Hawai'i federal court, we are

^{32/} We note that one judge on the Task Force raised concerns that a judge's calendar may prevent the judge from immediately responding to the letter briefs, and that the new rule may create unrealistic expectations on the part of litigants regarding how soon the judge would be able to rule. In response to these concerns, the new rule gives the judge discretion to determine what procedure will be used to resolve the discovery dispute.

cognizant of concerns that it may be difficult to utilize certain of the federal rules incorporated in our proposals in circuit court, given the larger caseload carried by state judges. To address these concerns and to provide assurance that our proposals can be implemented successfully in the circuit courts, we have exempted a group of cases from a number of our proposals.

No case is exempt from our proposal to incorporate proportionality into the scope of discovery. Proportionality considerations apply to discovery in all cases. However, we have exempted from our proposal to impose early scheduling conference/order requirements, which are similar to those used in Hawai‘i federal court, the following group of cases: foreclosures, CAAP cases, agency appeals, consumer debt collection cases, quiet title actions, and mechanic's and materialman's lien cases.^{33/} These are cases that would derive the least benefit from the early scheduling conference/order requirements because they typically involve limited discovery, are resolved by default or summary judgment, or are already governed by specialized procedures, such as CAAP cases. At the same time, exempting these cases will significantly reduce the number of cases subject

^{33/} We note that "consumer debt collection" is not in the list of claim categories that may be selected to describe claims asserted in a civil case. See RCCH Rule 3(c)(5). To facilitate the exemption of consumer debt collection actions, it may be helpful to add "consumer debt collection" to the list of claim categories. We also note that mechanic's and materialman's lien cases are not classified as "civil" under the RCCH and thus are not intended to be covered by our proposals. See note 16, *supra*. Nevertheless, we include mechanic's and materialman's lien cases among the exempted actions to provide additional notice that they are excluded.

to the early scheduling conference/order requirements.^{34/} In particular, foreclosure cases have comprised approximately 40 percent, and CAAP cases roughly 20 percent, of the cases classified as civil filed in the circuit courts in recent years.^{35/}

For reasons similar to those for exempting these cases from the early scheduling conference/order requirements, we are also exempting the same group of cases from our proposals for mandatory initial disclosure and early conferral on discovery planning, expert disclosure and discovery, and tier assignments. Cases in the exempt group that involve limited discovery or are already governed by specialized procedures would tend to garner diminished benefits from these proposals. Consistency in using the same group of cases for the exemptions will also serve to avoid confusion and simplify the implementation of the proposals.

^{34/} Under the current rules, at least in the First Circuit, in all cases except those designated as complex litigation, the plaintiff must schedule a trial setting status conference within sixty days of filing the initial pretrial statement that must be attended by each party or each party's lead counsel. See RCCH Rule 12(c). Thus, the proposed early scheduling conference/order requirements do not create an entirely new burden on the court to hold a conference, but rather modifies conference burdens already existing under the current rules.

^{35/} It is possible that the proposed foreclosure task force could modify the effect of the foreclosure exemption by deciding to recommend some form of early scheduling conference for foreclosure cases. It is also possible, on the other hand, that the proposed foreclosure task force could recommend rules that impose mandatory disclosure obligations and establish dispositive motion and other deadlines that obviate the need for an early scheduling conference. In any event, we believe that the proposed foreclosure task force should be able to recommend specialized rules and procedures that will reduce the overall burden that foreclosure cases impose on circuit court caseloads and thereby free-up additional judicial resources.

The exemptions create a margin of safety to address caseload concerns and to help insure that our proposals can be successfully implemented.^{36/}

We believe that in exempting this group of cases from a number of our proposals, we have reached an appropriate balance between securing the benefits provided by the rule amendments and addressing caseload and implementation concerns. With respect to whether circuit court judges, given their larger caseloads, will be able to successfully utilize the scheduling conference/order procedures of the Hawai'i federal court, the comments of Magistrate Judge Chang in his presentation to the Task Force are instructive.

Magistrate Judge Chang was formerly a Hawai'i circuit judge and is in the unique position of having experience managing cases under both the state circuit court system and the current federal rules. Magistrate Judge Chang believes that if state foreclosure cases and CAAP cases are exempted,^{37/} the early scheduling conference/order rules used in Hawai'i federal court would transfer very well to circuit court and could effectively be

^{36/} As set forth in his dissent attached as Appendix 3, Task Force member Roy K.S. Chang disagrees with the Task Force's decision to exempt CAAP cases from a number of our proposals. It was noted, however, that the CAAP is designed to remove cases from a judge's caseload by facilitating resolution of a case through arbitration, without significant court involvement unless and until an appeal of the arbitrator's award and a trial de novo is sought. After considering Mr. Chang's views, the Task Force decided to include CAAP cases in the group of exempted actions.

^{37/} Magistrate Judge Chang believes that CAAP cases should be exempted until a trial de novo of the arbitrator's award is requested.

implemented under the caseloads carried by circuit court judges. He stated that these rules enable a judge to be more efficient in managing cases, and he recommended that they be adopted, with an exemption for foreclosure and CAAP cases, by the Hawai‘i circuit courts.

2. Trial Setting for the Exempt Actions

The proposed amended rules remove the filing of the pretrial statement as the trigger for setting a trial date. For cases subject to the early scheduling conference/order requirements, trial and other important deadlines will be set by the scheduling order issued pursuant to the revised RCCH Rule 12(a). To provide a trial date or other case resolution deadlines for exempt actions, the Task Force proposes to amend RCCH Rule 12(b) to require plaintiffs in exempt actions to file a notice requesting a trial setting/status conference eight months after the complaint is filed. It is anticipated that many of the exempt cases may be resolved before such conference through default, dispositive motion, or resolution through the CAAP, thereby avoiding the need for further action. For cases that have not been resolved, the revised RCCH Rule 12(b) requires the court to establish a trial date or other appropriate deadlines for resolving the case. The court also has the discretion to require the parties to comply, in whole or in part, with the scheduling conference procedures applicable to non-exempt cases.

Under the current RCCH Rule 12, an action may be dismissed *sua sponte* for want of prosecution if a pretrial statement has not been filed within eight months after a complaint has been filed (or within further extensions granted by the court) or if a trial setting status conference has not been scheduled as required by the rule. RCCH Rule 12(q). We propose to amend this provision by replacing these grounds for dismissal with: (1) for exempt cases, the failure to file a notice requesting a trial setting/status conference as required by the revised RCCH Rule 12; and (2) for non-exempt cases, the failure to file a notice requesting a scheduling conference as required by the revised RCCH Rule 12. Our proposed amendment, which is set forth in revised RCCH Rule 12(i), does not change other aspects of the current rule for dismissal for want of prosecution.

E. Additional Recommendations

1. Proposed Amendments to HRCP Rule 5

The current HRCP Rule 5 does not permit service of documents by email. However, email is widely used and provides a very inexpensive means of serving documents. The Task Force proposes amending HRCP Rule 5 to include service of documents by email as an option. Under the revised rule, parties must consent in writing to service by email before it can be used. The consent requirement will serve to avoid disputes, such as what email address(es) to use, and protect non-lawyers who do not have ready

access to email. The revised rule provides that service by email is complete upon transmission of the entire document, unless the sender learns that it did not reach the person to be served. The Task Force is aware that the electronic filing (e-filing) of documents will soon be available in circuit court and will likely be accompanied by rules relating to service of e-filed documents. Certain documents, however, such as discovery materials, are not filed in court and therefore may not be covered by those e-filing rules. The Task Force recommends that our email service proposal be integrated with rules for service of e-filed documents.^{38/}

2. The CAAP

Since 1986, Hawai‘i has used the CAAP as a means of resolving tort cases with a probable jury award value of \$150,000 or less. See HRS § 601-20. The CAAP is a mandatory program in that tort cases are subject to the program unless the case is exempted. Id; Hawai‘i Arbitration Rules (HAR) Rule 8. A party may appeal the CAAP arbitrator's award and obtain a trial de novo in circuit court, but if there is no appeal, the arbitrator's award is entered as a final judgment of the court. HAR Rule 21, 22.

Similar to the purposes of this Task Force, the CAAP was designed to reduce litigation costs by managing and reducing

^{38/} In conjunction with our proposal to amend HRCP Rule 5(b) to permit service by email, the Task Force proposes to amend: (1) RCCH Rule 3 to require parties to include an email address in the caption of pleadings; and (2) RCCH Rule 4 to require parties who appear without counsel to notify the clerk of their email address.

pretrial discovery and expediting tort cases to resolution at a faster pace. See John Barkai and Gene Kassenbaum, Hawaii's Court-Annexed Arbitration Program Final Evaluation Report, 1 (1992). An evaluation of the CAAP performed in 1992 concluded that the CAAP had been successful in reducing litigation costs and pretrial discovery and in increasing the pace of litigation for tort cases included in the program. Id. at 12, 35-36, 53-54. The Task Force survey also indicates some support for the CAAP in that a majority of respondents: (1) agree or strongly agree that the \$150,000 ceiling should be increased (53%) and that the program should be expanded to cases besides torts (61%); and (2) disagree or strongly disagree that the program should be modified to make participation voluntary (52%).

The Task Force, however, also heard questions raised about the experience and availability of CAAP arbitrators and whether improvements in the CAAP can be made. Under HAR Rule 4, a Judicial Arbitration Commission, established by the Chief Justice, has "the responsibility to develop, monitor, maintain, supervise and evaluate the [CAAP] for the State of Hawai'i." The Task Force recommends that the Judicial Arbitration Commission solicit input on and evaluate the current condition of the CAAP and develop recommendations on how the program can be improved.

3. E-filing in Circuit Court

The Task Force notes that the Hawai'i Judiciary will soon expand its Judicial Electronic Filing System (JEFS) to include e-

filing in circuit court. Respondents to the Task Force's survey frequently recommended e-filing as a means of using technology to reduce costs and delay in the circuit courts. The new e-filing system in circuit court provides a valuable resource and tool for making the civil justice system more efficient and user-friendly and for reducing costs and delay. We recommend that every effort be made to utilize the new e-filing system to further these goals.

V. CONCLUSION

We have done our best to offer recommendations on ways to improve the civil justice system by reducing costs and delay and streamlining the litigation process in Hawaii's circuit courts. We know that we do not have a monopoly on good ideas. We hope that our recommendations can be used, and improved upon, to make the civil justice system more accessible, affordable, efficient, and just.

We thank Chief Justice Recktenwald for giving us the opportunity to serve on this Task Force. It has been an honor and a privilege.

Members of the Task Force on Civil Justice Improvements:

The Honorable Craig H. Nakamura (ret.)
Chair

The Honorable Rhonda A. Nishimura (ret.)
Reporter

Clare E. Connors
Vice-Chair
Attorney General, State of Hawai‘i^{39/}

David M. Louie
Vice-Chair
Kobayashi, Sugita & Goda

The Honorable Keith K. Hiraoka
Co-Chair, Discovery Committee
Associate Judge, Intermediate Court of Appeals^{40/}

The Honorable Jeannette H. Castagnetti
Chair, Case Management Committee
Circuit Judge, First Circuit

The Honorable Peter T. Cahill
Chair, Expedited Trial and Other Innovations Committee
Circuit Judge, Second Circuit

The Honorable Henry T. Nakamoto
Co-Chair, Discovery Committee
Circuit Judge, Third Circuit

The Honorable Randal G. Valenciano
Chair, Case Triage/Tiering and Other Case
Differentiation Measures
Circuit Judge, Fifth Circuit

The Honorable Summer M.M. Kupau-Odo
District Judge, First Circuit^{41/}

^{39/} When appointed to the Task Force, Attorney General Connors was a partner at Davis Levin Livingston

^{40/} When appointed to the Task Force, Associate Judge Hiraoka was a Circuit Judge for the First Circuit.

^{41/} When appointed to the Task Force, Judge Kupau-Odo was a lawyer for the Native Hawaiian Legal Corporation.

Nadine Y. Ando
McCorriston Miller Mukai & MacKinnon

Nancy J. Budd
Law Offices of Nancy J. Budd

Roy K.S. Chang
Shim & Chang

Steven J.T. Chow
The Pacific Law Group

Edmund W.K. Haitsuka
Haitsuka Degele LLP

William B. Heflin
Alcain Naniole & Heflin, LLLC^{42/}

Susan Ichinose
Panelist, Dispute Prevention & Resolution Inc.

Geoffrey K.S. Komeya
Cronin Fried Sekiya Kekina & Fairbanks

Lisa W. Munger
Goodsill Anderson Quinn & Stifel

Daniel J. O'Meara
Legal Aid Society of Hawai'i

Caroline S. Otani
Rush Moore LLP

Judith A. Pavey
Starn O'Toole Marcus & Fisher

Jeffrey H.K. Sia
Chong, Nishimoto, Sia, Nakamura & Goya, LLLP

Russell A. Suzuki
Department of the Attorney General^{43/}

^{42/} When appointed to the Task Force, Mr. Heflin was an associate at the Law Offices of Ian L. Mattoch.

^{43/} When appointed to the Task Force, Mr. Suzuki was the Attorney General for the State of Hawai'i.

Cynthia K. Wong
Cynthia K. Wong, Attorney at Law, LLLC

Eric K. Yamamoto
Fred T. Korematsu Professor of Law and Social Justice,
William S. Richardson School of Law,
University of Hawai‘i

Elijah Yip
Luminate Law^{44/}

^{44/} When appointed to the Task Force, Mr. Yip was a partner at Cades Schutte.

Appendix 1

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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In Re

TASK FORCE ON CIVIL JUSTICE IMPROVEMENTS

ORDER
(By: Recktenwald, C.J.)

Our civil justice court system serves a critical role in our society. It has long been recognized as providing the best and most reliable forum for the fair, impartial, and transparent resolution of disputes. National surveys, however, reflect concerns that resolving disputes through the courts is becoming too costly and takes too long. The costs of and delays in litigation, in turn, affects the ability of people to access and use the courts to resolve their disputes.

The mission of the Hawai'i Judiciary is "to administer justice in an impartial, efficient and accessible manner in accordance with the law." In furtherance of this mission, the Judiciary is committed to ensuring the continued vitality of our civil justice system and its effectiveness in responding to the

current and future needs of our community. We seek to improve the State's civil justice system by looking for ways to reduce the costs of civil litigation, streamline the litigation process, and make our courts more accessible, affordable, efficient, and just. In this endeavor, we draw upon recommendations and input received through Hawai'i State Bar Association (HSBA) Bench-Bar Conferences and Civil Law Forums as well as the efforts, experiences, and best practices of other jurisdictions.

NOW, THEREFORE, in furtherance of the Judiciary's mission and our commitment to improving Hawaii's civil justice system,

IT IS HEREBY ORDERED as follows:

1. A Task Force on Civil Justice Improvements (Task Force) is hereby established, effective upon the filing of this order.

2. The purpose of the Task Force is to develop recommendations, including rule amendments, on ways to reduce the costs of and delays in civil litigation, and to streamline the litigation process, in Hawaii's circuit courts.

a. In developing its recommendations, the Task Force should:

(i) Consider the report and recommendations of the Civil Justice Initiative by the Conference of Chief Justices.

(ii) Consider the reports and recommendations of the American College of Trial Lawyers and the

Institute for the Advancement of the American Legal System on civil justice reforms.

- (iii) Consider the disclosure and discovery provisions of the Federal Rules of Civil Procedure.
- (iv) Consider rule changes, pilot projects, and best practices implemented by other states and federal courts directed at improving their civil justice systems.
- (v) Consider steps to promote access to the courts by self-represented litigants.
- (vi) Consider steps to facilitate access to, and ensure the continued viability of, trial by jury in civil cases.
- (vii) Consider recommendations and input from members of the HSBA and other interested stakeholders.

b. In formulating its recommendations, the Task Force should be guided by the following principles:

- (i) The recommendations should seek to achieve demonstrable improvements with respect to the time and costs expended in resolving civil cases.

(ii) The recommendations should promote effective and economic utilization of resources while maintaining basic fairness.

(iii) The recommendations should enhance public confidence in the courts and provide assurance that justice is being done.

3. The individuals appointed as members of the Task Force are set forth in Appendix A. The Chief Justice may appoint additional members as may be necessary. The terms of the Task Force members shall expire on August 1, 2019.

4. The Task Force shall meet at the discretion of the Task Force Chair.

5. On or before July 1, 2019, the Task Force shall submit to the Chief Justice its final report containing its recommendations, including any rule amendments, on ways to reduce the costs of and delays in civil litigation, and to streamline the litigation process, in Hawaii's circuit courts.

Dated: Honolulu, Hawai'i, June 19, 2018.

/s/ Mark E. Recktenwald

Chief Justice



APPENDIX A

MEMBERS OF THE TASK FORCE ON CIVIL JUSTICE IMPROVEMENTS

The Honorable Craig H. Nakamura (ret.), Chair

The Honorable Rhonda A. Nishimura (ret.), Reporter

Clare E. Connors, Vice-Chair

David M. Louie, Vice-Chair

The Honorable Jeannette H. Castagnetti

The Honorable Keith K. Hiraoka

The Honorable Peter T. Cahill

The Honorable Henry T. Nakamoto

The Honorable Randal G. Valenciano

Attorney General Russell A. Suzuki

Nadine Y. Ando

Nancy J. Budd

Roy K.S. Chang

Steven J.T. Chow

Edmund W.K. Haitsuka

William B. Heflin

Susan Ichinose

Geoffrey K.S. Komeya

Summer M.M. Kupau-Odo

Lisa W. Munger

Daniel J. O'Meara

Caroline S. Otani

Judith A. Pavey

Jeffrey H.K. Sia

Cynthia K. Wong

Eric K. Yamamoto

Elijah Yip

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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In Re

TASK FORCE ON CIVIL JUSTICE IMPROVEMENTS

ORDER
(By: Recktenwald, C.J.)

Upon consideration of the requests of the Task Force on Civil Justice Improvements (Task Force) for an extension of time to submit its final report and to extend the terms of the Task Force members:

IT IS HEREBY ORDERED as follows:

1. The time for the Task Force to submit its final report to the Chief Justice is extended from on or before July 1, 2019, to on or before August 1, 2019.

2. The date on which the terms of the Task Force members shall expire is extended from August 1, 2019, to September 1, 2019.

Dated: Honolulu, Hawai'i, June 4, 2019.

/s/ Mark E. Recktenwald

Chief Justice



Appendix 2

TASK FORCE ROSTER AND COMMITTEE ASSIGNMENTS

Task Force on Civil Justice Improvements

The Honorable Craig H. Nakamura (ret.), Chair
The Honorable Rhonda A. Nishimura (ret.), Reporter
Attorney General Clare E. Connors, Vice-Chair
David M. Louie, Vice Chair

Committee on Case Triage/Tiering and Other Case Differentiation Measures

The Honorable Randal G.B. Valenciano, Chair
Nadine Y. Ando
Nancy J. Budd
Roy K.S. Chang
Lisa W. Munger
Caroline S. Otani

Committee on Case Management

The Honorable Jeannette H. Castagnetti, Chair
Russell A. Suzuki
Steven J.T. Chow
Geoffrey K.S. Komeya
Cynthia K. Wong
Elijah Yip

Committee on Discovery

The Honorable Keith K. Hiraoka, Co-Chair
The Honorable Henry T. Nakamoto, Co-Chair
Susan Ichinose
Judith A. Pavey
Jeffrey H.K. Sia
Eric K. Yamamoto

Committee on Expedited Trials and Other Innovations

The Honorable Peter T. Cahill, Chair
The Honorable Summer M.M. Kupau-Odo
Edmund W.K. Haitsuka
William B. Heflin
Daniel J. O'Meara

Appendix 3

Dissent by Task Force Member, Roy Chang

I, Roy Chang, respectfully disagree with the Task Force's decision to exclude all CAAP tort cases from the case triage and tier program. In establishing this Task Force, our Chief Justice intended for us to come up with changes and recommendations to our current civil justice system which would help to "reduce the costs of and delays in civil litigation, and to streamline the litigation process." He also directed that the "recommendations should seek to achieve demonstrable improvements with respect to the time and costs expended in resolving civil cases." Tort cases constitute 25% of all civil filings, and amount to 40% of all non-foreclosure civil cases. The proposed exclusion of CAAP cases from this program would be contrary to the intent and purpose of the Chief Justice's initiative, and would leave a large number of cases out of the proposed streamlining process.

The Conference of Chief Justices Civil Justice Improvements Committee ("CJI Committee") made several key recommendations ("CJI Recommendations") which are cited, in part, below:

Recommendation 1.1 requires the court to manage civil cases from "time of filing to disposition" by setting requirements for reaching just and prompt case resolution. "These requirements should at a minimum include a firm date for commencing trial and mandatory disclosures of essential information."

Recommendation 4.2 requires the court to "establish deadlines to complete key case stages, including a firm trial date."

Recommendation 4.3 states: "To keep the discovery process proportional to the needs of the case, courts should require mandatory disclosures as an early opportunity to clarify issues, with enumerated and limited discovery thereafter."

As a plaintiff attorney who has participated in the CAAP program since its inception, I have seen first-hand the problems with the program. The CAAP statistics are deceiving. While they show that CAAP cases are being resolved with limited number of appeals, they also show that a significant majority of the cases usually take more than a year to resolve. The primary reason for this delay is because the Hawaii Arbitration Rules ("HAR") leave discovery and case management solely to the arbitrators and parties themselves. As a result, there is no uniformity in discovery, very little deadlines, and no management from the arbitrator (unless a dispute arises). CAAP cases are put on the back burners, and arbitration dates are routinely moved. The reality is that cases without deadlines and a firm trial date take longer to resolve.

The changes being recommended by this Task force, in many ways, mirror the federal rules, and for good reason. The federal system works and is in keeping with the CJI Recommendations. By comparison, when tort cases (which would have been in CAAP had the case been filed in state court) are in federal court, they proceed more efficiently and resolve sooner because of the early involvement of a judge, a scheduling conference within 2-3 months of filing, required initial disclosures, discovery deadlines, and the setting of a firm trial date. Under the CAAP program, none of this exists, and no trial date is set until 8 months down the road, at the earliest. In my experience and as pointed out by CJI Recommendations 1.1 and 4.2, the absence of a firm trial date removes the incentive and urgency to resolve cases.

CAAP cases alone make up 20 % of the civil cases filed in the circuit courts. That's more than any other type of civil case that is being kept within the proposed triage and tier program. The one group of cases which would benefit the most from this new program is being excluded because of the concern that it would unduly burden the state judges. I disagree.

I may be mistaken, but I believe our Chief Justice's mandate was to come up with a system that would expedite the resolution of **all** civil cases at a reduced and proportionate cost. If in doing so it would require hiring more judges to serve in a similar role as a federal magistrate, then that should be the recommendation of this Task Force, rather than taking it upon ourselves to remove an entire class of cases from the program.

Removing CAAP cases from this program will not reduce the number of times judges will have to meet with the parties in CAAP cases. Under the current CAAP program, judges are required by Circuit Court Rule 12 to hold a trial setting conference 8-10 months after filing. The proposed new rules would still require the judge to hold a pretrial conference 8 months after the filing of a CAAP case which, in the great majority of these cases, would occur before the CAAP arbitration. If CAAP cases were to be included in this new program, the judge would be holding that same **one** conference, but months earlier, which would actually be a good thing.

If CAAP cases are excluded from this program and the circuit court rules and civil rules of procedure are changed as recommended by this Task Force, then the HAR rules would also have to be changed as several of the HAR rules rely upon and specifically reference the existing rules.

I had urged the Task Force to create a third tier, an arbitration tier, where CAAP cases would go through the triage process just like any other case, and thereafter be assigned to the appointed arbitrator for oversight, management, and if necessary, arbitration. The benefits would be many. All CAAP cases would have already gone through a scheduling conference where they would have been given a firm trial date, an initial disclosure date, a proportionate discovery plan, and other deadlines, all within 3 months of filing. Thereafter, the assigned arbitrator would, in effect, be assuming the role of a federal magistrate (at no cost to the state) to monitor the progress of the case, resolve discovery disputes, and ultimately bring the case to resolution, either by way of a settlement conference, mediation, or arbitration. This would create uniformity in all CAAP cases, provide direction to the arbitrator (especially the inexperienced ones), and speed up the ultimate resolution of the case.

In my experience, federal court tort cases resolve much faster because of the Rule 16 requirements, the same rule requirements which are being proposed by this Task Force, but not for CAAP cases. Early court involvement, early discovery, and early setting of a firm trial date will more likely result in CAAP cases resolving earlier and at a reduced cost, a result which is directly in keeping with the CJI Recommendations and the Task Force's original purpose, as mandated by our Chief Justice. Excluding CAAP cases would run counter to this purpose and would have the exact opposite effect.

Appendix 4

The Task Force thanks and commends the following members of the Hawai'i Judiciary staff for their exceptional work in supporting and assisting the Task Force. An extra-special thank you to Mark Santoki and Karen Takahashi for their dedication and extraordinary efforts to make sure that the Task Force was provided with whatever we needed.

Office of the Chief Justice

Curt Shibata, Supreme Court Bailiff

Office of the Administrative Director of the Courts

Brandon M. Kimura, Deputy Administrative Director of the Courts
Daylin-Rose H. Heather, Special Assistant to the Administrative Director of the Courts

Legislative Coordinating/Special Projects Office

Karen Takahashi, Special Projects Coordinator
Lori Rutherford, Legislative Office Assistant I
Caryn Moran, Research Analyst

First Circuit Court, Office of the Chief Court Administrator, Administrative Services Division

Mark Santoki, Court Operations Specialist
Karol Sakamoto, Court Operations Specialist
Todd Unten, IT Support Technician

Center for Alternative Dispute Resolution

Becky Sugawa, Research Analyst

Communications and Community Relations Office

Deborah Murray, Information Specialist IV/Webmaster

Information Technology and Systems Department System Services Branch, User Support Section

Linda Kawakami, IT Specialist

Information Technology and Systems Department, Telecommunications Services Branch

Darryl Nakasone, Information Specialist
Xiaorong Wu, Information Specialist

Facilities Management, Ali'ioli Hale

Glenn Murakami, Assistant Facilities Manager

Miles Uehara, Working Supervisor

Andrew Chu, Janitor

Lolita Tinaza, Janitor

Mary Jane Padaca, Janitor

Perlita Pablo, Janitor

Glen Oyama, Janitor

Edelyn Masagnay, Janitor

Appendix 5a

HAWAI'I CIVIL JUSTICE IMPROVEMENTS TASK FORCE SURVEY

Chief Justice Mark E. Recktenwald established the Civil Justice Improvements Task Force to develop recommendations on ways to reduce costs and delay and streamline the litigation process in Hawaii's Circuit Courts. The purpose of this survey is to obtain input from members of the Hawai'i State Bar Association to assist the Task Force in formulating its recommendations. Your cooperation in completing the survey is greatly appreciated. The Task Force plans to distribute the survey through various means, so please submit only one response to the survey and disregard any duplicate survey requests.

You may email any additional thoughts, comments, or suggestions regarding civil justice improvements to the Task Force at CJI.Jud@courts.hawaii.gov.

HAWAI'I CIVIL JUSTICE IMPROVEMENS TASK FORCE SURVEY

Are you an attorney or judge with past or present CIVIL LITIGATION experience in the Circuit Courts of Hawai'i? For this survey, civil litigation does not include domestic relations or family law.

- Yes
- No

If you answered "Yes," please proceed to Question 1. If you answered "No," you may stop here.

I. ATTORNEY BACKGROUND

1. Number of years of experience in civil litigation, including years serving as a judge: _____.
2. Which of the following best describes your experience in civil litigation:
 - My current practice involves civil litigation.
 - My current practice does not involve civil litigation, but I have past experience in civil litigation.
3. Please identify the judicial circuit in which you have primarily conducted your civil litigation practice.
 - First Circuit
 - Second Circuit
 - Third Circuit
 - Fifth Circuit
4. Estimated number of Hawai'i Circuit Court civil cases in which you have been an attorney of record (entered an appearance) or a judge within the last ten years:
 - None
 - 1 to 10
 - 11 to 50
 - 51 to 100
 - Over 100
5. Estimated number of your Hawai'i Circuit Court civil cases that have gone to trial in the last ten years (Judges, please include cases over which you have presided at trial):
 - None
 - 1 to 5
 - 6 to 10
 - 11 to 20
 - Over 20

6. Identify the types of civil cases with which you have the most experience in Hawai‘i Circuit Court. Select up to three areas but do not include areas of minimal involvement:

- | | |
|---|---|
| <input type="checkbox"/> Contract | <input type="checkbox"/> Condemnation |
| <input type="checkbox"/> Motor Vehicle Tort | <input type="checkbox"/> Environment |
| <input type="checkbox"/> Assault and Battery | <input type="checkbox"/> Foreclosure -- Mortgage /Agreement of Sale |
| <input type="checkbox"/> Construction Defect | <input type="checkbox"/> Agency Appeal |
| <input type="checkbox"/> Medical Malpractice | <input type="checkbox"/> Declaratory Judgment |
| <input type="checkbox"/> Legal Malpractice | <input type="checkbox"/> Other, please specify _____ |
| <input type="checkbox"/> Product Liability | <input type="checkbox"/> Other, please specify _____ |
| <input type="checkbox"/> Other Non-Vehicle Tort | <input type="checkbox"/> Other, please specify _____ |

7. Which of the following best describes your civil litigation role over the course of your career? If applicable, you may check “neutral decision maker” in addition to any other box.

- Represent plaintiffs in all or nearly all cases
- Represent defendants in all or nearly all cases
- Represent plaintiffs and defendants, but plaintiffs more frequently
- Represent plaintiffs and defendants, but defendants more frequently
- Represent plaintiffs and defendants equally
- Neutral decision-maker

8. Your current position is best described as:

- Law firm lawyer or solo practitioner
- In-house counsel
- Government lawyer
- Judge
- Retired or inactive lawyer, last year of practice: _____
- Other, please specify: _____

If your answer to Question 8 is “Law firm or solo practitioner,” please answer Questions 9 and 10. Otherwise, please skip to Question 11.

9. Current number of full- and part-time attorneys who work in your firm.

- 1 to 5
- 6 to 10
- 11 to 20
- 21 to 50
- Over 50

10. As a general matter, your firm will not file or defend a case unless the amount in controversy exceeds:

\$_____

- Firm will not refuse a case based on the amount in controversy.
- Don't know.

11. Do you have civil litigation experience in federal court in the District of Hawai'i?

- Yes
- No

*If your answer to Question 11 was "Yes," please answer Questions 12 and 13.
Otherwise, please skip to Question 14.*

12. How would you describe the frequency of your appearance in federal court in the District of Hawai'i?

- Rarely appear
- Occasionally appear
- Frequently appear

13. Between the Hawai'i Circuit Courts and the U.S. District Court for the District of Hawai'i:

- I prefer litigating in Hawai'i Circuit Courts.

Reason: _____

-
- I prefer litigating in U.S. District Court for the District of Hawai'i

Reason: _____

-
- No preference:

Reason: _____

II. CIVIL LITIGATION GENERALLY

14. Please indicate your level of agreement with each statement as it relates specifically to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. The civil justice system provides for the just, speedy, and inexpensive determination of civil actions.					
b. The civil justice system is reasonably efficient and fundamental changes to reduce costs and delay and streamline the litigation process are not necessary.					
c. Fundamental changes need to be made to the civil justice system to reduce costs and delay and to streamline the litigation process.					
d. The civil justice system takes too long.					
e. The civil justice system is too expensive.					
f. The civil justice system is too complex.					
g. Cases are resolved based on considerations unrelated to the merits of the parties' claims or defenses.					
h. Opposing counsel are generally uncooperative.					

15. In your experience, how often are litigation costs proportional to the value of the case in Hawai‘i Circuit Courts?

- Almost never
- Occasionally
- About 50% of the time
- Often
- Almost always

16. The primary cause of delay in the litigation process in Hawai‘i Circuit Courts is:

- Lack of a trial setting conference at the outset of the case
- Delayed rulings on pending motions
- Court continuances of scheduled events
- Attorney requests for extensions of time and continuances
- The time spent on discovery
- Lack of attorney collaboration on discovery issues and proceedings
- Other, please specify _____

17. How often does the cost of litigation force cases to settle that should not settle based on the merits.

- Almost never
- Occasionally
- About 50% of the time
- Often
- Almost always

18. How often does the length of time it takes to get a case to trial force cases to settle that should not settle based on the merits.

- Almost never
- Occasionally
- About 50% of the time
- Often
- Almost always

19. How often is each of the following a significant factor in the decision to settle a case.

	Almost never	Occasionally	About 50% of the time	Often	Almost always
a. Expert witness costs					
b. Deposition costs					
c. Document production costs					
d. E-discovery costs					
e. Trial costs					
f. Legal research costs					
g. Motions practice costs					
h. Attorney fees					
i. Time it takes to get to trial					

20. Please indicate how often the following occur in your experience as it relates to Hawai‘i Circuit Courts.

	Almost Never	Occasionally	About 50% of the time	Often	Almost Always
a. Litigants engage in misconduct and rule violations that serve to increase the costs of and/or delay litigation.					
b. Litigants request sanctions for such misconduct and rule violations.					
c. Courts impose sanctions for such misconduct and rule violations.					

III.A CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES.

21. For each statement, please indicate your level of agreement as it applies to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. Discovery and judicial involvement should be tailored to the needs of a case, as not every case requires the same amount of discovery and judicial involvement.					
b. Efficiency and costs savings would be enhanced if cases were separated into different pathways based on criteria such as amount in controversy and complexity, with appropriate levels of discovery and judicial resources applied to each pathway.					
c. Judicial involvement should happen once the parties have answered the complaint.					
d. The Court Annexed Arbitration Program (CAAP) should be modified to increase the \$150,000 “probable jury award” ceiling for acceptance into the program.					
e. The CAAP should be modified to make participation in the program voluntary.					
f. The CAAP should be expanded to apply to cases besides tort cases.					
g. Specialized courts to handle specific types of civil cases or disputes should be created.					
h. The District Court’s \$40,000 jurisdictional limit should be increased so that more cases can be filed in District Court.					
i. The \$5,000 threshold for the right to a jury trial should be increased.					
j. Jury trials with a jury of less than twelve but not less than six jurors should be authorized.					

22. If you agree or strongly agree that the \$150,000 CAAP ceiling should be increased, to what amount should the ceiling be increased: \$_____

23. If you agree or strongly agree that the CAAP should be expanded to cases besides torts, what other types of cases should be included in the CAAP: _____

24. If you agree or strongly agree that specialized courts should be created, what types of specialized courts would you recommend: _____

25. If you agree or strongly agree that the District Court's jurisdictional limit should be increased, to what amount should the limit be increased: \$_____

26. If you agree or strongly agree that the threshold for the right to a jury trial should be increased, to what amount should the threshold be increased: \$_____

27. Do you have any suggestions or recommendations on how case triage/tiering and other case differentiation measures can be used to reduce costs and delay and streamline the litigation process in Circuit Court? _____

III.B. CASE MANAGEMENT

28. Who primarily controls the pace of litigation in Circuit Court?

- The Court
- The Lawyers
- The Litigants
- Don't know

29. For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. The court, rather than the lawyers or the parties, should exercise ultimate responsibility over the management of cases.					
b. Judges should take a more active role in imposing deadlines and managing the progress of a case.					
c. Hawai'i should adopt procedures to facilitate early judicial involvement in a case.					
d. Hawai'i should adopt procedures to facilitate the early establishment of the trial date and pretrial deadlines.					
e. Hawai'i should adopt procedures similar to the scheduling conference provisions of Rule 16 of the Federal Rules of Civil Procedure.					
f. Hawai'i should adopt procedures to facilitate the early identification and review of frivolous lawsuits.					

30. The following are statements related to trial dates. For each, please give your opinion as it applies to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. Trial dates should be set early in the case.					
b. Trial dates should be set after the parties answer the complaint.					
c. Trial dates should be set after discovery is completed.					
d. Trial dates should be continued or vacated only under rare circumstances.					
e. It is too easy for parties to obtain extensions of trial dates already set.					

31. The following are statements about judicial role in litigation. For each give your opinion as it applies to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. One judge should handle a case from start to finish.					
b. The judge who is going to try the case should handle all pre-trial matters.					
c. It is more important that pre-trial matters are handled promptly than whether the trial judge or another judicial officer handles the matter.					
d. Judges are involved early in case proceedings.					
e. Involvement by judges early in the case helps to narrow the issues.					
f. Involvement by judges early in the case helps to narrow discovery to the information necessary for case resolution.					

32. Do you have any suggestions or recommendations on how case management practices can be used to reduce costs and delay and streamline the litigation process in Circuit Court? _____

III.C DISCOVERY

33. For each statement, please indicate your level of agreement as it applies to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. Hawai‘i should incorporate considerations of proportionality in defining the scope of discovery.					
b. Hawai‘i should adopt mandatory initial disclosure requirements, such as the ones imposed by the federal rules, to require disclosure of certain matters without the need for a discovery request.					
c. Hawai‘i should impose a mandatory requirement, such as the one imposed by the federal rules, to require the parties to meet and confer after a complaint has been served to discuss discovery and obtain agreement to a discovery plan.					
d. Judges are available to resolve discovery disputes on a timely basis.					
e. Judges should be more willing and available to resolve discovery disputes on an informal (non-motion) and expedited basis, such as through discovery/status conferences or letter briefing.					
f. The First Circuit should consider designating a specialized judge to resolve discovery disputes as a means of reducing costs and delay.					
g. Judges enforce discovery rules by imposing sanctions for discovery violations when warranted.					

34. Judges offer and are available to resolve discovery disputes on an informal (non-motion) and expedited basis:

- Almost never
- Occasionally
- About 50% of the time
- Often
- Almost always

35. The following statements relate to rules concerning expert discovery. For each statement, please indicate your level of agreement as it applies to Hawai‘i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
a. Hawai‘i should adopt rules, similar to the federal rules, that impose specific deadlines for disclosure of expert witnesses and expert reports.					
b. Hawai‘i should adopt rules, similar to the federal rules, regarding what an expert’s report must contain.					
c. Hawai‘i should adopt rules, similar to the federal rules, regarding the extent to which communications between counsel and an expert are discoverable.					

36. If there are aspects of discovery that you could change in order to reduce costs and delay and streamline the litigation process, what would they be and why? _____

III. D. EXPEDITED TRIALS AND OTHER INNOVATIONS

37. Should the Hawai‘i Circuit Courts adopt an expedited trial program or pilot project to provide for expedited jury or bench trials for certain types of cases?

- Yes
- No
- Don’t know

38. If your answer to the preceding Question 37 was “Yes,” do you have any suggestions or recommendations regarding what types of cases should be included in the expedited trial program and what procedures should apply to trials within the program.

39. Do you have any suggestions or recommendations on how the Hawai‘i Circuit Courts can use technology to make the litigation process more user friendly and transparent for pro se litigants and to help reduce costs and delay? _____

IV. CONCLUSION

40. If you could change one rule or procedure in the Hawai‘i Circuit Courts to reduce costs and delay and secure a more streamlined court process for litigants, what would it be and why. _____

41. Please include any recommendation, information, clarification, or comment you would like to add. _____

Appendix 5b

Hawaii Civil Justice Improvement Task Force Survey

Chief Justice Mark E. Recktenwald established the Civil Justice Improvements Task Force to develop recommendations on ways to reduce costs and delay and streamline the litigation process in Hawaii's Circuit Courts. The purpose of this survey is to obtain input from members of the Hawai'i State Bar Association to assist the Task Force in formulating its recommendations. Your cooperation in completing the survey is greatly appreciated. The Task Force plans to distribute the survey through various means, so please submit only one response to the survey and disregard any duplicate survey requests.

The survey should take approximately 20 to 25 minutes to complete. Your responses to survey questions will be submitted once you click "Next" in the survey, but your responses may be revised at any time until you click "Done" at the end of the survey. Your progress in completing the survey will be saved, and you may exit the survey and then later return to the survey by clicking on the survey link.

You may email any additional thoughts, comments, or suggestions regarding civil justice improvements to the Task Force at CJI.Jud@courts.hawaii.gov.

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

* Are you an attorney or judge with past or present CIVIL LITIGATION experience in the Circuit Courts of Hawai'i? For this survey, civil litigation does not include domestic relations or family law.

- Yes
 No

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

* Number of years of experience in civil litigation, including years serving as a judge:

* Which of the following best describes your experience in civil litigation?

- My current practice involves civil litigation.
- My current practice does not involve civil litigation, but I have past experience in civil litigation.

* Please identify the judicial circuit in which you have primarily conducted your civil litigation practice.

- First Circuit
- Second Circuit
- Third Circuit
- Fifth Circuit

* Estimated number of Hawai'i Circuit Court civil cases in which you have been an attorney of record (entered an appearance) or a judge within the last ten years:

- None
- 51 to 100
- 1 to 10
- Over 100
- 11 to 50

* Estimated number of your Hawai'i Circuit Court civil cases that have gone to trial in the last ten years (Judges, please include cases over which you have presided at trial):

- None
- 11 to 20
- 1 to 5
- Over 20
- 6 to 10

* Identify the types of civil cases with which you have the most experience in Hawai'i Circuit Court. Select up to three areas but do not include areas of minimal involvement:

- | | |
|---|---|
| <input type="checkbox"/> Contract | <input type="checkbox"/> Other Non-Vehicle Tort |
| <input type="checkbox"/> Motor Vehicle Tort | <input type="checkbox"/> Condemnation |
| <input type="checkbox"/> Assault and Battery | <input type="checkbox"/> Environment |
| <input type="checkbox"/> Construction Defect | <input type="checkbox"/> Foreclosure -- Mortgage /Agreement of Sale |
| <input type="checkbox"/> Medical Malpractice | <input type="checkbox"/> Agency Appeal |
| <input type="checkbox"/> Legal Malpractice | <input type="checkbox"/> Declaratory Judgment |
| <input type="checkbox"/> Product Liability | |
| <input type="checkbox"/> Other (please specify) | |

* Which of the following best describes your civil litigation role over the course of your career? If applicable, you may check "neutral decision maker" in addition to any other box.

