

SCRU-11-0000632

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAI‘I

ORDER AMENDING THE RULES OF THE
CIRCUIT COURTS OF THE STATE OF HAWAI‘I

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ.)¹

IT IS HEREBY ORDERED that Rules 3, 4, 12, and 12.1 of the Rules of the Circuit Courts of the State of Hawai‘i are amended, and new Rules 12.1, 12.2, 12.3, and 15.1 are adopted, effective January 1, 2021, as follows (deleted material is bracketed and stricken, new material is underscored):

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, attorney number, office address, telephone number, facsimile number (if any), and electronic mail address of the attorney for

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

the party in whose behalf the document is filed, or of the party^[5] if the party is ~~[appearing unrepresented by counsel]~~ self-represented;

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.

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.~~

~~**(e) — 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 (e)(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) of this Rule and cases designated as complex litigation under Rule 12(c) of this Rule, the trial judge 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 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 track 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, depositions and trial preservation testimonies, 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. 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 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 an expedited or non-expedited track 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 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.

(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 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 an expedited or non-expedited track 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 as cases that have been adjudicated or have otherwise been terminated, in any state or federal court; and

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

Each party shall certify that it has conferred pursuant to paragraph (a)(6) of this Rule 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 an expedited or non-expedited track 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 of these Rules;

(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; and

(M) Any other matter 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) of this Rule:

(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) of this Rule, 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 trial setting/status 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) of this Rule. 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.

~~[(4*)]~~**(c) Designation as complex litigation.** Any party may move to have a case designated by the court as Complex Litigation within 8 months after a complaint has been filed or at any time upon good cause shown. The judge hearing the Motion for Designation as Complex Litigation will have complete and unreviewable discretion in making the determination. Upon such a designation by the court, in cases where a jury will decide all issues the case will be assigned to a trial judge for handling until conclusion. In non-jury cases, the case will be assigned to a trial judge for handling until trial, but may be reassigned to a separate judge for the actual trial. This rule shall apply to cases filed in the First Circuit and other circuits as ordered by the Civil Administrative Judge of that circuit. Once a case is designated by the court as Complex Litigation, the scheduling and case management of the case shall be governed by orders issued by the judge assigned to the case pursuant to this paragraph (c).

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

~~(i)~~(A) The estimated amount in controversy is in excess of \$750,000, excluding interest, attorney's fees and costs;

~~(ii)~~(B) The estimated length of trial is ~~six~~ 6 weeks or more;

~~(iii)~~(C) The number of parties, including all plaintiffs and defendants is ~~ten~~ 10 or more;

~~(iv)~~(D) One or more of the parties is a person who is not a citizen or resident of the United States;

~~(v)~~(E) The anticipated number of expert witnesses is ~~eight~~ 8 or more;

~~(vi)~~(F) The case involves complex and multiple issues;

~~(vii)~~(G) The subject matter of the case involves either asbestos, natural catastrophes, national trends, construction or class actions;

~~(viii)~~(H) Discovery is anticipated to be complex; or

~~(ix)~~(I) 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) above applies to the case, and shall set forth wherever applicable, the following information^[-]:

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

~~(ii)~~(B) A list of parties served, in the process of being served or anticipated to be joined in the action;

~~(iii)~~(C) Whether jury trial has been demanded or will be demanded;

~~(iv)~~(D) A list of anticipated discovery, discovery in progress and completed discovery;

~~(v)~~(E) A list of anticipated motions, motions pending and hearing dates; and

~~(vi)~~(F) 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)~~(A) Establish deadlines for the following:

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

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

~~(ii)~~(B) Discuss the following:

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

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

~~[(c)]~~(iii) 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) above. The order(s) shall be binding as to all parties. The provisions of any order shall not excuse compliance with otherwise applicable rules or deadlines unless specifically ordered by the court.

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

~~[(e)]~~**(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 factors under Rule 26(b)(2)(iii) of the Hawai'i Rules of Civil Procedure.

