

[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.