SEPTEMBER 2002 COMPREHENSIVE PROPOSED AMENDMENTS TO THE LOCAL RULES

Lined-out text is proposed deletion
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CHAPTER I - GENERAL AND CIVIL RULES

LR1.1. Title.

These are the Local Rules of Practice for the United States District Court for the District of Hawaii. They should be cited as "LR_____, CrimLR_____ or LBR_____."

LR1.2. Effective Date; Transitional Provision.

These rules govern all actions and proceedings pending on or commenced after ~~October 30, 1997~~_____. Where justice requires, a district judge may order that an action or proceeding pending before the court prior to that date be governed by the prior practice of the court.

LR1.3. Scope of the Rules; Construction.

These rules supplement the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, and shall be construed so as to be consistent with those rules and to promote the just, efficient and economical determination of every action and proceeding. The provisions of the General and Civil Rules shall apply to all actions and proceedings, including criminal, admiralty and actions and proceedings before magistrate judges, except where they may be inconsistent with rules or provision of law specifically applicable thereto.

LR1.4. Definitions.

(a) The word "court" refers to the United States District Court for the District of Hawaii, and not to any particular judge of the court.

(b) The word "judge" refers to any United States District Judge or to a part-time or full-time United States Magistrate Judge to whom such action or proceeding has been assigned exercising jurisdiction with respect to a particular action or proceeding in the court.

(c) Full-time magistrate judge shall mean a full-time United States magistrate judge.

(d) Part-time magistrate judge shall mean a part-time United States magistrate judge.

(e) United States magistrate judge and magistrate judge shall mean both full-time and part-time United States magistrate judges.

(f) The word clerk means Clerk, United States District Court, District of Hawaii.

LR4.1. Service of Process.

The Sheriff of the State of Hawaii and his deputies and anyone else included in Fed. R. Civ. P. 4(c)(2)(A) are authorized to serve civil process.

~~**LR5.1. Nonfiling of Discovery Materials.**~~

~~(a) Unless otherwise ordered by the court, written discovery, including initial and expert disclosures, notices of depositions, deposition transcripts, requests for documents, admissions, inspections and interrogatories, and answers and responses thereto, shall not be filed with the court. This rule shall not preclude their use as exhibits or as evidence with a motion or at trial.~~

~~(b) During the pendency of any civil proceeding, any person, with leave of court, after notice served on all parties to the action, may obtain a copy of any deposition or discovery document not on file with the court upon payment of the expense of the copy.~~

LR5.~~2~~1. Depositions: Original Transcripts.

Counsel ~~for the party noticing any deposition pursuant to Fed.R.Civ.P. 30 shall be~~ responsible for the preservation and storage of the original transcript, tape, or other means of preservation of ~~such~~any deposition~~. Counsel having custody of~~ shall produce the original transcript, tape, or other means of preservation of ~~the~~such deposition~~ shall produce it~~ if needed for ~~trial by any party.~~ court proceedings by any party when filing or using the same in court proceedings or, as ordered by the court as provided in Fed. R. Civ. P. 5(d), shall file only copies of the portion(s) thereof that are germane.

LR5.2. Identification of Original Filings.

The original of any document submitted for filing shall be clearly stamped or marked “ORIGINAL” on the first page of the document. For purposes of this rule, “document” includes any papers (e.g., notice of hearing, motion, memorandum, declaration,

exhibits, certificate of service) fastened together; only the first page in such a group of papers must be stamped to comply with this rule.

LR6.1. Computation of Time.

Unless otherwise specified in these rules, time periods prescribed or allowed shall be computed in accordance with Fed. R. Civ. P. 6 and Fed. R. ~~Crim.P. 45(a)~~ Crim. P. 45(a). As used in these rules, the terms “business days” and “working days” are synonymous and mean days in which the general public may enter the courthouse without prior arrangement. The staff of the Office of the Clerk of Court shall be available to provide services to the general public on business days. “Business days” and “working days” do not include Saturdays, Sundays, legal holidays as defined in Fed. R. Civ. P. 6(a), additional holidays observed pursuant to court order, or days on which weather or other conditions have made the Office of the Clerk of Court inaccessible. Days that are not business (or working) days are “non-business (or non-working) days.” The term “calendar days” includes days that are and days that are not business (or working) days.

Whenever these rules require papers to be filed “not more than” or “not less than” a designated period after or before a specified event, and whenever the outside limit of the designated period is not a business day, such papers shall be filed no later than the previous business day to ensure filing “not more than” or “not less than” the designated period.

LR6.2. Extensions, Enlargements or Shortening of Time.

(a) **Stipulations Extending or Enlarging Time.** All stipulations extending or enlarging time shall indicate on the face sheet the sequential number of such extensions or enlargements; e.g., "Second Stipulation Extending Time." ~~If the first two extensions do not collectively exceed sixty (60) days, these stipulations shall be routinely stamped with the judge's signature and filed. The third and following extensions shall be accompanied by an affidavit setting forth the reasons for the extension and the clerk shall submit the stipulation to the magistrate judge for disposition.~~

(b) **Applications for Extension or Enlargement of Time.** All applications for extension or enlargement of time made by motion shall state (I) the total ~~enlargement~~amount of time previously

obtained by the parties and (ii) the reason for the particular extension or enlargement requested.