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

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

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

~~[(i)]~~**(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 Rule 12 ~~Rule 12(e)~~. Such dismissal may be set aside and the action reinstated by order of the court for good cause shown upon motion duly filed not later than ~~ten~~-(10) days from the date of the order of dismissal.

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

~~[(k)]~~**(k) Additional party practice.** ~~Ten 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 orders setting pretrial deadlines.~~

~~[(t)]~~ **Sanctions.** Failure of a party or ~~[his]~~the party's 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 ~~[r]~~Rules.

NEW RULE

Rule 12.1. PRETRIAL STATEMENT.

Unless otherwise ordered by the court, the parties shall serve and file separate pretrial statements no later than 7 days before any final pretrial conference scheduled by the court, and if no such conference has been set, then no later than 14 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 the trial proceeding as scheduled.

(j) Stipulations and requests for judicial notice. A statement of stipulations requested or proposed for pretrial or trial purposes. Identification of any requests for judicial notice of fact or law with supporting documentation and certification by the party that notice pursuant to the Hawai‘i 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.

Rule ~~[42-4]~~12.2. MANDATORY CIVIL SETTLEMENT CONFERENCE; [SETTLEMENT CONFERENCE STATEMENT;] CONFIDENTIAL SETTLEMENT CONFERENCE LETTER.

(a) Settlement conference. ~~[A settlement conference may be ordered by the court at any time before trial.]~~ During the scheduling

conference held pursuant to Rule 12(a) of these Rules, the judge shall set a settlement conference for a date before trial, unless the judge believes another judge should conduct the settlement conference, in which case a settlement conference date shall be issued no later than 30 days after the scheduling conference. Alternative dispute resolution options, including but not limited to mediation, shall be discussed at the scheduling conference held pursuant to Rule 12(a) of these Rules, and if the alternative dispute resolution process(es) are determined to be appropriate, the court should consider including orders scheduling and to facilitate the alternative dispute resolution 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) of these Rules, 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~~the party's attorney to appear at a scheduled settlement conference, the neglect of a party or ~~his~~the party's 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 noneorporate 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.]~~

~~(e)~~ **(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:

(A) The name, age, marital status and occupation of all noncorporate plaintiffs;

(B) A brief statement of the case;

(C) 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.];

(D) A summary of the proceedings to date, including a statement as to the status of discovery;

(E) 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;

(F) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and

(G) A brief statement of the party's position on settlement.

(2) FOR THE DEFENDANT:

(A) The age, marital status, occupation and corporate or other legal status of each defendant;

(B) The name of the applicable insurance carriers and the stated policy limits;

(C) A brief statement of the case;

(D) 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;

(E) A summary of the proceedings to date, including a statement as to the status of discovery;

(F) 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;

(G) A brief statement of present demands and offers and the history of past settlement discussions, offers, and demands; and

(H) 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 conference letter.

Rule ~~[12.2.]~~12.3. ALTERNATIVE DISPUTE RESOLUTION.

(a) Authority to order. The court, sua sponte or upon motion or request by a party, may, in exercise of its discretion, order the parties to participate in a non-binding Alternative Dispute Resolution process (ADR or ADR process) subject to terms and conditions imposed by the court. ADR includes mediation, summary jury trial, neutral evaluation, non-binding arbitration, presentation to a focus group, or other such process the court determines may be helpful in encouraging an economic and fair resolution of all or any part of the disputes presented in the matter. Subsections (a) through (e) of this Rule do not apply to ADR administered by the Hawai'i Judiciary, such as the Court Annexed Arbitration Program.

NEW RULE

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 5 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 of these Rules. 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 whether the burden or expense of the proposed discovery outweighs its likely benefit under Rule 26(b)(2)(iii) of the Hawai'i Rules of Civil Procedure, 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) of 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.

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

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S McKenna

/s/ Michael D. Wilson