- Represent plaintiffs in all or nearly all cases
- Represent defendants in all or nearly all cases
- Represent plaintiffs and defendants, but plaintiffs more frequently
- Represent plaintiffs and defendants, but defendants more frequently
- Represent plaintiffs and defendants equally
- Neutral decision-maker

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

* Your current position is best described as:

- Law firm lawyer or solo practitioner
- In-house counsel
- Government lawyer
- Other (please specify)
- Judge
- Retired or inactive lawyer

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

Current number of full- and part-time attorneys who work in your firm.

- 1 to 5
- 6 to 10
- 11 to 20
- 21 to 50
- Over 50

Will your firm refuse to file or defend a case based on the amount in controversy?

- Yes
- No
- I don't know

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

As a general matter, your firm will not file or defend a case unless the amount in controversy exceeds (in \$):

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

What was your last year of practice?

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

* Do you have civil litigation experience in federal court in the District of Hawai'i?

- Yes
- No

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

* How would you describe the frequency of your appearance in federal court in the District of Hawai'i?

- Rarely appear
- Occasionally appear
- Frequently appear

* Between the Hawai'i Circuit Courts and the U.S. District Court for the District of Hawai'i:

- I prefer litigating in Hawai'i Circuit Courts.
- I prefer litigating in U.S. District Court for the District of Hawai'i
- No preference

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

Why do you prefer litigating in Hawai'i Circuit Courts?

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

Why do you prefer litigating in U.S. District Court for the District of Hawai'i?

Hawaii Civil Justice Improvement Task Force Survey

I. ATTORNEY BACKGROUND

Why do you have no preference between litigating in the Hawai'i Circuit Courts and the U.S. District Court for the District of Hawai'i?

Hawaii Civil Justice Improvement Task Force Survey

II. CIVIL LITIGATION GENERALLY

Please indicate your level of agreement with each statement as it relates specifically to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
The civil justice system provides for the just, speedy, and inexpensive determination of civil actions.	<input type="checkbox"/>				
The civil justice system is reasonably efficient and fundamental changes to reduce costs and delay and streamline the litigation process are not necessary.	<input type="checkbox"/>				
Fundamental changes need to be made to the civil justice system to reduce costs and delay and to streamline the litigation process.	<input type="checkbox"/>				
The civil justice system takes too long.	<input type="checkbox"/>				
The civil justice system is too expensive.	<input type="checkbox"/>				
The civil justice system is too complex.	<input type="checkbox"/>				
Cases are resolved based on considerations unrelated to the merits of the parties' claims or defenses.	<input type="checkbox"/>				
Opposing counsel are generally uncooperative.	<input type="checkbox"/>				

In your experience, how often are litigation costs proportional to the value of the case in Hawai'i Circuit Courts?

- | | |
|---|-------------------------------------|
| <input type="radio"/> Almost never | <input type="radio"/> Often |
| <input type="radio"/> Occasionally | <input type="radio"/> Almost always |
| <input type="radio"/> About 50% of the time | |

The primary cause of delay in the litigation process in Hawai'i Circuit Courts is:

- Lack of a trial setting conference at the outset of the case
- Attorney requests for extensions of time and continuances
- Delayed rulings on pending motions
- The time spent on discovery
- Court continuances of scheduled events
- Lack of attorney collaboration on discovery issues and proceedings
- Other (please specify)

How often does the cost of litigation force cases to settle that should not settle based on the merits?

- Almost never
- Often
- Occasionally
- Almost always
- About 50% of the time

How often does the length of time it takes to get a case to trial force cases to settle that should not settle based on the merits?

- Almost never
- Often
- Occasionally
- Almost always
- About 50% of the time

How often is each of the following a significant factor in the decision to settle a case?

	Almost never	Occasionally	About 50% of the time	Often	Almost always
Expert witness costs	<input type="radio"/>				
Deposition costs	<input type="radio"/>				
Document production costs	<input type="radio"/>				
E-discovery costs	<input type="radio"/>				
Trial costs	<input type="radio"/>				
Legal research costs	<input type="radio"/>				
Motions practice costs	<input type="radio"/>				
Attorney fees	<input type="radio"/>				
Time it takes to get to trial	<input type="radio"/>				

Please indicate how often the following occur in your experience as it relates to Hawai'i Circuit Courts.

	Almost Never	Occasionally	About 50% of the time	Often	Almost Always
Litigants engage in misconduct and rule violations that serve to increase the costs of and/or delay litigation.	<input type="radio"/>				
Litigants request sanctions for such misconduct and rule violations.	<input type="radio"/>				
Courts impose sanctions for such misconduct and rule violations	<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
Discovery and judicial involvement should be tailored to the needs of a case, as not every case requires the same amount of discovery and judicial involvement.	<input type="radio"/>				
Efficiency and costs savings would be enhanced if cases were separated into different pathways based on criteria such as amount in controversy and complexity, with appropriate levels of discovery and judicial resources applied to each pathway.	<input type="radio"/>				
Judicial involvement should happen once the parties have answered the complaint.	<input type="radio"/>				
The Court Annexed Arbitration Program (CAAP) should be modified to make participation in the program voluntary.	<input type="radio"/>				
Jury trials with a jury of less than twelve but not less than six jurors should be authorized.	<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

* Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts:

The Court Annexed Arbitration Program (CAAP) should be modified to increase the \$150,000 "probable jury award" ceiling for acceptance into the program.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
	<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

To what dollar amount should the ceiling be increased?

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

* Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts:

The CAAP should be expanded to apply to cases besides tort cases.



Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

What other types of cases should be included in the CAAP?

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

* Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts:

Specialized courts to handle specific types of civil cases or disputes should be created.

Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

What types of specialized courts would you recommend?

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

* Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts:

The District Court's \$40,000 jurisdictional limit should be increased so that more cases can be filed in District Court.

Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

To what dollar amount should the jurisdictional limit be increased?

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

* Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts:

The \$5,000 threshold for the right to a jury trial should be increased.

Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
<input type="radio"/>				

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

To what dollar amount should the jury trial threshold be increased?

Hawaii Civil Justice Improvement Task Force Survey

III. A. CASE TRIAGE/TIERING AND OTHER CASE DIFFERENTIATION MEASURES

Do you have any suggestions or recommendations on how case triage/tiering and other case differentiation measures can be used to reduce costs and delay and streamline the litigation process in Circuit Court?

Hawaii Civil Justice Improvement Task Force Survey

III. B. CASE MANAGEMENT

Who primarily controls the pace of litigation in Circuit Court?

- The Court
- The Lawyers
- The Litigants
- Don't know

For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
The court, rather than the lawyers or the parties, should exercise ultimate responsibility over the management of cases.	<input type="radio"/>				
Judges should take a more active role in imposing deadlines and managing the progress of a case.	<input type="radio"/>				
Hawai'i should adopt procedures to facilitate early judicial involvement in a case.	<input type="radio"/>				
Hawai'i should adopt procedures to facilitate the early establishment of the trial date and pretrial deadlines.	<input type="radio"/>				
Hawai'i should adopt procedures similar to the scheduling conference provisions of Rule 16 of the Federal Rules of Civil Procedure.	<input type="radio"/>				
Hawai'i should adopt procedures to facilitate the early identification and review of frivolous lawsuits.	<input type="radio"/>				

The following are statements related to trial dates. For each, please give your opinion as it applies to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
Trial dates should be set early in the case.	<input type="radio"/>				
Trial dates should be set after the parties answer the complaint.	<input type="radio"/>				
Trial dates should be set after discovery is completed.	<input type="radio"/>				
Trial dates should be continued or vacated only under rare circumstances.	<input type="radio"/>				
It is too easy for parties to obtain extensions of trial dates already set.	<input type="radio"/>				

The following are statements about judicial role in litigation. For each, please give your opinion as it applies to Hawai'i Circuit Courts.

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
One judge should handle a case from start to finish.	<input type="radio"/>				
The judge who is going to try the case should handle all pre-trial matters.	<input type="radio"/>				
It is more important that pre-trial matters are handled promptly than whether the trial judge or another judicial officer handles the matter.	<input type="radio"/>				
Judges are involved early in case proceedings.	<input type="radio"/>				
Involvement by judges early in the case helps to narrow the issues.	<input type="radio"/>				
Involvement by judges early in the case helps to narrow discovery to the information necessary for case resolution.	<input type="radio"/>				

Do you have any suggestions or recommendations on how case management practices can be used to reduce costs and delay and streamline the litigation process in Circuit Court?

Hawaii Civil Justice Improvement Task Force Survey

III. C. DISCOVERY

For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

Strongly Disagree Disagree Agree Strongly Agree No Opinion

Hawai'i should incorporate considerations of proportionality in defining the scope of discovery.

Hawai'i should adopt mandatory initial disclosure requirements, such as the ones imposed by the federal rules, to require disclosure of certain matters without the need for a discovery request.

Hawai'i should impose a mandatory requirement, such as the one imposed by the federal rules, to require the parties to meet and confer after a complaint has been served to discuss discovery and obtain agreement to a discovery plan.

Judges are available to resolve discovery disputes on a timely basis.

Strongly Disagree Disagree Agree Strongly Agree No Opinion

Judges should be more willing and available to resolve discovery disputes on an informal (non-motion) and expedited basis, such as through discovery/status conferences or letter briefing.

The First Circuit should consider designating a specialized judge to resolve discovery disputes as a means of reducing costs and delay.

Judges enforce discovery rules by imposing sanctions for discovery violations when warranted.

Judges offer and are available to resolve discovery disputes on an informal (non-motion) and expedited basis:

- | | |
|---|-------------------------------------|
| <input type="radio"/> Almost never | <input type="radio"/> Often |
| <input type="radio"/> Occasionally | <input type="radio"/> Almost always |
| <input type="radio"/> About 50% of the time | |

The following statements relate to rules concerning expert discovery. For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

Strongly Disagree Disagree Agree Strongly Agree No Opinion

Hawai'i should adopt rules, similar to the federal rules, that impose specific deadlines for disclosure of expert witnesses and expert reports.

Hawai'i should adopt rules, similar to the federal rules, regarding what an expert's report must contain.

Hawai'i should adopt rules, similar to the federal rules, regarding the extent to which communications between counsel and an expert are discoverable.

If there are aspects of discovery that you could change in order to reduce costs and delay and streamline the litigation process, what would they be and why?

Hawaii Civil Justice Improvement Task Force Survey

III. D. EXPEDITED TRIALS AND OTHER INNOVATIONS

Should the Hawai'i Circuit Courts adopt an expedited trial program or pilot project to provide for expedited jury or bench trials for certain types of cases?

- Yes
- No
- Don't know

Hawaii Civil Justice Improvement Task Force Survey

III. D. EXPEDITED TRIALS AND OTHER INNOVATIONS

Do you have any suggestions or recommendations regarding what types of cases should be included in the expedited trial program and what procedures should apply to trials within the program?

Hawaii Civil Justice Improvement Task Force Survey

III. D. EXPEDITED TRIALS AND OTHER INNOVATIONS

Do you have any suggestions or recommendations on how the Hawai'i Circuit Courts can use technology to make the litigation process more user friendly and transparent for pro se litigants and to help reduce costs and delay?

Hawaii Civil Justice Improvement Task Force Survey

IV. CONCLUSION

If you could change one rule or procedure in the Hawai'i Circuit Courts to reduce costs and delay and secure a more streamlined court process for litigants, what would it be and why?

Please include any recommendation, information, clarification, or comment you would like to add.

Appendix 6

Q1 Are you an attorney or judge with past or present CIVIL LITIGATION experience in the Circuit Courts of Hawai'i? For this survey, civil litigation does not include domestic relations or family law.

Answered: 408 Skipped: 0

ANSWER CHOICES	RESPONSES	
Yes	80.88%	330
No	19.12%	78
TOTAL		408

Q2 Number of years of experience in civil litigation, including years serving as a judge:

Answered: 288 Skipped: 120

#	RESPONSES	DATE
1	8	2/1/2019 8:56 AM
2	5	1/23/2019 8:17 PM
3	15	1/8/2019 11:14 PM
4	6	1/7/2019 9:58 AM
5	20	1/6/2019 10:20 PM
6	30	1/2/2019 4:19 PM
7	30	12/31/2018 9:11 AM
8	47	12/30/2018 11:04 AM
9	4	12/28/2018 5:13 PM
10	1	12/27/2018 11:23 AM
11	3	12/27/2018 9:55 AM
12	25	12/26/2018 9:10 PM
13	3	12/26/2018 4:52 PM
14	10	12/26/2018 3:22 PM
15	32	12/26/2018 2:28 PM
16	15	12/26/2018 1:00 PM
17	43	12/26/2018 12:59 PM
18	5	12/26/2018 12:54 PM
19	30	12/26/2018 12:54 PM
20	6	12/26/2018 12:30 PM
21	8	12/26/2018 12:29 PM
22	5	12/26/2018 12:27 PM
23	36	12/26/2018 12:26 PM
24	14	12/26/2018 11:46 AM
25	4	12/26/2018 11:45 AM
26	2	12/26/2018 11:45 AM
27	7	12/26/2018 11:42 AM
28	25	12/26/2018 11:40 AM
29	21	12/23/2018 5:14 PM
30	34	12/17/2018 3:30 PM
31	7	12/17/2018 3:13 PM
32	5	12/17/2018 11:30 AM
33	5	12/11/2018 4:08 PM
34	40+	12/10/2018 5:18 PM

Hawaii Civil Justice Improvement Task Force Survey

35	22	12/10/2018 2:27 PM
36	39	12/10/2018 10:08 AM
37	30	12/7/2018 4:16 PM
38	2	12/7/2018 1:08 PM
39	10	12/7/2018 9:20 AM
40	35+	12/6/2018 12:49 PM
41	176	12/6/2018 8:23 AM
42	28	12/6/2018 7:55 AM
43	12	12/6/2018 7:03 AM
44	15 years	12/5/2018 3:22 PM
45	2	12/4/2018 7:55 PM
46	30	12/4/2018 5:03 PM
47	35	12/4/2018 1:10 PM
48	3	12/4/2018 8:55 AM
49	0	12/3/2018 7:42 PM
50	22	12/3/2018 10:52 AM
51	40	12/3/2018 10:44 AM
52	12	12/2/2018 1:42 PM
53	7	12/1/2018 9:14 PM
54	35	12/1/2018 3:15 PM
55	18 or so	11/30/2018 9:33 PM
56	30	11/30/2018 7:57 PM
57	7	11/30/2018 4:10 PM
58	45	11/30/2018 1:41 PM
59	35	11/30/2018 10:47 AM
60	22	11/30/2018 10:45 AM
61	23	11/30/2018 7:12 AM
62	3	11/29/2018 9:44 PM
63	36	11/29/2018 9:40 PM
64	6	11/29/2018 9:02 PM
65	1	11/29/2018 5:04 PM
66	34	11/29/2018 2:49 PM
67	25	11/29/2018 2:06 PM
68	40 plus	11/29/2018 1:57 PM
69	0	11/29/2018 1:35 PM
70	47	11/29/2018 1:14 PM
71	44	11/29/2018 12:44 PM
72	12	11/29/2018 12:16 PM
73	20	11/29/2018 12:13 PM
74	38	11/29/2018 11:56 AM
75	12	11/29/2018 11:51 AM

Hawaii Civil Justice Improvement Task Force Survey

76	17	11/29/2018 11:34 AM
77	25 Canada 2 Hawaii	11/29/2018 11:28 AM
78	16	11/29/2018 11:16 AM
79	3	11/29/2018 11:12 AM
80	30	11/29/2018 11:06 AM
81	23	11/29/2018 11:03 AM
82	5	11/29/2018 10:59 AM
83	13	11/29/2018 10:55 AM
84	25	11/29/2018 10:47 AM
85	30	11/29/2018 10:40 AM
86	7	11/29/2018 10:39 AM
87	30	11/29/2018 10:37 AM
88	2	11/29/2018 10:19 AM
89	16	11/29/2018 10:02 AM
90	1	11/29/2018 9:58 AM
91	3	11/29/2018 9:48 AM
92	25	11/29/2018 9:42 AM
93	33	11/29/2018 9:24 AM
94	15	11/29/2018 9:13 AM
95	32	11/29/2018 9:06 AM
96	5	11/29/2018 9:02 AM
97	50 plus	11/29/2018 9:00 AM
98	14	11/29/2018 8:50 AM
99	35	11/29/2018 8:48 AM
100	19	11/29/2018 8:31 AM
101	27	11/29/2018 8:30 AM
102	10	11/29/2018 8:26 AM
103	20	11/29/2018 8:25 AM
104	5	11/29/2018 8:23 AM
105	29	11/29/2018 8:21 AM
106	10	11/29/2018 8:20 AM
107	5	11/29/2018 8:15 AM
108	9	11/29/2018 8:04 AM
109	40	11/29/2018 8:04 AM
110	35	11/29/2018 7:53 AM
111	4	11/29/2018 7:42 AM
112	15	11/29/2018 7:39 AM
113	47	11/29/2018 7:25 AM
114	40	11/29/2018 7:14 AM
115	40	11/29/2018 7:03 AM
116	38	11/29/2018 6:25 AM

Hawaii Civil Justice Improvement Task Force Survey

117	24	11/29/2018 6:09 AM
118	29	11/29/2018 5:38 AM
119	23	11/29/2018 5:29 AM
120	33	11/29/2018 5:26 AM
121	25	11/29/2018 5:16 AM
122	30+	11/29/2018 4:41 AM
123	42	11/29/2018 3:19 AM
124	10	11/29/2018 2:45 AM
125	13	11/29/2018 2:06 AM
126	3	11/28/2018 11:24 PM
127	40	11/28/2018 11:10 PM
128	2	11/28/2018 11:01 PM
129	17	11/28/2018 9:31 PM
130	9	11/28/2018 9:25 PM
131	11	11/28/2018 9:17 PM
132	1.5	11/28/2018 9:06 PM
133	25	11/28/2018 8:14 PM
134	49	11/28/2018 7:55 PM
135	50	11/28/2018 7:30 PM
136	14	11/28/2018 7:23 PM
137	18	11/28/2018 7:12 PM
138	3	11/28/2018 7:10 PM
139	31	11/28/2018 7:06 PM
140	36	11/28/2018 6:37 PM
141	40	11/28/2018 6:37 PM
142	33	11/28/2018 6:32 PM
143	40	11/28/2018 6:24 PM
144	17	11/28/2018 6:10 PM
145	50	11/28/2018 6:10 PM
146	10	11/28/2018 6:04 PM
147	25	11/28/2018 5:46 PM
148	20	11/28/2018 5:45 PM
149	45	11/28/2018 5:45 PM
150	3	11/28/2018 5:43 PM
151	25	11/28/2018 5:37 PM
152	2-3	11/28/2018 5:37 PM
153	11	11/28/2018 5:33 PM
154	40	11/28/2018 5:29 PM
155	33	11/28/2018 5:29 PM
156	4	11/28/2018 5:29 PM
157	15	11/28/2018 5:26 PM

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158	30	11/28/2018 5:21 PM
159	1.5	11/28/2018 5:17 PM
160	3	11/28/2018 5:13 PM
161	23	11/28/2018 5:13 PM
162	5	11/28/2018 5:12 PM
163	23	11/28/2018 5:06 PM
164	25	11/28/2018 5:05 PM
165	34	11/28/2018 5:04 PM
166	10	11/28/2018 5:02 PM
167	9	11/28/2018 5:00 PM
168	34	11/28/2018 5:00 PM
169	30+	11/28/2018 4:57 PM
170	30	11/28/2018 4:57 PM
171	24	11/28/2018 4:54 PM
172	35	11/28/2018 4:54 PM
173	4	11/28/2018 4:53 PM
174	33	11/28/2018 4:53 PM
175	41	11/28/2018 4:52 PM
176	47	11/28/2018 4:52 PM
177	10	11/28/2018 4:52 PM
178	38	11/28/2018 4:52 PM
179	1	11/28/2018 4:50 PM
180	17	11/28/2018 4:50 PM
181	40	11/28/2018 4:50 PM
182	25	11/28/2018 4:50 PM
183	2	11/28/2018 4:49 PM
184	30	11/28/2018 4:49 PM
185	28 yrs	11/28/2018 4:49 PM
186	15	11/28/2018 4:49 PM
187	24	11/28/2018 4:49 PM
188	38	11/28/2018 4:48 PM
189	10	11/28/2018 4:47 PM
190	37	11/28/2018 4:46 PM
191	4	11/28/2018 4:46 PM
192	7	11/28/2018 4:45 PM
193	6	11/28/2018 4:45 PM
194	30	11/27/2018 8:49 PM
195	6	11/27/2018 1:14 PM
196	48	11/27/2018 12:54 PM
197	19	11/19/2018 10:45 AM
198	11 years	11/19/2018 10:38 AM

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199	40	11/19/2018 10:33 AM
200	10	11/19/2018 10:30 AM
201	38	11/19/2018 9:43 AM
202	38 years	11/19/2018 9:38 AM
203	21	11/19/2018 9:27 AM
204	42	11/19/2018 9:20 AM
205	30	11/15/2018 10:49 AM
206	36	11/15/2018 10:44 AM
207	40	11/15/2018 10:30 AM
208	25	11/15/2018 10:29 AM
209	17	11/15/2018 9:32 AM
210	30	11/15/2018 9:14 AM
211	35	11/15/2018 8:53 AM
212	25	11/15/2018 7:54 AM
213	10	11/15/2018 7:50 AM
214	two	11/15/2018 7:38 AM
215	33	11/14/2018 3:08 PM
216	10	11/14/2018 3:02 PM
217	15	11/13/2018 3:22 PM
218	13	11/13/2018 3:17 PM
219	11+	11/13/2018 3:13 PM
220	10	11/13/2018 3:06 PM
221	30	11/13/2018 3:00 PM
222	6	11/13/2018 2:44 PM
223	20	11/13/2018 2:37 PM
224	10	11/13/2018 2:33 PM
225	10	11/13/2018 2:28 PM
226	30	11/13/2018 2:23 PM
227	19	11/13/2018 1:48 PM
228	4	11/13/2018 1:41 PM
229	13	11/13/2018 1:27 PM
230	39	11/13/2018 1:21 PM
231	20+	11/13/2018 1:17 PM
232	16	11/13/2018 1:12 PM
233	23	11/13/2018 1:08 PM
234	34	11/13/2018 1:00 PM
235	8	11/13/2018 12:56 PM
236	27	11/13/2018 12:50 PM
237	35	11/13/2018 12:41 PM
238	45	11/13/2018 11:38 AM
239	14	11/9/2018 8:07 AM

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240	40	11/9/2018 8:03 AM
241	40	11/9/2018 7:55 AM
242	32	11/9/2018 7:49 AM
243	30+	11/8/2018 3:38 PM
244	20	11/8/2018 2:44 PM
245	41	11/8/2018 2:40 PM
246	13	11/8/2018 2:13 PM
247	8	11/8/2018 2:01 PM
248	27	11/8/2018 1:56 PM
249	28	11/8/2018 1:50 PM
250	13	11/8/2018 1:40 PM
251	29	11/8/2018 1:33 PM
252	40	11/8/2018 1:27 PM
253	30	11/8/2018 1:18 PM
254	42	11/8/2018 1:14 PM
255	12	11/8/2018 1:10 PM
256	12	11/8/2018 1:02 PM
257	30	11/8/2018 12:56 PM
258	23	11/8/2018 12:49 PM
259	40	11/8/2018 12:42 PM
260	24	11/8/2018 12:32 PM
261	16	11/8/2018 12:26 PM
262	30	11/8/2018 11:18 AM
263	28	11/8/2018 10:51 AM
264	33	11/8/2018 10:47 AM
265	46	11/8/2018 10:43 AM
266	33	11/8/2018 10:39 AM
267	18	11/8/2018 10:31 AM
268	39	11/8/2018 10:27 AM
269	45	11/8/2018 10:24 AM
270	5	11/8/2018 10:12 AM
271	25	11/8/2018 10:06 AM
272	30	11/8/2018 9:57 AM
273	31	11/8/2018 9:53 AM
274	36	11/8/2018 9:48 AM
275	50	11/8/2018 9:41 AM
276	40	11/8/2018 9:13 AM
277	29	11/8/2018 9:09 AM
278	40	11/8/2018 8:59 AM
279	34	11/8/2018 8:55 AM
280	20	11/8/2018 8:48 AM

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281	34	11/8/2018 8:40 AM
282	48	11/8/2018 8:35 AM
283	37	11/7/2018 2:49 PM
284	26	11/7/2018 2:43 PM
285	30	11/7/2018 2:29 PM
286	40	11/7/2018 2:15 PM
287	34	11/7/2018 2:14 PM
288	36	11/7/2018 10:58 AM

Q3 Which of the following best describes your experience in civil litigation?

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES	
My current practice involves civil litigation.	73.96%	213
My current practice does not involve civil litigation, but I have past experience in civil litigation.	26.04%	75
TOTAL		288

Q4 Please identify the judicial circuit in which you have primarily conducted your civil litigation practice.

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES	
First Circuit	77.78%	224
Second Circuit	6.94%	20
Third Circuit	10.76%	31
Fifth Circuit	4.51%	13
TOTAL		288

Q5 Estimated number of Hawai'i Circuit Court civil cases in which you have been an attorney of record (entered an appearance) or a judge within the last ten years:

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES	
None	5.21%	15
1 to 10	12.50%	36
11 to 50	29.17%	84
51 to 100	17.71%	51
Over 100	35.42%	102
TOTAL		288

Q6 Estimated number of your Hawai'i Circuit Court civil cases that have gone to trial in the last ten years (Judges, please include cases over which you have presided at trial):

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES	
None	36.81%	106
1 to 5	40.28%	116
6 to 10	10.07%	29
11 to 20	4.86%	14
Over 20	7.99%	23
TOTAL		288

Q7 Identify the types of civil cases with which you have the most experience in Hawai'i Circuit Court. Select up to three areas but do not include areas of minimal involvement:

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES
Contract	55.56% 160
Motor Vehicle Tort	34.03% 98
Assault and Battery	4.86% 14
Construction Defect	19.44% 56
Medical Malpractice	13.89% 40
Legal Malpractice	5.90% 17
Product Liability	15.63% 45
Other Non-Vehicle Tort	39.93% 115
Condemnation	4.17% 12
Environment	9.38% 27
Foreclosure -- Mortgage /Agreement of Sale	23.26% 67
Agency Appeal	14.58% 42
Declaratory Judgment	14.93% 43
Other (please specify)	21.53% 62
Total Respondents: 288	

#	OTHER (PLEASE SPECIFY)	DATE
1	Representing government in various actions	12/28/2018 5:13 PM
2	Contested probate and trust litigation	12/26/2018 2:28 PM
3	Planned Community Assoc. litigation CC&Rs/CPRs	12/26/2018 12:59 PM
4	Condominium	12/26/2018 11:42 AM
5	estate planning contests	12/10/2018 2:27 PM
6	Interpleader	12/10/2018 10:08 AM
7	Business Collections	12/7/2018 9:20 AM
8	trust litigation and probate litigation	12/4/2018 5:03 PM
9	boundary dispute	12/4/2018 1:10 PM
10	Code Enforcement	11/30/2018 4:10 PM
11	Real Property Title Cases	11/30/2018 10:47 AM
12	employment	11/29/2018 12:44 PM
13	Tax	11/29/2018 11:51 AM
14	Employment	11/29/2018 11:34 AM

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15	Govt civil enforcement	11/29/2018 11:16 AM
16	Employment Law	11/29/2018 11:03 AM
17	Real Property; Trust	11/29/2018 10:59 AM
18	Homeowners AOAO Law	11/29/2018 9:58 AM
19	Tort or insurance litigation	11/29/2018 9:42 AM
20	IDEA	11/29/2018 9:24 AM
21	land use; native hawaiian issues	11/29/2018 9:06 AM
22	UDAP	11/29/2018 8:04 AM
23	quiet title	11/29/2018 7:42 AM
24	Real Property	11/29/2018 7:14 AM
25	Civil rights	11/28/2018 7:55 PM
26	Quiet Title	11/28/2018 7:23 PM
27	Commercial litigation	11/28/2018 7:06 PM
28	Damages for Breach of Trust	11/28/2018 6:37 PM
29	Admiralty	11/28/2018 6:10 PM
30	real property dispute	11/28/2018 5:37 PM
31	Injunctive Relief	11/28/2018 5:29 PM
32	Trust and Estate	11/28/2018 5:17 PM
33	All of the above	11/28/2018 5:00 PM
34	Partition	11/28/2018 4:54 PM
35	land titles and easements	11/28/2018 4:52 PM
36	Public Records	11/28/2018 4:50 PM
37	Partition	11/28/2018 4:49 PM
38	employment	11/28/2018 4:49 PM
39	business torts	11/28/2018 4:48 PM
40	Insurance Bad Faith	11/28/2018 4:45 PM
41	Civil rights	11/27/2018 12:54 PM
42	torts	11/19/2018 10:45 AM
43	property disputes	11/19/2018 9:38 AM
44	real estate	11/15/2018 10:29 AM
45	employment	11/15/2018 7:50 AM
46	employment law	11/13/2018 3:22 PM
47	partition/real property quiet title	11/13/2018 3:06 PM
48	insurance defense	11/13/2018 1:48 PM
49	employment, discrimination in employment	11/13/2018 1:41 PM
50	Tax	11/13/2018 1:12 PM
51	bank and trust matter, real estate	11/13/2018 12:50 PM
52	condo/AOAO	11/9/2018 8:07 AM
53	civil fraud	11/9/2018 7:55 AM
54	Labor Law	11/9/2018 7:49 AM
55	employment, complex commercial litigation	11/8/2018 2:44 PM

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56	summary possession	11/8/2018 2:13 PM
57	unfair business practice; wrongful death	11/8/2018 2:01 PM
58	partition & quiet title	11/8/2018 1:50 PM
59	defense use of force	11/8/2018 1:33 PM
60	no response	11/8/2018 12:26 PM
61	left blank	11/8/2018 10:24 AM
62	Sexual Assault	11/7/2018 2:49 PM

Q8 Which of the following best describes your civil litigation role over the course of your career? If applicable, you may check “neutral decision maker” in addition to any other box.

Answered: 288 Skipped: 120

ANSWER CHOICES	RESPONSES	
Represent plaintiffs in all or nearly all cases	20.83%	60
Represent defendants in all or nearly all cases	18.40%	53
Represent plaintiffs and defendants, but plaintiffs more frequently	19.44%	56
Represent plaintiffs and defendants, but defendants more frequently	19.44%	56
Represent plaintiffs and defendants equally	13.19%	38
Neutral decision-maker	8.68%	25
TOTAL		288

Q9 Your current position is best described as:

Answered: 287 Skipped: 121

ANSWER CHOICES	RESPONSES	
Law firm lawyer or solo practitioner	61.67%	177
In-house counsel	0.70%	2
Government lawyer	12.20%	35
Judge	15.33%	44
Retired or inactive lawyer	5.57%	16
Other (please specify)	4.53%	13
TOTAL		287

#	OTHER (PLEASE SPECIFY)	DATE
1	Government lawyer in "non-attorney" position	12/26/2018 12:32 PM
2	non-profit	12/10/2018 5:19 PM
3	Nonprofit	12/7/2018 1:09 PM
4	Pro Bono cases only	12/2/2018 1:42 PM
5	Mediator	12/1/2018 9:14 PM
6	HRS ch. 90 volunteer	11/28/2018 7:34 PM
7	Retired judge	11/28/2018 6:38 PM
8	Mediator	11/28/2018 5:22 PM
9	Non profit public interest	11/27/2018 12:55 PM
10	no response	11/8/2018 12:26 PM
11	arbitrator/mediator	11/8/2018 10:43 AM
12	left blank	11/8/2018 10:24 AM
13	Public Interest	11/8/2018 10:12 AM

Q10 Current number of full- and part-time attorneys who work in your firm.

Answered: 177 Skipped: 231

ANSWER CHOICES	RESPONSES	
1 to 5	56.50%	100
6 to 10	14.69%	26
11 to 20	10.73%	19
21 to 50	11.86%	21
Over 50	6.21%	11
TOTAL		177

Q11 Will your firm refuse to file or defend a case based on the amount in controversy?

Answered: 172 Skipped: 236

ANSWER CHOICES	RESPONSES	
Yes	35.47%	61
No	43.02%	74
I don't know	21.51%	37
TOTAL		172

Q12 As a general matter, your firm will not file or defend a case unless the amount in controversy exceeds (in \$):

Answered: 53 Skipped: 355

#	RESPONSES	DATE
1	Depends on Amount of Time Required	12/30/2018 11:16 AM
2	50,000	12/26/2018 9:11 PM
3	depends on type of case	12/26/2018 2:29 PM
4	\$40,000.00	12/26/2018 1:12 PM
5	\$15,000	12/26/2018 12:55 PM
6	No set \$ amount, and case by case basis	12/7/2018 4:17 PM
7	5000	12/7/2018 9:20 AM
8	200,000	12/6/2018 7:56 AM
9	50,000	12/4/2018 5:04 PM
10	25000	12/4/2018 1:11 PM
11	25,000	12/1/2018 3:17 PM
12	30,000	11/30/2018 7:59 PM
13	5000	11/29/2018 2:50 PM
14	\$500,000	11/29/2018 1:58 PM
15	15,000	11/29/2018 1:15 PM
16	15000	11/29/2018 12:45 PM
17	10000	11/29/2018 12:17 PM
18	20,000	11/29/2018 11:57 AM
19	25,000	11/29/2018 11:52 AM
20	10,000	11/29/2018 11:35 AM
21	50,000	11/29/2018 10:41 AM
22	20000	11/29/2018 9:42 AM
23	\$20,000.00	11/29/2018 9:25 AM
24	25,000	11/29/2018 8:31 AM
25	10000	11/29/2018 8:05 AM
26	15000	11/29/2018 2:46 AM
27	30000	11/29/2018 2:07 AM
28	50000	11/28/2018 11:24 PM
29	100000	11/28/2018 9:26 PM
30	25000	11/28/2018 9:07 PM
31	10000	11/28/2018 7:31 PM
32	No fixed amount	11/28/2018 5:47 PM
33	is less than \$25,000	11/28/2018 5:30 PM
34	25,000	11/28/2018 5:27 PM

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35	5,000.00	11/28/2018 5:13 PM
36	20000	11/28/2018 5:13 PM
37	\$100,000	11/28/2018 4:58 PM
38	depends	11/28/2018 4:58 PM
39	\$15000	11/28/2018 4:54 PM
40	\$10,000	11/28/2018 4:51 PM
41	it depends on the case	11/28/2018 4:51 PM
42	20,000	11/28/2018 4:48 PM
43	50,000	11/27/2018 8:50 PM
44	30000	11/19/2018 10:45 AM
45	20000	11/19/2018 10:39 AM
46	50000	11/15/2018 10:49 AM
47	30000	11/15/2018 7:54 AM
48	100000	11/14/2018 3:08 PM
49	100000	11/13/2018 11:39 AM
50	50000	11/9/2018 7:49 AM
51	50000, but various amounts may be much higher or lower depending on the client & matter	11/8/2018 2:45 PM
52	10000 to 15000	11/8/2018 1:28 PM
53	\$30,000	11/8/2018 12:42 PM

Q13 What was your last year of practice?

Answered: 15 Skipped: 393

#	RESPONSES	DATE
1	2017	12/3/2018 7:43 PM
2	2016	11/29/2018 8:04 AM
3	2011	11/29/2018 6:09 AM
4	2017	11/29/2018 5:39 AM
5	2011	11/29/2018 5:17 AM
6	2014	11/28/2018 11:10 PM
7	2012	11/28/2018 7:11 PM
8	2002	11/28/2018 6:11 PM
9	2008	11/28/2018 5:03 PM
10	Current	11/28/2018 5:00 PM
11	2016	11/28/2018 4:54 PM
12	2018	11/28/2018 4:51 PM
13	2010	11/28/2018 4:49 PM
14	2016	11/19/2018 9:27 AM
15	2017	11/8/2018 10:47 AM

Q14 Do you have civil litigation experience in federal court in the District of Hawai'i?

Answered: 285 Skipped: 123

ANSWER CHOICES	RESPONSES	
Yes	80.70%	230
No	19.30%	55
TOTAL		285

Q15 How would you describe the frequency of your appearance in federal court in the District of Hawai'i?

Answered: 230 Skipped: 178

ANSWER CHOICES	RESPONSES	
Rarely appear	40.87%	94
Occasionally appear	42.61%	98
Frequently appear	16.52%	38
TOTAL		230

Q16 Between the Hawai'i Circuit Courts and the U.S. District Court for the District of Hawai'i:

Answered: 230 Skipped: 178

ANSWER CHOICES	RESPONSES	
I prefer litigating in Hawai'i Circuit Courts.	33.91%	78
I prefer litigating in U.S. District Court for the District of Hawai'i	33.91%	78
No preference	32.17%	74
TOTAL		230

Q17 Why do you prefer litigating in Hawai'i Circuit Courts?

Answered: 65 Skipped: 343

#	RESPONSES	DATE
1	Simpler	12/28/2018 5:14 PM
2	More used to it	12/26/2018 4:53 PM
3	Our offices are located in Kona, Hawaii. As a general rule, we limit our civil practice to the Circuit Courts of the Third Circuit and primarily West Hawaii.	12/26/2018 1:16 PM
4	Less rigid formalities.	12/26/2018 1:02 PM
5	Familiarity makes me more comfortable even though federal system is easier to navigate administratively.	12/26/2018 12:56 PM
6	Since my practice included more Circuit Court cases, I had more familiarity with Circuit Court rules, policies, procedures, etc.	12/6/2018 12:51 PM
7	The Hawaii Circuit Courts are more familiar with my practice area and I prefer the case management and deadlines in Hawaii Circuit Courts.	12/6/2018 8:24 AM
8	I am not as familiar with current local rules in Fed Court	12/6/2018 7:58 AM
9	I am more familiar with the rules and judges.	12/4/2018 8:56 AM
10	that's where most of the complaints are filed; so, majority of my practice, so I'm familiar with it	12/3/2018 10:53 AM
11	More familiar	12/2/2018 1:43 PM
12	The federal courts are far too conservative. The U.S. Supreme Court is dominated by right-wing ideologues. State law is more protective of the public.	11/30/2018 9:36 PM
13	I know most of the state court rules without having to look them up. Additionally, Federal Court does not see much in the way of collection or foreclosure cases and therefore is unfamiliar with how to handle them which can complicate matters for me and place a level of uncertainty for my client.	11/30/2018 8:04 PM
14	Because you get a more honest decision.	11/30/2018 1:43 PM
15	I have little experience in district courts.	11/30/2018 10:46 AM
16	I am more familiar with the rules and culture	11/29/2018 9:45 PM
17	It is less formal than federal court.	11/29/2018 9:42 PM
18	everything is simpler, better judges	11/29/2018 12:46 PM
19	Familiarity with court rules	11/29/2018 12:18 PM
20	Not familiar with federal dist ct practice or procedure	11/29/2018 11:17 AM
21	Familiarity with Judges and my location on Maui. When I worked in Honolulu, I appeared in Federal court more. It was fine.	11/29/2018 9:43 AM
22	location; local judges and juries	11/29/2018 9:15 AM
23	majority of the cases are filed in the Circuit Court so I am more familiar with the rules.	11/29/2018 9:04 AM
24	More time; less fast-track	11/29/2018 7:26 AM
25	Familiarity	11/29/2018 7:15 AM
26	Less procedurally formalistic. More personal touch with Judges and alternative forms of resolution.	11/29/2018 5:28 AM
27	Better for plaintiffs	11/28/2018 11:25 PM
28	I am n Maui. Federal court is inconvenient and more costly for my clients.	11/28/2018 11:13 PM
29	Because the Federal judges often refuse to follow hawaii law, and are defense oriented.	11/28/2018 8:17 PM

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30	Less time consuming and formal.	11/28/2018 7:32 PM
31	I have a neighbor island practice so litigating in federal court is costly for my clients especially if they want to witness hearings. My practice focuses mostly on Hawai'i law involving government defendants or other persons domiciled in Hawaii and I rarely litigate federal questions -- and when there is a question that can be raised under state constitution or federal constitution, we typically litigate the state constitutional question.	11/28/2018 7:27 PM
32	Appeared more often in State circuit courts.	11/28/2018 7:14 PM
33	More well-versed in state law than federal law; less formality, more collegiality in state court	11/28/2018 5:35 PM
34	I am more familiar with litigation in Hawaii Circuit Courts.	11/28/2018 5:31 PM
35	more familiar with rules and procedures; don't have many cases within the jurisdiction of federal court	11/28/2018 5:07 PM
36	State claims	11/28/2018 5:01 PM
37	They are user friendly. The Hawaii courts provide the opportunity for meaningful jury selection and voir dire. The judges, for the most part, put substance above form and typically are less rigid in their interpretation of the rules.	11/28/2018 5:01 PM
38	I am more comfortable with the rules, procedures and people in State courts.	11/28/2018 4:53 PM
39	It's much more a known quantity.	11/28/2018 4:53 PM
40	More straight forward filing requirements, better involvement of judiciary for conferences and settlement discussions, friendlier judges and staff.	11/28/2018 4:48 PM
41	Easier to be a Plaintiff's attorney in Hawaii Circuit Courts, because there are no immediate timelines or mandatory disclosure requirements imposed upon filing.	11/28/2018 4:47 PM
42	Judges and staff are more accessible. Hawaii law is better than federal law.	11/28/2018 4:46 PM
43	More experience, familiarity with the court rules.	11/27/2018 8:50 PM
44	my practice is based in the 2nd Circuit	11/19/2018 10:39 AM
45	no travel required, more familiar with jury venire	11/19/2018 10:34 AM
46	more knowledgeable of the rules than US District Court	11/19/2018 9:28 AM
47	easier filing procedure	11/15/2018 10:44 AM
48	no need to fly & ease of filing	11/15/2018 10:40 AM
49	live on neighbor island. travel to Oahu difficult	11/15/2018 10:29 AM
50	More flexibility and less restrictive rules	11/15/2018 9:15 AM
51	no need to fly to go to court. federal ct is more biased, in favor of corporate defts.	11/15/2018 7:55 AM
52	more accessibility	11/13/2018 3:22 PM
53	faster response; easier access to judicial resources	11/13/2018 3:18 PM
54	live on Maui	11/13/2018 3:06 PM
55	available, tech, flexibility	11/13/2018 2:38 PM
56	More familiar w/ rules/procedure	11/13/2018 2:28 PM
57	familiarity	11/9/2018 7:49 AM
58	b/c of my familiarity w/the Rules of Court & judges	11/8/2018 1:50 PM
59	Accessibility of judges	11/8/2018 1:41 PM
60	Rules are less restrictive & allows parties leeway to set deadlines	11/8/2018 12:43 PM
61	the U.S. District Court is generally with noted exceptions a hostile forum for injury claims.	11/8/2018 11:18 AM
62	familiarity	11/8/2018 10:28 AM
63	greater interest in state laws; nature of current practice involves more state as opposed to federal laws.	11/8/2018 10:13 AM

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64	simpler	11/8/2018 9:42 AM
65	12 person juries in state court vs. 8 person juries in federal court.	11/7/2018 2:16 PM

Q18 Why do you prefer litigating in U.S. District Court for the District of Hawai'i?

