

RE: **Proposal for Five New Forms, Designed to Implement the New Requirements of the Rules of the Circuit Courts of the State of Hawai‘i and the Hawai‘i Rules of Civil Procedure Effective January 1, 2022**

*NEW FORMS TO ASSIST LITIGANTS IN COMPLYING WITH
THE NEW CIVIL JUSTICE IMPROVEMENTS PROVISIONS*

The Supreme Court of Hawai‘i seeks public comment regarding five new proposed forms, drafted to assist litigants in complying with the new provisions of the Rules of the Circuit Courts of the State of Hawai‘i and the Hawai‘i Rules of Civil Procedure which go into effect January 1, 2022, as part of the Task Force on Civil Justice Improvements. The forms are intended to encapsulate the information and deadlines required by the new rules, in a standardized and uniform manner. The forms are attached hereto.

Comments about the proposed forms should be submitted, in writing, **no later than Thursday, October 28, 2021**, to the Judiciary Communications & Community Relations Office, by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary website](#).

Attachments

[Name of Attorney & Bar Number or Self-represented Party]
[Address]
[Telephone No.]
[Email]

[Attorney for Plaintiff(s) or Plaintiff]

(Form 1) Notice of Request for Scheduling Conference

IN THE CIRCUIT COURT OF THE _____ CIRCUIT
STATE OF HAWAI'I

XXX,	)	CIVIL NO. _____
)	
Plaintiff(s),)	
)	
vs.	)	NOTICE OF REQUEST FOR
	)	SCHEDULING CONFERENCE;
XXX,	)	[PROPOSED] ORDER SETTING
	)	SCHEDULING CONFERENCE
Defendant(s).)	
)	
	)	JUDGE: _____
_____)	

NOTICE OF REQUEST FOR SCHEDULING CONFERENCE

Plaintiff enters a Notice of Request for Scheduling Conference pursuant to Rule 16)(b)(4) of the Hawai'i Rules of Civil Procedure (HRCP) and Rule 12(a)(4) of the Rules of the Circuit Courts of the State of Hawai'i (RCCH).

HRCP 16(b)(2) and RCCH 12(a)(2) require the court to issue a Scheduling Order within the *earlier* of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared, unless the court finds good cause for delay.

The undersigned certifies that (check all that apply):

the first service of the complaint on any defendant was on _____ (date)

the first appearance by any defendant was on _____ (date)

and requests that the Scheduling Conference be held before _____ (insert the applicable 60 or 90 day deadline).

DATED: _____, Hawai'i, _____.

Signature of Attorney or Self-Represented Party

[Name of Attorney & Bar Number or Self-Represented Party]
[Address]
[Telephone No.]
[Email]

[Attorney for Plaintiff(s) or Plaintiff]

**(Form 2) [Proposed] Order Setting Scheduling Conf. Video or In Person
(to be attached to Plaintiff's Notice of Request for Scheduling Conference)**

IN THE CIRCUIT COURT OF THE _____ CIRCUIT
STATE OF HAWAII

XXX	,	)	CIVIL NO. _____
)	
	Plaintiff(s),)	
)	
vs.		)	[PROPOSED] ORDER SETTING
		)	SCHEDULING CONFERENCE
XXX	,)	
)	
	Defendant(s).	)	Date: _____
		)	Time: _____
		)	Judge: _____
_____)

[PROPOSED] ORDER SETTING SCHEDULING CONFERENCE

(READ THIS ORDER CAREFULLY)

IT IS HEREBY ORDERED that the parties shall appear (check one):

In person

Video Conference

for a scheduling conference on _____ at _____ .m. before the

Honorable _____, pursuant to Rule 16(b) of the Hawai'i Rules of Civil Procedure (HRCP) and Rule 12(a) of the Rules of the Circuit Courts of the State of Hawai'i (RCCH).

1. Lead trial counsel and self-represented parties are required to attend.

2. **In person** conferences are held in the judge's courtroom located at _____ (insert address).

Please be prompt and inform the Law Clerk of your presence. **Video conferences** are conducted via **Zoom**. Parties are instructed to read the court's Zoom Video Conferencing Instructions for Attorneys and Other Participants filed in this case to participate in a video conference.

3. The parties are reminded that a meeting of the parties must occur at least 21 days before the scheduling conference. The parties must confer in good faith on the following:

- The basis of their claims and defenses;
- Possibilities for promptly settling or resolving the case;
- Initial disclosures as required by HRCP 26(a)(1);
- Assignment of the case to an expedited or non-expedited track under HRCP 16.1;
- Issues about preserving discoverable information; and
- A proposed discovery plan as required by HRCP 26(f)(3) and RCCH 12(a)(6)(C).

HRCP 26(f); RCCH 12(a)(6). The parties are expected to review the applicable court rules which set forth in detail the information the parties are required to discuss.

4. A joint report of the parties outlining the parties' discovery plan must be filed within 14 calendar days after the meeting of the parties. HRCP 26(f); RCCH 12(a)(6)(B).