(c) **Ex Parte Applications.** Upon satisfactory showing that the extension or enlargement of time could not be obtained by stipulation or duly noticed motion, a judge may grant ex parte an emergency ~~enlargement~~grace period sufficient to enable the party to apply for a further extension or enlargement by stipulation or duly noticed motion.

(d) **Extension to Respond to Third-Party Claims.** Whenever a defendant causes a summons and complaint to be served pursuant to Fed. R. Civ. P. 14— on a person not a party to the action, no ~~enlargement~~extension of time shall be granted to such person except on stipulation of all parties or motion duly noticed.

(e) **Orders Shortening Time.** Applications for orders shortening the time permitted or required for filing any paper or pleading or complying with any requirement under the Federal Rules of Civil Procedure shall be supported by a certificate stating the reasons therefor. When the application is made ex parte, the certificate shall state the reason that a stipulation could not be obtained or notice could not be given.

LR7.1. Motions; Format.

A notice of motion shall appear on the first page of the moving document. Endorsement by counsel is required on all motions. All related documents subsequently filed shall bear below the title of the document (1) the date and time of the hearing, and (2) the name of the presiding judge.

LR7.2. Motions; Notice, Hearing, Motion and Supporting Papers.

(a) Except as otherwise provided by this rule, all motions shall be entered on the motion calendar of the assigned judge for hearing not less than twenty-eight (28) days after service.

(b) The twenty-eight (28) day period may be shortened by order of court upon the submission of an ex parte application. Such an application must be accompanied by an affidavit or declaration setting forth the reasons necessitating shortened time.

(c) The twenty-eight (28) day period shall not apply to the following motions: those designated as non-hearing motions under subsections (d) and (e) of this rule; applications for a temporary restraining order; motions for protective order;

motions for withdrawal of counsel; motions for an extension or shortening of time; motions made during the course of a trial or hearing.

(d) The court, in its discretion, may decide any motion without a hearing.

(e) The following motions shall be non-hearing motions to be decided on submissions: motions to alter, amend, reconsider, set aside or vacate a judgment or order; motions for judgment ~~notwithstanding the verdict~~as a matter of law or for a new trial; motions for clarification of a judgment or order; motions for relief from judgment; motions to proceed in forma pauperis; motions for appointment of counsel; motions for certification of finality under Fed. R. Civ. P. 54 ; appeals from a magistrate judge's decision or order; objections to a magistrate judge's report and recommendation. The court, in its discretion, may set any of the foregoing motions for hearing *sua sponte*, or upon application by a party.

(f) All motions shall be accompanied, when appropriate, by affidavits or declarations sufficient to support material factual assertions and by a memorandum of law.

LR7.3. Motions; Deadline for Hearings on Dispositive Motions.

Unless otherwise ordered by the court, all dispositive motions shall be heard no later than thirty (30) days prior to the scheduled trial date.

LR7.4. Motions; Opposition and Reply.

An opposition to a motion set for hearing shall be served and filed not less than eighteen (18) days prior to the date of hearing. An opposition to a non-hearing motion shall be served and filed not more than eleven (11) days after service of the motion. When appropriate, the opposition shall include affidavits or declarations and a memorandum of law. A party not opposing a motion shall instead file a statement of no opposition or no position within the time provided above.

Any reply in support of a motion set for hearing shall be served and filed by the moving party not less than eleven (11) days prior to the date of hearing. Any reply in support of a non-hearing motion shall be served and filed by the moving party not more than eleven (11) days after service of the opposition. A reply must respond only to arguments raised in the opposition.

Any arguments raised for the first time in the reply shall be disregarded.

~~Any~~No further or supplemental briefing shall ~~not~~ be submitted without leave of court.

LR7.5. Motions; Length of Briefs and Memoranda.

~~B~~(a) A brief~~s~~ or memoran~~d~~um in support of or in opposition to any motion shall not exceed thirty (30) pages in length~~. Reply memoranda~~, unless it complies with LR7.5(b) and (e).

(b) A brief or memorandum in support of or in opposition to a motion may exceed the page limitation in LR7.5(a) if it either (i) contains no more than 9,000 words or (ii) uses a monospaced face and contains no more than 750 lines of text.

(c) A reply brief or reply memorandum shall not exceed fifteen (15) pages in length~~. The court may grant permission to exceed page limits upon showing of good cause. Briefs and memoranda exceeding fifteen (15) pages shall have a~~, unless it contains no more than half of the words or lines of text specified for a brief or memorandum in support of or in opposition to a motion and also complies with LR7.5(e).

(d) Headings, footnotes, and quotations count toward the word and line limitations. The case caption, table of contents ~~and a~~, table of authorities ~~cited. All attached exhibits shall have appropriate labeled tabs. Briefs not in compliance with this rule may be disregarded by the court.~~ , exhibits, declarations, certificates of counsel, and certificates of service do not count toward the page, word, or line limitation.