Answered: 68 Skipped: 340

#	RESPONSES	DATE
1	More efficient disposition of cases along with strict deadlines. More dispositive rulings on motions to dismiss and summary judgment.	1/7/2019 9:59 AM
2	Judges are efficient, the rules are adhered to fairly. In Circuit court it sometimes seems that when plaintiffs counsel fails to follow rules there are no consequences.	12/31/2018 9:13 AM
3	More intelligent judges. Written decisions are generally thorough in cases decided on motion. Far better facilities. Juries are impressed with court's precision and surroundings' grandeur and therefore likely to award more.	12/30/2018 11:24 AM
4	electronic filing	12/27/2018 9:56 AM
5	The cases proceed faster, the judges and magistrates seem more experienced, more qualified and have more control over cases	12/26/2018 2:30 PM
6	USDC is far more efficient and expedient. The FRCP and Local Rules remove a lot of questions and inconsistencies about procedures whereas in State Court every judge does things differently. USDC seems much more willing to grant dispositive motions if merited.	12/26/2018 12:37 PM
7	FRCP require Plaintiffs to actively prosecute their claims and expend time and effort. This weeds out frivolous actions whereas HRCP permits a Plaintiff to file a claim and essentially do nothing but issue discovery requests in the hopes of incentivizing settlement based solely on costs rather than the merit of the claims presented.	12/26/2018 12:31 PM
8	Easier online filing and document retrieval. Streamlined processes. Less stalling and gamesmanship.	12/26/2018 11:48 AM
9	online filing.	12/26/2018 11:47 AM
10	They are more likely to follow the law and their decisions are reasonable.	12/26/2018 11:41 AM
11	Because I get a free flight to Honolulu.	12/10/2018 10:10 AM
12	Rules are easier and the judges are accountable. Plus, State Judges never sanction malfeasance and frivolous motions, but instead give them total deference, while lawyers rarely pull stunts or file frivolous motions in federal court because they are sanctioned.	12/7/2018 9:23 AM
13	It's more formal.	12/5/2018 3:23 PM
14	They had more resources.	12/1/2018 9:15 PM
15	Online filing and quicker resolution of cases	11/30/2018 7:13 AM

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16	The Electronic Filing System and I believe there is more judicial impartiality in the federal court and more professional collegiality among attorneys, but I have had limited experience in both. For some strange reason there does not seem to be as much collegiality between the counsel and the Judges as I have experienced in my Canadian practice. However, that may be my own lack of familiarity with the Hawaii Courts compared to the system I am familiar with in Canada (British Columbia principally). It does seem the Federal Court bar is much more collegial with the Court than in the State courts, especially District Court. Again, I have had very limited experience in both Federal Court and State Courts. I was shocked to see the Courthouses do not provide barrister rooms or counsel lockers for trial apparel. Barrister/Counsel rooms are where counsel meet, discuss cases, prepare for hearings, relax during breaks at trial, and socialize with other counsel (Judges do not enter Barrister/Counsel Rooms for obvious reasons). That is part of the reason for the lack of collegiality (I believe), is that the Counsel are not constantly reminded they are part of a system that depends on respect, integrity and collegiality toward other counsel, as well as the Court (Judges, Jurors, Clerks, Staff, witnesses etc.) The offsetting factor is that some of what might be lacking in the infrastructure supporting collegiality, is built into the Hawaii Culture, which stresses mutual respect and consideration toward others and I believe this does carry over into the practice of law generally and in the courts. So, overall I have a very positive view of fellow attorneys in my Hawaii Practice. I do miss the positive benefits of having a Barristers/Counsel room, but this is a different country, different system, and has developed a somewhat different perspective on the role of trial counsel in the adversary system. Therefore, the collegiality may not be seen as promoting the necessary "adversarial mentality" of counsel as zealous advocates of their respective clients best interests. I cannot comment further and I offer those observations humbly and with the greatest respect.	11/29/2018 12:00 PM
17	Federal Judges are not afraid to grant dispositive motions	11/29/2018 11:05 AM
18	More efficient. (Magistrate judges, e-filing, active case management)	11/29/2018 11:02 AM
19	More efficient, filing is easier, cases are managed better	11/29/2018 10:56 AM
20	more consistent with procedures and decisionmaking	11/29/2018 10:42 AM
21	Cases move more quickly; courts more inclined to grant substantive motions.	11/29/2018 8:31 AM
22	The judges have a lighter case load and more resources. I think that allows them the luxury (and responsibility) to spend more time on their decisions.	11/29/2018 8:26 AM
23	The availability of e-filing, the level of attention that the judge, clerks and staff are able to give to a case, the technology available in the courtroom, and generally the more streamlined process for getting things done, such as requesting telephone appearances.	11/29/2018 8:25 AM
24	Judges prove written decisions on their rulings.	11/29/2018 8:06 AM
25	electronic filing	11/29/2018 7:54 AM
26	documents filed are better organized. communication with court staff are easier. documents filed are easily retrievable where in state court, the document list and minute are often delayed and not current or even inaccurate. Improvements needs to be made in handling of documents and pleadings in State Court.	11/29/2018 7:44 AM
27	Procedural rules provided more predictable pre-trial management and outcomes; helpful, professional staff	11/29/2018 6:14 AM
28	Better judges; better pre-trial procedures	11/29/2018 5:40 AM
29	Cases move faster	11/29/2018 3:21 AM
30	fewer case on docket, more expedited handling, greater competence of judges, proceeding generally more efficient.	11/29/2018 2:08 AM
31	More regimented and they follow the rule of law.	11/28/2018 9:35 PM
32	The rules, procedures, and precedents are more detailed and clearly stated, and adhered to more rigorously than in the state courts	11/28/2018 7:34 PM
33	Responsiveness of court and staff	11/28/2018 7:07 PM
34	Except for a few exceptions, better quality of judges who make decisions based on the law rather than their personal bias	11/28/2018 6:34 PM
35	More fair and equal treatment by the court for me and my clients.	11/28/2018 5:47 PM

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36	Better quality of judges who are willing to apply the law rather than deciding on the basis of personal bias.	11/28/2018 5:30 PM
37	E-filing and quick timelines	11/28/2018 5:14 PM
38	Scheduling is more orderly.	11/28/2018 5:06 PM
39	Rules streamline discovery and pretrial process and set deadlines early on.	11/28/2018 4:55 PM
40	They have less cases, hearings and trials happen sooner	11/28/2018 4:52 PM
41	More efficient procedures to resolve discovery disputes. Trial dates are set earlier than in State courts. Electronic filing/service.	11/28/2018 4:52 PM
42	Electronic filing; more predictable.	11/28/2018 4:51 PM
43	Judges tend to be more decisive in issuing rulings on substantive pre-trial motions.	11/28/2018 4:51 PM
44	quality of opposing attorneys.	11/28/2018 4:50 PM
45	rules are actually enforced	11/28/2018 4:50 PM
46	Better active case management In federal court through the magistrates	11/28/2018 4:49 PM
47	Electronic filing system is so much easier than paper filing and of JEFs filing in the ICA. Magistrate judges are easy to contact and they resolve a lot of minor disputes via status conferences. That saves a lot of time and expense.	11/27/2018 1:17 PM
48	Clarity of rules, sensible processes, highly competent judges	11/27/2018 12:57 PM
49	much more structured and efficient	11/19/2018 9:44 AM
50	less busy; judges and clerks have more time	11/19/2018 9:20 AM
51	Prefer federal trial practice and substantive jurisprudence as well as less crowded calendars.	11/15/2018 8:55 AM
52	fewer conflicts	11/14/2018 3:02 PM
53	faster resolution	11/13/2018 1:48 PM
54	because judges are less plaintiff friendly	11/13/2018 11:40 AM
55	Electronic filing/clear standards under rule 12 (b)(6). Magistrate judges handle discovery/settlement.	11/9/2018 8:08 AM
56	online filing system, rules for proceeding and consistency in rule application	11/9/2018 7:55 AM
57	Faster, more efficient, better prepared, more consistent results & user friendly	11/8/2018 2:45 PM
58	discovery rules & early case assessment	11/8/2018 2:13 PM
59	Our office has a effective motions practice (motions to dismiss & summary judgements have been granted more often than in state courts) & tighter case management.	11/8/2018 1:34 PM
60	Process better defined & structured	11/8/2018 1:04 PM
61	discovery disputes handled quicker; earlier court oversight.	11/8/2018 10:52 AM
62	The rules are more streamlined and there is a greater body of law to draw upon, and thus, greater certainty.	11/8/2018 10:32 AM
63	mandatory initial disclosures, scheduling conference, faster track	11/8/2018 10:07 AM
64	excellent magistrates	11/8/2018 9:49 AM
65	prefer case management and discovery rules	11/8/2018 9:14 AM
66	courts are more likely to issue summary judgment orders limiting issues; electronic filing.	11/8/2018 8:41 AM
67	faster track	11/8/2018 8:35 AM
68	Small caseload for judges. More established law from USDC and 9th Circuit.	11/7/2018 2:14 PM

Q19 Why do you have no preference between litigating in the Hawai'i Circuit Courts and the U.S. District Court for the District of Hawai'i?

Answered: 39 Skipped: 369

#	RESPONSES	DATE
1	I am comfortable litigating in both.	1/8/2019 11:17 PM
2	No preference.	1/6/2019 10:22 PM
3	Litigating in each gives a broader range of experience. Each court has its plusses and minuses.	12/26/2018 12:28 PM
4	Depends on the case	12/23/2018 5:16 PM
5	I will litigate wherever necessary for my clients	12/17/2018 3:37 PM
6	Good experiences in both courts	12/11/2018 4:09 PM
7	State court: Prefer atmosphere (less formal) and less intrusive security Federal court: Prefer some of the procedures - e.g., division of labor with magistrates; more user-friendly language in FRCP	12/10/2018 5:28 PM
8	Some types of cases I prefer to have in State Court, and other types I prefer to have in Federal Court.	12/7/2018 4:18 PM
9	depends upon the case.	12/3/2018 10:46 AM
10	Similar rules and procedures.	12/1/2018 3:18 PM
11	Have had no issues with either.	11/30/2018 4:12 PM
12	Circuit court is more familiar but USDC is generally better run. It balances out	11/29/2018 2:51 PM
13	there are many pluses and minuses in both venues which tend to end up as a wash	11/29/2018 1:59 PM
14	I had good experiences in both courts with well managed cases	11/29/2018 1:35 PM
15	Except for the court rules, which are somewhat similar, the judges and staff in both courts provide exceptional service to the litigants and counsel.	11/29/2018 12:04 PM
16	Familiarity with the Circuit Courts but appreciate the rules and timelines adhered to in the U.S. District Court	11/29/2018 10:49 AM
17	I don't have enough experience with either to have a preference. However, filing, scheduling, and case management seem to be easier with the U.S. District Court.	11/29/2018 10:23 AM
18	each court system addresses its own unique citizen based needs. The federal interests are not the same as a state's interest in either providing access to justice or the court. Thus, the systems should be different to reflect the priority of needs being met.	11/29/2018 9:28 AM
19	Not having a preference gave me breadth of experience and revenue.	11/29/2018 8:52 AM
20	Limited recent experience	11/29/2018 8:52 AM
21	n/a	11/29/2018 8:32 AM
22	It all depends on which court has jurisdiction over the case I am involved	11/29/2018 8:23 AM
23	Each has its pros and cons. E-filing with the USDC is much easier and convenient. The opportunity to settle is more likely in Hawaii Circuit Courts given how the courts handles its cases.	11/28/2018 11:04 PM
24	????	11/28/2018 9:19 PM
25	I have had both good and bad experiences in both places.	11/28/2018 7:57 PM
26	Neutral work is the same.	11/28/2018 6:40 PM
27	Each had advantages and disadvantages.	11/28/2018 6:28 PM
28	civil litigation is a very small part of my practice. I have no basis to prefer one jurisdiction over the other. Both have their positive and negative aspects.	11/28/2018 5:39 PM

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29	there are pros and cons for each	11/28/2018 4:58 PM
30	It is dependent upon case load. Federal Court cases move quickly, time is needed to confirm the applicable rules and MSJs are granted and up held by appellate courts. In Circuit Court cases move much slower, MSJs are rarely granted and there seems to be more discovery. Depending upon my case load, Circuit Court or Federal Court may be preferred.	11/28/2018 4:57 PM
31	Each has its pros and cons. Each has/had judges who are/were excellent and judges who who are/were not.	11/28/2018 4:55 PM
32	Each jurisdiction has different pros and cons that equal out.	11/28/2018 4:55 PM
33	Forum for cases is dictated by statute, no choice	11/28/2018 4:52 PM
34	I would prefer Federal but i am on Maui so it makes it more efficient	11/19/2018 10:46 AM
35	I don't currently litigate	11/15/2018 9:33 AM
36	deal with both	11/9/2018 8:04 AM
37	I do appreciate the case management that happens in Federal Court. Attys are more transparent w/ each other. Issues of discovery & pretrial litigation b/c of the magistrate & district judge involvement. Deadlines are important & HI circuit courts would benefit fr. having them set early in the cases.	11/8/2018 2:03 PM
38	depends on the type of case	11/8/2018 1:18 PM
39	Cases dictate venue both venues have pluses & minuses	11/8/2018 12:50 PM

Q20 Please indicate your level of agreement with each statement as it relates specifically to Hawai'i Circuit Courts.

Answered: 263 Skipped: 145

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL RESPONDENTS
The civil justice system provides for the just, speedy, and inexpensive determination of civil actions.	12.55% 33	61.22% 161	19.39% 51	2.28% 6	4.56% 12	263
The civil justice system is reasonably efficient and fundamental changes to reduce costs and delay and streamline the litigation process are not necessary.	15.65% 41	62.21% 163	16.03% 42	2.67% 7	3.44% 9	262
Fundamental changes need to be made to the civil justice system to reduce costs and delay and to streamline the litigation process.	3.42% 9	12.93% 34	44.11% 116	34.22% 90	5.32% 14	263
The civil justice system takes too long.	1.53% 4	9.96% 26	42.91% 112	39.08% 102	6.51% 17	261
The civil justice system is too expensive.	1.90% 5	8.37% 22	43.35% 114	40.30% 106	6.08% 16	263
The civil justice system is too complex.	5.32% 14	36.88% 97	31.18% 82	19.39% 51	7.22% 19	263
Cases are resolved based on considerations unrelated to the merits of the parties' claims or defenses.	6.11% 16	25.57% 67	37.40% 98	22.14% 58	8.78% 23	262
Opposing counsel are generally uncooperative.	6.56% 17	59.85% 155	20.46% 53	5.79% 15	7.72% 20	259

Q21 In your experience, how often are litigation costs proportional to the value of the case in Hawai'i Circuit Courts?

Answered: 253 Skipped: 155

ANSWER CHOICES	RESPONSES	
Almost never	16.60%	42
Occasionally	40.71%	103
About 50% of the time	23.32%	59
Often	15.42%	39
Almost always	3.95%	10
TOTAL		253

Q22 The primary cause of delay in the litigation process in Hawai'i Circuit Courts is:

Answered: 250 Skipped: 158

ANSWER CHOICES	RESPONSES
Lack of a trial setting conference at the outset of the case	16.00% 40
Delayed rulings on pending motions	6.00% 15
Court continuances of scheduled events	1.20% 3
Attorney requests for extensions of time and continuances	16.00% 40
The time spent on discovery	23.60% 59
Lack of attorney collaboration on discovery issues and proceedings	10.80% 27
Other (please specify)	26.40% 66
TOTAL	250

#	OTHER (PLEASE SPECIFY)	DATE
1	No cause is primary. It often depends on the judge or opposing attorneys involved. Mediation/arbitration often adds a layer of costs to cases which cannot be settled. It seems the courts will do anything to avoid a trial on the merits, increasing costs of litigation..	12/31/2018 11:51 AM
2	all of the above.	12/26/2018 2:48 PM
3	combination of time in discovery and delayed rulings	12/26/2018 1:40 PM
4	Trials are scheduled prematurely often requiring subsequent rescheduling that causes repeated strain on the court's calendar.	12/26/2018 1:08 PM
5	All of the above. Setting a trial date at the outset of a case would be beneficial and may reduce the impact of the other options. Courts don't usually delay rulings in my experience, but there seems to be a general unwillingness to grant dispositive motions when warranted, which results in many cases remaining on calendar for far longer than they should, resulting in the court and the parties wasting time and resources. Parties no longer seem willing to settle cases on their own anymore, instead doing so only at mediation or perhaps a settlement conference.	12/26/2018 12:50 PM
6	Backlog of trial dates	12/26/2018 11:50 AM
7	Plaintiffs failing to be diligent	12/26/2018 11:45 AM
8	Need earlier serious ADR promotion	12/10/2018 5:38 PM
9	Lack of enforcement of directives intended to expedite litigation.	12/10/2018 10:14 AM
10	Frivolous litigation by defense attorneys who never, ever get sanctioned, no matter how much extra fees their lies and frivolity cost the plaintiff.	12/7/2018 9:26 AM
11	trial date scheduling and appeals	12/3/2018 10:53 AM
12	The court grants too many continuances to the government.	11/30/2018 1:48 PM
13	None primary but all secondary causes.	11/30/2018 10:49 AM
14	defense attorneys schedules	11/29/2018 2:03 PM

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15	I caveat my comment with my limited experience in Hawaii Courts, but I believe there is a lack of collegiality between the Judges and Counsel. In the system I come from Judges regularly have counsel (both sides together of course) for pre-hearing discussions on many timing and scheduling issues. Sometimes it is one of the counsel that requests the pre-trial meetings. Sometimes the Judge wants to know how things are progressing and quite often directs counsel to have a Pre-trial settlement conference to resolve some or all of the issues. Also, mediations and other forms of ADR are employed at the recommendation or request of both counsel and the Judges. Here it is mandated and mechanical, as set out in the HRCP and the FRCP, but in the system I come from it is less mandated by the Rules and primarily initiated by the Counsel and the Judges. I realize it is a fundamental difference between the systems, but the British/Canadian system generally awards cost (on a two or three tier scale) to the successful party in virtually all proceedings and this discourages litigation and encourages settlement and ADR, but the US system has its benefits by encouraging Pro Se Litigants/Plaintiff Contingency Litigants to bring actions that are generally not feasible under the British System. It does heavily burden the legal system though.	11/29/2018 12:24 PM
16	There is no "delay". "judical due process" simply requires time. Justice is not instant pudding and the Courts should stop trying to make it such. Educate the public about what real access to justice is would be preferable to asking about an alleged "delay"	11/29/2018 9:33 AM
17	the overloading of cases to judges. there is a need for a judicial or non judicial review for the cases before trial. There needs to be a level before CAAP.	11/29/2018 9:14 AM
18	ALL OF THE ABOVE	11/29/2018 8:35 AM
19	attorney laziness, and economic disincentives to settle	11/29/2018 7:56 AM
20	All of the above	11/29/2018 6:22 AM
21	Court and Party's continuances	11/28/2018 9:16 PM
22	Lack of court supervision over discovery issues and proceedings	11/28/2018 7:34 PM
23	each of the choices represent delay causes depending on the case...	11/28/2018 7:31 PM
24	various reasons	11/28/2018 7:18 PM
25	No one primary cause; need to look at case-by-case	11/28/2018 6:38 PM
26	Too much discovery, too many court mandated statements and no incentive for defense counsel to settle cases early. Judges overuse mediation. Judges should set clear and certain deadlines, refuse extensions, limit discovery and eliminate paperwork. Nothing induces a faster resolution more than a quick and certain trial date.	11/28/2018 6:28 PM
27	Not requiring early settlement conference	11/28/2018 5:55 PM
28	Delays in court setting of settlement conferences	11/28/2018 5:50 PM
29	I haven't done a civil case in Circuit Court for a while, so no opinion	11/28/2018 5:43 PM
30	Complexities caused by legal and evidentiary issues, e.g., Reyes-Toldeo	11/28/2018 5:39 PM
31	A primary cause is difficult to select because I think that a couple of issues are the common sources of delay. First, discovery is broad and unmanaged from the beginning, which enables counsel to draw out the discovery process, sometimes hoping to outspend the other side. Second, extensions and continuance are a common source of delay. Courts grant them freely and counsel is encouraged to agree to any reasonable request. Reasonable requests require no verification so these requests are likely abused regularly. The effect of these issues is that firms continue to accept litigation cases because there can be huge lulls in activity. Then, an inevitable "perfect storm" of deadlines and appearances drains firm resources and attorneys are spread thin. This scenario is unlikely to result in excellent representation of clients.	11/28/2018 5:27 PM
32	Trial should be within 12 months of filing date. Immediate conferences, 45 day mandatory dual document production, etc.	11/28/2018 5:02 PM
33	Judges who take steps to prevent speedy trials	11/28/2018 5:01 PM
34	all of these at different times. Also the long appeal process	11/28/2018 5:01 PM
35	Defense try to rack up billables	11/28/2018 4:58 PM
36	Lack of trial setting...time spent on discovery....lack of attorney collaboration	11/19/2018 10:47 AM
37	don't know currently	11/19/2018 10:36 AM

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38	all of the above	11/19/2018 9:45 AM
39	attorney requests...the time spent...lack of attorney collaboration	11/19/2018 9:22 AM
40	court continuances & criminal priority	11/15/2018 10:45 AM
41	lack of trial; time spent; lack of atty; atty requests	11/15/2018 7:52 AM
42	lack of atty collaboration; inefficiency of the CAAP process	11/14/2018 3:09 PM
43	court continuances as scheduled events, lack of atty collaboration & time spent on discovery	11/13/2018 1:50 PM
44	lack of attorney collaboration and need for earlier settlement conference and monitoring of discovery	11/13/2018 1:43 PM
45	attorneys' calendars are not compatible with early trial dates	11/13/2018 1:22 PM
46	attorney request for extensions of time, time spent on discovery and lack of attorney collaboration.	11/13/2018 1:18 PM
47	the system is too crowded. We need more judges, maybe state court magistrates. As well as support staff and physical plant (more courtrooms).	11/13/2018 11:41 AM
48	delayed ruling, time spent on discovery, failure to enforce rule 12(b)(6) at pleading stage.	11/9/2018 8:09 AM
49	available realistic court dates and attorney trial schedules	11/9/2018 8:05 AM
50	court continuances and attorney requests	11/9/2018 7:56 AM
51	attorney request for extension and time spent on discovery	11/9/2018 7:50 AM
52	Lack of trial setting, time spent on discovery, counsels' packed schedules	11/8/2018 3:40 PM
53	Lack of trial setting conference & time spent on discovery	11/8/2018 2:46 PM
54	lack of trial setting conference at outset & lack of atty collaboration	11/8/2018 2:04 PM
55	Court continuances & lack of court availability for hearing & trial dates	11/8/2018 1:52 PM
56	Atty requests; time spent on discovery; lack of atty collaboration	11/8/2018 1:20 PM
57	not setting hearings with 20 days	11/8/2018 1:16 PM
58	Lack of trial setting conference & Lack of atty collaboration	11/8/2018 1:06 PM
59	Atty requests for ext. time & continuances; Lack of atty collaboration on disc. issues/proceedings	11/8/2018 12:45 PM
60	lack of trial setting conference at outset of case & lack of case managmt by attys	11/8/2018 12:33 PM
61	The burden and unreasonable expectations plays on lawyers to try a case if trial courts force the parties to try the case on truly disputed issues more cases would ... (see original)	11/8/2018 11:18 AM
62	No urgency by attorneys. Attorneys too busy.	11/8/2018 10:29 AM
63	checked #4, #5, and #6	11/8/2018 10:00 AM
64	five selected except delayed rulings	11/8/2018 9:50 AM
65	attorney request for extensions and time spent on discovery	11/8/2018 8:50 AM
66	lawyers not seeking prompt resolution (i.e. not paying enough attention to their cases)	11/7/2018 2:31 PM

Q23 How often does the cost of litigation force cases to settle that should not settle based on the merits?

Answered: 258 Skipped: 150

ANSWER CHOICES	RESPONSES	
Almost never	5.04%	13
Occasionally	31.01%	80
About 50% of the time	14.34%	37
Often	43.02%	111
Almost always	6.59%	17
TOTAL		258

Q24 How often does the length of time it takes to get a case to trial force cases to settle that should not settle based on the merits?

Answered: 258 Skipped: 150

ANSWER CHOICES	RESPONSES	
Almost never	16.67%	43
Occasionally	41.09%	106
About 50% of the time	10.85%	28
Often	28.29%	73
Almost always	3.10%	8
TOTAL		258

Q25 How often is each of the following a significant factor in the decision to settle a case?

Answered: 254 Skipped: 154

	ALMOST NEVER	OCCASIONALLY	ABOUT 50% OF THE TIME	OFEN	ALMOST ALWAYS	TOTAL
Expert witness costs	8.76% 22	45.42% 114	13.94% 35	25.50% 64	6.37% 16	251
Deposition costs	16.67% 42	42.06% 106	17.46% 44	20.63% 52	3.17% 8	252
Document production costs	26.59% 67	44.44% 112	14.29% 36	13.10% 33	1.59% 4	252
E-discovery costs	33.33% 81	39.92% 97	13.58% 33	10.70% 26	2.47% 6	243
Trial costs	6.37% 16	21.51% 54	12.75% 32	40.64% 102	18.73% 47	251
Legal research costs	49.80% 123	30.77% 76	8.91% 22	8.50% 21	2.02% 5	247
Motions practice costs	30.12% 75	38.15% 95	14.06% 35	13.25% 33	4.42% 11	249
Attorney fees	9.92% 25	19.05% 48	13.10% 33	35.32% 89	22.62% 57	252
Time it takes to get to trial	16.40% 41	26.40% 66	14.80% 37	30.00% 75	12.40% 31	250

Q26 Please indicate how often the following occur in your experience as it relates to Hawai'i Circuit Courts.

Answered: 257 Skipped: 151

	ALMOST NEVER	OCCASIONALLY	ABOUT 50% OF THE TIME	OFTEN	ALMOST ALWAYS	TOTAL	WEIGHTED AVERAGE
Litigants engage in misconduct and rule violations that serve to increase the costs of and/or delay litigation.	24.90% 64	56.03% 144	7.39% 19	9.73% 25	1.95% 5	257	2.08
Litigants request sanctions for such misconduct and rule violations.	35.55% 91	46.88% 120	7.42% 19	8.20% 21	1.95% 5	256	1.94
Courts impose sanctions for such misconduct and rule violations	60.94% 156	33.98% 87	2.73% 7	1.56% 4	0.78% 2	256	1.47

Q27 For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

Answered: 253 Skipped: 155

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
Discovery and judicial involvement should be tailored to the needs of a case, as not every case requires the same amount of discovery and judicial involvement.	1.20% 3	1.99% 5	46.22% 116	49.00% 123	1.59% 4	251	3.48
Efficiency and costs savings would be enhanced if cases were separated into different pathways based on criteria such as amount in controversy and complexity, with appropriate levels of discovery and judicial resources applied to each pathway.	3.97% 10	9.92% 25	44.84% 113	34.52% 87	6.75% 17	252	3.30
Judicial involvement should happen once the parties have answered the complaint.	3.60% 9	14.40% 36	45.60% 114	31.20% 78	5.20% 13	250	3.20
The Court Annexed Arbitration Program (CAAP) should be modified to make participation in the program voluntary.	19.05% 48	33.33% 84	18.65% 47	11.51% 29	17.46% 44	252	2.75
Jury trials with a jury of less than twelve but not less than six jurors should be authorized.	8.37% 21	14.74% 37	37.45% 94	18.73% 47	20.72% 52	251	3.29

Q28 Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts: The Court Annexed Arbitration Program (CAAP) should be modified to increase the \$150,000 "probable jury award" ceiling for acceptance into the program.

Answered: 261 Skipped: 147

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
(no label)	5.75% 15	17.24% 45	33.72% 88	19.54% 51	23.75% 62	261	3.38

Q29 To what dollar amount should the ceiling be increased?

Answered: 127 Skipped: 281

#	RESPONSES	DATE
1	500000	1/7/2019 10:01 AM
2	No opinion.	1/6/2019 10:40 PM
3	don't know	12/28/2018 5:21 PM
4	500,000	12/27/2018 11:28 AM
5	300,000.00	12/27/2018 10:02 AM
6	300000	12/26/2018 3:28 PM
7	\$ 300,000.00	12/26/2018 1:43 PM
8	250,000	12/26/2018 1:10 PM
9	250,000	12/26/2018 12:38 PM
10	no limit	12/26/2018 11:46 AM
11	\$250,000	12/17/2018 4:01 PM
12	250,000	12/10/2018 5:39 PM
13	\$250,000	12/10/2018 10:16 AM
14	\$250,000	12/6/2018 1:14 PM
15	200000	12/4/2018 5:09 PM
16	\$200,000	12/4/2018 9:05 AM
17	1,000,000	12/3/2018 7:50 PM
18	\$350,000	12/2/2018 1:47 PM
19	\$250,000	11/30/2018 8:11 PM
20	250000	11/30/2018 10:52 AM
21	one millioin	11/30/2018 10:51 AM
22	\$250,000	11/30/2018 7:17 AM
23	\$200,000	11/29/2018 9:51 PM
24	\$250,000	11/29/2018 9:46 PM
25	1 million	11/29/2018 1:39 PM
26	250000	11/29/2018 1:22 PM
27	500000	11/29/2018 12:52 PM
28	250,000	11/29/2018 11:57 AM
29	500,000	11/29/2018 11:39 AM
30	\$500,000	11/29/2018 11:07 AM
31	250,000	11/29/2018 10:52 AM
32	250,000	11/29/2018 10:49 AM
33	500,000	11/29/2018 10:38 AM
34	\$300,000.00	11/29/2018 10:14 AM
35	no opinion	11/29/2018 10:03 AM

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36	\$250.000	11/29/2018 9:38 AM
37	250,000	11/29/2018 9:16 AM
38	\$250,000	11/29/2018 9:10 AM
39	300000	11/29/2018 8:13 AM
40	\$250,000	11/29/2018 7:48 AM
41	\$200,000	11/29/2018 6:26 AM
42	500,000	11/29/2018 5:20 AM
43	200,000.00	11/29/2018 3:24 AM
44	300000	11/29/2018 3:19 AM
45	1million	11/28/2018 11:10 PM
46	300000	11/28/2018 9:26 PM
47	175000	11/28/2018 9:22 PM
48	500,000	11/28/2018 8:02 PM
49	300000	11/28/2018 7:38 PM
50	300,000	11/28/2018 6:29 PM
51	No limit	11/28/2018 5:57 PM
52	\$200,000	11/28/2018 5:47 PM
53	\$300,000	11/28/2018 5:42 PM
54	?	11/28/2018 5:28 PM
55	\$250,000.00	11/28/2018 5:20 PM
56	250000	11/28/2018 5:12 PM
57	\$250,000	11/28/2018 5:05 PM
58	\$500,000	11/28/2018 5:04 PM
59	\$250,000	11/28/2018 5:03 PM
60	\$250,000	11/28/2018 4:59 PM
61	500,000.00	11/28/2018 4:59 PM
62	250,000	11/28/2018 4:59 PM
63	1,000,000	11/28/2018 4:56 PM
64	200,000	11/28/2018 4:53 PM
65	\$250,000	11/28/2018 4:52 PM
66	\$250,000.00	11/28/2018 4:50 PM
67	\$250,000	11/27/2018 8:53 PM
68	\$500,000	11/27/2018 1:25 PM
69	500000	11/19/2018 10:47 AM
70	500000	11/19/2018 10:40 AM
71	unlimited	11/19/2018 10:30 AM
72	300000	11/19/2018 9:46 AM
73	300000	11/19/2018 9:39 AM
74	350000	11/19/2018 9:23 AM
75	250000	11/15/2018 10:51 AM
76	300000	11/15/2018 10:46 AM

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77	250000	11/15/2018 9:19 AM
78	250000	11/15/2018 8:19 AM
79	450000	11/15/2018 7:56 AM
80	\$500,000	11/15/2018 7:44 AM
81	250000	11/13/2018 3:23 PM
82	250000	11/13/2018 3:19 PM
83	250000	11/13/2018 3:15 PM
84	500000	11/13/2018 3:08 PM
85	250000	11/13/2018 3:02 PM
86	250000	11/13/2018 2:46 PM
87	300000	11/13/2018 2:35 PM
88	200000	11/13/2018 2:30 PM
89	250000	11/13/2018 2:25 PM
90	250000	11/13/2018 1:43 PM
91	250000	11/13/2018 1:29 PM
92	250000	11/13/2018 1:19 PM
93	250000	11/13/2018 1:09 PM
94	300000	11/13/2018 12:57 PM
95	250000	11/13/2018 12:43 PM
96	250000	11/13/2018 11:42 AM
97	200000	11/9/2018 7:51 AM
98	250000	11/8/2018 3:40 PM
99	250000	11/8/2018 2:41 PM
100	500000	11/8/2018 2:15 PM
101	500000	11/8/2018 1:53 PM
102	250000	11/8/2018 1:43 PM
103	250000	11/8/2018 1:35 PM
104	200000	11/8/2018 1:20 PM
105	300000	11/8/2018 1:16 PM
106	250000	11/8/2018 1:12 PM
107	\$250,000	11/8/2018 12:52 PM
108	\$250,000	11/8/2018 12:35 PM
109	200,000	11/8/2018 12:28 PM
110	250000	11/8/2018 10:44 AM
111	250000	11/8/2018 10:40 AM
112	200000	11/8/2018 10:33 AM
113	250000	11/8/2018 10:25 AM
114	250000	11/8/2018 10:00 AM
115	250000	11/8/2018 9:50 AM
116	300000	11/8/2018 9:43 AM
117	250000	11/8/2018 9:10 AM

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118	200000	11/8/2018 9:00 AM
119	200000	11/8/2018 8:57 AM
120	500000	11/8/2018 8:51 AM
121	350000	11/8/2018 8:44 AM
122	250000	11/8/2018 8:37 AM
123	250000	11/7/2018 2:52 PM
124	500000	11/7/2018 2:46 PM
125	500000	11/7/2018 2:37 PM
126	500000	11/7/2018 2:13 PM
127	250,000	11/7/2018 11:02 AM

Q30 Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts: The CAAP should be expanded to apply to cases besides tort cases.

Answered: 260 Skipped: 148

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
(no label)	3.85% 10	17.69% 46	41.54% 108	19.23% 50	17.69% 46	260	3.29

Q31 What other types of cases should be included in the CAAP?

Answered: 140 Skipped: 268

#	RESPONSES	DATE
1	Minor contract disputes (less than \$50,000 at issue).	1/8/2019 11:27 PM
2	Injunction	1/7/2019 10:02 AM
3	Simpler disputes	12/28/2018 5:22 PM
4	not sure, maybe contract disputes?	12/27/2018 10:03 AM
5	All non-declaratory relief and non-injunctive relief cases. Vetting for arbitrators should be more stringent for non-tort cases.	12/26/2018 3:30 PM
6	Contract, Construction and Planned Community Association Disputes	12/26/2018 1:46 PM
7	simple contract disputes	12/26/2018 1:10 PM
8	Cases in which requested relief is primarily monetary, e.g, contract, employment	12/26/2018 12:39 PM
9	Contract disputes.	12/26/2018 12:33 PM
10	Declaratory judgment	12/26/2018 11:49 AM
11	most civil cases should be included. complex cases can be assigned to more experienced attorneys to act as arbitrators	12/26/2018 11:47 AM
12	dec actions	12/23/2018 5:24 PM
13	All	12/17/2018 4:01 PM
14	Contract disputes (e.g., breach)	12/17/2018 11:39 AM
15	Contract	12/10/2018 5:40 PM
16	contract	12/10/2018 2:33 PM
17	contract	12/7/2018 4:33 PM
18	Other civil cases with anticipated judgment of <\$250K.	12/6/2018 1:15 PM
19	contract cases	12/6/2018 8:07 AM
20	contract; construction disputes	12/5/2018 3:29 PM
21	contract disputes: participated in this requirement in Oregon courts years ago	12/4/2018 5:09 PM
22	contract disputes, boundary disputes	12/4/2018 1:15 PM
23	Contract disputes	12/4/2018 9:06 AM
24	All cases.	12/2/2018 1:47 PM
25	Non-mandatory contract and other business litigation.	11/30/2018 8:12 PM
26	Contract cases	11/30/2018 4:23 PM
27	civil rights, criminal defense	11/30/2018 1:52 PM
28	Real Estate	11/30/2018 10:52 AM
29	small contract disputes; other disputes with low dollar value, but not class actions or complex litigation.	11/30/2018 10:52 AM
30	Contract disputes that are not complex	11/30/2018 7:17 AM
31	Contact disputes	11/29/2018 9:52 PM
32	Business litigation	11/29/2018 9:47 PM
33	contract	11/29/2018 1:39 PM

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34	contract, some employee matters, medical malpractice to 250K, contested probate	11/29/2018 1:26 PM
35	medical malpractice, everything	11/29/2018 12:55 PM
36	Contract cases, agency appeals, all civil cases	11/29/2018 11:58 AM
37	Employment	11/29/2018 11:40 AM
38	Govtenforcement cases	11/29/2018 11:23 AM
39	All cases included in CAAP or a modified version of CAAP where the judiciary creates full-time positions for CAAP arbitrators.	11/29/2018 11:08 AM
40	Contract disputes, including labor, employment and construction, as well as other civil cases that are not subject to referral to special boards or commissions.	11/29/2018 10:55 AM
41	Not sure	11/29/2018 10:53 AM
42	all cases involving monetary damages	11/29/2018 10:39 AM
43	all cases except malpractice and a separate CAAP like process should be set up for these and other cases.	11/29/2018 9:19 AM
44	All civil cases except multiparty complex	11/29/2018 9:10 AM
45	All civil (and family and probate) cases, up to a monetary limit (except for family, which should be limited by other criteria).	11/29/2018 8:58 AM
46	contract; UDAP	11/29/2018 8:13 AM
47	Contract	11/29/2018 8:07 AM
48	all cases, no special treatment	11/29/2018 7:57 AM
49	condemnation, inmate litigation	11/29/2018 7:49 AM
50	all civil cases	11/29/2018 7:30 AM
51	Contract	11/29/2018 6:27 AM
52	All civil cases	11/29/2018 5:44 AM
53	Contract	11/29/2018 5:20 AM
54	contract	11/29/2018 3:25 AM
55	literally everything	11/29/2018 3:19 AM
56	personal injury, contract	11/28/2018 11:12 PM
57	Construction defects condo disputes	11/28/2018 9:27 PM
58	Debts, contracts,	11/28/2018 9:24 PM
59	Most tort, contract, and basic disputes	11/28/2018 8:03 PM
60	contract (but not foreclosure)	11/28/2018 7:38 PM
61	Contract, collection cases but not foreclosure.	11/28/2018 7:21 PM
62	Breach of contract, but not complex mixed-claims cases	11/28/2018 7:11 PM
63	All circuit court cases. Not family court	11/28/2018 5:52 PM
64	Contract	11/28/2018 5:47 PM
65	property disputes, debtor/creditor disputes, some contract matters	11/28/2018 5:46 PM
66	All	11/28/2018 5:42 PM
67	any case that litigants believe would benefit from the process.	11/28/2018 5:38 PM
68	contract, partnerships, domestic relations	11/28/2018 5:35 PM
69	Pretty much anything except foreclosure cases.	11/28/2018 5:21 PM
70	contract	11/28/2018 5:13 PM

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71	Any type of case where the parties and their counsel agree to participate in CAAP. It can be a useful tool to help resolve the case sooner, but it is important to have an attorney familiar with the area of practice for each case.	11/28/2018 5:10 PM
72	Cases that are more than likely to go to trial.	11/28/2018 5:09 PM
73	Contract	11/28/2018 5:07 PM
74	Landlord/Tenant Disputes or breach of rental agreement cases	11/28/2018 5:06 PM
75	Contract.	11/28/2018 5:05 PM
76	Contract cases	11/28/2018 5:05 PM
77	relatively less complex civil cases that usually settle 90% of the time	11/28/2018 5:04 PM
78	all types	11/28/2018 5:03 PM
79	Contract cases with less than 3 parties or a \$ ceiling.	11/28/2018 5:02 PM
80	Breach of Contract	11/28/2018 4:59 PM
81	Contract	11/28/2018 4:59 PM
82	any complaint seeking money damages	11/28/2018 4:56 PM
83	All civil cases	11/28/2018 4:53 PM
84	real property disputes, construction defect, small business disputes	11/28/2018 4:51 PM
85	Contracts, construction litigation	11/27/2018 8:53 PM
86	discrimination, contracts	11/19/2018 10:48 AM
87	under 50000 any civil case	11/19/2018 10:37 AM
88	all cases unless elected out	11/19/2018 10:30 AM
89	contract	11/19/2018 9:46 AM
90	contracts	11/19/2018 9:39 AM
91	business and litigation	11/19/2018 9:24 AM
92	AOAO, covenants/deed covenant violations; smaller construct defects case involving homeowners; breach of warranty in consumer product cases	11/15/2018 10:52 AM
93	admin appeals, landlord, contracts, purchase & sale of residential property	11/15/2018 10:47 AM
94	contract disputes	11/15/2018 10:42 AM
95	Two party contract cases. Product liability. Single plaintiff (not AOAO) construction cases.	11/15/2018 9:21 AM
96	contract	11/15/2018 8:19 AM
97	sexual harassment, breach of contract, premises liability, privacy tort	11/15/2018 8:06 AM
98	employment	11/13/2018 3:24 PM
99	breach of contract	11/13/2018 3:20 PM
100	all	11/13/2018 3:15 PM
101	contract, property disputes, others	11/13/2018 3:09 PM
102	contract, agency appeals	11/13/2018 3:02 PM
103	contract cases	11/13/2018 2:46 PM
104	contract	11/13/2018 2:30 PM
105	contract, construction litigation	11/13/2018 2:26 PM
106	Employment, construction, any case in which insurance coverage is available	11/13/2018 1:43 PM
107	contracts, employment	11/13/2018 1:29 PM
108	all cases	11/13/2018 1:22 PM
109	contract, environmental	11/13/2018 1:01 PM

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110	Assumpsit	11/13/2018 12:43 PM
111	foreclosure, collections, AOAO cases	11/13/2018 11:42 AM
112	simple contract disputes	11/9/2018 8:05 AM
113	contract	11/9/2018 7:51 AM
114	contract	11/8/2018 3:40 PM
115	contracts	11/8/2018 2:42 PM
116	AOAO disputes & construction disputes	11/8/2018 2:16 PM
117	breach of contract	11/8/2018 1:53 PM
118	contracts	11/8/2018 1:43 PM
119	contract dispute & foreclosures	11/8/2018 1:35 PM
120	all	11/8/2018 1:12 PM
121	contracts	11/8/2018 12:52 PM
122	contracts	11/8/2018 12:35 PM
123	all other cases except product liability and construction defects.	11/8/2018 10:49 AM
124	all civil	11/8/2018 10:45 AM
125	contracts below a certain \$ amount in dispute.	11/8/2018 10:41 AM
126	contract case below a specific amount. For example, \$100,000	11/8/2018 10:34 AM
127	contract, other civil actions	11/8/2018 10:30 AM
128	2 party contract disputes	11/8/2018 9:55 AM
129	contract but not foreclosures	11/8/2018 9:44 AM
130	contract, lease	11/8/2018 9:11 AM
131	contract	11/8/2018 9:00 AM
132	contract	11/8/2018 8:51 AM
133	contract, collection cases	11/8/2018 8:44 AM
134	non-tort	11/8/2018 8:37 AM
135	contracts, employment cases	11/7/2018 2:52 PM
136	contract	11/7/2018 2:46 PM
137	all	11/7/2018 2:37 PM
138	contract, not foreclosures	11/7/2018 2:18 PM
139	employment law	11/7/2018 2:13 PM
140	Non-complex contract matters	11/7/2018 11:02 AM

Q32 Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts: Specialized courts to handle specific types of civil cases or disputes should be created.

