Appendix 8

RED-LINE SHOWING HOW THE TASK FORCE'S PROPOSED AMENDMENTS WILL CHANGE THE EXISTING HAWAIʻI RULES OF CIVIL PROCEDURE AND THE EXISTING RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAIʻI

I. RED-LINE SHOWING HOW THE TASK FORCE'S PROPOSED AMENDMENTS WILL CHANGE THE EXISTING HAWAIʻI RULES OF CIVIL PROCEDURE (HRCP)

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

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(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.

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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);

(~~4~~ii) ~~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.

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[NEW] HRCP Rule 16.1 TIER ASSIGNMENT BASED ON CASE CHARACERISTICS; 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.~~1~~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) 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 dislosures 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.

(~~B~~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.

(~~C~~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~~D) ~~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.

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(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~~;~~, 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.

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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 HAWAIʻI (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 ~~he~~the party is ~~appearing in person~~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. ~~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.

(~~l~~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.

(m~~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.

(n~~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.

(o~~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.

(p~~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.

(~~q~~i) 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 r~~R~~ule ~~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~~j~~) Discovery cut off. Discovery shall be cut off 60 days before the assigned trial date.

(s~~k~~) 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~~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.~~1~~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.

RCCH Rule 12.~~1~~2. MANDATORY CIVIL SETTLEMENT CONFERENCE~~;~~ ~~SETTLEMENT CONFERENCE STATEMENT~~; CONFIDENTIAL SETTLEMENT CONFERENCE LETTER.

(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.~~

(~~c~~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~~, 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.~~2~~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.