SCRU-11-0000051

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of the

HAWAIʻI RULES OF CIVIL PROCEDURE

ORDER AMENDING THE HAWAIʻI RULES OF CIVIL PROCEDURE
(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ.)[1]

IT IS HEREBY ORDERED that Rules 16, 16.1, 26 and 29 of the Hawaiʻi Rules of Civil Procedure are amended, and new Rule 16.1 is adopted, effective January 1, 2021, as follows (deleted material is bracketed and stricken, new material is underscored):

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 self-represented 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;

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[1] Associate Justice Richard W. Pollack, who participated in the consideration of these amendments, retired on June 30, 2020.

(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 of the State of Hawai‘i, the court must issue a scheduling order after consulting with the parties' attorneys and any self-represented 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:

(i) set the date for trial;

(ii) limit the time to join other parties, amend the pleadings, complete discovery, and file motions;

(iii) either assign, or specifically decline to assign, the case to the expedited track under Rule 16.1 of these Rules; and

(iv) include other matters required by the Rules of the Circuit Courts of the State of Hawai‘i.

(B) *Permitted contents*. The scheduling order may [~~also include~~]:

(i) modify the timing of disclosures under Rules 26(a) and 26(e) of these Rules;

[~~(4)~~] (ii) [~~modifications of~~] 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;

(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, depositions and trial preservation testimonies, proposed jury instructions, and proposed questions for jury selection; and

(viii) include other appropriate matters.

[~~(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and~~

~~(6) any other matters appropriate in the circumstances of the case.~~]

(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. In a case with multiple defendants, where despite plaintiff's diligent efforts it appears likely that not all defendants will be served with the complaint prior to the first Scheduling Conference, the plaintiff may request that the Scheduling Conference be rescheduled to allow additional time for service.

(5) MODIFYING A SCHEDULE. A schedule [~~shall not~~] may be modified [~~except upon a showing of~~] only for good cause and [~~by leave of the court~~] with the judge's consent.

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NEW RULE

Rule 16.1. EXPEDITED OR NON-EXPEDITED TRACK ASSIGNMENT BASED ON CASE CHARACTERISTICS; DISCOVERY LIMITATIONS; TRIAL SETTING.

(a) Assignment of case to expedited track. Except for cases exempted by Rule 16.1(b) of this Rule, the court, for discovery and case management purposes, may upon the agreement of the parties, designate the case for an expedited track through the scheduling order issued pursuant to Rule 16(b) of these Rules. The purpose of the expedited track is to secure the just, speedy, and efficient resolution of cases by placing them into an appropriate pathway based on considerations of fairness, cost-effectiveness, and expedition.

(1) In assigning a case to an expedited track, the court may 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 2 parties or more than 2 parties, and whether any party is self-represented;

(C) The monetary value of the case;

(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 expedited-track assignment.

Based upon these factors, the court by order may 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 the expedited track.

(2) Any party may, based upon a showing of good cause, request that a case originally assigned to the expedited track be removed from it.

(b) Exempt actions. The following categories of actions are exempt from the provisions of this Rule 16.1.

(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 expedited track cases.

(1) For cases assigned to the expedited track, each party shall be subject to the following limitations on discovery:

(A) no more than 4 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 of these Rules, requests for documents under Rule 34 of these Rules, and requests for admissions under Rule 36 of these Rules.

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

(A) a request for discovery beyond the expedited track limits, by motion or request for streamlined assistance under Rule 15.1 of the Rules of Circuit Courts of the State of Hawai‘i, setting forth why that discovery is necessary and why its burden or expense will not outweigh its likely benefit under Rule 26(b)(2)(iii) of these Rules, 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 expedited track limits is necessary, that the burden or expense of the discovery will not outweigh its likely benefit under Rule 26(b)(2)(iii) of these Rules, and that the discovery is agreed to by the parties.

(d) Trial setting for expedited track and non-expedited track cases.

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

(2) For cases not assigned to the expedited track that are subject to this Rule 16.1 and are not exempt actions under Rule 12(b)(1) of the Rules of the Circuit Courts of the State of Hawai‘i, 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 may file a motion seeking to advance the trial date.

(4) Upon motion by any party in an expedited-track or non-expedited track case, the court may continue the trial for good cause.

Rule [~~16.1.~~]16.2. APPEARANCE BY TELEPHONIC OR VIDEO CONFERENCE CALL.

(a) Telephonic or video conferencing call allowed. Except as otherwise provided by statute or rule, the court should, absent good reason, as determined in the court's discretion, allow any party, to appear by telephonic or video conferencing for any of the following motions, conferences, hearings, or proceedings:

(1) Trial setting conferences;

(2) Status conferences;

(3) Uncontested motions; and

(4) Such other conferences or hearings which the trial court approves.

If, at any time during a motion, conference, hearing or proceeding conducted by telephonic or video conferencing the court determines a personal appearance is necessary by one or more of the parties, the court may continue the matter and require a personal appearance by one or more of the parties.

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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) of this Rule 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 of these Rules 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 of these Rules:

(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 Hawaii 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 of these Rules and Rule 12 of the Rules of the Circuit Courts of the State of Hawai‘i, 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 DISCLOSURES.

(A) *Expert witnesses who must provide a written report.* Except in actions exempt from initial disclosure under Rule 26(a)(1)(B) of this Rule 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) of this Rule 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) of this Rule, 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) of this Rule 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) of this Rule.

(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) of this Rule. The Court may specify conditions for the disclosure of discovery.

(2) LIMITATIONS. By order, and subject to the provisions of Rule 16.1 of these Rules in expedited-track cases, the court may alter the limits in these [~~r~~]Rules on the number of depositions and interrogatories, [~~or~~] the length of depositions under Rule 30 of these Rules[~~. By order, the court may also limit~~] and the number of requests under Rule 36 of these Rules. 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) of this Rule.

(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 [~~r~~]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) of these Rules 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 of these Rules in expedited-track 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) of this Rule 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) of this Rule protects drafts of any report or disclosure required under Rule 26(a)(2) of this Rule, 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) of this Rule protects communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(A) of this Rule, 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 of these Rules in expedited-track 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) of these Rules 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) of this Rule; and (ii) with respect to discovery obtained under [~~subdivision~~] Rule 26(b)(5)[~~(B)~~](D) of this [~~r~~]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) of this Rule, except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) of this Rule, 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~~]the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement [~~his~~]the party's 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~~]the expert witness is expected to testify, and the substance of [~~his or her~~]the expert witness's 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) of this Rule 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 these Rules.

(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) of this Rule, discuss any issues about preserving discoverable information, and develop a proposed discovery plan. The attorneys of record and all self-represented 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 requirements for disclosures under Rule 26(a) of this Rule, 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 of the State of Hawai'i, and what other limitations should be imposed; and

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

[~~(f)~~]**(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 of these Rules.

[~~(g)~~](h) Signing of Discovery Requests, Responses, and Objections.

(1) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least [~~one~~]1 attorney of record in the attorney's individual name, whose address shall be stated. A[~~n~~] [~~unrepresented~~] self-represented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

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) of these Rules for expedited-track cases may only be modified as provided in that rule; and

(b) stipulations extending the time provided in Rules 33, 34, and 36 of these Rules 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.

DATED: Honolulu, Hawai‘i, October 8, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S McKenna

/s/ Michael D. Wilson