Answered: 260 Skipped: 148

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
(no label)	6.92% 18	23.46% 61	33.08% 86	16.92% 44	19.62% 51	260	3.19

Q33 What types of specialized courts would you recommend?

Answered: 91 Skipped: 317

#	RESPONSES	DATE
1	Courts focused on commercial contract disputes and insurance coverage issues.	1/8/2019 11:28 PM
2	agency appeal	1/7/2019 10:02 AM
3	Need separate civil and criminal judges on the 2nd, 3rd, and 5th circuit.	12/27/2018 11:29 AM
4	Construction	12/26/2018 5:02 PM
5	Business-litigation related courts like the chancery courts in delaware and a fed-court style magistrate judge that handles discovery disputes. A full-time discovery master would be a great idea.	12/26/2018 3:33 PM
6	At minimum - civil and criminal cases should be litigated in separate courts, especially where the Circuit Court judges experience is primarily civil or criminal. This is not done in the Third Circuit. Cases involving property and Association disputes.	12/26/2018 1:48 PM
7	Construction litigation	12/26/2018 1:11 PM
8	Construction court; malpractice (medical and other professional malpractice)	12/26/2018 12:34 PM
9	wrongful foreclosure court	12/26/2018 11:51 AM
10	Condominium/HOA	12/26/2018 11:49 AM
11	The environmental court is great. Would also be great to have a property court handling land use, property and QT issues	12/23/2018 5:25 PM
12	not sure	12/17/2018 4:02 PM
13	construction cases (both contract disputes, and cases on construction defects)	12/6/2018 8:08 AM
14	construction	12/5/2018 3:30 PM
15	probate and trust	12/4/2018 5:10 PM
16	commercial litigation court	12/4/2018 1:15 PM
17	construction, med mal, large contract disputes, product liability...anything where specialization and background knowledge and experience is helpful.	12/3/2018 10:55 AM
18	Asbestos; Medical Malpractice; Construction Defects	12/1/2018 3:26 PM
19	environmental; foreclosure;	11/30/2018 9:40 PM
20	Commercial litigation, construction litigation, secured transaction litigation and collections and foreclosure litigation with judges who come from that practice area.	11/30/2018 8:14 PM
21	Foreclosures, personal injury	11/30/2018 7:19 AM
22	Torts, Business litigation	11/29/2018 9:48 PM
23	courts dealing with tort cases so judges will be experts in that area.	11/29/2018 2:06 PM
24	(1) Construction litigation / bid protests, (2) corporate issues such as embezzlement, conversion, stockholder claims.	11/29/2018 12:26 PM
25	Perhaps divided by level of court involvement rather than areas of law. E.g., parties who waive jury trial could be fast-tracked to court that only addresses bench trials;	11/29/2018 11:14 AM
26	Employment law and labor law cases including employment related discrimination	11/29/2018 11:13 AM
27	Foreclosure court; eviction court; separate court for custody issues vice general family court	11/29/2018 10:53 AM
28	Court to handle Landlord/Tenant disputes; court to handle real property related issues such as foreclosures, partitions, boundary disputes, etc.	11/29/2018 10:18 AM
29	construction defect; med mal; civil rights; employment	11/29/2018 9:41 AM

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30	malpractice and other areas like construction lit	11/29/2018 9:21 AM
31	unsure. need further analysis	11/29/2018 9:11 AM
32	Homeowner Association Disputes	11/29/2018 8:14 AM
33	as many as financially possible	11/29/2018 7:31 AM
34	Real Property	11/29/2018 7:21 AM
35	business related matters; tax matters; IP law matters	11/29/2018 3:20 AM
36	Harassment, medmal	11/28/2018 11:28 PM
37	Judges familiar with the type of civil case litigated.	11/28/2018 11:28 PM
38	residential foreclosure	11/28/2018 11:13 PM
39	Commercial/Chancery	11/28/2018 9:32 PM
40	Construction insurance condominium	11/28/2018 9:28 PM
41	Foreclosure, debts and contracts,	11/28/2018 9:26 PM
42	contract disputes, construction disputes	11/28/2018 7:39 PM
43	foreclosure courts to streamline the process	11/28/2018 7:21 PM
44	Based on amount in controversy.	11/28/2018 6:29 PM
45	tort, contract, specify a sought amount in complaint	11/28/2018 5:53 PM
46	complex litigation, probate, class actions	11/28/2018 5:47 PM
47	1) Household Mortgage Foreclosures; and 2) Condominiums, each with court-approved forms as it is in the District Courts for assumpsit and summary possession cases	11/28/2018 5:44 PM
48	small torts (less than \$150,000), contract, foreclosure	11/28/2018 5:36 PM
49	Personal injury, malpractice, construction	11/28/2018 5:30 PM
50	Foreclosure. Breach of Construction Contracts.	11/28/2018 5:23 PM
51	foreclosure; condominium and planned community disputes	11/28/2018 5:14 PM
52	Construction defect, contract, real property, product liability are worth at least a try.	11/28/2018 5:10 PM
53	contract and tort	11/28/2018 5:09 PM
54	malpractice (where standard of care is primary issue) construction condos quiet titles/partitions eminent domain auto/no fault	11/28/2018 5:07 PM
55	Civil rights.	11/28/2018 5:05 PM
56	Corporate/Commercial/Construction	11/28/2018 5:05 PM
57	Real property issues including foreclosure; commercial;	11/28/2018 4:57 PM
58	foreclosure	11/28/2018 4:55 PM
59	separate civil and criminal courts and treatment courts	11/19/2018 10:48 AM
60	torts	11/19/2018 10:41 AM
61	complex	11/19/2018 10:30 AM
62	construction courts, medical malpractice	11/19/2018 9:39 AM
63	AOAO/private deed covenant cases	11/15/2018 10:53 AM
64	real estate	11/15/2018 10:47 AM
65	DUI	11/15/2018 8:19 AM
66	civil rights & employment	11/15/2018 8:07 AM
67	business courts, commercial courts, labor courts	11/13/2018 2:46 PM
68	indigenous cultural	11/13/2018 2:19 PM

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69	discovery	11/13/2018 1:29 PM
70	personal injury, product liability, employment, etc.	11/13/2018 12:44 PM
71	foreclosure and collections	11/13/2018 11:43 AM
72	condo/AOAO ??? Division???	11/9/2018 8:10 AM
73	On Maui we have no real specializations so trust/property, real estate	11/9/2018 7:57 AM
74	Courts that handle commercial cases similar to Delaware.	11/8/2018 3:32 PM
75	foreclosures, liens, construction	11/8/2018 2:42 PM
76	construction & AOAO disputes.	11/8/2018 2:16 PM
77	contract disputes	11/8/2018 1:35 PM
78	personal injury	11/8/2018 1:30 PM
79	complex litigation e.g. malpractice	11/8/2018 1:22 PM
80	Probate	11/8/2018 1:12 PM
81	personal injury courts	11/8/2018 11:19 AM
82	foreclosure	11/8/2018 10:34 AM
83	based on pathways	11/8/2018 10:14 AM
84	environmental, foreclosure, collection	11/8/2018 10:09 AM
85	foreclosure court	11/8/2018 10:01 AM
86	tort, contract, foreclosure	11/8/2018 9:44 AM
87	keep foreclosure separate	11/8/2018 9:16 AM
88	contract, tort	11/8/2018 8:51 AM
89	contract disputes	11/8/2018 8:37 AM
90	complex and class action	11/7/2018 2:18 PM
91	Foreclosure, agency appeals	11/7/2018 11:03 AM

Q34 Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts: The District Court's \$40,000 jurisdictional limit should be increased so that more cases can be filed in District Court.

Answered: 258 Skipped: 150

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
(no label)	4.65% 12	22.48% 58	37.60% 97	20.16% 52	15.12% 39	258	3.19

Q35 To what dollar amount should the jurisdictional limit be increased?

Answered: 140 Skipped: 268

#	RESPONSES	DATE
1	50000	1/7/2019 10:03 AM
2	\$50,000 - 75,000	12/28/2018 5:23 PM
3	\$100,000	12/27/2018 11:29 AM
4	\$60,000	12/26/2018 2:51 PM
5	\$100,000.00	12/26/2018 1:49 PM
6	\$75,000	12/26/2018 1:20 PM
7	75,000	12/26/2018 1:11 PM
8	50,000	12/26/2018 12:39 PM
9	50000	12/26/2018 11:52 AM
10	\$100,000	12/17/2018 4:02 PM
11	\$100,000	12/17/2018 11:40 AM
12	75,000	12/10/2018 5:41 PM
13	100,000	12/10/2018 2:35 PM
14	100,000	12/10/2018 10:17 AM
15	\$60,000+	12/7/2018 1:19 PM
16	100,000	12/7/2018 9:28 AM
17	\$50K	12/6/2018 1:15 PM
18	50,000	12/6/2018 8:08 AM
19	125000	12/4/2018 1:15 PM
20	\$60,000	12/4/2018 9:06 AM
21	\$100,000	12/2/2018 1:48 PM
22	UNLIMITED - with an option above \$50,000 for the Defendant to request transfer to Circuit Court	11/30/2018 8:17 PM
23	100000	11/30/2018 10:53 AM
24	\$100,000	11/30/2018 10:52 AM
25	\$50,000	11/29/2018 9:53 PM
26	\$75,000	11/29/2018 9:48 PM
27	\$100,000	11/29/2018 2:06 PM
28	75 k	11/29/2018 1:40 PM
29	100000	11/29/2018 12:58 PM
30	Not sure it depends on complexity of Case	11/29/2018 12:32 PM
31	100,000	11/29/2018 11:58 AM
32	100,000	11/29/2018 11:40 AM
33	100,000	11/29/2018 11:14 AM
34	\$150,000	11/29/2018 11:14 AM
35	50000	11/29/2018 11:03 AM

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36	75,000	11/29/2018 10:58 AM
37	75,000	11/29/2018 10:54 AM
38	50,000	11/29/2018 10:40 AM
39	\$50,000.00	11/29/2018 10:19 AM
40	\$100,000	11/29/2018 9:41 AM
41	\$150,000.00	11/29/2018 9:35 AM
42	300,000	11/29/2018 9:22 AM
43	\$100,000	11/29/2018 9:12 AM
44	\$75,000	11/29/2018 8:43 AM
45	50,000	11/29/2018 8:36 AM
46	100,000	11/29/2018 8:36 AM
47	100,000	11/29/2018 8:14 AM
48	\$50,000	11/29/2018 8:08 AM
49	100,000	11/29/2018 7:49 AM
50	\$100,000	11/29/2018 7:31 AM
51	\$200,000	11/29/2018 7:21 AM
52	75,000	11/29/2018 5:44 AM
53	\$100,000	11/29/2018 5:35 AM
54	100,000	11/29/2018 5:21 AM
55	100,000.00	11/29/2018 3:25 AM
56	75000	11/28/2018 11:29 PM
57	\$75000	11/28/2018 11:28 PM
58	\$50,000	11/28/2018 11:13 PM
59	75000	11/28/2018 9:52 PM
60	75000	11/28/2018 9:32 PM
61	70000	11/28/2018 7:39 PM
62	75000	11/28/2018 7:16 PM
63	100,000	11/28/2018 6:49 PM
64	150,000	11/28/2018 6:31 PM
65	100,000	11/28/2018 6:29 PM
66	\$50,000.00	11/28/2018 5:53 PM
67	\$50,000	11/28/2018 5:48 PM
68	\$60,000	11/28/2018 5:44 PM
69	\$100,000	11/28/2018 5:36 PM
70	100k	11/28/2018 5:31 PM
71	80000	11/28/2018 5:28 PM
72	\$75,000.00	11/28/2018 5:21 PM
73	\$80,000	11/28/2018 5:15 PM
74	100000	11/28/2018 5:14 PM
75	75000	11/28/2018 5:12 PM
76	\$75,000	11/28/2018 5:10 PM

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77	\$100,000	11/28/2018 5:08 PM
78	\$75,000	11/28/2018 5:07 PM
79	\$50,000	11/28/2018 5:03 PM
80	100,000.00	11/28/2018 5:02 PM
81	\$75,000	11/28/2018 5:00 PM
82	100,000	11/28/2018 4:59 PM
83	\$50,000	11/28/2018 4:58 PM
84	75,000	11/28/2018 4:56 PM
85	75,000	11/28/2018 4:54 PM
86	\$100,000	11/28/2018 4:52 PM
87	\$75,000.00	11/28/2018 4:51 PM
88	100,000	11/27/2018 1:26 PM
89	75000	11/19/2018 10:48 AM
90	75000	11/19/2018 10:41 AM
91	60000	11/19/2018 9:46 AM
92	100000	11/19/2018 9:24 AM
93	75000	11/15/2018 10:53 AM
94	150000	11/15/2018 10:47 AM
95	50000	11/15/2018 10:42 AM
96	75,000	11/15/2018 9:39 AM
97	\$75,000	11/15/2018 9:22 AM
98	\$100,000	11/15/2018 9:01 AM
99	100000	11/15/2018 8:19 AM
100	120000	11/15/2018 8:07 AM
101	100000 to unlimited w/ more district court judges	11/13/2018 3:09 PM
102	150000	11/13/2018 3:02 PM
103	75000	11/13/2018 2:30 PM
104	50000	11/13/2018 2:20 PM
105	75000	11/13/2018 1:30 PM
106	75000	11/13/2018 1:22 PM
107	50000	11/13/2018 1:14 PM
108	75000	11/13/2018 1:10 PM
109	50000	11/13/2018 12:44 PM
110	75000	11/13/2018 11:43 AM
111	100000	11/9/2018 7:57 AM
112	75000	11/8/2018 2:42 PM
113	100000	11/8/2018 1:58 PM
114	50000	11/8/2018 1:53 PM
115	100000	11/8/2018 1:43 PM
116	50000	11/8/2018 1:35 PM
117	75000	11/8/2018 1:30 PM

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118	100000	11/8/2018 1:22 PM
119	80000	11/8/2018 1:16 PM
120	100000	11/8/2018 1:12 PM
121	100000	11/8/2018 1:07 PM
122	75000	11/8/2018 12:52 PM
123	\$100,000	11/8/2018 12:35 PM
124	\$50,000 or \$75,000	11/8/2018 12:29 PM
125	\$75,000 w/District Ct being an option for pltf rather than CAAP	11/8/2018 11:19 AM
126	75000	11/8/2018 10:45 AM
127	75000	11/8/2018 10:41 AM
128	75000	11/8/2018 10:30 AM
129	75000	11/8/2018 10:25 AM
130	75000	11/8/2018 10:01 AM
131	60000	11/8/2018 9:44 AM
132	75000	11/8/2018 9:16 AM
133	50000	11/8/2018 9:01 AM
134	50000	11/8/2018 8:51 AM
135	75000	11/8/2018 8:44 AM
136	100000	11/8/2018 8:37 AM
137	50000	11/7/2018 2:52 PM
138	100000	11/7/2018 2:38 PM
139	100000	11/7/2018 2:14 PM
140	100000	11/7/2018 11:03 AM

Q36 Please indicate your level of agreement with this statement as it applies to Hawai'i Circuit Courts: The \$5,000 threshold for the right to a jury trial should be increased.

Answered: 257 Skipped: 151

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
(no label)	6.23% 16	14.79% 38	34.24% 88	31.91% 82	12.84% 33	257	3.30

Q37 To what dollar amount should the jury trial threshold be increased?

Answered: 152 Skipped: 256

#	RESPONSES	DATE
1	\$100,000.00	1/23/2019 8:24 PM
2	50000	1/7/2019 10:03 AM
3	35,000	12/30/2018 11:50 AM
4	\$40,000	12/26/2018 9:16 PM
5	\$40,000	12/26/2018 3:34 PM
6	\$25,000	12/26/2018 2:52 PM
7	\$25,000.00	12/26/2018 1:51 PM
8	\$20,000	12/26/2018 1:21 PM
9	20,000	12/26/2018 12:53 PM
10	25,000	12/26/2018 12:40 PM
11	\$25,000	12/26/2018 12:35 PM
12	\$100,000	12/17/2018 4:03 PM
13	10,000	12/10/2018 5:42 PM
14	100,000	12/10/2018 2:35 PM
15	100,000	12/10/2018 10:17 AM
16	\$25,000	12/7/2018 4:34 PM
17	\$75,000	12/7/2018 1:20 PM
18	50,000	12/7/2018 9:28 AM
19	\$25K	12/6/2018 1:16 PM
20	50,000	12/6/2018 8:09 AM
21	\$25,000	12/5/2018 3:31 PM
22	100,000	12/4/2018 5:10 PM
23	125000	12/4/2018 1:16 PM
24	\$10,000	12/4/2018 9:06 AM
25	\$100,000	12/2/2018 1:49 PM
26	\$50,000	11/30/2018 8:17 PM
27	150000	11/30/2018 4:25 PM
28	50000	11/30/2018 10:53 AM
29	\$25,000	11/30/2018 10:53 AM
30	\$25,000	11/29/2018 9:48 PM
31	\$100,000	11/29/2018 2:07 PM
32	20000	11/29/2018 1:27 PM
33	25000	11/29/2018 12:58 PM
34	\$100,000	11/29/2018 12:32 PM
35	\$100,000	11/29/2018 11:15 AM

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36	25,000	11/29/2018 11:12 AM
37	35,000	11/29/2018 10:54 AM
38	50,000	11/29/2018 10:51 AM
39	\$25,000.00	11/29/2018 10:20 AM
40	\$25,000	11/29/2018 9:41 AM
41	200,000	11/29/2018 9:22 AM
42	\$10,000	11/29/2018 9:00 AM
43	\$20,000	11/29/2018 8:44 AM
44	25,000	11/29/2018 8:37 AM
45	75,000	11/29/2018 8:29 AM
46	100,000	11/29/2018 8:14 AM
47	100,000	11/29/2018 7:49 AM
48	\$50,000+	11/29/2018 7:31 AM
49	\$200,000	11/29/2018 7:22 AM
50	50,000	11/29/2018 5:45 AM
51	\$50,000	11/29/2018 5:35 AM
52	\$500,000	11/29/2018 5:33 AM
53	75,000.00	11/29/2018 3:26 AM
54	25000	11/28/2018 11:30 PM
55	30000	11/28/2018 11:29 PM
56	\$20,000	11/28/2018 11:14 PM
57	75000	11/28/2018 9:52 PM
58	12500	11/28/2018 9:28 PM
59	10,000	11/28/2018 7:46 PM
60	20000	11/28/2018 7:39 PM
61	\$25,000	11/28/2018 7:22 PM
62	Above District Court jurisdictional limit	11/28/2018 7:12 PM
63	commensurate with the type of case	11/28/2018 6:41 PM
64	35,000	11/28/2018 6:31 PM
65	50,000	11/28/2018 6:29 PM
66	\$25,000	11/28/2018 6:00 PM
67	50000	11/28/2018 5:58 PM
68	\$50,000.00	11/28/2018 5:53 PM
69	\$7,000	11/28/2018 5:49 PM
70	\$10,000	11/28/2018 5:48 PM
71	\$100,001	11/28/2018 5:37 PM
72	\$250,000.00	11/28/2018 5:22 PM
73	\$10,000	11/28/2018 5:16 PM
74	250000	11/28/2018 5:14 PM
75	50000	11/28/2018 5:13 PM
76	\$20,000	11/28/2018 5:11 PM

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77	\$100,000	11/28/2018 5:10 PM
78	15,000	11/28/2018 5:08 PM
79	\$40,000	11/28/2018 5:08 PM
80	\$50,000	11/28/2018 5:08 PM
81	10,000	11/28/2018 5:06 PM
82	\$25,000 and eliminate CAAP. It is largely worthless	11/28/2018 5:04 PM
83	250,000.00	11/28/2018 5:03 PM
84	\$50,000	11/28/2018 5:03 PM
85	\$25,000	11/28/2018 5:00 PM
86	250,000	11/28/2018 5:00 PM
87	\$30,000	11/28/2018 4:58 PM
88	\$100,000	11/28/2018 4:57 PM
89	100,000	11/28/2018 4:57 PM
90	75,000	11/28/2018 4:54 PM
91	\$100,000.00	11/28/2018 4:52 PM
92	50,000	11/27/2018 8:54 PM
93	50000	11/19/2018 10:48 AM
94	100000	11/19/2018 10:41 AM
95	25000	11/19/2018 10:30 AM
96	50000	11/19/2018 9:46 AM
97	100000	11/19/2018 9:24 AM
98	50000	11/15/2018 10:53 AM
99	100000	11/15/2018 10:47 AM
100	25000	11/15/2018 10:42 AM
101	75,000	11/15/2018 9:39 AM
102	10000	11/15/2018 9:22 AM
103	50000	11/15/2018 8:19 AM
104	50000	11/13/2018 3:24 PM
105	100000	11/13/2018 3:20 PM
106	100000	11/13/2018 3:15 PM
107	25000	11/13/2018 3:02 PM
108	100000	11/13/2018 2:30 PM
109	50000	11/13/2018 2:26 PM
110	10000	11/13/2018 2:20 PM
111	100000	11/13/2018 1:44 PM
112	75000	11/13/2018 1:30 PM
113	75000	11/13/2018 1:23 PM
114	20000	11/13/2018 1:19 PM
115	25000	11/13/2018 1:10 PM
116	20000	11/13/2018 1:02 PM
117	100000	11/13/2018 12:51 PM

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118	25000	11/13/2018 12:44 PM
119	20000	11/13/2018 11:44 AM
120	20000	11/9/2018 8:10 AM
121	20000	11/9/2018 8:05 AM
122	25000	11/9/2018 7:57 AM
123	20000	11/9/2018 7:51 AM
124	10000	11/8/2018 3:33 PM
125	25000	11/8/2018 2:42 PM
126	100000	11/8/2018 1:58 PM
127	10000	11/8/2018 1:53 PM
128	100000	11/8/2018 1:43 PM
129	10000	11/8/2018 1:36 PM
130	50000	11/8/2018 1:22 PM
131	250000	11/8/2018 1:16 PM
132	100000	11/8/2018 1:12 PM
133	40000	11/8/2018 12:58 PM
134	50000	11/8/2018 12:52 PM
135	\$100,000	11/8/2018 12:35 PM
136	\$50,000 or \$75,000	11/8/2018 12:29 PM
137	\$75,000	11/8/2018 11:19 AM
138	100000	11/8/2018 10:45 AM
139	7500	11/8/2018 10:41 AM
140	75000	11/8/2018 10:34 AM
141	75000	11/8/2018 10:30 AM
142	250000	11/8/2018 10:01 AM
143	20000	11/8/2018 9:56 AM
144	10000	11/8/2018 9:44 AM
145	25000	11/8/2018 9:16 AM
146	40000	11/8/2018 9:11 AM
147	200000	11/8/2018 8:51 AM
148	25000	11/8/2018 8:45 AM
149	50000	11/8/2018 8:38 AM
150	10000	11/7/2018 2:52 PM
151	50000	11/7/2018 2:38 PM
152	50,000	11/7/2018 11:03 AM

Q38 Do you have any suggestions or recommendations on how case triage/tiering and other case differentiation measures can be used to reduce costs and delay and streamline the litigation process in Circuit Court?

Answered: 133 Skipped: 275

#	RESPONSES	DATE
1	A status conference with the court soon after all parties are served and the responsive pleading deadline has passed may help all appearing parties sit down and discuss with the court the issues each party currently sees/has in the action. If any issues can be focused or eliminated then maybe discovery could be more focused and the court may be able to help a party, especially a pro se party, understand the issues before the court.	1/23/2019 8:27 PM
2	No.	1/8/2019 11:29 PM
3	No opinion.	1/6/2019 10:42 PM
4	Eliminate mandatory CAAP, encourage mediation.	12/31/2018 11:54 AM
5	The CAAP program stinks. Attorneys serving as arbitrators cannot resist evaluating claims to coincide with their viewpoints. The time it takes to select an arbitrator is way to long; use of the alternative procedure of making the list of available arbitrators available to the parties should be encouraged, but there must be protections against the same arbitrator being burdened, by removing his name from the list for a while after he has handled each case. It makes no sense to discourage discovery requests until an arbitrator gets appointed.	12/30/2018 12:02 PM
6	None	12/28/2018 5:23 PM
7	A magistrate judge in every circuit to handle discovery disputes and the sorts of things that a federal judge handles.	12/26/2018 3:34 PM
8	Holding scheduling conferences upfront to set deadlines, rather than 8 months into case.	12/26/2018 2:53 PM
9	Courts should be separately designated as civil, criminal, property (real estate disputes) and Planned Community Association. More legal support should be given to Circuit Court judges - like federal "Magistrate Judges." Additional law clerks should be provided to Circuit Court judges. Salaries for law clerks should be increased in order to attract more qualified and experienced law clerks upon whom the Circuit Court judges can rely..	12/26/2018 2:01 PM
10	In lower dollar cases the ability to have a bench trial, rather than a jury trial, would be helpful.	12/26/2018 1:23 PM
11	Often the number of parties on the caption is an indication of the case's likely complexity. Generally, the more parties there are, the more discovery and costs of litigation. However, one caveat is when the same attorney represents multiple parties on the same matter.	12/26/2018 1:15 PM
12	Court management of discovery early in the case.	12/26/2018 12:41 PM
13	courts should be more willing to dismiss cases that do not have merit. Meritless cases are often filed, but the courts are reluctant to dismiss given recent decisions by the appellate courts.	12/26/2018 11:48 AM
14	Initial screening.	12/17/2018 4:03 PM
15	The way first circuit is set up, there is one foreclosure judge to handle the bulk of the foreclosure cases. Perhaps if this same concept was applied in the neighbor islands, it might alleviate the workload of the judges who currently handle both civil and criminal cases, often in the same day. Regarding the streamlining of the litigation process in Circuit Court, this is a difficult matter to address. While the process is streamlined to an extent, there are often delays beyond the control of the attorneys, which thereby cause delays to moving the litigation along in the court. Delays can range from bankruptcy filings, service issues, service transfers of the file, discovery requests, changes in case law coming from both the ICA and Supreme Court of Hawaii, and other delays. It might be best to have a foreclosure judge in every circuit to streamline the litigation process. It seems to work in First Circuit, so it's a process that may work in the other Circuits as well.	12/17/2018 3:22 PM

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16	Not at this time.	12/17/2018 11:41 AM
17	Clarification of complex-case determination	12/10/2018 5:43 PM
18	Shorten discovery cut off dates and time within which dispositive motions can be brought. Make the attorneys work on the front end of the case.	12/10/2018 10:28 AM
19	At least start to sanction frivolous motions and defenses by unethical defense counsel. My time representing honest plaintiff would have been reduced by 80%, to almost nothing, if I never had to defend against frivolous motions. They were never sanctioned, even when what they asked for, as a matter of law, was illegal or unethical, regardless of the merits of the evidence proffered.	12/7/2018 9:30 AM
20	Not at this time.	12/6/2018 1:16 PM
21	I don't think any changes are necessary.	12/6/2018 8:28 AM
22	Early judge involvement in conferences where the attorneys are expected to be familiar enough with the facts of their cases to discuss what discovery is likely to be needed, and rough timetables for discovery. For example, discussion early with the judge about how much discovery burden is appropriate given the case value and case issues should occur early. Best to try to flush out likely areas for discovery disputes, so there can be early informal judicial feedback to the attorneys. When motions to compel discovery are filed, judges should be much more aggressive in dishing out Rule 37 sanctions. Virtually all attorneys know that most Hawaii judges only impose small discovery sanctions, if any. That only encourages discovery "stonewalling" which is all-to-frequent in Hawaii.	12/6/2018 8:23 AM
23	Have counsel create a discovery plan and timeline.	12/5/2018 3:31 PM
24	use of proposed rulings in motions practice, available to the attorneys before the motion hearing, and hearing is held only if attorneys want to argue at hearing. Done in California courts	12/4/2018 5:11 PM
25	look at New Zealand system. Upon filing cases are screened by trained court staff to determine course	12/4/2018 1:17 PM
26	no. mostly concerned about the delay on appeal	12/3/2018 10:56 AM
27	Not at this time.	12/2/2018 1:49 PM
28	I do NOT think it should be based on the amount in controversy. There is no justification for giving more attention to a case just because the amount sought is higher. There are other important considerations such as the complexity of the issues and the potential impact of the case on the parties.	12/1/2018 9:24 PM
29	No.	12/1/2018 3:27 PM
30	Unfortunately, I think the survey's perception of the problem, and my views of the problem are incompatible - rendering this question difficult to answer.	11/30/2018 9:42 PM
31	Create FORMS like District Court has and the California Courts of similar jurisdiction to HI's Circuit Courts have, plus additional forms for things Circuit Court does that District Court does not have. Also, allow parties in cases that are above the current District Court jurisdictional amount and that are filed in Circuit Court to elect to go to District Court. All parties would need to consent and any amount in controversy would be allowed (remember, the parties would be consenting).	11/30/2018 8:26 PM
32	no	11/30/2018 4:26 PM
33	I think the system works okay	11/30/2018 1:54 PM
34	Judges should be authorized to decide motions based on the written submissions, as is done in King County (Seattle), where motions are decided faster. Also federal courts can do the same in Hawaii, and magistrates can decide based on letters.	11/30/2018 10:55 AM
35	no	11/30/2018 10:53 AM
36	No	11/29/2018 9:48 PM
37	pretrial conference with court leading to schedule	11/29/2018 1:40 PM
38	impose a rule that parties make a good faith effort to settle before trial date will be set	11/29/2018 1:32 PM
39	limit depositions to 2 hours	11/29/2018 12:59 PM

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40	Increase to level of Collegiality and cooperation between opposing Counsel and also between Counsel and the Court. Greater mutual respect will promote fair and reasonable behavior and promote fair and reasonable outcomes. Very few litigants enjoy seeing their counsel squander their money fighting and arguing over technicalities in civil matters. With few exceptions clients want pragmatic, fair and reasonable solutions to their disputes by their counsel and the courts. Those litigators/(and the occasional Judge) that exacerbate the disputes by their actions/decisions are doing no service to their clients (usually)/ the parties or to the general public's trust, confidence and respect they hold for the civil judicial system capacity to be fair, just and swift.	11/29/2018 12:44 PM
41	The ICA is stretched far too thin. Need to go back to system where more appeals could be made directly to State Supreme Court.	11/29/2018 12:27 PM
42	No	11/29/2018 11:40 AM
43	I think civil parties should be under obligations similar to a prosecutor in a criminal case: all relevant documents and information should be turned over to the other side without the necessity of a request. The burden should be on the party possessing the information. Sanctions should be harsh and routine for those who do not comply.	11/29/2018 11:18 AM
44	I think case differentiation and judges specialization would increase costs and delays. All judges should handle all types of cases and be ready and available to handle all types of cases.	11/29/2018 11:02 AM
45	Initial trial setting conference; settlement conference within 90 days of close of pleadings; and limits on depositions within the first 180 days of the close of pleadings	11/29/2018 10:55 AM
46	initial judicial involvement, 1 year deadline to trial for less complex cases	11/29/2018 10:52 AM
47	It's great that we want access to justice but while we embrace this concept we do not provide the mechanism to accomplish this goal. All the extra work will fall on the Judiciary and yet we do not have an increase in staff to address the work load. The bottom line is the greatest costs for civil litigation is the attorneys fees and generation of costs for litigation. We all know which attorneys charge excessive fees and costs.	11/29/2018 10:44 AM
48	In breach of contract cases where liability is not an issue, the case could be automatically referred to mediation first; where liability and damages are at issue and there is no arbitration clause, there could be a threshold of claimed damages set such that claims for amounts below the threshold would be required to go to arbitration first.	11/29/2018 10:27 AM
49	No. I think e-filing would be a simpler first step.	11/29/2018 10:05 AM
50	Allow me to say there is "no delay". To frame the question this way misses the point and further drives citizen dissatisfaction in any response the court undertakes. The time it takes is necessary to ensure the due process for the citizens of this state in the resolution of their legal problems. That said, I note below one area of concern that could be improved. By increasing predictability of court rulings on recurrent disputed issues would save time and money. However, the cost to access justice for an individual is still quite cheap. Moreover, the costs to litigate are driven by "for profit legal markets" and not by the courts. Again to frame the question in this way totally misses the factors which produce high case costs to begin with. Lastly, Judicial Rulings on frequently recurrent common issues in both discovery and evidentiary motion practice - should be more uniform across all courts and all circuits- as executed by all judges - This is needed to increase predictability of outcome for the parties- pre and during trial. Finally, The trial lawyers should be able to put on the case they have determined best suits the needs and interests of their client and not what a judge has predetermined to be better for the judge's courtroom or calendar needs. While Parties generally respect the Court and its complex social and legal function - they soon fail to do so and may recoil from a "bad outcome" as perceived by them - when they see first hand- in the execution of their "once in a life time case" - a judge's decision to "move things along" to prioritize and serve a need of either the bench - or the judicial administration behind the bench- over the parties interest in being heard. A commission or skilled working panel of trial lawyers could easily address this type of an issue, as was done decades ago re: uniformed circuit court standard jury instructions - which can always be modified via the court's discretion to fit the particular facts of a individual case.	11/29/2018 9:59 AM
51	appoint discovery oversight and deadlines for conducting same	11/29/2018 9:42 AM
52	Need time for further analysis	11/29/2018 9:13 AM
53	Create automatic early deadlines (e.g., ADR attempt, discovery initiation, discovery completion, preliminary exhibits and witness list), and a "fast track" calendar for violations of, and exceptions from, the same.	11/29/2018 9:01 AM

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54	Assign discovery masters to handle discovery matters and disputes (like federal magistrates in Federal Court)	11/29/2018 8:45 AM
55	Change rules to more closely resemble federal court rules -- much faster deadlines for discovery, witness, expert disclosure. This forces parties to analyze and evaluate their cases much sooner.	11/29/2018 8:38 AM
56	I think it is unfair to consider case triage/tiering without addressing the Circuit Court judge's case load. My impression is that active case management for them is basically impossible due to their case load. If you want more management, authorize more judgeships and consider a state equivalent to the magistrate judge position.	11/29/2018 8:31 AM
57	Judicial involvement/mediation at the outset of cases	11/29/2018 8:15 AM
58	not really	11/29/2018 7:32 AM
59	Are there efforts to survey civil litigants/parties regarding their personal experiences and ideas on the topic? Their perspectives would be relevant and informative.	11/29/2018 6:35 AM
60	Judges need to be more involved in case management similar to the federal courts	11/29/2018 5:46 AM
61	Enforce attorney behavior n discovery process and less leverage and advantages in set ups. Enforce frivolous deposition objections and practices.	11/29/2018 5:34 AM
62	it would take constitutional amendments to eliminate/reduce jury trials for most matters as the USA is virtually the only country to have such an outdated requirement.	11/29/2018 3:21 AM
63	Reduce time for appellate decisions in civil cases. 4 years is outrageous.	11/28/2018 11:33 PM
64	Pro Se Plaintiff; Agency Appeal	11/28/2018 9:54 PM
65	Not sure	11/28/2018 9:29 PM
66	Early retrial or status conference as in federal courts with mandatory initial disclosures	11/28/2018 8:04 PM
67	Parties needing to meet to go over a discovery plan in the beginning and shortening the default time to file a pretrial statement (etc) would help. For cases involving declaratory/injunctive relief with government defendants where the legal consequences of undisputed actions are at issue, it has been my experience that joint exhibit stipps are very helpful, unfortunately, that only happens if the deputy AG or corp counsel happens to be collegial. there are some cases that drag on unnecessarily where there is really no factual dispute but in order to obtain authenticated documents, discovery drags out. I've found this generally not to be a problem in the environmental court but I can't explain why that it compared to other circuit court cases. It may just be coincidence. In quiet title cases, it would be helpful if there were a rule that stayed the time for a party to answer while other parties are being served. In these cases, many parties are self-represented and in many instances they are cousins or siblings who all have the same factual basis for their claim of interest and when the number of defendants is numerous, things can get complicated where the court is ruling on issues that will affect others in the case who haven't answered yet or haven't been served. Maybe the number of cases this applies to state wide is small enough that a rule is not appropriate, but I still see this issue come up to this day.	11/28/2018 7:42 PM
68	Have the judge become an arbitrator for non tort cases	11/28/2018 7:41 PM
69	Circuit judges assigned to the civil division should be able to handle all civil cases, other than those assigned to the family, tax and probate courts	11/28/2018 7:34 PM
70	May be civil cases that have a value between \$25,000 to \$100,000 can be tried by a jury of only 6.	11/28/2018 7:23 PM
71	Reducing costs/delay necessarily involves reduction in current rights to discovery. Streamlining or restricting discovery in order to reduce cost is a policy decision for the Courts or Legislature to make. Potentially, it is at the cost of litigant rights.	11/28/2018 7:14 PM
72	look at cases that are appealed from CAAP; perhaps the smaller cases (e.g., \$10,000 and under) can be put on a different track with limitations on time and discovery and early settlement conferences	11/28/2018 6:47 PM
73	See Sec II	11/28/2018 6:29 PM
74	Tiering cases should happen after counsel works out a discovery plan and timeline. Cases that have a discover plan requiring 6 months or less should be scheduled for trial immediately. Cases requiring discovery of 6-12 months should be set for trial after the first 6 months of discovery. Discovery benchmarks should be set in every discovery plan and status conferences held with the court by phone to ensure that those benchmarks are met.	11/28/2018 6:02 PM