5. Each party shall file a scheduling conference statement in accordance with RCCH 12(a)(7) no later than 7 calendar days before the scheduling conference.

6. Plaintiff(s) is(are) required to promptly serve this Order on all parties who have been served with the complaint, but who have not yet appeared in this case. Plaintiff(s) must also serve this Order on all unrepresented parties who are not JEFS Users and who have not consented to electronic service.

7. Failure to comply with either any part of this Order or to attend the scheduling conference may result in sanctions (including fines, dismissal, entry of default, and an award of attorneys' fees and costs). RCCH 12(l).

DATED: _____, Hawai'i, _____.

Judge of the above-entitled Court

[Attorney Name & Bar No. or Name of self-represented party]
[Address]
[Telephone no.]
[Email]

[Attorney for Plaintiff(s) or Unrepresented Plaintiff]

(Form 3) CERTIFICATE OF SERVICE (RE ORDER SETTING SCHEDULING CONFERENCE)

IN THE CIRCUIT COURT OF THE [] CIRCUIT
STATE OF HAWAI'I

[XXX],

Plaintiff(s),

vs.

[XXX],

Defendant(s).

CIVIL NO. []

CERTIFICATE OF SERVICE

(RE: ORDER SETTING SCHEDULING CONFERENCE)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct file marked copy of the ORDER SETTING SCHEDULING CONFERENCE was served on all parties who have been served with the complaint either electronically through the Hawai'i Judiciary Electronic Filing System ("JEFS") or conventionally via U.S. Mail at their last known address(es) on the date indicated below:

[Name of Party]

[Manner of Service]

[Date]

DATED: _____, Hawai'i _____.

Plaintiff/Plaintiff's Counsel

[Attorney Name & Bar No. or Name of self-represented party]
[Address]
[Telephone no.]
[Email]

[Attorney for _____ or self-represented party]

(Form 4) JOINT REPORT OF THE PARTIES

IN THE CIRCUIT COURT OF THE _____ CIRCUIT
STATE OF HAWAI'I

XXX,	)	CIVIL NO. _____
)	
Plaintiff,)	
)	
vs.	)	JOINT REPORT OF THE PARTIES
)	
XXX,)	
	)	Scheduling Conference: _____
Defendant.	)	Judge: _____
)	
)	
)	
)	
)	

JOINT REPORT OF THE PARTIES

(HRCP 26(f)(2) and RCCH 12(a)(6)(B)
require the parties to file a joint report within 14 days after the parties' meeting.)

In accordance with Rule 26(f)(2) of the Hawai'i Rules of Civil Procedure (HRCP)
and Rule 12(a)(6)(B) of the Rules of the Circuit Courts of the State of Hawai'i (RCCH),
the parties signing below met (*check one*) in person by telephone by video

on _____ (*insert date*) and certify they conferred in good faith about the following:

- ✓ the nature and basis of their claims and defenses;
- ✓ the possibilities for promptly settling or resolving the case;
- ✓ making or arranging for disclosures required by HRCP 26(a)(1);
- ✓ whether the case should be assigned to an expedited or non-expedited track for trial under HRCP 16.1;
- ✓ preserving discoverable information; and
- ✓ a proposed discovery plan.

A. Disclosures under HRCP 26(a) (check all that apply):

Initial Disclosures – HRCP 26(a)(1):

Initial disclosures were or will be made by Plaintiff(s) on _____ (date).

Initial disclosures were or will be made by Defendant(s) on _____ (date).

Changes in the timing, form, or requirements for initial disclosures under HRCP 26(a)(1) should be made as follows:

Expert Disclosures – HRCP 26(a)(2):

Expert Disclosures will be made:

1. By parties having the burden of proof on a claim or an affirmative defense no later than **120 days** before the trial date to be set by the court;

- 2. By parties opposing a claim for relief or an affirmative defense no later than **90 days** before the trial date to be set by the court; and
- 3. By parties intending to present evidence solely to rebut evidence on the subject matter identified for the first time by a party opposing a claim for relief or an affirmative defense no later than **60 days** before the date set for trial.

OR

[] Changes in the timing, form, or requirements for expert disclosures under HRCP 26(a)(2) should be made as follows:

B. Discovery:

- 1. Discovery may be needed on the following subjects:

- 2. Discovery should be completed by: [] (date).

- 3. Discovery should be conducted in phases or be limited to or focused on particular issues as follows:

C. Electronically Stored Information (ESI):

As to any issues about disclosure, discovery, or preservation of ESI, including the form or forms in which it should be produced, the parties report:

D. Claims of Privilege or of Protection as Trial-Preparation Materials: (parties should identify whether they anticipate any claims of privilege or of protection as trial-preparation materials; whether the parties agree on a procedure to assert these claims after production (i.e., claw back), and whether they ask the court to include their agreement in an order under Rule 502 of the Hawai'i Rules of Evidence):

E. Changes, if any, to be Made in Limitations on Discovery: (parties should discuss and report on whether any changes should be made to the limitations on discovery set forth in the HRCP or the RCCH, and any other limitations that should be imposed):

F. Other Orders: (parties should report on whether there are any other orders that the court should issue under HRCP 26(c) or under HRCP 16(b) and (c)).