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75	Require specification of amount sought in complaint. Set case for CAAP faster. Have settlement conference date sooner.	11/28/2018 5:55 PM
76	Not at this time.	11/28/2018 5:51 PM
77	Six person juries in cases of limited monetary damages or other consequential factors in controversy	11/28/2018 5:50 PM
78	need to think about this one	11/28/2018 5:37 PM
79	?	11/28/2018 5:32 PM
80	Pay CAAP arbitrators at hourly rate of about 75% of circuit court judge salary. Allow/require parties to opt for binding CAAP arbitration, especially if amount in controversy is \$50K or less. Provide for substantial sanctions for failure to make good faith efforts in arbitration. Exclude from trial any evidence that was available for a CAAP hearing, but not put into evidence.	11/28/2018 5:27 PM
81	A judge can be assigned for all pre-trial matters and assist with settlement. A different judge can be asked to preside over actual trials. The pre-trial judge can be forceful in getting discovery completed, motions filed and disposed of within 1.5 years, and constant settlement efforts. The judge can try to get the attorneys into a mindset of "do what is right for the client" as compared to being motivated towards billable hours. Settlement often has little to do with what was found in discovery and courts are reluctant to rule on substantive motions, yet the attorneys focus on this. Perhaps this is considered overreaching by the judiciary but it is clear that if left to the attorneys, the system stalls out. Allow judges to take forceful positions to get the bar back in line with representing clients instead of making money.	11/28/2018 5:19 PM
82	There is a huge problem with the Hawaii Supreme Court continually reversing trial court decisions and failing to provide clear guidance going forward. This uncertainty is a primary factor in how cases are litigated and evaluated for settlement.	11/28/2018 5:16 PM
83	no	11/28/2018 5:16 PM
84	Earlier Court involvement setting deadlines. Grant MSJs and limit sending all cases to a jury. Require parties to retain experts much earlier so they can determine if they will spend the money to do so or settle/dismiss the case.	11/28/2018 5:14 PM
85	Earlier mandatory expert deadlines should be imposed. If no CAAP, an early or immediate status/settlement conferences with confidential ex parte communication might be useful to force the parties to think about ADR.	11/28/2018 5:13 PM
86	Have cases assessed early by the parties for likelihood of trial--e.g., medical--or involving complex legal issues or issues of first impression. If trial is highly likely in a case or these other factors manifest, the case should be designated for "active" management by the court, with frequent status conferences to resolve discovery and other issues without the necessity of motions or having to listen to name-calling-for-profit arguments.	11/28/2018 5:11 PM
87	See earlier comment. Immediate judicial involvement, coordination with CAAP, no nonsense document production, common sense depo period given facts of the case, Swift adjudication of discovery disputes, taking a hammer to those playing games, and trial within a year of filing.	11/28/2018 5:11 PM
88	have rule 16 conferences and deadline setting very early as in Fed Court	11/28/2018 5:09 PM
89	Stronger sanctions in the event that a party does not "better" a Rule 68 offer.	11/28/2018 5:05 PM
90	No	11/28/2018 5:03 PM
91	Based on amount of claimed damages	11/28/2018 5:00 PM
92	require a settlement conference BEFORE the Pretrial Statement Deadline	11/28/2018 4:59 PM
93	Increase threshold for district court, increase number of sitting judges at district and circuit court, create specialized courts familiar with certain areas of the law, speed up ICA/Supreme court decisions projected to have major impacts on certain areas of the law	11/28/2018 4:58 PM
94	No	11/28/2018 4:58 PM
95	Letter briefs for discovery disputes; allow early summary judgment motions. Hawai'i Supreme Court has essentially made it impossible to resolve a case early or get early ruling Lo's in key issues to drive cases to settlement.	11/28/2018 4:55 PM
96	mandatory disclosure requirements and pretrial procedures similar to US District Court. Creation of a Circuit Court discovery master/magistrate position to resolve all pretrial discovery disputes.	11/28/2018 4:53 PM

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97	Something needs to be done to bring discovery under control. Discovery costs are very difficult for Plaintiffs.	11/27/2018 8:55 PM
98	discovery streamlined-more court mediation-settlement involvement-separate the courts civil/criminal and appoint judges who have experience in their matters	11/19/2018 10:50 AM
99	discovery/status conferences	11/19/2018 10:30 AM
100	set deadlines similar to federal court local rules and revised eventuality rules to allow medical records presentation of admissibility	11/19/2018 9:31 AM
101	limit amount of discovery, based on the case value initial pretrial conference early on. set limits	11/19/2018 9:25 AM
102	Early intervention by judges, such as a Rule 16 conference in Federal Ct as an example	11/15/2018 10:54 AM
103	expand mediation	11/15/2018 10:47 AM
104	A status/trial setting conference should take place within 45 days of the filing of the Answer. Then the Court should prioritize the case and set discovery parameters--including deadlines. If the matter is in CAAP, the Court should set discovery parameters and deadlines to minimize litigation costs.	11/15/2018 9:24 AM
105	early settlement conferences	11/15/2018 8:19 AM
106	Case should be referred to early settlment conferences w/ the judge who will revisit settlement as the case progresses. Judges should sanction abusive advocates & 998 offers should have more teeth.	11/15/2018 8:08 AM
107	Before increasing the monetary CAAP ceiling or expanding the subject matter of CAAP cases, something needs to be done to assure that the CAAP arbitrator is competent & has the requisite experience to serve as an effective arbitrator.	11/14/2018 3:20 PM
108	Early, special masters possibly volunteers	11/13/2018 3:10 PM
109	Promote private mediation	11/13/2018 3:02 PM
110	set a hearing w/ the court w/in 30 days after service of complaint or petition. At that hearing, set deadlines for discovery and further status hearings.	11/13/2018 2:47 PM
111	???case	11/13/2018 2:21 PM
112	require plaintiff to set forth in two paragraphs what the case is about. Require a two paragraph response as to why the defendant is not liable. Have pre-trial conferences within 60 days to monitor discovery. Set a date by which settlement offer to be exchanged.	11/13/2018 1:45 PM
113	If this is implemented, judges' need more staff support, similar in concept, similar to federal magistrate judges.	11/13/2018 1:23 PM
114	special masters for discovery and/or potentially settlement via ADR mediation or dedication of a judge specifically for settlements for a significant period of time (6 months or more).	11/13/2018 1:03 PM
115	Early settlement and or mediation of cases with experienced judges or mediators in the particular types of cases.	11/13/2018 12:44 PM
116	Not at this time	11/13/2018 11:44 AM
117	set up special procedures for foreclosure and debt collection cases to streamline them.	11/9/2018 8:06 AM
118	limitations on discovery in smaller cases.	11/9/2018 7:58 AM
119	The key is less discovery & quicker trial dates. We allow very little discovery for criminal cases. Why allow so much for civil?	11/8/2018 3:41 PM
120	Follow the Federal Court model regarding the scheduling of conferences.	11/8/2018 3:33 PM
121	If there is to be a triage in process, the early intervention of the court should still include setting of a trial date & the imposition of deadlines concerning discovery, etc. the parties should feel the presence of the court early on & have access to the court throughout.	11/8/2018 2:06 PM
122	Statute & rule establishing that certain kinds of cases w/ jurisdictional amount of less than \$250000 goes into a triage tiering structure.	11/8/2018 1:36 PM
123	Expedited trials	11/8/2018 1:30 PM
124	tiering early settlement conferences w/ confidential settlement statements only	11/8/2018 12:53 PM

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125	Mandatory mediation	11/8/2018 12:36 PM
126	If litigants did not have to jump through tremendous evidentiary and foundations requirements to get the real disputed issues b/f the jury, cases could be tried much cheaper w/ fewer experts. This would in turn result in cases being resolved on merits, not cost and burden of going to trial.	11/8/2018 11:19 AM
127	Attorney input into categorizing cases should be part of the process somewhere, but the court should be able to presumptively put cases into a category/track based on objective criteria. The attorney input could be used to modify the category to which the case is assigned.	11/8/2018 10:35 AM
128	Supreme court must pass court rules to ensure attorney compliance.	11/8/2018 10:30 AM
129	use judges as arbitrators	11/8/2018 9:44 AM
130	create a process similar to federal court rule 16.	11/7/2018 2:53 PM
131	early involvement of the judge	11/7/2018 2:19 PM
132	not yet	11/7/2018 2:14 PM
133	No	11/7/2018 11:04 AM

Q39 Who primarily controls the pace of litigation in Circuit Court?

Answered: 236 Skipped: 172

ANSWER CHOICES	RESPONSES	
The Court	25.00%	59
The Lawyers	65.25%	154
The Litigants	4.24%	10
Don't know	5.51%	13
TOTAL		236

Q40 For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

Answered: 242 Skipped: 166

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
The court, rather than the lawyers or the parties, should exercise ultimate responsibility over the management of cases.	3.73% 9	22.41% 54	47.72% 115	19.50% 47	6.64% 16	241	3.03
Judges should take a more active role in imposing deadlines and managing the progress of a case.	1.24% 3	15.70% 38	51.24% 124	27.69% 67	4.13% 10	242	3.18
Hawai'i should adopt procedures to facilitate early judicial involvement in a case.	1.66% 4	6.64% 16	51.04% 123	31.95% 77	8.71% 21	241	3.39
Hawai'i should adopt procedures to facilitate the early establishment of the trial date and pretrial deadlines.	2.07% 5	9.96% 24	49.38% 119	33.20% 80	5.39% 13	241	3.30
Hawai'i should adopt procedures similar to the scheduling conference provisions of Rule 16 of the Federal Rules of Civil Procedure.	2.92% 7	8.33% 20	48.75% 117	30.00% 72	10.00% 24	240	3.36
Hawai'i should adopt procedures to facilitate the early identification and review of frivolous lawsuits.	4.17% 10	10.83% 26	36.25% 87	42.50% 102	6.25% 15	240	3.36

Q41 The following are statements related to trial dates. For each, please give your opinion as it applies to Hawai'i Circuit Courts.

Answered: 240 Skipped: 168

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL
Trial dates should be set early in the case.	4.18% 10	15.90% 38	46.03% 110	26.78% 64	7.11% 17	239
Trial dates should be set after the parties answer the complaint.	2.52% 6	24.37% 58	41.18% 98	23.95% 57	7.98% 19	238
Trial dates should be set after discovery is completed.	19.15% 45	45.53% 107	24.26% 57	5.11% 12	5.96% 14	235
Trial dates should be continued or vacated only under rare circumstances.	9.70% 23	33.33% 79	37.97% 90	14.35% 34	4.64% 11	237
It is too easy for parties to obtain extensions of trial dates already set.	5.88% 14	29.83% 71	36.55% 87	15.55% 37	12.18% 29	238

Q42 The following are statements about judicial role in litigation. For each, please give your opinion as it applies to Hawai'i Circuit Courts.

Answered: 240 Skipped: 168

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
One judge should handle a case from start to finish.	0.42% 1	7.92% 19	47.92% 115	35.00% 84	8.75% 21	240	3.44
The judge who is going to try the case should handle all pre-trial matters.	1.26% 3	10.88% 26	48.54% 116	28.87% 69	10.46% 25	239	3.36
It is more important that pre-trial matters are handled promptly than whether the trial judge or another judicial officer handles the matter.	3.36% 8	26.89% 64	40.76% 97	18.07% 43	10.92% 26	238	3.06
Judges are involved early in case proceedings.	5.04% 12	45.38% 108	27.73% 66	10.08% 24	11.76% 28	238	2.78
Involvement by judges early in the case helps to narrow the issues.	0.43% 1	10.73% 25	52.36% 122	30.04% 70	6.44% 15	233	3.31
Involvement by judges early in the case helps to narrow discovery to the information necessary for case resolution.	1.26% 3	12.61% 30	48.32% 115	26.89% 64	10.92% 26	238	3.34

Q43 Do you have any suggestions or recommendations on how case management practices can be used to reduce costs and delay and streamline the litigation process in Circuit Court?

Answered: 87 Skipped: 321

#	RESPONSES	DATE
1	Adopt procedures similar to Rules 16 and 26 of the Federal Rules of Civil Procedure.	1/8/2019 11:36 PM
2	Please establish a computer program, accessible throughout the pendency of each case by any party, showing the deadlines, automatically computing the number of days remaining before each deadline is reached, showing the status of the pending motions, and availability to proceed with trial as scheduled, identifying cases scheduled such that they could interfere with subject case's proceeding as scheduled.	12/30/2018 12:15 PM
3	Maybe have a magistrate system for Circuit Courts	12/28/2018 5:25 PM
4	Early settlement conferences, early scheduling conferences. I have no problem with current system where a separate judge handles settlement in a jury case.	12/26/2018 2:57 PM
5	Motions for Dismissal and/or Summary Judgment should be scheduled and ruled upon as quickly as possible but no later than 45 days after the close of discovery. This would help to limit the issues to be determined at trial, the number of witnesses and the amount of documentary evidence needed for trial. Joint Exhibits stipulated by opposing counsel should be required to be filed if reasonably possible. Petitions solely for Declaratory/Injunctive Relief should be given a scheduling priority.	12/26/2018 2:13 PM
6	For complex cases requiring trial length of over two weeks, trial should only be set after the parties have completed discovery rather than setting trials prematurely at the outset of the case as is currently required under the rules. This would alleviate much of the court's setting of multiple concurrent trials on the calendar.	12/26/2018 1:21 PM
7	Early mandatory settlement conferences. Not related to this question, but please add somewhere: the tremendous waste of time and money preparing paper documents. We are long overdue.	12/23/2018 5:31 PM
8	If there is earlier involvement in cases, it is probable and possible that litigation fees will only increase.	12/17/2018 3:25 PM
9	Not at this time.	12/17/2018 11:47 AM
10	Impose a rule requiring all non complex matters to be tried within fifteen months of the date of filing.	12/10/2018 10:32 AM
11	Not at this time.	12/6/2018 1:19 PM
12	Not at this time.	12/2/2018 1:52 PM
13	No.	12/1/2018 3:30 PM
14	Generally, defendants attempt to delay giving a plaintiff his or her day in court. When judges delay rulings on motions, justice is denied.	11/30/2018 9:45 PM
15	Set a settlement conference within 60 days after the complaint is answered with a simple settlement conference letter from each counsel (not the long and detailed settlement conference statement required under the Rules). Not all parties will be in a position to settle, and in some cases, because discovery has not been done, it may not work at all, in fact, I would guess that the number is low, but for the cases where little discovery will be necessary, a certain number of cases will settle at that point or at least a seed will be planted for future settlement discussions. Note: not necessary for foreclosure cases because 99% of the time there is no dispute - the mortgagor simply failed to make the payments due because the mortgagor is broke and the property will need to be sold. Not a lot to compromise in that area.	11/30/2018 8:43 PM
16	no	11/30/2018 4:33 PM

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17	Follow federal practice more. Initial disclosures and more tailored discovery to make it less broad and burdensome.	11/30/2018 10:59 AM
18	no	11/30/2018 10:55 AM
19	No	11/29/2018 9:51 PM
20	have a team of 3 retired judges review the case to determine the court the case belongs and/or if the case should be in the circuit court.	11/29/2018 2:07 PM
21	impose a rule that parties make a good faith effort to settle before trial date will be set	11/29/2018 1:33 PM
22	The Federal Court Model Is a good start, even though it is too mechanical and Judges should be more involved with Counsel in working through the cases. I refer to the Judicial Involvement as more Collegial rather than Authoritarian, which is why necessarily requiring the same Judge be assigned to all pre-trial matters is not always helpful. If the Judge is not willing to work with counsel to narrow the issues, look hard at resolving the matter(s) by pre-trial conferences, settlement conferences, ADR, then getting another judge involve with a positive attitude toward resolving issues is helpful. I want to go on the record as suggesting the Circuit court has in my limited experience display more focus on making the litigation process function smoothly, efficiently, fairly, and effectively for all concerned than the District Court Civil System, so many of my comments would be better aimed at the District Court, which seems to put efficiency ahead of justice at the expense of the litigants, especially those defendants least able to protect their own interests. Again, I have only had limited exposure to the District Court, but it seems to put emphasis of form over substance. At least the Circuit Courts "no bounce rule" suggests it is not a "slave" to form and seeks to allow litigants to have their day in court if their is merit to their claims or defenses.	11/29/2018 1:06 PM
23	set trials sooner	11/29/2018 1:01 PM
24	No.	11/29/2018 11:45 AM
25	Except for lack of info to accurately identify case, filing clerks should not 'bounce' filings. Filing clerks should accurately docket cases.	11/29/2018 11:30 AM
26	Put limits on discovery, especially production of documents.	11/29/2018 11:18 AM
27	No	11/29/2018 11:08 AM
28	Schedule for parties' depositions early in the case	11/29/2018 10:57 AM
29	adopt a magistrate judge system to promptly and informally address discovery issues, deadlines, motions	11/29/2018 10:56 AM
30	Create position for more law clerks and court clerks to assist in determining reasonable attorney fees and costs.	11/29/2018 10:50 AM
31	Courts should require that counsel identify the issues in the case as early as possible so as to be able to focus discovery on these issues.	11/29/2018 10:34 AM
32	uniform case management practice for all judges	11/29/2018 10:19 AM
33	Adopt the practices of the federal courts. Also, even in a jury trial case, the trial judge should not be the settlement judge. It should be like the federal system where the magistrate judge handles settlement discussions.	11/29/2018 10:08 AM
34	Implement the above procedures across the board	11/29/2018 9:15 AM
35	The master calendar system generally works well in First Circuit Court, but there is an occasional problem if the judge is too determined to settle the case at the expense of the merits of the case.	11/29/2018 8:42 AM
36	See above - we cannot ask Circuit Court judges to do more and maintain their current case load. If you create more judgeships, they would have more time to actively manage their cases.	11/29/2018 8:33 AM
37	Hawai'i should adopt procedures to facilitate the early identification and review of frivolous lawsuits. Frivolous defenses should be included.	11/29/2018 8:00 AM
38	see above answers	11/29/2018 7:34 AM
39	Judges need to set deadlines and require the attorneys meet those deadlines	11/29/2018 5:48 AM
40	It is all based on delays and attorney games in the discovery process. Document requests are frequently blown off or delayed significantly until pushed and then not everything is produced. Some better way to manage document discovery is needed that is flexible and case tailored. Attorneys who play games should be held accountable.	11/29/2018 5:38 AM

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41	Judicial oversight of attorneys' case management.	11/28/2018 11:40 PM
42	Electronic filing and service of process; waiver of service procedures; ban "take under advisememt; do not assign former prosecutors to the civil docket unless they have significant recent civil experience.	11/28/2018 10:00 PM
43	I think that Circuit Courts are too reluctant to seriously consider dispositive motions early in the case.	11/28/2018 9:37 PM
44	Follow procedures in use in federal courts	11/28/2018 8:07 PM
45	In environmental court cases in the Second Circuit, Judge Cardoza established a practice of a status conference once all parties were served and defense counsel was known. He goes through how the court can be involved in moving the case forward, etc., and I've found that to be helpful in most cases.	11/28/2018 7:47 PM
46	Circuit judges assigned to the civil division should be able to handle all civil cases, other than those assigned to the family, tax and probate courts	11/28/2018 7:34 PM
47	Perhaps early settlement conferences or mandatory mediation should be instituted.	11/28/2018 7:26 PM
48	These questions are difficult to answer because it all depends on the judge. Judges should be willing to grant dispositive motions -- some have admitted that they almost NEVER grant dispositive motions because they don't want to be appealed/reversed on appeal	11/28/2018 6:54 PM
49	Set early deadlines and enforce them.	11/28/2018 6:32 PM
50	More transparency and accountability	11/28/2018 5:36 PM
51	By being firm with the court deadlines, the attorneys will be forced to get to the substance of the dispute early on. The pretrial judge can simply ask counsel what are the issues and decipher through what matters. Then case efforts can focus on what actually counts which will place the litigants in best position for settlement. Do not allow the bar to lead. Have the judiciary take lead and force the bar to get to the point of resolving cases in the best interest of their client, including fees and costs consideration.	11/28/2018 5:27 PM
52	The rigidity and formality of the USDC process should be avoided. For example, expert disclosures should not mimic FRCP 26 and every discovery hangnail should not require a motion. Uniformity regarding the application of rules--e.g. final naming of witnesses limits who who can testify vs. anyone named in discovery can testify--should be encouraged. Attempts to import Draconian and unsound limitations on proof and pleading, such as Daubert and Towbly/Iqbal should be expressly rejected and sanctions should be imposed for federal court mavens who continue to argue for their implementation in Hawai'i courts. The trial courts should be encouraged to contribute to the development of the common law.	11/28/2018 5:26 PM
53	practices should be uniform, not subject to individual judges' preferences; pro se litigants should be required to inform themselves and comply to the same extent as represented litigants	11/28/2018 5:23 PM
54	Get everyone to agree on dates early and then stick to them. Require standard disclosures like the Feds. Tailor discovery to the size and complexity of the case. One size does not fit all. assume every case will be set for trial within one year of completion of service and filing answers. Use mini trials for key issues.	11/28/2018 5:22 PM
55	Earlier involvement by the Court, granting of MSJs instead of requiring a jury hear the evidence.	11/28/2018 5:22 PM
56	The volume of case makes it unrealistic to handle cases like the federal courts.	11/28/2018 5:19 PM
57	Shorter pretrial deadlines for expert disclosure will reduce delay but won't necessarily decrease cost.	11/28/2018 5:17 PM
58	1. Early and short trials for matters under \$x threshold 2. Court enforcement of time limits for attorneys at motions and at trial (a la Judge Chang) 3. Court-administered settlement efforts -- early and aggressive	11/28/2018 5:12 PM
59	Have judges issue decisive orders in pre-trial motions	11/28/2018 5:04 PM
60	No	11/28/2018 5:01 PM
61	Early status conference would be helpful. Make sure litigation tactics are proportional to amount in disputes. Higher pleading standard.	11/28/2018 4:58 PM
62	Set the trial date and deadlines right after the filing of the Complaint.	11/28/2018 4:57 PM

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63	Having Judges control the scope of discovery given the type of case and the amount in controversy.	11/27/2018 8:57 PM
64	Modify rule 16 conference procedure as done in Federal Ct	11/15/2018 10:55 AM
65	Each judge is different and should be able to exercise their discretion in case management. Too many rules defeat flexibility. Judges handling civil cases should have had significant experience in civil litigation.	11/15/2018 9:27 AM
66	Judges should be more active in facilitating settlemt. Each case should have at least 2 mandatory settlement conferences in person.	11/15/2018 8:09 AM
67	Judicial involvement for the purpose of facilitating discovery should be available early on to assure the timely disclosure of information and records which are the subject of discovery. It has been my experience that significant delay results when discovery ??? are not ??? complete, thus, necessitating repeated requests & ultimately judicial involvement.	11/14/2018 3:23 PM
68	Hold early settlement conferences and more frequent status conferences.	11/13/2018 3:03 PM
69	Judicial enforcement of deadlines w/ sanctions for violations.	11/13/2018 2:48 PM
70	Assuming adequate resources: 1) informal discovery dispute resolution; 2) power-judges to limit discovery; 3) authorize judges to sanction abusive behavior; 4) appellate courts must be more supportive of trial court sanctions; 5) require parties to submit early relevant pages of exhibits (not entire document if only 2 pages are relevant); 6) restrict malpractice against attorneys if they abbreviate trial procedures.	11/13/2018 1:26 PM
71	No	11/13/2018 1:15 PM
72	see comments on page 7	11/13/2018 1:03 PM
73	Again, early pre-trial conferences and mediation would focus the relevant issues and reduce costs and dealy.	11/13/2018 12:45 PM
74	early settlement conferences/mandatory mediation	11/9/2018 8:11 AM
75	Informal discovery rulings by letter brief would be incredibly helpful and expeditious. Less costly too. Scheduling conferences by phone more often.	11/9/2018 7:59 AM
76	If tracks or categories exist, judges can have early process to decide the track & set trial date & limit discovery the sooner the better.	11/8/2018 3:44 PM
77	Set trial dates & discovery deadlines at the outset of the case, i.e., after the party's answer.	11/8/2018 2:07 PM
78	Rule should be established similar to Federal rules regarding Rule 16 conferences & Rule 26(b) proportionality provisions.	11/8/2018 1:37 PM
79	Purchase software that would assist the judges & staff.	11/8/2018 1:23 PM
80	Trial setting conference to be set 60-75 days after Answer.	11/8/2018 12:54 PM
81	Earlier trial status conferences & limiting discovery & shorter discovery periods.	11/8/2018 12:30 PM
82	Early trial dates & deadlines based upon an understanding of the nature of the case & what discovery it will take to try the case. Standardized ? events for all circuit judges would help as well.	11/8/2018 11:19 AM
83	In addition to realistically assessing the strengths/weaknesses of a case, the parties/attorneys need to realistically access likely cost, early on, and such that clients are knowledgeable and advised of potential costs.	11/8/2018 10:55 AM
84	Set discovery deadlines early in the case.	11/8/2018 10:46 AM
85	Trial dates and the pre-trial deadlines that are keyed to trial dates need to be firmer. Parties tend to drag out a case because deadlines are not strictly enforced. Early setting of pre-trial and trial deadlines that are enforced would help to cut delays.	11/8/2018 10:36 AM
86	create a process similar to federal court rule 16	11/7/2018 2:54 PM
87	none	11/7/2018 2:14 PM

Q44 For each statement, please indicate your level of agreement as it applies to Hawai'i Circuit Courts.

Answered: 233 Skipped: 175

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
Hawai'i should incorporate considerations of proportionality in defining the scope of discovery.	3.91% 9	7.83% 18	46.52% 107	27.83% 64	13.91% 32	230	3.40
Hawai'i should adopt mandatory initial disclosure requirements, such as the ones imposed by the federal rules, to require disclosure of certain matters without the need for a discovery request.	2.58% 6	10.73% 25	50.21% 117	30.04% 70	6.44% 15	233	3.27
Hawai'i should impose a mandatory requirement, such as the one imposed by the federal rules, to require the parties to meet and confer after a complaint has been served to discuss discovery and obtain agreement to a discovery plan.	2.15% 5	7.73% 18	50.64% 118	30.90% 72	8.58% 20	233	3.36
Judges are available to resolve discovery disputes on a timely basis.	3.88% 9	27.59% 64	41.38% 96	18.10% 42	9.05% 21	232	3.01
Judges should be more willing and available to resolve discovery disputes on an informal (non-motion) and expedited basis, such as through discovery/status conferences or letter briefing.	0.86% 2	4.74% 11	42.24% 98	47.41% 110	4.74% 11	232	3.50
The First Circuit should consider designating a specialized judge to resolve discovery disputes as a means of reducing costs and delay.	7.79% 18	21.65% 50	27.27% 63	16.02% 37	27.27% 63	231	3.33
Judges enforce discovery rules by imposing sanctions for discovery violations when warranted.	6.96% 16	25.65% 59	40.43% 93	13.91% 32	13.04% 30	230	3.00

Q45 Judges offer and are available to resolve discovery disputes on an informal (non-motion) and expedited basis:

Answered: 216 Skipped: 192

ANSWER CHOICES	RESPONSES	
Almost never	36.57%	79
Occasionally	44.44%	96
About 50% of the time	6.48%	14
Often	10.65%	23
Almost always	1.85%	4
TOTAL		216

**Q46 The following statements relate to rules concerning expert discovery.
For each statement, please indicate your level of agreement as it applies
to Hawai'i Circuit Courts.**

Answered: 231 Skipped: 177

	STRONGLY DISAGREE	DISAGREE	AGREE	STRONGLY AGREE	NO OPINION	TOTAL	WEIGHTED AVERAGE
Hawai'i should adopt rules, similar to the federal rules, that impose specific deadlines for disclosure of expert witnesses and expert reports.	3.03% 7	7.36% 17	50.65% 117	31.17% 72	7.79% 18	231	3.33
Hawai'i should adopt rules, similar to the federal rules, regarding what an expert's report must contain.	2.60% 6	10.39% 24	51.52% 119	27.71% 64	7.79% 18	231	3.28
Hawai'i should adopt rules, similar to the federal rules, regarding the extent to which communications between counsel and an expert are discoverable.	3.91% 9	6.96% 16	46.52% 107	29.57% 68	13.04% 30	230	3.41

Q47 If there are aspects of discovery that you could change in order to reduce costs and delay and streamline the litigation process, what would they be and why?

Answered: 74 Skipped: 334

#	RESPONSES	DATE
1	Adopt rules/procedures similar to that of federal courts.	1/8/2019 11:39 PM
2	No opinion.	1/6/2019 10:51 PM
3	If mandatory disclosures are imposed, they should be enforced, particularly against the plaintiffs who bring the lawsuit.	12/31/2018 11:59 AM
4	The more important consideration is whether strict deadlines are used to frustrate justice. Every time sanctions are imposed that imperil a party's chances of getting a fair end-result justice is denied and the Judiciary has failed.	12/30/2018 12:30 PM
5	Earlier and simplified production of critical discovery info	12/28/2018 5:28 PM
6	Adopt the federal rule limiting each party to 25 interrogatories without first seeking leave of court.	12/27/2018 10:12 AM
7	More judicial willingness to sanction.	12/26/2018 3:41 PM
8	The Courts should require that discovery be completed within 6-10 months of the filing of the Answer, Counter and Cross claims and/or Third Party pleadings - whichever is later. The Judge (or Magistrate Judge/Officer/Clerk) should schedule a discovery status conference among all counsel within 6 months of the filing of the initial Summons and Complaint and make recommendations to the Circuit Court Judge for the Circuit Judge's ruling.	12/26/2018 2:24 PM
9	Clarifying the extend of e-discovery required under the rules. For many litigants and practitioners, e-discovery represents a significant added costs often requiring specialized IT vendors to cull through electronic data, convert data to searchable form, electronic bate-stamping, and purchase of proprietary software to make efficient use of e-discovery.	12/26/2018 1:29 PM
10	Initial Disclosures help immensely. Too often we proceed for months with no understanding of the basis for a claim. Proportionality would also help, especially since the discovery burden is often far greater for one side than the other. Expert deadlines should be set to avoid parties sitting on expert opinions until the last possible moment. If expert deadlines are established, the responding party should have more than 30 days to produce its report. That turn around time is impractical and prejudices the responding party.	12/26/2018 1:03 PM
11	It would be nice if the circuit court judges had a letter briefing procedures for discovery disputes like federal court.	12/26/2018 11:53 AM
12	Require parts of the Sedona Principles and related discovery guidelines	12/23/2018 5:36 PM
13	None.	12/17/2018 3:26 PM
14	Shorten the discovery cut off date as it would lead to attorneys to properly evaluate their cases early in the proceeding.	12/10/2018 10:37 AM
15	Not at this time.	12/6/2018 1:27 PM
16	1. Early judge involvement on an informal basis. 2. Imposing more and larger Rule 37 sanctions when motions to compel discovery are brought.	12/6/2018 8:42 AM
17	Limit the number of document requests and admissions requests the same way there is a limit for interrogatories.	12/6/2018 8:31 AM
18	Not at this time.	12/2/2018 1:54 PM
19	Judge's should more enforce the discovery rules -- with sanctions -- more vigorously. Stop the game playing.	11/30/2018 9:48 PM

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20	Instead of having one party file a motion regarding discovery issues, have a simple option available where the party wanting to enforce or protect sends a letter to the judge and a meeting is set up with the judge. If the dispute cannot be resolved through discussion, then the party who initiated the meeting with the judge can file a motion for a formal order and sanctions.	11/30/2018 8:49 PM
21	Reduce number of interrogatories, like federal, and put a cap on document requests and requests for admissions.	11/30/2018 11:01 AM
22	no	11/30/2018 10:56 AM
23	stronger sanctions for failure to provide discovery, incomplete answers, no answers, perjured testimony	11/29/2018 1:37 PM
24	I lack the experience to properly answer this question	11/29/2018 1:10 PM
25	limit discovery	11/29/2018 1:04 PM
26	I think mandatory disclosure would be great. But it needs to be enforced. Even in Federal court I don't think it is enforced completely.	11/29/2018 11:22 AM
27	Make it mandatory to provide discovery materials at initiation of complaint and answer.	11/29/2018 11:14 AM
28	none	11/29/2018 10:59 AM
29	uniformity in execution along judges should be mandated.	11/29/2018 10:21 AM
30	Forced and early disclosure of basic information (which will differ depending on the type of case), with firm deadlines; accountability to a judge quickly (e.g., telephone conference); certainty about the imposition of sanctions.	11/29/2018 9:07 AM
31	Impose a meet and confer requirement that an actual conversation take place regarding all disputed issues, similar to Fed Local Rule 37.1. Emails do not suffice. This forces lawyers to speak with each other; and if a good faith meet and confer doesn't happen, the Court can quickly and easily deny the discovery motion.	11/29/2018 8:35 AM
32	require more specific responses to discovery; despite rules,, there is way too much game playing.	11/29/2018 7:36 AM
33	Discovery needs to be tailored to the nature of the case. Unlimited discovery should not be a tool to force a settlement for reasons unrelated to the merits of the case.	11/29/2018 5:51 AM
34	Pre-approval of types of experts required and cost limitations.	11/29/2018 5:40 AM
35	Judicial oversight of the necessity for and good faith compliance with discovery.	11/28/2018 11:47 PM
36	Ditch 2 paper copies and prescribe rules for furnishing electronic media because the paper is an anachronism, expensive, and increases costs.	11/28/2018 10:05 PM
37	Filing electronically will help significantly:)	11/28/2018 10:03 PM
38	Meet and confer at the beginning of the case on discovery and a status conference with the court thereafter.	11/28/2018 7:51 PM
39	Judges should be required to review and rule on all objections made included in responses to Depositions Upon Written Depositions, Interrogatories to Parties, Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes, Requests for Admissions Parties should be made to adhere more closely to the rules limiting the number of written interrogatories, and the duration of depositions they are appeared to request and take.	11/28/2018 7:41 PM
40	Rules of civility should be made mandatory.	11/28/2018 7:28 PM
41	Again, this is a policy decision. Restricting to discovery in order to streamline the litigation process comes at a cost of litigants' rights. This is a decision which changes the playing field for all litigants and should be a decision for the Legislature or Supreme Court after notice and comment.	11/28/2018 7:19 PM
42	Limit discovery based on the amount in controversy and nature of the case.	11/28/2018 6:35 PM
43	Mandatory initial productions of documents and court-approved discovery plans early in the case. These requirements would enable the parties to evaluate each other's claims and defenses, narrow the issues for discovery early, and enable counsel to establish a timeline for discovery.	11/28/2018 6:10 PM
44	limited discovery except in substantial cases	11/28/2018 5:41 PM

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45	Sanctions should be issued for non-compliance with the rules when it affects substantive issues. Attorneys cannot be allowed to provide non-responsive answers and deceptive or incomplete production of documents. The bar should just get to the truth of the matters that are important. Deception should be sanctioned else the bar will continue the pattern which has become more prominent in decades past.	11/28/2018 5:39 PM
46	?	11/28/2018 5:38 PM
47	(1) Early disclosures; (2) Reduce copying costs when obtaining records, a court reporter charges a substantial sum already, it is absurd for a person who is subpoenaed to charge the same as a court reporter to copy documents, when those copies can be made at a copy company for 10 cents a page. (3) require expert opinions earlier so that the parties can start talking to resolve case earlier.	11/28/2018 5:38 PM
48	The judiciary should maintain a record for each attorney that tracks requests for delays, motions to compel etc so that problem attorneys can be identified and disbarred. There are plenty of attorneys pulling the same stunts in one case after another because nobody is tracking misbehavior.	11/28/2018 5:36 PM
49	Mandatory disclosure is a great idea and should be implemented.	11/28/2018 5:28 PM
50	Discovery should be tailored to the case and to the critical threshold issues. Decide primary or threshold issues early.	11/28/2018 5:26 PM
51	Serious discovery conferences with knowledgeable, engaged judges early and, if need be, often, with common sense and a hammer to limit nonsense.	11/28/2018 5:20 PM
52	Interrogatories may be propounded only with leave of Court, sanctions for "contention"-type interrogatories	11/28/2018 5:15 PM
53	Enforce the rule that e-discovery requests must be reasonable in scope given the cost of compliance in relation to the case	11/28/2018 5:06 PM
54	Need certainty! Right now each judge has his or her own expert rules and requirements.	11/28/2018 5:01 PM
55	allow insurance carrier/industry ??? to make it uneconomical to parse claims-and blanket denials of safety and claims of ???	11/19/2018 10:30 AM
56	Attorneys should be required to meet and confer and prepare a litigation plan for court approval. If there are disagreements, the court can order a discovery plan that can be modified as the circumstances dictate.	11/15/2018 9:29 AM
57	Judges should twist arms in chambers & sanction discovery abuses.	11/15/2018 8:09 AM
58	Streamline discovery requests, standardize sanctions	11/13/2018 3:04 PM
59	allow &/or require e-discovery. It's faster & less costly. Plus, easier to verify regarding pages sent as well as date & time sent/received.	11/13/2018 2:57 PM
60	If resources are increased, greater supervision over discovery will significantly improve efficiency of litigation.	11/13/2018 1:26 PM
61	Special masters should definitely oversee discovery or complex litigation cases where there is voluminous e-discovery. Consideration of retaining a handful of e-discovery vendors that lawyers must use when e-discovery is in play. Judges should have training on e-discovery, and have vendors as advisors when understanding discovery issues and in making decisions on whether/expand e-discovery in any particular case and within what appropriate parameters.	11/13/2018 1:05 PM
62	having mandatory and early disclosures of relevant evidence	11/13/2018 12:46 PM
63	proportionality standard	11/9/2018 8:12 AM
64	More limits on discovery and the scope and volume proportionally is a good start	11/9/2018 7:59 AM
65	It is critical to get serious about limiting discovery. Almost all problems stem from too much discovery. Second big item is quicker trial dates (which also tend to limit discovery.)	11/8/2018 3:45 PM
66	Set clear deadlines	11/8/2018 2:08 PM
67	Early pretrial conference	11/8/2018 1:45 PM
68	Include limited discovery such as a specific amount of interrogatories and deposition of witnesses.	11/8/2018 1:38 PM

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69	Have each party submit a proposed discovery & proposed deposition list at time of Rule 16 meeting & the trial judge will limit or allow each side's discovery keeping in mind the rule of proportionality of the parties.	11/8/2018 1:32 PM
70	Discovery is in significant part a function of what the trial court requires in order to present the disputed issues to the jury. Why do litigants take 20 depositions? B/c if they don't, they risk the trial court prohibiting the witness from testifying or severely limiting testimony. Why can arbitration cases be heard in 1 or 2 days and the same trial jury trial would take 2 to 3 weeks? Unreasonable expectations as to what must be presented in order to get evidence b/f the jury. Discovery is a function of what must be presented to get a case b/f a jury & make it easier to get evidence b/f the jury, discovery costs will go down proportionately.	11/8/2018 11:19 AM
71	Should use discovery masters in significant cases	11/8/2018 10:46 AM
72	Set limits on discovery (subject to modification by stipulation or leave of court) that are stated in a rule, and vary the limits based on type of case, as determined during the triage process.	11/8/2018 10:37 AM
73	create a process similar to federal court rule 16	11/7/2018 2:54 PM
74	early involvement of judge. Less discovery motions which only encourage gamesmanship and sanction games.	11/7/2018 2:22 PM

Q48 Should the Hawai'i Circuit Courts adopt an expedited trial program or pilot project to provide for expedited jury or bench trials for certain types of cases?

Answered: 233 Skipped: 175

ANSWER CHOICES	RESPONSES	
Yes	65.67%	153
No	10.73%	25
Don't know	23.61%	55
TOTAL		233

Q49 Do you have any suggestions or recommendations regarding what types of cases should be included in the expedited trial program and what procedures should apply to trials within the program?

Answered: 85 Skipped: 323

#	RESPONSES	DATE
1	No.	1/8/2019 11:39 PM
2	Parties should be able to opt in to an expedited trial program. Or if only one party wants it, a judge can decide via motion.	12/31/2018 12:01 PM
3	Contract	12/28/2018 5:58 PM
4	Smallish personal injury cases.	12/26/2018 3:42 PM
5	Declaratory and injunctive relief cases not requiring a jury and where all material facts are stipulated to and not disputed by all counsel, cases should be resolved by summary judgment /disposition within 6 months of the filing of the initial Summons and Complaint.	12/26/2018 2:29 PM
6	Lower dollar motor vehicle cases.	12/26/2018 1:28 PM
7	Low-value cases. Perhaps jury demands up to the 40k AIC, so parties have to weigh whether they are demanding a jury because they want one vs. demanding a jury because they want to avoid the expediency of proceeding in District Court and to drive up costs for the opposing party. Simple cases involving only two parties. Certain bench trials. Perhaps parties could have a choice between this program and CAAP?	12/26/2018 1:14 PM
8	Declaratory and injunctive actions that are not significantly focused on monetary damages and their supporting records.	12/26/2018 12:47 PM
9	Foreclosure, declaratory relief, interpleader, quiet title, and condemnation proceedings.	12/10/2018 10:38 AM
10	Either side should be able to opt out when the program is still in the testing phase.	12/6/2018 8:43 AM
11	All types with expedited rules.	12/2/2018 1:55 PM
12	Collection cases. Foreclosure cases.	11/30/2018 8:50 PM
13	car accidents, limit discovery, allow experts to testify without having to pay for reports	11/30/2018 8:42 AM
14	Tort cases	11/29/2018 9:53 PM
15	no	11/29/2018 1:37 PM
16	Contract cases	11/29/2018 12:31 PM
17	no	11/29/2018 11:14 AM
18	Foreclosures and evictions. Expedited trial setting, mandatory disclosure and exchange of evidence with identification of percipient witnesses	11/29/2018 11:00 AM
19	contract disputes, collection cases	11/29/2018 11:00 AM
20	Further research needed and discussions	11/29/2018 10:56 AM
21	Certain contracts cases (non-technical subject; no expert witnesses; low damages claimed) may be suitable for expedited trial; such trials could be limited to jury waived trials lasting 1-2 days with less than 5 witnesses testifying live or by deposition.	11/29/2018 10:45 AM
22	death cases.	11/29/2018 10:22 AM
23	Ejectment, breach of certain contracts (e.g., real estate purchase/sale; foreclosure; settlement agreement); enforcement.	11/29/2018 9:09 AM
24	Homeowner Association disputes	11/29/2018 8:25 AM
25	if you are testing a process, test all types of cases in proportion to their proportion of all cases.	11/29/2018 8:05 AM

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26	cases valued at less than \$10,000	11/29/2018 7:54 AM
27	as many as possible	11/29/2018 7:36 AM
28	Contract cases may be more amenable to such a program as they are often document based.	11/29/2018 6:50 AM
29	Low value tort cases; limited discovery; firm trial dates	11/29/2018 5:52 AM
30	Not at this time. More data is required to have such opinions. But dollar amount realistically contested and complexity are important.	11/28/2018 11:51 PM
31	No	11/28/2018 8:09 PM
32	Declaratory/injunctive relief type complaints against government defendants where facts are generally not in dispute should be included in an expedited trial program.	11/28/2018 7:58 PM
33	simple tort and contract cases	11/28/2018 7:46 PM
34	contract and non-vehicle tort cases with value of \$150,000 or less	11/28/2018 7:28 PM
35	minimal value cases with simple issues that do not require extensive discovery	11/28/2018 6:59 PM
36	Routine tort and contract cases. Set firm deadlines. Limit discovery and limit expert testimony. Disallow a wealthy litigant from over litigating in order to achieve an advantage.	11/28/2018 6:39 PM
37	Trials in which the amount in controversy does not exceed a limit, the exact amount of which I leave to the task force.	11/28/2018 5:55 PM
38	Contract cases bench trial only are the obvious ones. An in depth pre-trial conference with the attorneys narrowing down the trial issues should be mandatory. Should an attorney claim the kitchen sink, sanctions against that attorney post trial should be ordered. Frivolous issues are a waste of time and have real costs to all involved. Offers of proof per witness in writing and proposed FF/CL before trial. This will force attorneys to be prepared. Xcel sheets the court can follow the proof with highlighted essential documents an exhibit list that in part states what will be introduced	11/28/2018 5:53 PM
39	separate rules of evidence for judge trials - everything comes in and judges decide weight	11/28/2018 5:42 PM
40	If the parties/attorneys feel their case is ready for expedited trial program then they should be entered into the program, earlier disclosures and full disclosures so parties can obtain the records they need.	11/28/2018 5:40 PM
41	No	11/28/2018 5:39 PM
42	Foreclosure cases. The defendants rarely have any defenses to non-payment but use trials to delay the inevitable. Create magistrate judges to handle discovery and other pre-trial proceedings	11/28/2018 5:30 PM
43	Those that now go to CAAP, cases where liability is not disputed, cases where the parties agree an expedited trial is fair and useful	11/28/2018 5:29 PM
44	Foreclosure, declaratory relief, breach of contract under \$500,000.	11/28/2018 5:22 PM
45	No	11/28/2018 5:20 PM
46	Liens Will Contests	11/28/2018 5:17 PM
47	Actions for declaratory relief; HRS 343, 205A and other environmental cases	11/28/2018 5:10 PM
48	Based on amount of claimed damages	11/28/2018 5:06 PM
49	Cases identified by statute as requiring expedited review	11/28/2018 5:04 PM
50	AOAO, foreclosure, and slip and fall cases are clogging the system so maybe start there.	11/28/2018 5:02 PM
51	real property, construction defect, small business disputes	11/28/2018 4:57 PM
52	non-complex, non-experts	11/19/2018 10:51 AM
53	criminal cases and contact disputes	11/19/2018 9:47 AM
54	car accident cases	11/19/2018 9:39 AM
55	Cases limited to a few issues and/or causes of action	11/15/2018 10:55 AM
56	Simple personal injury matters with an anticipated verdict value not to exceed \$250,000.	11/15/2018 9:30 AM
57	Cases w/ children or elderly persons as parties. Also, cases alleging on-going harm. Quiet title.	11/15/2018 8:10 AM

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58	Non-motor vehicle tort, environmental, agency appeals, declaratory judgment	11/13/2018 3:04 PM
59	Cases that go to CAAP & do not settle. Set more than 1 case for trial on the same week.	11/13/2018 2:58 PM
60	smaller uncomplex and stupid cases	11/13/2018 1:27 PM
61	No	11/13/2018 1:15 PM
62	limited party/issue case	11/13/2018 1:11 PM
63	smaller (less than \$100,000) personal injury and assumpsit cases	11/13/2018 12:47 PM
64	simple tort cases with low value. simple contract disputes.	11/9/2018 8:07 AM
65	Basic contract, collections and neighbor easement/other dispute cases	11/9/2018 8:00 AM
66	low value car accidents	11/9/2018 7:54 AM
67	Cases w/ limited key issues.	11/8/2018 3:45 PM
68	Cases that are being "litigated" by e-Bay & Amazon and is non-judicial foreclosure.	11/8/2018 2:09 PM
69	Motor vehicle accident & personal injury cases; non-complex breach of contract cases	11/8/2018 1:55 PM
70	simple contract disputes	11/8/2018 1:45 PM
71	All cases that want to be in this program.	11/8/2018 1:32 PM
72	The more simple tort case, auto accidents, premises liability (should result in limited discovery) & less than 12-jurors	11/8/2018 1:25 PM
73	small value cases; pro se cases	11/8/2018 1:17 PM
74	Jury demand cases transferred fr. district ct small contract cases.	11/8/2018 12:59 PM
75	contract disputes	11/8/2018 12:55 PM
76	contracts	11/8/2018 12:37 PM
77	Any case by which Pltf requests & Judge agrees after consideration of Deft's position or any case so Deft by the trial court after consideration of the position of all parties.	11/8/2018 11:19 AM
78	By agreement of parties similar to consent to magistrate trials at federal court.	11/8/2018 10:56 AM
79	No	11/8/2018 10:47 AM
80	The response. Tort and contract cases value of which is less than \$ ceiling.	11/8/2018 10:42 AM
81	smaller dollar amounts	11/8/2018 9:45 AM
82	No. I will leave that issue to the informed task force	11/8/2018 8:53 AM
83	those on the streamlined tract as described	11/8/2018 8:39 AM
84	tort, contract, employment	11/7/2018 2:54 PM
85	love the idea of a partial trial to adjudicate certain key issues which can lead to settlement and if not, to a full trial on the remainder issues.	11/7/2018 2:22 PM

Q50 Do you have any suggestions or recommendations on how the Hawai'i Circuit Courts can use technology to make the litigation process more user friendly and transparent for pro se litigants and to help reduce costs and delay?

Answered: 96 Skipped: 312

#	RESPONSES	DATE
1	No.	1/8/2019 11:39 PM
2	No opinion.	1/6/2019 10:51 PM
3	In my experience, pro se litigants are difficult to work with and often have hand written documents. How can those litigants be expected to use technology? For the ones with computer access, they often copy and paste from cases which have no relation to the law or facts in their case, confusing the issues. I don't think our government should provide a legal education or free advocacy from the bench to pro se litigants.	12/31/2018 12:05 PM
4	Maybe provide an overview of how the system works.	12/28/2018 5:58 PM
5	adopt electronic filing. have computer terminals available in law library for common fillable court forms such as family law forms, non-vehicle tort, etc.	12/27/2018 10:14 AM
6	E-filing in the Circuit Courts should be required, although paper pleadings should be sent to pro se litigants if requested by the pro se party. Appearance of counsel by Skype or other technology should be permitted in all cases in which opposing counsel are located in Circuits other than the forum Circuit. This would reduce costs of travel and legal fees for travel time substantially.	12/26/2018 2:35 PM
7	Electronic filing, generally. Better and more comprehensive forms available on judiciary website for pro se litigants. Change the name of In Forma Pauperis to something normal people would recognize. Provide easy access to the HRCP and RCCH on judiciary website (it could be a lot easier to find). Adopt procedural rules for all divisions and post them on the judiciary website. For those procedures that vary from division to division, create a web page for each division that details those particular procedures. This would save pro se litigants, practitioners, and court staff a lot of time.	12/26/2018 1:21 PM
8	Increase the availability of online fillable forms.	12/26/2018 12:48 PM
9	online filing system with how to instructions	12/26/2018 11:56 AM
10	efiling	12/26/2018 11:53 AM
11	The Hawaii civil court system is long over due in getting going paperless both in motions practice and in the court room. This is a massive and useless waste of money to parties.	12/23/2018 5:39 PM
12	No. The Circuit courts provide forms for pro se litigants to use, but often times the pro se litigants still choose to take advantage of the system and cause delays of their own by filing numerous documents, some of which is illegible and some also try to use the fact that they are pro se to try get leniency from the judges. They should be held accountable for the rules, especially if they are choosing to represent themselves in Court.	12/17/2018 3:27 PM
13	Not at this time.	12/17/2018 11:51 AM
14	Unsure what resources now available for pro se	12/10/2018 5:51 PM
15	videos that explain the court system and rules	12/10/2018 2:40 PM
16	Provide the public with access to view and copy case, other than their own, pleadings at no charge.	12/10/2018 10:40 AM
17	Not at this time.	12/6/2018 1:27 PM
18	E-filing.	12/6/2018 8:31 AM
19	Not at this time.	12/2/2018 1:55 PM

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20	Develope a comprehensive set of forms like HI District Court and the California Court system.	11/30/2018 8:51 PM
21	Bring efiling to circuit courts soon!	11/30/2018 11:02 AM
22	no	11/30/2018 10:56 AM
23	do everything in paper	11/30/2018 8:43 AM
24	Online filing in civil cases	11/30/2018 7:24 AM
25	No	11/29/2018 9:54 PM
26	availability of pleadings/documents online	11/29/2018 2:59 PM
27	standardize the on line fillable forms so that each circuit has the same ones	11/29/2018 1:38 PM
28	The Federal Court CM-ECF System is incredibly efficient and convenient for Counsel, but it is not used by Pro Se Litigants. Even the "no bounce rule" of the Circuit Court makes it more user friendly than the District Court for all concerned including Pro Se Litigants. Putting the Summons at the beginning of the Process instead of the end may eliminate some defaults by those that rely on the front page to convey the message. I believe that the British System of costs eliminates frivolous claims, but it must be tempered with less ridged mechanical approach to the rules, so Pro Se Litigants are not totally discourage from pursuing legitimate claims despite being unable to find legal counsel they can afford.	11/29/2018 1:20 PM
29	All documents should be filed and visible electronically like the JEFS system.	11/29/2018 12:31 PM
30	Get the circuit courts on the JEFS system and allow for electronic filing and service of pleadings other than the initial complaint.	11/29/2018 12:03 PM
31	Institute e-system similar to fed pacer	11/29/2018 11:33 AM
32	clearly e-filing , which i understand is on the way. Hearings by online video conferencing could be considered.	11/29/2018 11:24 AM
33	no	11/29/2018 11:15 AM
34	Yes. The program must actually be paperless. The technology is there, however, our system is cumbersome and outdated. Requires funding for updated technology	11/29/2018 10:57 AM
35	Provide a room of computers and volunteers where pro se litigants can sign up: to view training webinars on filling out documents and/or presenting in court; to complete documents from templates provided by the Court; to ask questions of staff/volunteers in the room. regarding forms or process.	11/29/2018 10:54 AM
36	Have more forms available, as well as a "help" window (like the Family Court).	11/29/2018 9:10 AM
37	No	11/29/2018 8:26 AM
38	why "reinvent" the wheel. copy the feds as closely as possible and do not allow individual judges to have their own unique rules.	11/29/2018 8:06 AM
39	have all pleadings and documents available on electronics so they are easily retrievable and accessible.	11/29/2018 7:55 AM
40	not really	11/29/2018 7:36 AM
41	Some pro se litigants may need the assistance of court navigators - someone who doesn't provide legal advice but administrative support on where to go, how to file things, assistance with navigating website, etc. Expanding the availability of on line forms is helpful. The First Circuit Court deserves recognition for the progress to made so far.	11/29/2018 6:56 AM
42	No suggestions	11/29/2018 5:53 AM
43	yes. Like the District Court and the Bankruptcy Court, provide training/instruction sessions; make it mandatory	11/29/2018 3:26 AM
44	No	11/28/2018 11:52 PM
45	e-filing like the USDC	11/28/2018 11:22 PM
46	No. This is impossible. The judiciary would need a level of interface that is well beyond its ability to administer.	11/28/2018 10:08 PM
47	No	11/28/2018 8:09 PM

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48	E-filing with a functioning milestone system would probably be the most elegant way to make litigation more transparent and understandable to self represented litigants especially with the regular issues like serving all parties, having access to the court file outside of court hours. E-notification system that the Second Circuit is trying in criminal cases might be another way to help self-represented parties in civil cases.	11/28/2018 8:03 PM
49	Hooiki should be expanded to include an electronic copy of each document included in the Document List of each case; persons searching Hooiki should be able to download a copy of each document included in the system Electronic copies of transcripts of proceedings that have been ordered in a case should be included in the Document List for the case on Hooiki The per page costs for transcriptions of proceedings need to be adjusted to reflect the improved technology available to prepare and store them	11/28/2018 7:42 PM
50	have pleadings available online on judiciary website	11/28/2018 7:30 PM
51	Make all pleadings accessible via the internet - whether at a cost or for free, accessibility without having to retrieve records from the courthouse is valuable.	11/28/2018 7:20 PM
52	efiling like the federal court system (NOT JEFS)	11/28/2018 7:01 PM
53	No.	11/28/2018 6:40 PM
54	perhaps ongoing educational opportunities for attorneys with lesser technological aptitude	11/28/2018 5:57 PM
55	Put all court documents online. Force the pro se litigants into CAAP--they truly need the helpful admonitions.	11/28/2018 5:54 PM
56	Pro se litigants are a problem in my practice. Some are sophisticated and do fairly well. Most just gum up the works. Many are representing themselves because attorneys and service groups won't represent them. I am not sure that making things easier for them would advance the cause. Admittedly, I do not deal much with the poor or economically disadvantaged, who need some help.	11/28/2018 5:48 PM
57	standardize forms on line	11/28/2018 5:43 PM
58	Scan the documents in so you can see/read what has been filed. Names of documents do not help people understand what was filed.	11/28/2018 5:41 PM
59	No	11/28/2018 5:39 PM
60	Make all case records available at no cost or at a nominal cost online. If PACER can do it, the State of Hawaii should be able to do it. It's not about just being able to look at your own case. It also enables people to look through similar cases and find samples that can be adapted for their own matter. Also, cases should be searchable by attorney name so people can review the attorney's history in litigation.	11/28/2018 5:39 PM
61	Create more fillable PDF forms and require their use in most cases, similar to the District Courts	11/28/2018 5:32 PM
62	Flat screen in every courtroom and larger lecterns.	11/28/2018 5:30 PM
63	Allow for more telephonic or Skype appearances at motions hearings. E-filing and service of documents.	11/28/2018 5:23 PM
64	No	11/28/2018 5:20 PM
65	Make court documents more accessible to the public. This might be accomplished by storing e-copies of filed documents on a cloud that is accessible to the public	11/28/2018 5:12 PM
66	The sooner electronic filing system is adopted in civil proceedings, the less expensive litigation will become.	11/28/2018 5:07 PM
67	Make it possible to see, download and print filed documents online (the actual pleading, not just the docket listing)	11/28/2018 5:07 PM
68	Electronic filing system	11/28/2018 5:03 PM
69	Absolutely need electronic filing for circuit court civil cases. This way there won't be any disputes about whether someone received notice.	11/28/2018 5:03 PM
70	JEFS/JIMS is a start but PACER is far superior. The PACER program in federal court is so much more user friendly it makes access to documents, minute orders, etc., so simple and quick to find.	11/27/2018 1:34 PM
71	a new system that is more workable than JIMS/JEFS	11/19/2018 10:51 AM
72	offer template discovery requests and responses	11/19/2018 10:43 AM

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73	More PDF forms on line for pro se litigants	11/15/2018 10:55 AM
74	Allow pro se litigants to obtain a portal entry number so they can file electronically (with JIMS) like the attorneys.	11/15/2018 9:31 AM
75	The state of the technology is not keeping w/ our needs. Costs is the main factor & the technicians are not readily available on the neighbor islands.	11/13/2018 3:05 PM
76	Use e-discovery & forms available to download on smart phone &/or tablets which are fillable & printable.	11/13/2018 2:58 PM
77	plain language resources online with plain language forms as well as staff who may answer questions (but not give legal advice) or direct them to legal resources for more detailed assistance.	11/13/2018 1:06 PM
78	expand self-help and access to justice services	11/13/2018 12:47 PM
79	permit parties/counsel to appear via phone or video more often when the case is in a neighbor island.	11/9/2018 8:12 AM
80	Online system must be brought technologically current and filings available online. Current system is often days out of date.	11/9/2018 8:01 AM
81	Use e-mail to communicate w/ parties.	11/8/2018 3:35 PM
82	expedite on-line filing	11/8/2018 2:17 PM
83	We should adopt an electronic docketing system like the federal system. We should be able to file documents on-line, have access to them electronically as soon as they are filed & be able to download fr. the court system any publically filed document and order in the case.	11/8/2018 2:11 PM
84	Ability to sign up to find out status of case so electronic notification would assist pro se litigants.	11/8/2018 1:39 PM
85	No	11/8/2018 1:32 PM
86	Create more templates, discovery requests, motions, e/z,	11/8/2018 1:25 PM
87	Explain process on website	11/8/2018 1:00 PM
88	Access to all filed documents for a maximum fee (see Pacer)	11/8/2018 12:55 PM
89	funding for upgrades	11/8/2018 12:31 PM
90	No	11/8/2018 10:47 AM
91	efiling, electronically delivery of court notices.	11/8/2018 10:38 AM
92	electronic filing and access to court documents electronically will be very helpful	11/8/2018 10:11 AM
93	electronic filing of all pleadings	11/8/2018 10:03 AM
94	electronic filing	11/8/2018 9:46 AM
95	service by email	11/8/2018 8:39 AM
96	electronic filing. Means to obtain filed documents electronically	11/7/2018 2:55 PM

Q51 If you could change one rule or procedure in the Hawai'i Circuit Courts to reduce costs and delay and secure a more streamlined court process for litigants, what would it be and why?

Answered: 116 Skipped: 292

#	RESPONSES	DATE
1	Provide for early settlement conferences.	1/8/2019 11:43 PM
2	Rule 23(a) & (b).	1/6/2019 10:58 PM
3	Never should sanctions for expediency violations attributable to an attorney's negligence be imposed on a party. Eliminating even the possibility of imperiling a legitimate claim or defense would prevent opposing parties from attempting to take unfair advantage of opposing counsel's being overburdened, and would thereby encourage those who would try to take such unfair advantage, instead of waiting for non-compliance to get worse to the extent that sanctions will be imposed to remind opposing counsel	12/30/2018 12:45 PM
4	mandatory discovery disclosures.	12/26/2018 3:47 PM
5	Adopt Rule 16 of FCRP	12/26/2018 3:01 PM
6	Filing all pleadings, motions, exhibits and evidence in Circuit Court and serving opposing parties -- by email. Paper documents can be filed before the hearing date or trial - if necessary. This would substantially reduce costs of copying, postage, service and courier services.	12/26/2018 2:58 PM
7	Delete Circuit Court Rule 12's requirement that the parties schedule a trial setting conference regardless of the parties' actual readiness for trial.	12/26/2018 1:35 PM
8	Adopt FRCP Rule 16.	12/26/2018 1:32 PM
9	Mandatory initial disclosures.	12/26/2018 12:50 PM
10	letter briefs for discovery disputes.	12/26/2018 11:57 AM
11	online filing system and updated court docket available online	12/26/2018 11:56 AM
12	Do away with paper service and paper exhibits. Get electronic.	12/23/2018 5:39 PM
13	Nothing.	12/17/2018 3:29 PM
14	Rule 56, I would lengthen from 50 days to 100 days the time in which an MSJ must be brought before trial. It would lead to more early settlements.	12/10/2018 10:45 AM
15	Allow for a judgment to be entered automatically after agreeing on the form without an extra motion to enter the judgment.	12/7/2018 9:37 AM
16	I would have the rules establish earlier trial dates, quicker disposition of discovery issues, earlier settlement conferences, etc.	12/6/2018 1:29 PM
17	Rule 56(f) should be changed to require the party requesting a continuance to explain why they haven't conducted discovery to date.	12/6/2018 8:32 AM
18	require a meeting of parties and judge within 30 days of answer being filed	12/4/2018 1:21 PM
19	Eliminate the rule requiring a Table of Authorities. Who even looks at those things?	11/30/2018 9:51 PM
20	Figure out how to offer litigants more ways to end up in District Court. District Court is fast, gives the parties an opportunity to have a judge hear their case, is less complicated, less paperwork intensive, and therefore, less expensive for the litigants.	11/30/2018 9:06 PM
21	Add a rule like FRCP 16.	11/30/2018 11:04 AM
22	Don't know	11/30/2018 10:57 AM
23	set trial dates sooner, limit discovery to not more than two depositions and CAAP rogs	11/30/2018 8:45 AM
24	The rule that a plaintiff has 8 months to file a pretrial statement. Trial dates should be set earlier.	11/30/2018 7:24 AM

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25	more teeth in discovery sanctions	11/29/2018 2:59 PM
26	REQUIRE DEFENSE ATTORNEYS TO DOUBLE SET TRIALS SO IF THE FIRST CASE SETTLES, THE 2ND WILL GO.	11/29/2018 2:13 PM
27	make every complaint filed be verified by party litigant under penalty of perjury	11/29/2018 1:43 PM
28	I think the proportionality rules of the federal court are fairer for discovery purposes, but I think the HRCP are moving in that direction now anyway.	11/29/2018 1:22 PM
29	Create a rule that would have standard language to replace the "Definitions" and "Instructions" that now take up a dozen pages or more in each discovery request and are hardly read anyway.	11/29/2018 12:06 PM
30	I would look at Rule 12 of the Circuit Court Rules and reduce the time to file the pretrial statement (from 8 months to 6 months) as well as the time to file the ready to proceed statement (from 60 days to 45 days). The additional pressure on Plaintiff to file the pretrial statement should force counsel to carefully and thoroughly review the case and to move quickly to serve the complaint and begin conversations with defense counsel.	11/29/2018 11:36 AM
31	Mandatory discovery disclosures to try to eliminate the gamesmanship and delay and cost in discovery. Allow a fast-track bench trial or even purely document based trial (no live testimony or even attorney argument), where the trial will occur so much faster than jury trial that parties will choose the fast-track.	11/29/2018 11:27 AM
32	Don't know	11/29/2018 11:16 AM
33	A deadline for when each type of case must begin trial	11/29/2018 11:01 AM
34	transforming a nonappealing party following a CAAP award- into a non prevailing party so that CAAP case costs and later sanctions can then be imposed upon them- even though they did not file the appeal from the CAAP award is simply wrong headed. This is particularly true where the same party secures a favorable verdict not overturned on appeal, in the personal exercise of a violation of their rights under the law.	11/29/2018 10:28 AM
35	All discovery rules. There should be a separate set of automatic but expedited discovery rules which should be used first, followed by a case management conference with the judge who will control whether the "traditional" discovery rules will now apply.	11/29/2018 9:12 AM
36	Implement a rule similar to FRCP Rule 26	11/29/2018 8:46 AM
37	Add a magistrate judge equivalent. Maybe you only need a couple to start and see how it goes.	11/29/2018 8:38 AM
38	Trial setting and settlement conferences should occur early in the case.	11/29/2018 8:29 AM
39	electronic filing identical to the feds and uniform for all courts at all levels	11/29/2018 8:06 AM
40	early settlement conferences with judicial involvement	11/29/2018 7:38 AM
41	A meeting with the judge once all parties have entered an appearance to conduct a preliminary discussion regarding the legal issues, scope of discovery, facilitate communications, etc. could help.	11/29/2018 6:59 AM
42	An early scheduling conference where limitations on discovery are set as well as firm deadlines for completion of discovery, expert witness reports, etc.	11/29/2018 5:54 AM
43	Allowing form objections to document discovery. Somehow need to get compliance within the first 30 days or a process to handle it if it cannot be done in that time completely.	11/29/2018 5:42 AM
44	limit discovery as much as possible	11/29/2018 3:26 AM
45	Have judicial oversight of discovery requests and compliance to make it more timely and efficient.	11/28/2018 11:59 PM
46	Start copying the federal court system because they have already put a ton of resources into working out these issues.	11/28/2018 10:11 PM
47	Earlier trial setting process as in federal courts	11/28/2018 8:10 PM
48	The per page costs for transcriptions of proceedings need to be adjusted to reflect the improved technology available to prepare and store them	11/28/2018 7:42 PM
49	allow skype calls to suffice for face to face requirement prior to filing the PTS	11/28/2018 7:31 PM
50	Similar to federal court, requiring the parties to meet and agree on a discovery plan after all parties have appeared would accelerate the current timeline to trial preparation.	11/28/2018 7:21 PM

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51	efiling for all documents	11/28/2018 7:01 PM
52	Eliminate or seriously curtail pretrial statements and settlement conference statements and the like. Just get the case to trial.	11/28/2018 6:43 PM
53	Set a settlement conference date and trial date within ten days of the filing of the answer	11/28/2018 5:59 PM
54	Sorry i have 2. 1) trials set within one year of answer (truly complex cases handled on a different track).2) Appellate decisions within 12 months of filing the final brief.	11/28/2018 5:57 PM
55	Upon a finding that a party has been substantially non-compliant with an order to give discovery, the party should be defaulted and not reinstated to the case unless within 30 days, the party (a) comes into substantial compliance with the order; and (b) pays all attorneys fees and costs incurred chasing after the discovery.	11/28/2018 5:46 PM
56	settlement conferences early to limit issues and often	11/28/2018 5:44 PM
57	(1) Limited Scope Representation should be allowed and accepted by the Courts. (2) Requirement of early disclosures and earlier deadlines for experts so the cases get ready for trial earlier.	11/28/2018 5:43 PM
58	?	11/28/2018 5:39 PM
59	Mandatory discovery disclosure and early settlement conferences.	11/28/2018 5:39 PM
60	Don't require pretrial statements unless the case is not resolved by motion.	11/28/2018 5:33 PM
61	Immediate trial scheduling and discovery conference	11/28/2018 5:22 PM
62	Do away with interrogatories	11/28/2018 5:18 PM
63	Make trial dates and deadline dates "real". Nothing moves a case like a deadline.	11/28/2018 5:14 PM
64	RCCH 22: Parties should not be required to pay for transcripts (which causes delay and increases costs because any appeal will require paying for the transcript again) to prepare an order that the judge dictated at a hearing; some, but not all judges transcribe the information in the minutes. If the court dictated an order and reasoning, it should be able to prepare the order faster than the parties.	11/28/2018 5:14 PM
65	Very early status conference or meet and confer.	11/28/2018 5:06 PM
66	Initial disclosures similar to the Federal Rules	11/28/2018 5:03 PM
67	End the current pretrial statement requirement, I've heard from judges that they do not read it, maybe a more streamlined version. Have a trial setting as early as possible.	11/28/2018 5:00 PM
68	\$5,000.00 jury trial amount	11/28/2018 4:58 PM
69	Scope of discovery; it should be tailored to the amount in controversy	11/27/2018 8:58 PM
70	The early advisory trials discussed at the conference seem to have a lot of potential. A lot of litigants and their clients will be hesitant to go to an expedited trial with limited discovery if they know that the verdict will be binding. It's hard to recommend taking that risk to clients. Clients and adjusters would be a lot more willing to have an advisory trial so that they can gain insight on how a jury will feel about liability and damages without being bound by the decision (and 2+ years in the appellate courts) and without expending trial costs.	11/27/2018 1:47 PM
71	require early settlement conferences within 90 days of answer to complaint being filed	11/19/2018 10:44 AM
72	need to change CAAP arbitration ??? provisions litigant who ??? at CAAP hearing still obligated to pay cost if loses at trial even if he/she prevailed at CAAP arbitration hearing ???.	11/19/2018 10:32 AM
73	Move up/advance the trial setting conferences and implement Rule 16 in HI court	11/15/2018 10:56 AM
74	require mediation arbitraiton	11/15/2018 10:48 AM
75	Eliminate interrogatories. Document production and depositions only.	11/15/2018 9:45 AM
76	Expert depositions should require Court approval.	11/15/2018 9:33 AM
77	Early & frequent settlement conferences	11/15/2018 8:20 AM
78	Judges should be more active in settlement.	11/15/2018 8:11 AM
79	See 32 & 33	11/14/2018 3:24 PM
80	Trial dates should not be automatically set. Early settlement conference should be required.	11/13/2018 3:05 PM

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81	Adopt Federal procedures	11/13/2018 2:23 PM
82	service of process should be made more efficient	11/13/2018 1:27 PM
83	require meet and confer and rule 16 conference with special master in complex litigation cases.	11/13/2018 1:07 PM
84	incorporate proportionality in all discovery	11/13/2018 12:53 PM
85	mandatory and early disclosures of relevant materials and evidence.	11/13/2018 12:47 PM
86	streamline process for discovery disputes. It could take up to 60 days to obtain a ruling on a discovery dispute meat and confer, followed by a motion, ??? hearing, etc.	11/9/2018 8:16 AM
87	eliminate settlement conference statements	11/9/2018 7:54 AM
88	Limited discovery by rule so attorneys don't fear malpractice so they have to make a compelling showing to opt out of limiting discovery.	11/8/2018 3:46 PM
89	Keep rules 12, 56, 37, but have judges actually enforce the preceeding rules.	11/8/2018 3:37 PM
90	Rule 16 scheduling conference should follow FRCP	11/8/2018 2:44 PM
91	Already stated--adopt the modified FRCP (12/1/15) re: ESI & E-discovery.	11/8/2018 2:18 PM
92	Early scheduling conference w/the Court to set a trial date & other important deadlines are the key to getting anything done & getting it done timely.	11/8/2018 2:12 PM
93	Have parties seeking e-discovery pay for the cost of such discovery.	11/8/2018 2:00 PM
94	Reduce the deadline for filing of the initial pretrial statement to w/in 2 months of filing of the Complaint & make it clear that the "initial pretrial statement" may also be filed by a deft, & adjust corresponding trial setting rules. This should "move up" the deadline for the setting of a trial date.	11/8/2018 1:56 PM
95	Change discovery rule to include proportionality.	11/8/2018 1:39 PM
96	Make CAAP optional not mandatory.	11/8/2018 1:32 PM
97	Some form of meaningful meet & confer prior to a Rule 16 scheduling conference. Encouraging frank discussion regarding the issues, defenses, discovery. Implement a more formalistic process to resolve discovery disputes expeditiously short of filing a motion.	11/8/2018 1:27 PM
98	Make something happen b/f case is 8 months old.	11/8/2018 1:09 PM
99	Require courts to schedule trial setting w/in 60 days of pretrial statement. Pltfs often don't schedule trial setting. Much delay caused by this. Require court to schedule Rule 16 if PTS not filed w/in 8 months.	11/8/2018 1:01 PM
100	Eliminate pretrial statement as prerequisite for obtaining trial date.	11/8/2018 12:55 PM
101	1-Adopt Fed rules as discussed & proposed 2- Make mediation mandatory in most cases except CAAP 3-Formation of court annexed mediation w/mediators practicing in field	11/8/2018 12:39 PM
102	6-person juries w/ relaxed rules of evidence	11/8/2018 11:22 AM
103	discovery compliance	11/8/2018 10:47 AM
104	Enforcement of the rules. Rule amendments are great and needed, but the existing rules already have features, that are seldom used/enforced. Rules are of little use if they're not seriously enforced.	11/8/2018 10:39 AM
105	Adopt the federal rules	11/8/2018 10:27 AM
106	Adopt pathways. Triage/tiery ??? to cases that the court decides initially. That would enforce cases that are simple get to trial quickly. The over-arching goal is to get cases to trial, even jury trial.	11/8/2018 10:17 AM
107	mandatory mediation/ADR with parameters and cost because parties here can choose the neutral, and the neutral can help identify issues and streamline the process to get cases resolved.	11/8/2018 10:11 AM
108	if the court would rule on as many issues pre-trial which would reduce the triable issues.	11/8/2018 10:04 AM
109	eliminate hcrr rule 12 and hrcp rule 26. Substitute with federal rules frcp local rule 16 and rule 26.	11/8/2018 9:53 AM
110	use judges as arbitrators if the parties agree. Cheaper and must faster to "try" a case.	11/8/2018 9:47 AM
111	order proportionally on discovery and give court autonomy to issue specific sanctions.	11/8/2018 9:13 AM

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112	Judges seem concerned about granting dispositive motions despite of lack of facts supporting a cognizable claim or facts supporting certain issues. Rule 56 guidelines should be applied both by circuit and appellate courts.	11/8/2018 8:48 AM
113	adopt rule 16.	11/8/2018 8:39 AM
114	creating a process similar to federal court rule 16 would be helpful. Because it requires the parties to litigate the case early.	11/7/2018 3:19 PM
115	Require all attorneys to annually attend a day long CLE emphasizing applicable HRCP and civility guidelines.	11/7/2018 2:41 PM
116	adopt federal court standards for rule 56 motions. Have appellate courts give more deference to trial courts in considering disposition motions.	11/7/2018 2:14 PM

Q52 Please include any recommendation, information, clarification, or comment you would like to add.

Answered: 56 Skipped: 352

#	RESPONSES	DATE
1	Trial court judges (District and Circuit Court) should be less focused on clearing their dockets and forcing the party they perceive to be the "deep pocket" to settle cases and more focused on the merits of cases when engaged in settlement conferences.	1/8/2019 11:43 PM
2	Electronic filing in civil cases is a must!	1/6/2019 10:58 PM
3	I think this survey, while well-intentioned, is severely biased and worded to discourage participants from taking into account the damage to the quality of justice that can result from expediency, particularly the threat of sanctions for discovery procedure violations.	12/30/2018 12:45 PM
4	magistrate judge is a great idea.	12/26/2018 3:47 PM
5	The Legislature should provide the Judiciary with additional funds to hire qualified and experienced law magistrates, officers and/or law clerks to assist Circuit Court Judges. Courts on all Islands, at minimum, should be divided into separate civil and criminal dockets so that those with the most experience and expertise in those areas can preside over cases in which they are most qualified.	12/26/2018 2:58 PM
6	Much of the backlog on the court's trial calendar is caused by premature setting of trials which are then subsequently rescheduled repeatedly. The premature trial settings hinder the parties who are actually ready to proceed to trial and seek to obtain a firm trial date.	12/26/2018 1:35 PM
7	the current trial date outlined in circuit court rule 12(c)(2)(A), 150-240 days from the initial pretrial statement makes no sense and is never followed. It's not realistic deadline, so it is generally ignored. A case can't even be decided In CAAP by that deadline. A realistic trial date should be set.	12/26/2018 11:57 AM
8	If the Courts were to implement an earlier trial schedule, it may lead to more trials, more work for the judges, and more attorney's fees and costs incurred.	12/17/2018 3:29 PM
9	Rewording HRCP to more closely mimic FRCP would make them more understandable to pro se & lay clients	12/10/2018 5:52 PM
10	Start sanctioning frivolous motions by awarding the full cost of defending against them.	12/7/2018 9:37 AM
11	Please see above.	12/6/2018 1:29 PM
12	look at NZ system. Trained staff screen new case to decide on course of litigation	12/4/2018 1:21 PM

Hawaii Civil Justice Improvement Task Force Survey

13	<p>Proposal # 1 Regarding Notice Problem: Too many poor people facing eviction, foreclosure or quiet title fail to respond in a timely manner after receiving a complaint. Too often, defendants call public interest legal service providers after judgment has been issued. Case law and unsympathetic judges can make it difficult to set these decisions aside – even where a defendant has legitimate defenses. It is ironic that attorneys are given thirty days to respond to a discovery request, but ordinary people have less than three weeks to respond to a complaint. The complaint itself is often couched in legalese. The summons is only found at the very back of the complaint – and includes confusing verbiage about when the summons can be served. Regular people who have never been to court are very confused and often paralyzed when receiving a complaint. Why not inform defendants in plain English the importance of responding on time? Proposal: Court clerks should staple to the front of every complaint – or at least every complaint in which a defendant is a human being and not a corporation – a simple statement in plain English. It could read something like: You have been sued. You have twenty days to respond. If you fail to respond within twenty days, you could lose important legal rights. Consult an attorney as soon as possible. If your income is limited, you can contact the following non-profit public interest legal service providers: Legal Aid: Domestic Violence Clearinghouse: etc.</p> <p>Proposal #2 Regarding Quiet Title Actions Problem: It is virtually impossible to thoroughly research the land title in quiet title cases within twenty days.</p> <p>Proposal: Hawai'i Rules of Civil Procedure Rule 12 should be amended to include a new section to read something like: (h) In any quiet title action, the 20 days referred to in this Rule shall instead be 40 days.</p>	11/30/2018 9:51 PM
14	Go the California Court's website and hit forms. CA uses forms in multi-million dollar cases and they have hundreds of forms that cover virtually everything the court does or handles. Then go to the HI District Court's website and hit forms. Forms not only make it easier and cheaper for the litigants to get things done, it makes the court's job easier because the paperwork it sees is more uniform.	11/30/2018 9:06 PM
15	Reduce number of hearing motions. Judges usually decide, or can decide, based on the written submissions. See King County, where nondispositive motions are decided fast.	11/30/2018 11:04 AM
16	don't know	11/30/2018 10:57 AM
17	Justice delayed is justice denied	11/30/2018 8:45 AM
18	The state courts should adopt the federal court's e-filing system. This is a superficial critique, but even the ICA and Supreme Court's e-filing system is clunky and inconvenient when compared to Pacer. For example, when you receive the e-filing notice, you cannot access the document directly by clicking on the link. Hoohiki takes an unknown amount of time to be updated, and the First Circuit Court filing office is incredibly slow in processing requests to see and copy files. It also appears that even judges cannot get quick access to their own case files, and must go through a request process, which inevitably must slow down the process of deciding motions. E-filing also saves practitioners the time/expense of serving opposing counsel with hard copies of all filed documents. This is also unlikely to happen, but the state courts should consider raising the salaries of law clerks in order to attract the strongest candidates, and to attract clerks who have actually been practitioners.	11/29/2018 2:15 PM
19	For the most part judges do an admirable job	11/29/2018 1:43 PM
20	None	11/29/2018 11:16 AM
21	Court rules should apply to all circuits. We presently have different requirements depending on what circuit you practice in.	11/29/2018 10:54 AM
22	Cheap and quick does not equate with access to meaningful justice. Never has and never will....	11/29/2018 10:28 AM
23	I formerly practiced largely in state court. I don't think you can ask more of the Circuit Court judges given their current case load. If the legislature will authorize more judgeships, then I think the ideas you are considering could be implemented. And that would be a good thing.	11/29/2018 8:38 AM
24	I'd like to see the partner judge get involved early in a case and hold multiple settlement/status conferences.	11/29/2018 8:29 AM
25	documents and pleadings MUST be kept more accurately, consistently, and more readily up to date and available for parties in the litigation. all pleadings, documents should be retrievable without cost to the parties once in the system, as it is in federal court.	11/29/2018 7:56 AM
26	No additional comments	11/29/2018 5:54 AM
27	The time for a decision on appeal of a civil case in the context of the needs of litigants and the education of judges is outrageous.	11/28/2018 11:59 PM

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28	It is stunning to me that judges still routinely allow defendants to not bring insurance adjusters with full settlement authority to settlement conferences.	11/28/2018 9:33 PM
29	encourage early settlement conferences	11/28/2018 7:31 PM
30	See all answers.	11/28/2018 6:43 PM
31	Thank you for the opportunity. This is a good move in the necessary direction.	11/28/2018 5:58 PM
32	Many of my responses would be "it depends" if there was a category. Every litigant should feel that the or she had a fair opportunity to be heard. Speed, alone, is not the goal. However, a slow, expensive system does not guarantee a fair opportunity- it is just slow and expensive- and tends to discourage dispute resolution.	11/28/2018 5:57 PM
33	Court appointed counsel fees should be increased to \$400 an hour to give parity with government attorneys who get a salary, ludicrously generous benefits (including retirement), free office space, utilities, transportation, and staff. That's not the comment you wanted for this survey, but nobody ever does surveys about being fair to the bottom-feeding attorneys so we have to slip it in whenever we get a chance.	11/28/2018 5:46 PM
34	simplified evidence rules for non-jury trials	11/28/2018 5:44 PM
35	Judges do not have enough time or resources to maintain as much involvement in settlement as they otherwise might. Mandatory early settlement conferences where the parties have to declare their positions could help. Providing judges access to mediators for consultation as needed also could be of use.	11/28/2018 5:39 PM
36	Needs to be more uniformity between judge rules. Also the current judge requirements and scheduling by judges make it nearly impossible for young mothers or single parents to practice law. need To include young people and younger law firm partners in discussions of how to improve court system.	11/28/2018 5:06 PM
37	I am concerned that expediting trial and discovery could impair a litigant's opportunity to meaningfully prepare for trial and present evidence at trial	11/19/2018 10:44 AM
38	require insurance ??? to ??? in good faith in ??? to claims and ???	11/19/2018 10:32 AM
39	high technology has already been implemented by many other jurisdictions. don't reinvent the wheel. just use their recommendations	11/19/2018 9:48 AM
40	trial judge in a jury trial should not be the settlement judge. a separate independent judge should serve as the settlement judge	11/19/2018 9:40 AM
41	I am not a proponent of additional rules. We need judges who are committed to prioritizing matters and expeditiously moving cases through the system. Early meaningful settlement conferences are the most efficient method of resolving cases quickly and with minimal costs.	11/15/2018 9:33 AM
42	There should be a deadline for the ICA to rule. Typically it takes over 3-4 yrs. The ICA's extreme delays in ruling skews a fair process.	11/15/2018 8:11 AM
43	The Judiciary does a good job in moving the cases along. Lawyers need to be prepared. When the Complaint is filed, discovery should be half-way done & ready to go to trial w/in 6 months. Court hearing should be held to make sure case moves along. Sanctions should be imposed if deadlines are not followed.	11/13/2018 2:59 PM
44	I believe the civil circuit court system is working reasonably well. However, there is a vast difference between complex cases and other cases where the amount in controversy is relatively small in amount and where legal costs may outweigh legal benefits if the party prevails.	11/13/2018 1:07 PM
45	The lack of clarity with respect to rule 12(b)(6) should be addressed. The circuit courts often decline to dismiss non viable claims even without prejudice based on the antiquated quote "no set of fact" standard that was adopted in federal courts by ???? (It seems like a case but can't read it.).	11/9/2018 8:16 AM
46	Although it would be tough at first, there is a huge need to go to the rule 16 scheduling conferencing procedure.	11/9/2018 8:02 AM

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47	The current situation is not working. It takes too long and too expensive to litigate most cases, particularly when you factor in 2-4 yrs for an appeal period. Part of the problem is the lack of preparation by judges who appear to have too many cases. Part of the problem is the judges' unwillingness to dismiss claims & cases that have no merit. Another is the lack of involvement or oversite early in the case. We need to model the federal system, if possible. At a minimum, judges need to be more user friendly. Being available by phone & e-mail for conferences would help.	11/8/2018 3:37 PM
48	We might need to consider how expeditious these matter might then warrant changes/reforms to the Appellate process which takes a long time and also contributes to delay.	11/8/2018 2:12 PM
49	We should require at least 6 CLE credits per year w/ the same credit in ethics every 3 years.	11/8/2018 1:39 PM
50	Delete Rule 25 (a)(1) of HI Arbitration Rules -- unfair.	11/8/2018 1:01 PM
51	Thank you for working on these important changes.	11/8/2018 12:39 PM
52	I understand that judges & lawyers consider the rules of evidence to be essentially sacrosanct; however, if we had relaxed rules of evidence, discovery would be reduced dramatically, cases could be tried much cheaper and/or resolved on the merits. Why does a jury trial have to be a monumental, exhaustive & expensive process. 6 person juries, relaxed rules of evidence & reasonable trial court requirements for trial would make the litigation process cheaper and more efficient.	11/8/2018 11:22 AM
53	Please keep in mind that any expedition of pre-trial/trial process may increase the trial attorney to a malpractice claim.	11/8/2018 10:04 AM
54	Do not use doctors testimony at trial; use their reports or depositions only. Cuts trial time and expense.	11/8/2018 9:47 AM
55	Consider adopting the Utah rule. Judge Castagnetti discussed regarding trial continuances.	11/7/2018 2:41 PM
56	Don't forget that the new generation needs to go to trial. If we streamline and mechanize the process to ... we might as well have a legal app that people can access and obtain justice. 2. We are a small bar. Why can't we think outside the box to make litigation more efficient. More rules make more games. Seasoned and reasonable counsel don't need the structures. Can we find a way to encourage collegiality and cooperation rather than sanctioning missteps. For example, force counsel to come early to motions to discuss or explain to the court what they discussed. Can we figure out a social way to get lawyers to be collegial. For example, a barrister designation which can be withdrawn if you're an ass.	11/7/2018 2:26 PM

Appendix 7

**CLEAN VERSION OF THE TASK FORCE'S PROPOSED AMENDMENTS TO THE
HAWAI'I RULES OF CIVIL PROCEDURE AND THE RULES OF THE CIRCUIT
COURTS OF THE STATE OF HAWAI'I**

I. AMENDED HAWAI'I RULES OF CIVIL PROCEDURE (HRCP)

HRCP Rule 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

* * * *

(b) Same: How made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

(1) Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the court; or (d) if service is to be upon the attorney, by facsimile transmission to the attorney's business facsimile receiver; or (e) by electronic mailing (email) if the attorney or party has consented in writing to service by email.