G. Other Matters: (parties should report on whether they are amenable to ADR; and any other miscellaneous matter they believe is relevant to the scheduling conference with court):

SUBMITTED BY:

Plaintiff / Counsel for Plaintiff(s)

Defendant / Counsel for Defendant(s)

<<additional signature lines to be added if multiple parties>>

[Name of Attorney & Bar Number or Self-represented Party]
[Address]
[Telephone No.]
[Email]

[Attorney for _____ OR Self-represented Party]

(Form 5) SCHEDULING CONFERENCE STATEMENT

IN THE CIRCUIT COURT OF THE _____ CIRCUIT

STATE OF HAWAII

XXX,	)	Civil No. _____
)	
Plaintiff,	)	SCHEDULING CONFERENCE
	)	STATEMENT OF PLAINTIFF /
vs.	)	DEFENDANT
)	
XXX,)	
)	
Defendant.	)	<u>SCHEDULING CONFERENCE:</u>
	)	DATE: _____
	)	TIME: _____
)	
	)	JUDGE: _____
)	
)	
)	
)	
)	

SCHEDULING CONFERENCE STATEMENT OF _____

Must be filed and served no later than 7 days before the Scheduling Conference unless otherwise ordered by the court. RCCH 12(a)(7).

[Footer language to be added specifying docket code to be used by filing party]

Pursuant to Rule 12(a)(7) of the Rules of Circuit Courts of the State of Hawai'i (RCCH), PLAINTIFF/DEFENDANT NAME OF PARTY submits the following Scheduling Conference Statement.

A. BRIEF DESCRIPTION OF THE CASE (also specify if asserting legal and equitable claims):

If a party is seeking a remedy other than monetary damages, please specify the relief sought:

B. STATEMENT OF JURISDICTION AND VENUE (WITH CITED AUTHORITY) AND A SHORT DESCRIPTION OF THE FACTS CONFERRING VENUE:

C. JURY OR NON-JURY TRIAL (check one):

JURY TRIAL. A demand for a jury trial was filed on _____.

NON-JURY TRIAL.

D. ASSIGNMENT OF CASE TO AN EXPEDITED OR NON-EXPEDITED TRACK UNDER RULE 16.1 OF THE HAWAII RULES OF CIVIL PROCEDURE (HRCP) (check one):

Expedited Track: Based on considerations of fairness, cost-effectiveness, and expedition, this case should be assigned to an expedited trial track to secure the just, speedy, and efficient resolution of the case.

Non-Expedited Track: Considering factors such as the number of claims and parties involved, the monetary value of the case, the extent and nature of the claims, the volume and extent of discovery, and the number of witnesses, experts and documents, this case should be assigned to a non-expedited trial track.

E. APPROPRIATENESS, EXTENT, AND TIMING OF DISCLOSURES (check one):

The undersigned has or will provide all disclosures pursuant to HRCP 26 within the time limits prescribed within the rule or will provide disclosures as set forth in the Joint Report of the Parties.

DISCLOSURES pursuant to HRCP 26 not covered by the Joint Report of the Parties: _____

F. DISCOVERY COMPLETED: _____
DISCOVERY IN PROGRESS: _____
MOTIONS PENDING AND HEARING DATE(S): _____

G. STATEMENT ADDRESSING APPROPRIATENESS OF ANY SPECIAL PROCEDURES OR OTHER MATTERS SPECIFIED IN HRCP 16(c) THAT ARE NOT COVERED BY THE JOINT REPORT OF THE PARTIES FILED PURSUANT TO HRCP RULE 26(f):

H. RELATED CASES (IN STATE OR FEDERAL COURT) WITH CASE STATUS (e.g., pending, adjudicated or otherwise terminated): _____

I. ANY ADDITIONAL MATTERS: _____

J. THE UNDERSIGNED CERTIFIES (CHECK ONE):

THE PARTIES CONFERRED ON _____ (AT THE LEAST 21 DAYS BEFORE THE SCHEDULING CONFERENCE) ON THE FOLLOWING MATTERS:

- ✓ the nature and basis of their claims and defenses;
- ✓ the possibilities for promptly settling or resolving the case;
- ✓ making or arranging for disclosures required by HRCP 26(a)(1);
- ✓ whether the case should be assigned to an expedited or non-expedited track for trial under HRCP 16.1;
- ✓ preserving discoverable information; and
- ✓ a proposed discovery plan.

THE PARTIES DID NOT CONFER AS REQUIRED BY RULE 12(a)(6) OF THE RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAI'I BECAUSE:

DATED: _____, Hawai'i _____ 202_.

Name of Party / Party's Attorney