(2) Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Facsimile transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document. Documents served by email must (a) be attached to an email transmission; (b) be in Portable Document Format (PDF); and (c) be less than 10 megabytes (MB) in total per email; to meet the 10MB limit with large documents, multiple emails can be sent. Unless otherwise agreed in writing, providing a link to documents on a web server or file-sharing service does not fulfill the service requirement.

(3) Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the intended recipient by 5:00 p.m. on a court day. Service by facsimile transmission that occurs after 5:00 p.m., or that occurs on a non-court day, shall be deemed to have occurred on the next court day. Service by email is complete upon transmission of the entire document in .pdf format to the intended recipient by 5:00 p.m. on a court day, but is not complete if the sender learns that it did not reach the person to be served; transmission by email that occurs after 5:00 p.m., or that occurs on a non-court day, shall be deemed to have occurred on the next court day.

(4) Service by facsimile transmission shall be confirmed by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date, at a specific time. Service by email shall be confirmed by a certificate of service which declares that service was accomplished by email to a specific email address, on a specific date, at a specific time.

* * * *

HRCP Rule 16. PRE-TRIAL CONFERENCES; SCHEDULING; MANAGEMENT.

(a) Pretrial conferences; objectives. In any action, the court may in its discretion direct lead counsel or other attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating the settlement of the case.

(b) Scheduling and planning.

(1) ISSUING ORDER. Except in cases exempted by the Rules of the Circuit Courts, the court must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) TIME TO ISSUE. The court must issue the scheduling order as soon as practicable, but unless the court finds good cause for delay, the court must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) CONTENTS OF THE SCHEDULING ORDER.

(A) *Required Contents.* The scheduling order must: (a) set the date for trial; (b) limit the time to join other parties, amend the pleadings, complete discovery, and file motions; (c) assign the case to a tier under Rule 16.1; and (d) include other matters required by the Rules of the Circuit Courts.

(B) *Permitted Contents.* The scheduling order may:

- (i) modify the timing of disclosures under Rules 26(a) and 26(e);
- (ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences, including a final pretrial conference; and

(vii) set deadlines for the exchange and submission of trial materials, including exhibits, stipulations, deposition and trial preservation testimony, proposed jury instructions, and proposed questions for jury selection; and

(viii) include other appropriate matters.

(4) SCHEDULING CONFERENCE. Within the earlier of 14 days after any defendant has been served with the complaint or has appeared, the plaintiff shall file a notice requesting a Scheduling Conference to be set by the court. The court shall then issue an order or a notice setting the Scheduling Conference date. The plaintiff shall promptly serve the order or notice issued by the court setting the Scheduling Conference date on all parties who have been served with the complaint, except those who have appeared in the case before the order or notice was issued. The Scheduling Conference shall be attended by each party who has appeared in the case or that party's lead counsel.

(5) MODIFYING A SCHEDULE. A schedule may be modified only for good cause and with the judge's consent.

* * * *

[NEW] HRCP RULE 16.1

**TIER ASSIGNMENT BASED ON CASE
CHARACTERISTICS; DISCOVERY LIMITATIONS;
TRIAL SETTING.**

(a) Assignment of Case to Tier. Except for cases exempted by Rule 16.1(b), the court, for discovery and case management purposes, shall assign each case to one of two tiers (Tier 1 or Tier 2) through the scheduling order issued pursuant to Rule 16(b). The purpose of the tier assignment is to secure the just, speedy, and efficient resolution of cases by placing them into an appropriate pathway based on considerations of proportionality, fairness, cost-effectiveness, and expedition.

(1) In assigning a case to Tier 1 or Tier 2, the court shall take into consideration the following factors, with no one factor being dispositive:

- (A) The degree of readiness of the case for resolution;
- (B) The number of parties involved, whether there are two parties or more than two parties, and whether any party is self-represented;
- (C) The monetary value of the case and whether the amount in controversy is greater or less than \$150,000;
- (D) The number and complexity of the issues to be resolved;
- (E) The number, extent, and nature of the claims;
- (F) The volume and extent of discovery necessary;
- (G) The number of witnesses, experts, and documents;
- (H) Any other factor the court determines is relevant to fulfilling the purpose of the tier assignment.

Based upon these factors, the court by order shall assign cases that can be streamlined, managed with a minimum of court involvement, and expedited to resolution within 9 months of the scheduling conference to Tier 1. All other cases shall be assigned to Tier 2.

(2) Any party or parties may, based upon a showing of good cause, request that their case be re-assigned to the other tier.

(b) Cases Exempt from Tier Assignment. The following categories of actions are exempt from assignment to a tier under Rule 16.1(a).

- (1) foreclosure;
- (2) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;
- (3) agency appeals pursuant to Hawai'i Revised Statutes Chapter 91;
- (4) consumer debt collection;
- (5) quiet title; and
- (6) mechanic's and materialman's lien.

(c) Limitations on Discovery in Tier 1 cases.

(1) For cases assigned to Tier 1, each party shall be subject to the following limitations on discovery: (A) no more than four oral depositions with a cumulative time of 16 hours on the record; and (B) no more than a total of 35, in any combination, of interrogatories, including subparts, under Rule 33, requests for documents under Rule 34, and requests for admissions under Rule 36.

(2) To obtain discovery beyond the limitations on discovery established in Rule 16.1(c)(1), a party must file either:

(A) a request for discovery beyond the Tier 1 limits, by motion or request for streamlined assistance under Rule 15.1 of the Rules of the Circuit Courts, setting forth why that discovery is necessary and proportional, and where appropriate, attaching the proposed discovery, or in the case of a request for deposition, describing the anticipated discovery, and attaching a declaration or affidavit certifying a good faith effort to confer with the other party(ies) about the discovery; or

(B) a stipulation, approved by the court, that discovery beyond the Tier 1 limits is necessary and proportional and agreed to by the parties.

(d) Trial Setting for Tier 1 and Tier 2 cases.

(1) For cases assigned to Tier 1, the court shall, at the initial scheduling conference, set trial to commence within 9 months of that conference.

(2) For cases assigned to Tier 2, the court shall, at the initial scheduling conference, set trial to commence within 12 months of that conference unless a party requests a trial date after that period. Upon the request of any party at the initial scheduling conference, after reviewing the materials submitted, and considering the relative positions of all parties, the court may set trial to commence after 12 months but no later than 18 months after the conference. In determining whether and when to set trial to commence within the 12-to-18 month time frame, the court may consider the relative complexity of the case.

(3) After the trial date has been set, any party in a case assigned to Tier 1 or Tier 2 may file a motion seeking to advance the trial date.

(4) CONTINUANCES OF TRIAL SET AT THE INITIAL SCHEDULING CONFERENCE.

(A) Tier 1 cases.

(i) Upon motion by any party in a Tier 1 case, the court may continue the trial for extraordinary circumstances.

(a) Extraordinary circumstances shall be defined as an event that has or is about to occur that a party has not or could not reasonably anticipate occurring or exercised due diligence to prevent prior to or during the trial and that will result in actual prejudice to a party presenting evidence on any claim or defense should trial proceed as scheduled.

(b) Extraordinary circumstances include: death or serious illness of parties, lawyers representing parties, or witnesses necessary to establish key elements of a claim or defense; ongoing actual alternative dispute resolution; or any extraordinary change in circumstances that warrant a continuance.

(c) Extraordinary circumstances generally do not include discovery disputes. The inability to obtain discovery shall not

be considered an extraordinary circumstance unless a party or an attorney engages in conduct that the court finds unreasonably precluded any other party from obtaining discovery. Any party that unreasonably causes a delay may be sanctioned and precluded from providing evidence at trial as to any claim or defense.

(ii) Instead of a motion, the parties in a Tier 1 case may submit to the court a stipulation and order to continue the trial setting forth that extraordinary circumstances exist. In the stipulation and order, the parties shall describe in detail the following:

(a) the extraordinary circumstances necessitating the continuance;

(b) efforts made to alleviate or circumvent the need for a continuance; and

(c) the time period that is necessary for resolution of the extraordinary circumstances.

(iii) If the court grants a motion or approves a stipulation to continue the trial based on extraordinary circumstances, it shall reset the case for trial at the earliest date following the anticipated resolution of any extraordinary circumstances warranting the continuance.

(B) Tier 2 cases.

(i) Upon motion by any party in a Tier 2 case, the court may continue trial for good cause.

(a) Good cause defined. Good cause includes anything that would constitute an extraordinary circumstance.

(b) In considering a motion to continue the trial for good cause, the court may consider the needs of the parties to obtain and complete adequate discovery and shall consider the proportionality factors under Rule 26(b). The court may deny a motion to continue the trial in a Tier 2 case if the asserted necessity for the requested continuance has been caused by the actions of the moving party or parties or their attorneys, or if they have not complied with pretrial deadlines.

(5) The court may on its own or upon the request of any party set status conferences to assist in resolving matters that arise during the course of the case.

(6) In the setting of trial for Tier 1 and Tier 2 cases, the intent and goal is to bring these matters to a prompt and expeditious resolution while at the same time ensuring that parties are given an opportunity to present their claims and defenses in a meaningful manner. In setting trial dates, nothing in this rule shall interfere with trial courts retaining the ability to manage their calendars based upon the needs of other pending matters.

HRCP RULE 16.2. APPEARANCE BY TELEPHONIC OR VIDEO CONFERENCE CALL.

(The rule was previously HRCP Rule 16.1 and is renumbered HRCP Rule 16.2)

HRCP RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

(a) Required Disclosures.

(1) INITIAL DISCLOSURE.

(A) Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to all other parties:

(i) the name and, if known, the address and telephone number of all witnesses, other than those retained or specially employed by the disclosing party to present evidence under Rule 702 of the Hawai'i Rules of Evidence or those whose duties as the disclosing party's employee regularly involve giving such testimony, reasonably expected to be called at trial by the disclosing party, and a general statement concerning the nature of the testimony expected, unless the use would be solely for impeachment;

(ii) a copy -- or a description by category and location -- of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control that may be used to support the disclosing party's claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party -- who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34: (a) the declarations page(s) of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (b) any reservation of rights letter(s) received by the disclosing party.

(B) Proceedings Exempt from Initial Disclosure. The following categories of civil actions are exempt from initial disclosure:

(i) foreclosure;

(ii) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;

(iii) agency appeals pursuant to Hawai'i Revised Statutes Chapter 91;

(iv) consumer debt collection;

(v) quiet title; and

(vi) mechanic's and materialman's lien.

(C) Time for Initial Disclosures -- In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the Rule 26(f) conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. During the Scheduling Conference held pursuant to Rule 16 and Rule 12 of the Rules of the Circuit Courts, the court must rule on any objection, determine what disclosures, if any, are to be made, and set the time for disclosure, if any.

(D) Time for Initial Disclosures -- For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) EXPERT DISCLOSURE.

(A) Expert Witnesses Who Must Provide a Written Report.

Except in actions exempt from initial disclosure under Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to all other parties:

(i) the name and, if known, the address and telephone number of (a) all witnesses retained or specially employed by the disclosing party to present evidence at trial under Rule 702 of the Hawai'i Rules of Evidence and (b) all witnesses whose duties as the disclosing party's employee regularly involve giving testimony under Rule 702 of the Hawai'i Rules of Evidence and who are reasonably expected to be called at trial by the disclosing party;

(ii) a written report prepared and signed by each witness identified pursuant to this Rule 26(a)(2)(A). The report must contain:

(a) a complete statement of all opinions the witness will express and the basis and reasons for each opinion;

(b) the facts and data considered by the witness in forming the opinions;

(c) a statement of the compensation paid, and to be paid, for the witness's work in the case;

(d) the witness's qualifications, including a list of all publications authored in the previous 10 years; and

(e) the case name, docket number, and state or federal jurisdiction of each case in which the witness has provided expert opinion testimony for the 3 year period preceding the date of the report.

(B) Expert Witnesses Who Are Not Required to Provide a Written Report. Except in actions exempt from initial disclosure under Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, for witnesses who a party reasonably expects to call at trial to present evidence under Rule 702 of the Hawai'i Rules of Evidence but who are not required to provide a written report

under Rule 26(a)(2)(A), a party must disclose to all other parties, without awaiting a discovery request:

(i) the name and, if known, the address and telephone number of the witness;

(ii) the subject matter on which the witness is expected to present evidence under Rule 702 of the Hawai'i Rules of Evidence; and

(iii) a summary of the facts and opinions to which the witness is expected to testify.

(C) Time to Disclose Expert Testimony. Unless otherwise stipulated or ordered by the court, the parties must make the disclosures required by this Rule 26(a)(2) as follows:

(i) a party having the burden of proof on a claim for relief or an affirmative defense must serve the related disclosures no later than 120 days before the date set for trial;

(ii) a party opposing a claim for relief or an affirmative defense must serve the related disclosures no later than 90 days before the date set for trial;

(iii) a party intending to present evidence solely to rebut evidence on the subject matter identified for the first time by another party under this Rule 26(a)(2)(C)(ii) must serve the related disclosures no later than 60 days before the date set for trial.

(3) SUPPLEMENTING DISCLOSURES. A party who has made a disclosure under Rule 26(a) must supplement or correct its disclosure:

(A) in a timely manner if the party learns that in some material respect the disclosure is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(b) Discovery Scope and Limits.

(1) SCOPE IN GENERAL.

(A) Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the Court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause considering the limitations of Rule 26(b)(2). The Court may specify conditions for the disclosure of discovery.

(2) LIMITATIONS. By order, and subject to the provisions of Rule 16.1 in Tier 1 cases, the court may alter the limits in these rules on the number of depositions and interrogatories, the length of depositions under Rule 30, and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) INSURANCE AGREEMENTS. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(4) TRIAL PREPARATION: MATERIALS. A party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) TRIAL PREPARATION: EXPERTS.

(A) Subject to the provisions of Rule 16.1 in Tier 1 cases, a party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(A) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rule 26(b)(4) protects drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rule 26(b)(4) protects communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(A), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Subject to the provisions of Rule 16.1 in Tier 1 cases, a party may, through interrogatories and/or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(E) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(5)(A) or Rule 26 b)(5)(D); and (ii) with respect to

discovery obtained under Rule 26(b)(5)(D) the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

* * * *

(d) Timing and Sequence of Discovery.

(1) TIMING. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) SEQUENCE. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Conference of the Parties; Planning for Discovery.

(1) CONFERENCE TIMING. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable -- and in any event at least 21 days before a scheduling conference is to be held under Rule 16(b).

(2) CONFERENCE CONTENT; PARTIES' RESPONSIBILITIES. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) DISCOVERY PLAN. A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert these claims after production -- whether to ask the court to include their agreement in an order under Rule 502 of the Hawai'i Rules of Evidence;

(E) what changes should be made in the limitations on discovery imposed under these rules or by the Rules of the Circuit Courts, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(g) Discovery Conference. At any time after the commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Each party and the party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the court or by the attorney for any party.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses and the appointment of a discovery master, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

* * * *

HRCP Rule 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that: (a) the limitations on discovery set forth in Rule 16.1(c) for Tier 1 cases may only be modified as provided in that rule; and (2) stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

III. AMENDED RULES OF THE CIRCUIT COURTS OF
THE STATE OF HAWAI'I (RCCH)

RCCH Rule 3. FORM OF PLEADINGS AND MOTIONS.

* * * *

(c) Form of first page. The first page of each document, except as provided hereinbelow in (d), shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, code number, email address, office address and telephone number of the attorney for the party in whose behalf the document is filed, or of the party if the party is self-represented;

* * * *

RCCH Rule 4. PARTIES WITHOUT COUNSEL.

Parties who appear in person without counsel shall notify the clerk in writing of their names, their mailing and residence addresses, email address, and telephone numbers and shall keep the clerk informed by proper written notices of changes in the addresses and telephone numbers so given. All such notices shall be duly indexed and filed in the folio for the case.

* * * *

RCCH Rule 12. SCHEDULING.

(a) Scheduling Order.

(1) ISSUING ORDER. Except in categories of actions exempted by Rule 12(b) and cases designated as complex litigation under Rule 12(c), the trial judge must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) TIME TO ISSUE. The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) CONTENTS OF THE SCHEDULING ORDER.

(A) *Required Contents.* The judge shall enter an order governing and addressing: (i) the setting of a date for trial; (ii) disclosures under Rule 26(a) of the Hawai'i Rules of Civil Procedure; (iii) the extent of discovery to be permitted; (iv) the discovery completion date; (v) deadlines for motions to be filed and heard, to join other parties, and to amend pleadings; and (vi) the assignment of a case to a tier under Rule 16.1 of the Hawai'i Rules of Civil Procedure.

(B) *Permitted Contents.* The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e) of the Hawai'i Rules of Civil Procedure;

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences, including a final pretrial conference;

(vii) set deadlines for the exchange and submission of trial materials, including exhibits, stipulations, deposition and trial preservation testimony, proposed jury instructions, and proposed questions for jury selection; and

(viii) include other appropriate matters.

(4) SCHEDULING CONFERENCE. Within the earlier of 14 days after any defendant has been served with the complaint or has appeared, the plaintiff shall file a notice requesting a Scheduling Conference to be set by the court. The court shall then issue an order or a notice setting the Scheduling Conference date. The plaintiff shall promptly serve the order or notice issued by the court setting the Scheduling Conference date on all parties who have been served with the complaint, except those who have appeared in the case before the order or notice was issued. The Scheduling Conference shall be attended by each party who has appeared in the case or that party's lead counsel.

(5) MODIFYING A SCHEDULE. A schedule may be modified only for good cause and with the judge's consent.

(6) CONFERENCE OF THE PARTIES; PLANNING FOR DISCOVERY.

(A) *Timing of Parties' Conference.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) of the Hawai'i Rules of Civil Procedure or when the court orders otherwise, the parties must confer as soon as practicable -- and in any event at least 21 days before a scheduling conference is to be held under Rule 16(b) of the Hawai'i Rules of Civil Procedure.

(B) *Matters Considered in Parties' Conference; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1) of the Hawai'i Rules of Civil Procedure; discuss whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure; discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days

after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(C) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(i) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a) of the Hawai'i Rules of Civil Procedure, including a statement of when initial disclosures were made or will be made;

(ii) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(iii) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(iv) any issues about claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert these claims after production -- whether to ask the court to include their agreement in an order;

(v) what changes should be made in the limitations on discovery imposed under the Hawai'i Rules of Civil Procedure or these rules, and what other limitations should be imposed; and

(vi) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c) of the Hawai'i Rules of Civil Procedure.

(7) SCHEDULING CONFERENCE STATEMENT. Unless otherwise ordered by the court, each party shall file with the court and serve on all parties a "Scheduling Conference Statement" no later than seven (7) days prior to the scheduling conference. The Scheduling Conference Statement shall include the following:

(A) A short statement of the nature of the case;

(B) A statement of jurisdiction with cited authority for jurisdiction and a short description of the facts conferring venue;

(C) Whether jury trial has been demanded;

(D) Whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure;

(E) A statement addressing the appropriateness, extent, and timing of disclosures pursuant to Rule 26 of the Hawai'i Rules of Civil Procedure that are not covered by the report(s) filed pursuant to Rule 26(f) of the Hawai'i Rules of Civil Procedure;

(F) A list of discovery completed, discovery in progress, motions pending, and hearing dates;

(G) A statement addressing the appropriateness of any of the special procedures or other matters specified in Rule 16(c) of the Hawai'i Rules of Civil Procedure that are not covered by the report(s) filed pursuant to Rule 26(f) of the Hawai'i Rules of Civil Procedure;

(H) A statement identifying any related case, including pending cases as well cases that have been adjudicated or have otherwise been terminated, in any state or federal court;

(I) Additional matters at the option of the parties.

Each party shall certify that it has conferred pursuant to paragraph (a)(6) or state the reasons why the parties did not fulfill the requirement to confer.

(8) ATTENDANCE AND MATTERS FOR CONSIDERATION AT A SCHEDULING CONFERENCE. All parties receiving notice of the scheduling conference shall attend in person or by counsel and shall be prepared to discuss the following subjects:

(A) Service of process on parties not yet served;

(B) Jurisdiction and venue;

(C) Anticipated motions, and deadlines as to the filing and hearing of motions;

(D) Appropriateness and timing of motions for dismissal or for summary judgment under Rule 12 or Rule 56 of the Hawai'i Rules of Civil Procedure;

(E) Deadlines to join other parties and to amend pleadings;

(F) Whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure.

(G) Anticipated or remaining discovery, including discovery cut-off;

(H) The control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 16.1, Rule 26, and Rules 29 through 37 of the Hawai'i Rules of Civil Procedure;

(I) Further proceedings, including setting dates for additional pretrial conference(s), settlement conference, final pretrial conference, submission and exchange of trial materials, and trial, and compliance with Rule 12.1;

(J) Appropriateness of special procedures such as consolidation of actions for discovery or pretrial, alternative dispute resolution procedures, or application of procedures for cases designated as complex litigation;

(K) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the action or proceeding;

(L) Prospects for settlement, including participation in the court's mediation program or any other alternative dispute resolution process;

(M) Any other matters that may be conducive to the just, efficient, and economical determination of the action or proceeding, including the definition or limitation of issues, or any of the other matters specified in Rule 16(c) of the Hawai'i Rules of Civil Procedure.

(b) Exempt actions.

(1) CATEGORIES OF EXEMPT ACTIONS. The following categories of actions are exempt from the provisions of Rule 12(a):

(A) foreclosure;

(B) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;

(C) agency appeals pursuant to Hawai‘i Revised Statutes Chapter 91;

(D) consumer debt collection;

(E) quiet title; and

(F) mechanic's and materialman's lien.

(2) SCHEDULING FOR EXEMPT ACTIONS. For actions exempted under paragraph (b) (1), unless otherwise ordered by the court, within 8 months after the complaint has been filed, the plaintiff shall file a notice requesting a trial setting/status conference to be set by the court. After holding the conference, or based on the pleadings, the court shall establish the trial date or other appropriate deadlines for resolving the case. The court, in its discretion, may require the parties in whole or in part to follow the scheduling conference procedures set forth in Rule 12(a). The court may also consider alternative dispute resolution options and other matters which may be conducive to the just, efficient, and economical determination of the case.

(c) Designation as complex litigation. Any party may move to have a case designated by the court as Complex Litigation within 8 months after a complaint has been filed or at any time upon good cause shown. The judge hearing the Motion for Designation as Complex Litigation will have complete and unreviewable discretion in making the determination. Upon such a designation by the court, in cases where a jury will decide all issues the case will be assigned to a trial judge for handling until conclusion. In non-jury cases, the case will be assigned to a trial judge for handling until trial, but may be reassigned to a separate judge for the actual trial. This rule shall apply to cases filed in the First Circuit and other circuits as ordered by the Civil Administrative Judge of that circuit. Once a case is designated by the court as Complex Litigation, the scheduling and case management of the case shall be governed by orders issued by the judge assigned to the case pursuant to this paragraph (c).

(1) CRITERIA. In determining whether a case should be designated as Complex Litigation, the court shall consider the following criteria:

- (i) The estimated amount in controversy is in excess of \$750,000, excluding interest, attorney's fees and costs;
- (ii) The estimated length of trial is six weeks or more;
- (iii) The number of parties, including all plaintiffs and defendants is ten or more;
- (iv) One or more of the parties is a person who is not a citizen or resident of the United States;
- (v) The anticipated number of expert witnesses is eight or more;
- (vi) The case involves complex and multiple issues;
- (vii) The subject matter of the case involves either asbestos, natural catastrophes, national trends, construction or class actions;
- (viii) Discovery is anticipated to be complex; or
- (ix) Any other matters which may be conducive to the just, efficient, and economical determination of the case.

(2) MOTION FOR DESIGNATION. The motion for designation as Complex Litigation shall identify which of the criteria set forth in section (1) applies to the case, and shall set forth wherever applicable, the following information;

- (i) A short statement of the nature of the case;
- (ii) A list of parties served, in the process of being served or anticipated to be joined in the action;
- (iii) Whether jury trial has been demanded or will be demanded;
- (iv) A list of anticipated discovery, discovery in progress and completed discovery;
- (v) A list of anticipated motions, motions pending and hearing dates; and

(vi) Any other matters which may be conducive to the just, efficient, and economical determination of the action or proceeding, including the definition or limitation of issues.

(3) CASE MANAGEMENT CONFERENCES. The judge assigned to the complex case shall conduct case management conference(s) to determine all deadlines under these rules at which the court may:

(i) Establish deadlines for the following:

(A) A meeting with the Judiciary Center for Alternative Dispute Resolution; and

(B) Other matters as deemed applicable by the court.

(ii) Discuss the following:

(A) Appointment of special masters pursuant to Rules 26 and 53 of the Hawai'i Rules of Civil Procedure;

(B) Discovery schedule, including setting of any further case management conferences; and

(C) Other matters which may be conducive to the just, efficient, and economic determination of the case.

(4) COMPLEX CASE MANAGEMENT ORDER(S). The court may issue complex case management order(s) which may include, but shall not be limited to, the items set forth in section (3). The order(s) shall be binding as to all parties. The provisions of any order shall not excuse compliance with otherwise applicable rules or deadlines unless specifically ordered by the court.

(d) Final naming of witnesses. Sixty (60) days prior to the discovery cut off date plaintiff must name all theretofore unnamed witnesses. Thirty (30) days prior to the discovery cut off date defendant must name all theretofore unnamed witnesses.

(e) Further discovery. After the deadline for Final Naming of Witnesses, a Motion for Further Discovery can be filed upon a showing of good cause and substantial need. In ruling on a Motion for Further Discovery, the court shall give due consideration to the proportionality factors under Rule 26(b) of the Hawai'i Rules of Civil Procedure.

(f) Exclusion of witnesses. Any party may move the court for an order excluding a witness named by an opposing party if said witness was or should have been known at an earlier date and allowing the witness to testify will cause substantial prejudice to the movant. The movant under this motion must make a statement concerning the prejudice that will be suffered should this new witness be allowed to testify, and why the opposing party either knew or should have known of the witness at an earlier date. The opposing attorney must submit an affidavit stating that the witness was not known at an earlier date, nor with due diligence should have been known.

(g) Additional witness. At any time after the time for Final Naming of Witnesses, upon a showing of good cause and substantial need a party may move for the addition of a witness.

(h) Deviation in time for filing. Deviations from the time requirements for the filing of any document under this rule shall be allowed only upon good cause shown.

(i) Dismissal for want of prosecution. An action may be dismissed sua sponte with written notice to the parties if a notice requesting a Scheduling Conference or trial setting/status conference has not been filed as required by this rule. Such dismissal may be set aside and the action reinstated by order of the court for good cause shown upon motion duly filed not later than ten (10) days from the date of the order of dismissal.

(j) Discovery cut off. Discovery shall be cut off 60 days before the assigned trial date.

(k) Additional party practice. Any party joining a new party after trial has been set must serve, with the initiating pleading, a copy of the current order(s) setting the trial date and pretrial deadlines. Within 30 days of filing a responsive pleading, any newly joined party may move for a continuance of the trial date or other deviation from the time requirements under these rules or order(s) setting pretrial deadlines.

(l) Sanctions. Failure of a party or his attorney to comply with any section of this rule is deemed an undue interference with orderly procedures and unless good cause is shown, the court may, in its discretion, impose sanctions in accord with Rule 12.2(a)(6) of these rules.

[NEW] RCCH RULE 12.1 PRETRIAL STATEMENT

Unless otherwise ordered by the court, the parties shall serve and file separate pretrial statements no later than seven days before any final pretrial conference scheduled by the court, and if no such conference has been set, then no later than fourteen days before trial. The pretrial statement shall contain the following information:

(a) Party. The name of the party or parties on whose behalf the statement is filed.

(b) Substance of Action. A brief description of the substance of the claims and defenses presented.

(c) Undisputed Facts. A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(d) Disputed Factual Issues. A plain and concise statement of all disputed factual issues.

(e) Relief Prayed. A detailed statement of all relief requested for all claims and defenses asserted, including a particularized itemization of all elements of damages claimed.

(f) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to statutes and decisions relied upon. Extended legal argument is not to be included in the pretrial statement.

(g) Witnesses to be Called. A list of all witnesses likely to be called at trial.

(h) Exhibits, Schedules, and Summaries. A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each, describing its substance or purpose and the identity of the sponsoring witness.

(i) Further Discovery or Motions. A statement of any uncompleted discovery or undecided motions that may impact trial proceeding as scheduled.

(j) Stipulations and requests or judicial notice. A statement of stipulations requested or proposed for pretrial or trial purposes. Identification of any request for judicial notice of fact or law with supporting documentation and certification by the party that notice pursuant to the Hawaii Rules of Evidence, statute, rule, or case law has been provided to all other parties.

(k) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims, or defenses.

(l) Alternative Dispute Resolution. A statement summarizing the status of any alternative dispute resolution process that may impact trial.

(m) Estimate of Trial Time. An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel must make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, agreed statements of facts, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.

(n) Miscellaneous. Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient, and economical determination. Each party shall specify any equipment or technology not provided by the court that it plans to use in presenting its case. Every party must use reasonable efforts to share the cost of equipment or technology not provided by the court that is necessary and is used to present evidence, giving due consideration to each party's financial means to share costs.

(a) Settlement conference. During the scheduling conference held pursuant to Rule 12(a), the judge shall set a settlement conference for a date before trial, unless the judge believes another judge should conduct the settlement conference, in which case a settlement conference date shall be issued no later than 30 days after the scheduling conference. Alternative dispute resolution ("ADR") options, including but not limited to mediation, shall be discussed at the scheduling conference held pursuant to Rule 12(a), and if ADR process(es) are determined to be appropriate, the court should consider including orders scheduling and to facilitate the ADR process(es) in the scheduling order. Any party may also file a request for settlement conference at any time prior to trial. A settlement conference in civil cases shall be subject to the following guidelines:

(1) If a party settles or otherwise disposes of any action prior to a scheduled settlement conference, the party shall immediately notify the judge who scheduled the conference;

(2) Each party to the action shall attend the conference or be represented by an attorney or other representative who has authority to settle the case;

(3) For each party represented by counsel an attorney who is assigned to try the case shall attend the settlement conference. It is expected that the attorney will have become familiar with all aspects of the case prior to the conference;

(4) Each party to the action shall have thoroughly evaluated the case and shall have discussed and attempted to negotiate a settlement through an exchange of written bona fide and reasonable offers of settlement prior to the conference. Unless otherwise ordered by the court, the Plaintiff(s)' offer(s) shall be made prior to the Defendant(s)' offer(s). The specific timing of the offers shall be discussed at the scheduling conference held pursuant to Rule 12(a), and the court should consider including deadlines for the offers in the scheduling order.

(5) The judge conducting the settlement conference may, at the conclusion of said conference, continue said conference to another time and date, and from time to time thereafter for continued settlement negotiations if the judge has reason to believe a settlement can thereby be effectuated;

(6) SANCTIONS. The failure of a party or his attorney to appear at a scheduled settlement conference, the neglect of a party or his attorney to discuss or attempt to negotiate a settlement prior to the conference, or the failure of a party to have a person authorized to settle the case present at the conference shall, unless a good cause for such failure or neglect is shown, be deemed an undue interference with orderly procedures. As sanctions, the court may, in its discretion:

(i) Dismiss the action on its own motion, or on the motion of any party or hold a party in default, as the case may be;

(ii) Order a party to pay the opposing party's reasonable expenses and attorneys' fees;

(iii) Order a change in the calendar status of the action; and/or

(iv) Impose any other sanction as may be appropriate.

(b) Confidential settlement conference letter. At least five (5) working days before the settlement conference, each party shall deliver directly to the settlement conference judge a confidential settlement conference letter, which shall not be filed or served upon the other parties. The confidential settlement conference letter shall not be made a part of the record and confidential information contained in the letter shall not be disclosed to the other parties without express authority from the party submitting the letter. The court will destroy the confidential settlement conference letter no later than entry of final judgment in the case.

The confidential settlement conference letter shall include the following:

(1) For the plaintiff:

(i) The name, age, marital status and occupation of all noncorporate plaintiffs;

(ii) A brief statement of the case;

(iii) A brief statement of the claims and defenses, e.g. statutory and other grounds upon which claims are founded, a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses, and a description of the major issues in dispute, including damages;

- (iv) A summary of the proceedings to date, including a statement as to the status of discovery;
 - (v) An estimate of the time and expenses (including attorney's fees and all litigation costs) to be expended for further discovery, pretrial proceedings, and trial;
 - (vi) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and
 - (vii) a brief statement of the party's position on settlement.
- (2) For the defendants:
- (i) The age, marital status, occupation and corporate or other legal status of each defendant;
 - (ii) The name of applicable insurance carriers and the stated policy limits;
 - (iii) A brief statement of the case;
 - (iv) A brief statement of the claims and defenses, e.g. statutory and other grounds upon which claims are founded, a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses, and a description of the major issues in dispute, including damages;
 - (v) A summary of the proceedings to date, including a statement as to the status of discovery;
 - (vi) An estimate of the time and expenses (including attorney's fees and all litigation costs) to be expended for further discovery, pretrial proceedings, and trial;
 - (vii) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and
 - (viii) a brief statement of the party's position on settlement.

All written settlement offers submitted pursuant to paragraph (a)(4) of this rule shall be appended to the confidential settlement letter.

RCCH Rule 12.3. ALTERNATIVE DISPUTE RESOLUTION.

(a) Authority to order. The court, sua sponte or upon motion or request by a party, may, in exercise of its discretion, order the parties to participate in a non-binding Alternative Dispute Resolution process (ADR or ADR process) subject to terms and conditions imposed by the court. ADR includes mediation, summary jury trial, neutral evaluation, non-binding arbitration, presentation to a focus group, or other such process the court determines may be helpful in encouraging an economic and fair resolution of all or any part of the disputes presented in the matter. Subsections (a) through (e) do not apply to ADR administered by the Hawai'i Judiciary, such as the Court Annexed Arbitration Program.

* * * *

[NEW] RCCH Rule 15.1. STREAMLINED DISCOVERY ASSISTANCE.

(a) Upon agreement of all parties involved in a discovery dispute, the parties may seek resolution of the dispute through this streamlined procedure.

(1) Parties desiring streamlined discovery assistance shall agree upon a deadline for the simultaneous submission of letter briefs to the court.

(2) The letter brief of a party shall be delivered to chambers and served on all other parties by the deadline. The letter brief shall contain all relevant information, including:

(A) confirmation of the deadline for submission of letter briefs;

(B) dates of discovery cut-off and trial; and

(C) a discussion of the dispute and relief sought.

Unless otherwise ordered by the court, the letter briefs shall be five pages or less, inclusive of all exhibits.

(3) Upon receipt of the letter briefs, the court shall determine the procedure for resolving the dispute. The court may announce a decision without a conference or hearing. If a conference or hearing is set by the court, the court shall specify whether counsel must attend in person or may attend by telephonic or video conferencing. The court may request that one or more of the parties file a motion pursuant to the Hawai‘i Rules of Civil Procedure.

(4) The prevailing party shall prepare an order in compliance with Rule 23. All letter briefs shall be appended to the order for purposes of appellate review.

(b) Conference Required. The court will not entertain a request for streamlined discovery assistance unless the parties involved in the dispute have previously conferred, in person and/or by telephonic or video conferencing, to attempt to resolve or minimize the scope of the dispute, including but not limited to addressing the requirement that discovery be proportional to the needs of the case, in a good faith effort to eliminate the need for streamlined discovery assistance. Communication by email does not satisfy this requirement.

(c) Certificate of Compliance. When submitting a letter brief in accordance with this rule, a party shall certify compliance with paragraph (b) this rule. Certification shall include the date, time and length of the meeting and/or telephonic or video conference, and the names of all participants.

Appendix 8

**RED-LINE SHOWING HOW THE TASK FORCE'S PROPOSED AMENDMENTS WILL
CHANGE THE EXISTING HAWAI'I RULES OF CIVIL PROCEDURE AND THE
EXISTING RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAI'I**

I. RED-LINE SHOWING HOW THE TASK FORCE'S PROPOSED AMENDMENTS WILL CHANGE THE EXISTING HAWAI'I RULES OF CIVIL PROCEDURE (HRCP)

HRCP Rule 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

* * * *

(b) Same: How made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court.

(1) Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the court; or (d) if service is to be upon the attorney, by facsimile transmission to the attorney's business facsimile receiver; or (e) by electronic mailing (email) if the attorney or party has consented in writing to service by email.

(2) Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Facsimile transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document. Documents served by email must (a) be attached to an email transmission; (b) be in Portable Document Format (PDF); and (c) be less than 10 megabytes (MB) in total per email; to meet the 10MB limit with large documents, multiple emails can be sent. Unless otherwise agreed in writing, providing a link to documents on a web server or file-sharing service does not fulfill the service requirement.

(3) Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8:00 a.m. and by 5:00 p.m. on a court day. Service by facsimile

transmission that occurs after 5:00 p.m., or that occurs on a non-court day, shall be deemed to have occurred on the next court day. Service by email is complete upon transmission of the entire document in .pdf format to the intended recipient by 5:00 p.m. on a court day, but is not complete if the sender learns that it did not reach the person to be served; transmission by email that occurs after 5:00 p.m., or that occurs on a non-court day, shall be deemed to have occurred on the next court day.

(4) Service by facsimile transmission shall be confirmed by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date, at a specific time. Service by email shall be confirmed by a certificate of service, which declares that service was accomplished by email to a specific email address, on a specific date, at a specific time.

* * * *

HRCP Rule 16. PRE-TRIAL CONFERENCES; SCHEDULING; MANAGEMENT.

(a) Pretrial conferences; objectives. In any action, the court may in its discretion direct lead counsel or other attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and,
- (5) facilitating the settlement of the case.

(b) Scheduling and planning. ~~The court shall, after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time~~

- ~~(1) to join other parties and to amend the pleadings;~~
- ~~(2) to file motions; and~~
- ~~(3) to complete discovery.~~

(1) ISSUING ORDER. Except in cases exempted by the Rules of the Circuit Courts, the court must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) TIME TO ISSUE. The court must issue the scheduling order as soon as practicable, but unless the court finds good cause for delay, the court must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) CONTENTS OF THE SCHEDULING ORDER.

(A) Required Contents. The scheduling order must: (a) set the date for trial; (b) limit the time to join other parties,

amend the pleadings, complete discovery, and file motions; (c) assign the case to a tier under Rule 16.1; and (d) include other matters required by the Rules of the Circuit Courts.

(B) Permitted Contents. The scheduling order may ~~also~~ include:

(i) modify the timing of disclosures under Rules 26(a) and 26(e);

~~(4ii) modifications modify the extent of discovery to be permitted;~~

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

~~(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and~~

(vi) set dates for pretrial conferences, including a final pretrial conference;

(vii) set deadlines for the exchange and submission of trial materials, including exhibits, stipulations, deposition and trial preservation testimony, proposed jury instructions, and proposed questions for jury selection; and

~~(6) any other matters appropriate in the circumstances of the case.~~

(viii) include other appropriate matters.

(4) SCHEDULING CONFERENCE. Within the earlier of 14 days after any defendant has been served with the complaint or has appeared, the plaintiff shall file a notice requesting a Scheduling Conference to be set by the court. The court shall then issue an order or a notice setting the Scheduling Conference date. The plaintiff shall promptly serve the order or notice issued by the court setting the Scheduling Conference date on all parties who have been served with the complaint, except those who have appeared in the case before the order or notice was issued.

The Scheduling Conference shall be attended by each party who has appeared in the case or that party's lead counsel.

(5) MODIFYING A SCHEDULE. A schedule ~~shall not~~ may be modified ~~except upon a showing of~~ only for good cause and ~~by~~ leave of ~~with~~ the court~~judge's~~ consent.

* * * *

[NEW] HRCP Rule 16.1

**TIER ASSIGNMENT BASED ON CASE
CHARACTERISTICS; DISCOVERY LIMITATIONS;
TRIAL SETTING.**

(a) Assignment of Case to Tier. Except for cases exempted by Rule 16.1(b), the court, for discovery and case management purposes, shall assign each case to one of two tiers (Tier 1 or Tier 2) through the scheduling order issued pursuant to Rule 16(b). The purpose of the tier assignment is to secure the just, speedy, and efficient resolution of cases by placing them into an appropriate pathway based on considerations of proportionality, fairness, cost-effectiveness, and expedition.

(1) In assigning a case to Tier 1 or Tier 2, the court shall take into consideration the following factors, with no one factor being dispositive:

(A) The degree of readiness of the case for resolution;

(B) The number of parties involved, whether there are two parties or more than two parties, and whether any party is self-represented;

(C) The monetary value of the case and whether the amount in controversy is greater or less than \$150,000;

(D) The number and complexity of the issues to be resolved;

(E) The number, extent, and nature of the claims;

(F) The volume and extent of discovery necessary;

(G) The number of witnesses, experts, and documents;

(H) Any other factor the court determines is relevant to fulfilling the purpose of the tier assignment.

Based upon these factors, the court by order shall assign cases that can be streamlined, managed with a minimum of court involvement, and expedited to resolution within 9 months of the scheduling conference to Tier 1. All other cases shall be assigned to Tier 2.

(2) Any party or parties may, based upon a showing of good cause, request that their case be re-assigned to the other tier.

(b) Cases Exempt from Tier Assignment. The following categories of actions are exempt from assignment to a tier under Rule 16.1(a) .

(1) foreclosure;

(2) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;

(3) agency appeals pursuant to Hawai'i Revised Statutes Chapter 91;

(4) consumer debt collection;

(5) quiet title; and

(6) mechanic's and materialman's lien.

(c) Limitations on Discovery in Tier 1 cases.

(1) For cases assigned to Tier 1, each party shall be subject to the following limitations on discovery: (A) no more than four oral depositions with a cumulative time of 16 hours on the record; and (B) no more than a total of 35, in any combination, of interrogatories, including subparts, under Rule 33, requests for documents under Rule 34, and requests for admissions under Rule 36.

(2) To obtain discovery beyond the limitations on discovery established in Rule 16.1(c)(1), a party must file either:

(A) a request for discovery beyond the Tier 1 limits, by motion or request for streamlined assistance under Rule 15.1 of the Rules of the Circuit Courts, setting forth why that discovery is necessary and proportional, and where appropriate, attaching the proposed discovery, or in the case of a request for deposition, describing the anticipated discovery, and attaching a declaration or affidavit certifying a good faith effort to confer with the other party(ies) about the discovery; or

(B) a stipulation, approved by the court, that discovery beyond the Tier 1 limits is necessary and proportional and agreed to by the parties.

(d) Trial Setting for Tier 1 and Tier 2 cases.

(1) For cases assigned to Tier 1, the court shall, at the initial scheduling conference, set trial to commence within 9 months of that conference.

(2) For cases assigned to Tier 2, the court shall, at the initial scheduling conference, set trial to commence within 12 months of that conference unless a party requests a trial date after that period. Upon the request of any party at the initial scheduling conference, after reviewing the materials submitted, and considering the relative positions of all parties, the court may set trial to commence after 12 months but no later than 18 months after the conference. In determining whether and when to set trial to commence within the 12-to-18 month time frame, the court may consider the relative complexity of the case.

(3) After the trial date has been set, any party in a case assigned to Tier 1 or Tier 2 may file a motion seeking to advance the trial date.

(4) CONTINANCES OF TRIAL SET AT THE INITIAL SCHEDULING CONFERENCE.

(A) Tier 1 cases.

(i) Upon motion by any party in a Tier 1 case, the court may continue the trial for extraordinary circumstances.

(a) Extraordinary circumstances shall be defined as an event that has or is about to occur that a party has not or could not reasonably anticipate occurring or exercised due diligence to prevent prior to or during the trial and that will result in actual prejudice to a party presenting evidence on any claim or defense should trial proceed as scheduled.

(b) Extraordinary circumstances include: death or serious illness of parties, lawyers representing parties, or witnesses necessary to establish key elements of a claim or defense; ongoing actual alternative dispute resolution; or any extraordinary change in circumstances that warrant a continuance.

(c) Extraordinary circumstances generally do not include discovery disputes. The inability to obtain discovery shall not be considered an extraordinary circumstance unless a party or an attorney engages in conduct that the court finds unreasonably precluded any other party from obtaining discovery. Any party that unreasonably causes a delay may be sanctioned and precluded from providing evidence at trial as to any claim or defense.

(ii) Instead of a motion, the parties in a Tier 1 case may submit to the court a stipulation and order to continue the trial setting forth that extraordinary circumstances exist. In the

stipulation and order, the parties shall describe in detail the following:

(a) the extraordinary circumstances necessitating the continuance;

(b) efforts made to alleviate or circumvent the need for a continuance; and

(c) the time period that is necessary for resolution of the extraordinary circumstances.

(iii) If the court grants a motion or approves a stipulation to continue the trial based on extraordinary circumstances, it shall reset the case for trial at the earliest date following the anticipated resolution of any extraordinary circumstances warranting the continuance.

(B) Tier 2 cases.

(i) Upon motion by any party in a Tier 2 case, the court may continue trial for good cause.

(a) Good cause defined. Good cause includes anything that would constitute an extraordinary circumstance.

(b) In considering a motion to continue the trial for good cause, the court may consider the needs of the parties to obtain and complete adequate discovery and shall consider the proportionality factors under Rule 26(b). The court may deny a motion to continue the trial in a Tier 2 case if the asserted necessity for the requested continuance has been caused by the actions of the moving party or parties or their attorneys, or if they have not complied with pretrial deadlines.

(5) The court may on its own or upon the request of any party set status conferences to assist in resolving matters that arise during the course of the case.

(6) In the setting of trial for Tier 1 and Tier 2 cases, the intent and goal is to bring these matters to a prompt and expeditious resolution while at the same time ensuring that parties are given an opportunity to present their claims and defenses in a meaningful manner. In setting trial dates, nothing in this rule shall interfere with trial courts retaining the ability to manage their calendars based upon the needs of other pending matters.

HRCP RULE 16.12. APPEARANCE BY TELEPHONIC OR VIDEO CONFERENCE CALL.

(The rule was previously HRCP Rule 16.1 and is renumbered HRCP Rule 16.2)

HRCP Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or tangible things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(a) Required Disclosures.

(1) INITIAL DISCLOSURE.

(A) Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to all other parties:

(i) the name and, if known, the address and telephone number of all witnesses, other than those retained or specially employed by the disclosing party to present evidence under Rule 702 of the Hawai'i Rules of Evidence or those whose duties as the disclosing party's employee regularly involve giving such testimony, reasonably expected to be called at trial by the disclosing party, and a general statement concerning the nature of the testimony expected, unless the use would be solely for impeachment;

(ii) a copy -- or a description by category and location -- of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control that may be used to support the disclosing party's claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party -- who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34: (a) the declarations page(s) of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for

payments made to satisfy the judgment; and (b) any reservation of rights letter(s) received by the disclosing party.

(B) Proceedings Exempt from Initial Disclosure. The following categories of civil actions are exempt from initial disclosure:

(i) foreclosure;

(ii) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;

(iii) agency appeals pursuant to Hawai'i Revised Statutes Chapter 91;

(iv) consumer debt collection;

(v) quiet title; and

(vi) mechanic's and materialman's lien.

(C) Time for Initial Disclosures -- In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the Rule 26(f) conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. During the Scheduling Conference held pursuant to Rule 16 and Rule 12 of the Rules of the Circuit Courts, the court must rule on any objection, determine what disclosures, if any, are to be made, and set the time for disclosure, if any.

(D) Time for Initial Disclosures -- For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) EXPERT DISCLOSURE.

(A) Expert Witnesses Who Must Provide a Written Report. Except in actions exempt from initial disclosure under Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to all other parties:

(i) the name and, if known, the address and telephone number of (a) all witnesses retained or specially employed by the disclosing party to present evidence at trial under Rule 702 of the Hawai'i Rules of Evidence and (b) all witnesses whose duties as the disclosing party's employee regularly involve giving testimony under Rule 702 of the Hawai'i Rules of Evidence and who are reasonably expected to be called at trial by the disclosing party;

(ii) a written report prepared and signed by each witness identified pursuant to this Rule 26(a)(2)(A). The report must contain:

(a) a complete statement of all opinions the witness will express and the basis and reasons for each opinion;

(b) the facts and data considered by the witness in forming the opinions;

(c) a statement of the compensation paid, and to be paid, for the witness's work in the case;

(d) the witness's qualifications, including a list of all publications authored in the previous 10 years; and

(e) the case name, docket number, and state or federal jurisdiction of each case in which the witness has provided expert opinion testimony for the 3 year period preceding the date of the report.

(B) Expert Witnesses Who Are Not Required to Provide a Written Report. Except in actions exempt from initial disclosure under Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, for witnesses who a party reasonably expects to call at trial to present evidence under Rule 702 of the Hawai'i Rules of Evidence but who are not required to provide a written report under Rule 26(a)(2)(A), a party must disclose to all other parties, without awaiting a discovery request:

(i) the name and, if known, the address and telephone number of the witness;

(ii) the subject matter on which the witness is expected to present evidence under Rule 702 of the Hawai'i Rules of Evidence; and

(iii) a summary of the facts and opinions to which the witness is expected to testify.

(C) Time to Disclose Expert Testimony. Unless otherwise stipulated or ordered by the court, the parties must make the disclosures required by this Rule 26(a)(2) as follows:

(i) a party having the burden of proof on a claim for relief or an affirmative defense must serve the related disclosures no later than 120 days before the date set for trial;

(ii) a party opposing a claim for relief or an affirmative defense must serve the related disclosures no later than 90 days before the date set for trial;

(iii) a party intending to present evidence solely to rebut evidence on the subject matter identified for the first time by another party under this Rule 26(a)(2)(C)(ii) must serve the related disclosures no later than 60 days before the date set for trial.

(3) SUPPLEMENTING DISCLOSURES. A party who has made a disclosure under Rule 26(a) must supplement or correct its disclosure:

(A) in a timely manner if the party learns that in some material respect the disclosure is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL.

(A) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents,

~~electronically stored information or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(1)(B) and 26(b)(2)(i), (ii), and (iii).~~

(1) SCOPE IN GENERAL.

(A) Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the Court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause considering the limitations of Rule 26(b)(2). The Court may specify conditions for the disclosure of discovery.

(2) LIMITATIONS. By order, and subject to the provisions of Rule 16.1 in Tier 1 cases, the court may alter the limits in these rules on the number of depositions and interrogatories ~~or,~~ the length of depositions under Rule 30. By order, the court may also limit~~and~~ the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of

the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) INSURANCE AGREEMENTS. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(4) TRIAL PREPARATION: MATERIALS. A party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) TRIAL PREPARATION: EXPERTS.

(A) Subject to the provisions of Rule 16.1 in Tier 1 cases,
~~a~~ A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(A) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rule 26(b)(4) protects drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rule 26(b)(4) protects communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(A), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Subject to the provisions of Rule 16.1 in Tier 1 cases,
~~a~~ A party may, through interrogatories and/or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(E) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under ~~this subdivision~~Rule 26(b)(5)(A) or Rule 26 b)(5)(D); and (ii) with respect to discovery obtained under ~~subdivision~~Rule 26(b)(5)(B) ~~of this rule~~ the court shall require the party seeking discovery to pay the other party a fair portion of the

fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

* * * *

(d) Sequence Timing and Timing Sequence of Discovery.

(1) TIMING. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) SEQUENCE. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Conference of the Parties; Planning for Discovery.

(1) CONFERENCE TIMING. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable -- and in any event at least 21 days before a scheduling conference is to be held under Rule 16(b).

(2) CONFERENCE CONTENT; PARTIES' RESPONSIBILITIES. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) DISCOVERY PLAN. A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert these claims after production -- whether to ask the court to include their agreement in an order under Rule 502 of the Hawai'i Rules of Evidence;

(E) what changes should be made in the limitations on discovery imposed under these rules or by the Rules of the Circuit Courts, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(fg) Discovery Conference. At any time after the commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Each party and the party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the court or by the attorney for any party.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any~~T~~L, and determining such other matters, including the allocation of expenses and the appointment of a discovery master, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

* * * *

HRCP Rule 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that: (a) the limitations on discovery set forth in Rule 16.1(c) for Tier 1 cases may only be modified as provided in that rule; and (2) stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

II. RED-LINE SHOWING HOW THE TASK FORCE'S PROPOSED
AMENDMENTS WILL CHANGE THE EXISTING RULES
OF THE CIRCUIT COURTS OF THE STATE OF HAWAI'I (RCCH)

RCCH Rule 3. FORM OF PLEADINGS AND MOTIONS.

* * * *

(c) Form of first page. The first page of each document, except as provided hereinbelow in (d), shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, code number, email address, office address and telephone number of the attorney for the party in whose behalf the document is filed, or of the party if hethe party is appearing in personself-represented;

* * * *

RCCH Rule 4. PARTIES WITHOUT COUNSEL.

Parties who appear in person without counsel shall notify the clerk in writing of their names, their mailing and residence addresses, email address, and telephone numbers and shall keep the clerk informed by proper written notices of changes in the addresses and telephone numbers so given. All such notices shall be duly indexed and filed in the folio for the case.

* * * *

RCC Rule 12. **READY CIVIL CALENDAR SCHEDULING.**

(a) **Preparation of calendar by clerk.** At least once in each calendar month, the clerk shall prepare a list of all civil cases wherein a pretrial statement has been filed. Such list shall be known as the "Ready Calendar" and shall be available for public examination.

(b) **Pretrial statement.** No case shall be placed on the "Ready Calendar" unless a "Pretrial Statement" has been filed and served in accord with Rule 5 of the Hawai'i Rules of Civil Procedure. The pretrial statement shall be filed within 8 months after a complaint has been filed or within any further period of extension granted by the court. It shall contain the following information:

- (1) A statement of facts;
- (2) Admitted facts;
- (3) All claims for relief and all defenses advanced by the party submitting the pretrial statement and the type of evidence expected to be offered in support of each claim and defense;
- (4) The names, addresses, categories (i.e., lay, eye, investigative), and type (i.e., liability, damages) of all non-expert witnesses reasonably expected to be called by the party submitting the statement and a general statement concerning the nature of the testimony expected;
- (5) The name, address and field of expertise of each expert witness expected to testify and a general statement concerning the nature of the testimony expected;
- (6) A statement that each party, or the party's lead counsel, conferred in person with the opposing party, or with lead counsel for each opposing party, in a good faith effort to limit all disputed issues, including outstanding discovery, and considered the feasibility of settlement and alternative dispute resolution options. A face-to-face conference is required under these rules and shall not be satisfied by a telephone conference or written correspondence. The face-to-face conference shall take place in the judicial circuit where the action is pending unless otherwise agreed by counsel and/or the parties; and
- (7) A statement identifying any party who objects to alternative dispute resolution and the reasons for objecting. If the parties have agreed to an alternative dispute resolution process, a statement identifying the process.

(c) Selection of trial date and consideration of alternative dispute resolution.

(1) Except in cases which have been designated as complex litigation, within 60 days of the filing of the initial pretrial statement, the plaintiff in all cases filed in the First Circuit shall schedule a trial setting status conference that shall be attended by each party or each party's lead counsel and shall be conducted by the Civil Administrative Judge, or the Civil Administrative Judge's designee. The Civil Administrative Judge, or designee, shall:

(A) Establish the trial date; and

(B) Discuss alternative dispute resolution options.

The court may consider other matters which may be conducive to the just, efficient and economical determination of the case.

(2) In the Second, Third and Fifth Circuits, unless the court to which the case is assigned orders that the procedure set forth above in paragraph (c)(1) of this rule shall apply, the plaintiff shall, within 60 days of the filing of the initial pretrial statement, file a document with the court indicating the following:

(A) That counsel has agreed upon 3 separate weeks in which the trial can occur, which dates will fall within 150-240 days from the filing date of the initial pretrial statement and that if the trial can be for any one of these 3 weeks, all counsel will be ready to proceed; provided, if the court's calendar cannot accommodate any of the dates, then counsel will meet for a trial setting status conference or agree to a date by conference call; or

(B) That counsel cannot agree and the parties wish a trial setting status conference.

Any party may request a trial setting status conference to establish a trial date and discuss alternative dispute resolution options.

(d) Extension of time to file pretrial statement. By motion, and upon a showing of good cause, the 8 month period in which plaintiff has to file a pretrial statement may be extended by the court.

(e) Designation and order of actions. The cases on the Ready Calendar shall be designated by their respective numbers and by the surname of the first named party of each side and shall be listed in the order of the filing of the initial pretrial statement.

(f) Motion to strike from calendar. Within 10 days after a pretrial statement has been served, any party may move to strike the statement or the action from the calendar. The motion to strike shall be supported by an affidavit that clearly sets forth why the statement is incorrect or deficient, or why the case should otherwise be stricken from the calendar. The fact that the statement has been filed prior to substantial completion of discovery by other parties to the action shall not be grounds to strike the statement or the action from the calendar.

(g) Restoration to calendar. A case stricken from the ready calendar shall be restored thereto upon the filing of another pretrial statement and its place shall be determined by the filing date of the later statement, unless the court upon motion determines a different priority, e.g., restores the action to the date of the first pretrial statement. Any such motion for a different priority shall be filed at the same time as the new pretrial statement and must be accompanied by an affidavit stating why the case was previously stricken from the calendar and demonstrating good cause why the different priority should be fixed.

(h) Responsive pretrial statement. Every defendant shall file a "Responsive Pretrial Statement", served as required by Rule 5 of the Hawai'i Rules of Civil Procedure, that sets forth the same kind of information required in the pretrial statement within 60 days of the filing of the first pretrial statement.

(i) Extension of time to file responsive pretrial statement. Parties may stipulate once as a matter of course at any time before the responsive pretrial statement is due to extend the time in which to file the responsive pretrial statement. Parties shall not extend the time in which to file the responsive pretrial statement for more than 30 days. Otherwise, a motion seeking court approval to file a responsive pretrial statement more than 60 days after the filing of a pretrial statement shall be filed within 30 days of filing of a pretrial statement and shall specifically state why a responsive pretrial statement cannot be timely filed. If incomplete discovery is the reason why a responsive pretrial statement cannot be submitted, the motion shall include a schedule for completing discovery and the date when the responsive pretrial statement shall be filed.

~~(j) Amending pretrial statements.~~ Pretrial statements must be continually amended in the same manner in which answers to interrogatories must be amended.

(a) Scheduling Order.

(1) ISSUING ORDER. Except in categories of actions exempted by Rule 12(b) and cases designated as complex litigation under Rule 12(c), the trial judge must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) TIME TO ISSUE. The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) CONTENTS OF THE SCHEDULING ORDER.

(A) Required Contents. The judge shall enter an order governing and addressing: (i) the setting of a date for trial; (ii) disclosures under Rule 26(a) of the Hawai'i Rules of Civil Procedure; (iii) the extent of discovery to be permitted; (iv) the discovery completion date; (v) deadlines for motions to be filed and heard, to join other parties, and to amend pleadings; and (vi) the assignment of a case to a tier under Rule 16.1 of the Hawai'i Rules of Civil Procedure.

(B) Permitted Contents. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e) of the Hawai'i Rules of Civil Procedure;

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences, including a final pretrial conference;

(vii) set deadlines for the exchange and submission of trial materials, including exhibits, stipulations, deposition and trial preservation testimony, proposed jury instructions, and proposed questions for jury selection; and

(viii) include other appropriate matters.

(4) SCHEDULING CONFERENCE. Within the earlier of 14 days after any defendant has been served with the complaint or has appeared, the plaintiff shall file a notice requesting a Scheduling Conference to be set by the court. The court shall then issue an order or a notice setting the Scheduling Conference date. The plaintiff shall promptly serve the order or notice issued by the court setting the Scheduling Conference date on all parties who have been served with the complaint, except those who have appeared in the case before the order or notice was issued. The Scheduling Conference shall be attended by each party who has appeared in the case or that party's lead counsel.

(5) MODIFYING A SCHEDULE. A schedule may be modified only for good cause and with the judge's consent.

(6) CONFERENCE OF THE PARTIES; PLANNING FOR DISCOVERY.

(A) Timing of Parties' Conference. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) of the Hawai'i Rules of Civil Procedure or when the court orders otherwise, the parties must confer as soon as practicable -- and in any event at least 21 days before a scheduling conference is to be held under Rule 16(b) of the Hawai'i Rules of Civil Procedure.

(B) Matters Considered in Parties' Conference; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1) of the Hawai'i Rules of Civil Procedure; discuss whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure; discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(C) Discovery Plan. A discovery plan must state the parties' views and proposals on:

(i) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a) of the Hawai'i Rules of Civil Procedure, including a statement of when initial disclosures were made or will be made;

(ii) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(iii) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(iv) any issues about claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert these claims after production -- whether to ask the court to include their agreement in an order;

(v) what changes should be made in the limitations on discovery imposed under the Hawai'i Rules of Civil Procedure or these rules, and what other limitations should be imposed; and

(vi) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c) of the Hawai'i Rules of Civil Procedure.

(7) SCHEDULING CONFERENCE STATEMENT. Unless otherwise ordered by the court, each party shall file with the court and serve on all parties a "Scheduling Conference Statement" no later than seven (7) days prior to the scheduling conference. The Scheduling Conference Statement shall include the following:

(A) A short statement of the nature of the case;

(B) A statement of jurisdiction with cited authority for jurisdiction and a short description of the facts conferring venue;

(C) Whether jury trial has been demanded;

(D) Whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure;

(E) A statement addressing the appropriateness, extent, and timing of disclosures pursuant to Rule 26 of the Hawai'i Rules of Civil Procedure that are not covered by the report(s) filed pursuant to Rule 26(f) of the Hawai'i Rules of Civil Procedure;

(F) A list of discovery completed, discovery in progress, motions pending, and hearing dates;

(G) A statement addressing the appropriateness of any of the special procedures or other matters specified in Rule 16(c) of the Hawai'i Rules of Civil Procedure that are not covered by the report(s) filed pursuant to Rule 26(f) of the Hawai'i Rules of Civil Procedure;

(H) A statement identifying any related case, including pending cases as well cases that have been adjudicated or have otherwise been terminated, in any state or federal court;

(I) Additional matters at the option of the parties.

Each party shall certify that it has conferred pursuant to paragraph (a)(6) or state the reasons why the parties did not fulfill the requirement to confer.

(8) ATTENDANCE AND MATTERS FOR CONSIDERATION AT A SCHEDULING CONFERENCE. All parties receiving notice of the scheduling conference shall attend in person or by counsel and shall be prepared to discuss the following subjects:

(A) Service of process on parties not yet served;

(B) Jurisdiction and venue;

(C) Anticipated motions, and deadlines as to the filing and hearing of motions;

(D) Appropriateness and timing of motions for dismissal or for summary judgment under Rule 12 or Rule 56 of the Hawai'i Rules of Civil Procedure;

(E) Deadlines to join other parties and to amend pleadings;

(F) Whether the case should be assigned to Tier 1 or Tier 2 under Rule 16.1 of the Hawai'i Rules of Civil Procedure.

(G) Anticipated or remaining discovery, including discovery cut-off;

(H) The control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 16.1, Rule 26, and Rules 29 through 37 of the Hawai'i Rules of Civil Procedure;

(I) Further proceedings, including setting dates for additional pretrial conference(s), settlement conference, final pretrial conference, submission and exchange of trial materials, and trial, and compliance with Rule 12.1;

(J) Appropriateness of special procedures such as consolidation of actions for discovery or pretrial, alternative dispute resolution procedures, or application of procedures for cases designated as complex litigation;

(K) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the action or proceeding;

(L) Prospects for settlement, including participation in the court's mediation program or any other alternative dispute resolution process;

(M) Any other matters that may be conducive to the just, efficient, and economical determination of the action or proceeding, including the definition or limitation of issues, or any of the other matters specified in Rule 16(c) of the Hawai'i Rules of Civil Procedure.

(b) Exempt actions.

(1) CATEGORIES OF EXEMPT ACTIONS. The following categories of actions are exempt from the provisions of Rule 12(a):

(A) foreclosure;

(B) cases included in and not exempted from the Court Annexed Arbitration Program established by Hawai'i Revised Statutes § 601-20;

(C) agency appeals pursuant to Hawai'i Revised Statutes Chapter 91;

(D) consumer debt collection;

(E) quiet title; and

(F) mechanic's and materialman's lien.

(2) SCHEDULING FOR EXEMPT ACTIONS. For actions exempted under paragraph (b)(1), unless otherwise ordered by the court, within 8 months after the complaint has been filed, the plaintiff shall file a notice requesting a trial setting/status conference to be set by the court. After holding the conference, or based on the pleadings, the court shall establish the trial date or other appropriate deadlines for resolving the case. The court, in its discretion, may require the parties in whole or in part to follow the scheduling conference procedures set forth in Rule 12(a). The court may also consider alternative dispute resolution options and other matters which may be conducive to the just, efficient, and economical determination of the case.

(kc) Designation as complex litigation. Any party may move to have a case designated by the court as Complex Litigation within 8 months after a complaint has been filed or at any time upon good cause shown. The judge hearing the Motion for Designation as Complex Litigation will have complete and unreviewable discretion in making the determination. Upon such a designation by the court, in cases where a jury will decide all issues the case will be assigned to a trial judge for handling until conclusion. In non-jury cases, the case will be assigned to a trial judge for handling until trial, but may be reassigned to a separate judge for the actual trial. This rule shall apply to cases filed in the First Circuit and other circuits as ordered by the Civil Administrative Judge of that circuit. Once a case is designated by the court as Complex Litigation, the scheduling and case management of the case shall be governed by orders issued by the judge assigned to the case pursuant to this paragraph (c).

(1) CRITERIA. In determining whether a case should be designated as Complex Litigation, the court shall consider the following criteria:

- (i) The estimated amount in controversy is in excess of \$750,000, excluding interest, attorney's fees and costs;
- (ii) The estimated length of trial is six weeks or more;
- (iii) The number of parties, including all plaintiffs and defendants is ten or more;
- (iv) One or more of the parties is a person who is not a citizen or resident of the United States;
- (v) The anticipated number of expert witnesses is eight or more;

(vi) The case involves complex and multiple issues;

(vii) The subject matter of the case involves either asbestos, natural catastrophes, national trends, construction or class actions;

(viii) Discovery is anticipated to be complex; or

(ix) Any other matters which may be conducive to the just, efficient, and economical determination of the case.

(2) MOTION FOR DESIGNATION. The motion for designation as Complex Litigation shall identify which of the criteria set forth in section (1) applies to the case, and shall set forth wherever applicable, the following information;

(i) A short statement of the nature of the case;

(ii) A list of parties served, in the process of being served or anticipated to be joined in the action;

(iii) Whether jury trial has been demanded or will be demanded;

(iv) A list of anticipated discovery, discovery in progress and completed discovery;

(v) A list of anticipated motions, motions pending and hearing dates; and

(vi) Any other matters which may be conducive to the just, efficient, and economical determination of the action or proceeding, including the definition or limitation of issues.

(3) CASE MANAGEMENT CONFERENCES. The judge assigned to the complex case shall conduct case management conference(s) to determine all deadlines under these rules at which the court may:

(i) Establish deadlines for the following:

(A) A meeting with the Judiciary Center for Alternative Dispute Resolution; and

(B) Other matters as deemed applicable by the court.

(ii) Discuss the following:

(A) Appointment of special masters pursuant to Rules 26 and 53 of the Hawai'i Rules of Civil Procedure;

(B) Discovery schedule, including setting of any further case management conferences; and

(C) Other matters which may be conducive to the just, efficient, and economic determination of the case.

(4) COMPLEX CASE MANAGEMENT ORDER(S). The court may issue complex case management order(s) which may include, but shall not be limited to, the items set forth in section (3). The order(s) shall be binding as to all parties. The provisions of any order shall not excuse compliance with otherwise applicable rules or deadlines unless specifically ordered by the court.

(4d) Final naming of witnesses. Sixty (60) days prior to the discovery cut off date plaintiff must name all theretofore unnamed witnesses. Thirty (30) days prior to the discovery cut off date defendant must name all theretofore unnamed witnesses.

(me) Further discovery. After the deadline for Final Naming of Witnesses, a Motion for Further Discovery can be filed upon a showing of good cause and substantial need. In ruling on a Motion for Further Discovery, the court shall give due consideration to the proportionality factors under Rule 26(b) of the Hawai'i Rules of Civil Procedure.

(nf) Exclusion of witnesses. Any party may move the court for an order excluding a witness named by an opposing party if said witness was or should have been known at an earlier date and allowing the witness to testify will cause substantial prejudice to the movant. The movant under this motion must make a statement concerning the prejudice that will be suffered should this new witness be allowed to testify, and why the opposing party either knew or should have known of the witness at an earlier date. The opposing attorney must submit an affidavit stating that the witness was not known at an earlier date, nor with due diligence should have been known.

(og) Additional witness. At any time after the time for Final Naming of Witnesses, upon a showing of good cause and substantial need a party may move for the addition of a witness.

(ph) Deviation in time for filing. Deviations from the time requirements for the filing of any document under this rule shall be allowed only upon good cause shown.

(q) Dismissal for want of prosecution. An action may be dismissed sua sponte with written notice to the parties if a pretrial statement has not been filed within 8 months after a complaint has been filed (or within any further period of extension granted by the court) or if a trial setting status notice requesting a Scheduling Conference or trial setting/status conference has not been scheduled filed as required by this Rule 12(c). Such dismissal may be set aside and the action reinstated by order of the court for good cause shown upon motion duly filed not later than ten (10) days from the date of the order of dismissal.

(r) Discovery cut off. Discovery shall be cut off 60 days before the assigned trial date.

(s) Additional party practice. Ten (10) days after the appearance of any additional party who has been joined following the service of the initial pretrial statement or one year after the filing of the complaint, whichever is later, the party joining the additional party and all other parties asserting affirmative claims against the additional party shall each file and serve (in accord with Rule 5 of the Hawai'i Rules of Civil Procedure) a pretrial statement against the additional party. The pretrial statement shall set forth the same kind of information as required by Rule 12(b) of these rules. The additional party shall file and serve (in accord with Rule 5 of the Hawai'i Rules of Civil Procedure) a responsive pretrial statement that sets forth the same kind of information required by Rule 12(b) of these rules within 60 days of the service of the pretrial statement against the additional party. The additional party shall move the court for any Any party joining a new party after trial has been set must serve, with the initiating pleading, a copy of the current order(s) setting the trial date and pretrial deadlines. Within 30 days of filing a responsive pleading, any newly joined party may move for a continuance of the trial date or other deviation from the time requirements under these rules within 30 days of the filing of the pretrial statement against said additional party or order(s) setting pretrial deadlines.

(t) Sanctions. Failure of a party or his attorney to comply with any section of this rule is deemed an undue interference with orderly procedures and unless good cause is shown, the court may, in its discretion, impose sanctions in accord with Rule 12.12(a)(6) of these rules.

[NEW] RCCH RULE 12.1

PRETRIAL STATEMENT

Unless otherwise ordered by the court, the parties shall serve and file separate pretrial statements no later than seven days before any final pretrial conference scheduled by the court, and if no such conference has been set, then no later than fourteen days before trial. The pretrial statement shall contain the following information:

(a) Party. The name of the party or parties on whose behalf the statement is filed.

(b) Substance of Action. A brief description of the substance of the claims and defenses presented.

(c) Undisputed Facts. A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(d) Disputed Factual Issues. A plain and concise statement of all disputed factual issues.

(e) Relief Prayed. A detailed statement of all relief requested for all claims and defenses asserted, including a particularized itemization of all elements of damages claimed.

(f) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to statutes and decisions relied upon. Extended legal argument is not to be included in the pretrial statement.

(g) Witnesses to be Called. A list of all witnesses likely to be called at trial.

(h) Exhibits, Schedules, and Summaries. A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each, describing its substance or purpose and the identity of the sponsoring witness.

(i) Further Discovery or Motions. A statement of any uncompleted discovery or undecided motions that may impact trial proceeding as scheduled.

(j) Stipulations and requests or judicial notice. A statement of stipulations requested or proposed for pretrial or trial purposes. Identification of any request for judicial notice of fact or law with supporting documentation and certification by the party that notice pursuant to the Hawaii Rules of Evidence, statute, rule, or case law has been provided to all other parties.

(k) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims, or defenses.

(l) Alternative Dispute Resolution. A statement summarizing the status of any alternative dispute resolution process that may impact trial.

(m) Estimate of Trial Time. An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel must make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, agreed statements of facts, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.

(n) Miscellaneous. Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient, and economical determination. Each party shall specify any equipment or technology not provided by the court that it plans to use in presenting its case. Every party must use reasonable efforts to share the cost of equipment or technology not provided by the court that is necessary and is used to present evidence, giving due consideration to each party's financial means to share costs.

(a) Settlement conference. ~~A~~During the scheduling conference held pursuant to Rule 12(a), the judge shall set a settlement conference ~~may be ordered by the court at any time before trial~~for a date before trial, unless the judge believes another judge should conduct the settlement conference, in which case a settlement conference date shall be issued no later than 30 days after the scheduling conference. Alternative dispute resolution ("ADR") options, including but not limited to mediation, shall be discussed at the scheduling conference held pursuant to Rule 12(a), and if ADR process(es) are determined to be appropriate, the court should consider including orders scheduling and to facilitate the ADR process(es) in the scheduling order. Any party may also file a request for settlement conference at any time prior to trial. A settlement conference in civil cases shall be subject to the following guidelines:

(1) If a party settles or otherwise disposes of any action prior to a scheduled settlement conference, the party shall immediately notify the judge who scheduled the conference;

(2) Each party to the action shall attend the conference or be represented by an attorney or other representative who has authority to settle the case;

(3) For each party represented by counsel an attorney who is assigned to try the case shall attend the settlement conference. It is expected that the attorney will have become familiar with all aspects of the case prior to the conference;

(4) Each party to the action shall have thoroughly evaluated the case and shall have discussed and attempted to negotiate a settlement through an exchange of written bona fide and reasonable offers of settlement prior to the conference~~+~~. Unless otherwise ordered by the court, the Plaintiff(s)' offer(s) shall be made prior to the Defendant(s)' offer(s). The specific timing of the offers shall be discussed at the scheduling conference held pursuant to Rule 12(a), and the court should consider including deadlines for the offers in the scheduling order.

(5) The judge conducting the settlement conference may, at the conclusion of said conference, continue said conference to another time and date, and from time to time thereafter for

continued settlement negotiations if ~~he~~the judge has reason to believe a settlement can thereby be effectuated;

(6) SANCTIONS. The failure of a party or his attorney to appear at a scheduled settlement conference, the neglect of a party or his attorney to discuss or attempt to negotiate a settlement prior to the conference, or the failure of a party to have a person authorized to settle the case present at the conference shall, unless a good cause for such failure or neglect is shown, be deemed an undue interference with orderly procedures. As sanctions, the court may, in its discretion:

(i) Dismiss the action on its own motion, or on the motion of any party or hold a party in default, as the case may be;

(ii) Order a party to pay the opposing party's reasonable expenses and attorneys' fees;

(iii) Order a change in the calendar status of the action; and/or

(iv) Impose any other sanction as may be appropriate.

(b) Settlement conference statement. In all civil cases, including those which have been designated as Complex Litigation, a settlement conference statement shall be filed not less than 5 working days prior to the date of the settlement conference. The settlement conference statement shall be filed with the clerk of court and a file-marked copy shall be delivered to the office of the judge conducting the settlement conference, and copies served upon all other parties. The statement shall set forth, wherever applicable, the following information:

(1) FOR THE PLAINTIFF:

(i) The name, age, marital status and occupation of all noncorporate plaintiffs;

(ii) The relief claimed by each plaintiff;

(iii) A factual summary of the case;

(iv) Plaintiff's theories of liability against each defendant;

(v) The name, address, field of expertise and summary of substance of testimony of each expert witness who supports plaintiff's theories of liability;

____ (vi) The name, address and summary of substance of testimony of all other witnesses who support plaintiff's theories of liability;

____ (vii) A statement of plaintiff's position on general damages, including a statement of all injuries and damages claimed by plaintiff, together with the names of plaintiff's expert witnesses, including doctors, and copies of their reports;

____ (viii) Plaintiff's claim of special damages including an itemized statement of all special damages claimed by plaintiff;

____ (ix) The name, address, field of expertise and summary of substance of testimony of each expert witness who supports the plaintiff's claim of special damages;

____ (x) The name, address and summary of substance of testimony of all other witnesses who support plaintiff's position on damages; and

____ (xi) A statement of the status of settlement negotiations.

____ (2) FOR THE DEFENDANTS:

____ (i) The age, marital status, occupation and corporate or other legal status of each defendant;

____ (ii) The name of applicable insurance carriers and the stated policy limits;

____ (iii) A factual summary of the case;

____ (iv) The defense to each of plaintiff's theories of liability;

____ (v) The name, address, field of expertise and summary of substance of testimony of each expert witness who supports the defenses to plaintiff's theories of liability;

____ (vi) The name, address and summary of substance of testimony of all other witnesses who support the defenses to plaintiff's theories of liability;

____ (vii) A statement of the defense position on general damages, including a statement of all injuries and damages disputed by defendant, together with the names of defendant's expert witnesses including doctors, and copies of their reports;

- ~~(viii) The defendant's position on special damages including a statement of which special damages are disputed;~~
- ~~(ix) The name, address, field of expertise and summary of substance of testimony of each expert witness who supports the defense position on special damages;~~
- ~~(x) The name, address and summary of substance of testimony of other witnesses who support the defense position on damages; and~~
- ~~(xi) A statement of the status of settlement negotiations.~~

(cb) Confidential settlement conference letter. At least five (5) working days before the settlement conference, each party shall deliver directly to the settlement conference judge a confidential settlement conference letter, which shall not be filed or served upon the other parties. The confidential settlement conference letter shall not be made a part of the record and confidential information contained in the letter shall not be disclosed to the other parties without express authority from the party submitting the letter. The court will destroy the confidential settlement conference letter no later than entry of final judgment in the case.

The confidential settlement conference letter shall include the following:

(1) For the plaintiff:

(i) The name, age, marital status and occupation of all noncorporate plaintiffs;

(ii) A brief statement of the case;

(iii) A brief statement of the claims and defenses, e.g. statutory and other grounds upon which claims are founded, a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses, and a description of the major issues in dispute, including damages, counsel's good faith evaluation of the case, and other information requested by the court.;

(iv) A summary of the proceedings to date, including a statement as to the status of discovery;

(v) An estimate of the time and expenses (including attorney's fees and all litigation costs) to be expended for further discovery, pretrial proceedings, and trial;

(vi) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and

(vii) a brief statement of the party's position on settlement.

(2) For the defendants:

(i) The age, marital status, occupation and corporate or other legal status of each defendant;

(ii) The name of applicable insurance carriers and the stated policy limits;

(iii) A brief statement of the case;

(iv) A brief statement of the claims and defenses, e.g. statutory and other grounds upon which claims are founded, a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses, and a description of the major issues in dispute, including damages;

(v) A summary of the proceedings to date, including a statement as to the status of discovery;

(vi) An estimate of the time and expenses (including attorney's fees and all litigation costs) to be expended for further discovery, pretrial proceedings, and trial;

(vii) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and

(viii) a brief statement of the party's position on settlement.

All written settlement offers submitted pursuant to paragraph (a)(4) of this rule shall be appended to the confidential settlement letter.

RCCH Rule 12.23. ALTERNATIVE DISPUTE RESOLUTION.

(a) Authority to order. The court, sua sponte or upon motion or request by a party, may, in exercise of its discretion, order the parties to participate in a non-binding Alternative Dispute Resolution process (ADR or ADR process) subject to terms and conditions imposed by the court. ADR includes mediation, summary jury trial, neutral evaluation, non-binding arbitration, presentation to a focus group, or other such process the court determines may be helpful in encouraging an economic and fair resolution of all or any part of the disputes presented in the matter. Subsections (a) through (e) do not apply to ADR administered by the Hawai‘i Judiciary, such as the Court Annexed Arbitration Program.

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[NEW] RCCH Rule 15.1.

STREAMLINED DISCOVERY ASSISTANCE.

(a) Upon agreement of all parties involved in a discovery dispute, the parties may seek resolution of the dispute through this streamlined procedure.

(1) Parties desiring streamlined discovery assistance shall agree upon a deadline for the simultaneous submission of letter briefs to the court.

(2) The letter brief of a party shall be delivered to chambers and served on all other parties by the deadline. The letter brief shall contain all relevant information, including:

(A) confirmation of the deadline for submission of letter briefs;

(B) dates of discovery cut-off and trial; and

(C) a discussion of the dispute and relief sought.

Unless otherwise ordered by the court, the letter briefs shall be five pages or less, inclusive of all exhibits.

(3) Upon receipt of the letter briefs, the court shall determine the procedure for resolving the dispute. The court may announce a decision without a conference or hearing. If a conference or hearing is set by the court, the court shall specify whether counsel must attend in person or may attend by telephonic or video conferencing. The court may request that one or more of the parties file a motion pursuant to the Hawai'i Rules of Civil Procedure.

(4) The prevailing party shall prepare an order in compliance with Rule 23. All letter briefs shall be appended to the order for purposes of appellate review.

(b) Conference Required. The court will not entertain a request for streamlined discovery assistance unless the parties involved in the dispute have previously conferred, in person and/or by telephonic or video conferencing, to attempt to resolve or minimize the scope of the dispute, including but not limited to addressing the requirement that discovery be proportional to the needs of the case, in a good faith effort to eliminate the need for streamlined discovery assistance. Communication by email does not satisfy this requirement.

(c) Certificate of Compliance. When submitting a letter brief in accordance with this rule, a party shall certify compliance with paragraph (b) this rule. Certification shall include the date, time and length of the meeting and/or telephonic or video conference, and the names of all participants.