(e) A brief or memorandum submitted under LR7.5(b), a reply brief or memorandum submitted under the word or line limitation in LR7.5(c), or a concise statement submitted under the word limitation permitted in LR56.1(d) must include a certificate by the attorney or a pro se party that the document complies with the applicable word or line limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to produce the document. In the case of a brief or memorandum, the certificate must state either the number of words in the document or the number of lines of monospaced type in the document. In the case of a concise statement, the certificate must state the number of words in the document.

LR7.6. Motions; Affidavits and Declarations.

Factual contentions made in support of or in opposition to any motion shall be supported by affidavits or declarations. Affidavits and declarations shall contain only facts, shall conform to the requirements of Fed. R. Civ. P. 56(e) and 28 U.S.C. § 1746, and shall avoid conclusions and argument. Any statement made upon information or belief shall specify the basis therefor. Affidavits and declarations not in compliance with this rule may be disregarded by the court.

LR7.7. Motions; Filing; Lodging Extra Copy.

The original of each document provided for by this rule shall be filed with the clerk promptly after service and two (2) copies shall be submitted for the assigned district judge or magistrate judge.

LR7.8. Motions; Uncited Authorities.

A party who intends to rely at a hearing upon authorities not included in the brief or memorandum of law should provide to the court and opposing counsel copies of the authorities at the earliest possible time prior to the hearing.

LR7.9. Motions; ~~Related and~~ Counter Motions; Joinders.

Any motion ~~related to~~raising the same subject matter ~~of the~~as an original motion may be filed by the responding party together with the party's opposition and may be noticed for hearing on the same date as the original motion, provided that the motions would otherwise be heard by the same judge. A party's memorandum in support of the counter motion must be combined into one document with the party's memorandum in opposition to the original motion. The opposition to ~~related or~~the counter motion~~s~~ shall be served and filed together with any reply in support of the original motion ~~not less than eleven (11) days prior to the date of hearing~~in accordance with LR 7.4. A party's opposition to the counter motion must be combined into one document with that party's reply in support of the original motion and may not exceed the page limit for a reply absent leave of court. The movant on a ~~related or~~ counter motion shall have three (3) days after receipt of opposition within which to file and serve a reply.

Except with leave of court based on good cause, any substantive joinder in a motion or opposition must be filed and served within two business days of the motion or opposition joined in. "Substantive joinder" means a joinder based on a memorandum supplementing the motion or opposition joined in. A

joinder of simple agreement may be filed at any time. This paragraph applies only to joinders and does not preclude the filing of an independent motion that does not seek to be included in a pre-existing hearing schedule, or the filing of a motion to consolidate matters for hearing.

LR7.10 Responses to Petitions Under 28 U.S.C. § 2255

Except as otherwise ordered by the court, within thirty (30) days of service of a petition file under 28 U.S.C. § 2255, the respondents named in the petition shall file with the court a response addressing the matters asserted in the petition as grounds for relief. All rules applicable to the form of motions apply to any such petition or response, except that there is no page limit on any such petition or any response thereto, unless otherwise ordered by the court.

LR9.1. Civil RICO Actions; Filing.

A party shall file, with its complaint or counterclaim, based in whole or in part on the Racketeer Influenced and Corrupt Organizations Act (RICO) codified at 18 U.S.C. § 1961 et seq., a RICO statement. This statement shall include facts upon which claimant relies to initiate its RICO claims, as a result of the reasonable inquiry required by Fed. R. Civ. P. 11. In particular, this statement shall be in a form using the numbers and letters set forth in the form entitled RICO Case Statement, available for inspection and copying in the office of the Clerk, and shall state in detail and with specificity the information requested in that form. When cases are removed to U.S. District Court, the party asserting a claim or counterclaim based in whole or in part on RICO shall file a RICO statement as described above within fifteen (15) days of removal.

LR9.2. Civil RICO Actions; Failure to comply.

Failure to comply with LR9.1 subjects the RICO cause of action to dismissal.

LR9.3. Civil RICO Actions; Service.

Counsel must serve a copy of the RICO Case Statement on all parties.

LR10.1. Applicability of Rule on the Format of Papers; Effect of Noncompliance.

Th~~is~~e rule on the format of papers applies in all civil actions and proceedings, except where otherwise provided by rule governing the particular action or proceedings, and criminal proceedings to the extent that the provisions of the rule are pertinent. In the event of a failure to comply with the rule, the clerk may require the prompt refiling of the paper in proper form or may bring the failure to comply to the attention of the filing party and the judge.

LR10.2. Form of Papers; Copy.

(a) All papers presented for filing shall be on white opaque paper of good quality, eight and one-half inches by eleven inches in size, with one inch margins, and shall be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover, and firmly bound at the top, and shall comply with all other applicable provisions of these rules. All typewriting, including footnotes, shall be ~~of a size which is either (i)~~in either (i) a proportionally spaced face that is 14-point or larger and that includes serifs, except that sans-serif type may be used in headings and captions, or (ii) a monospaced face that contains not more than 10½ characters per ~~linear inch, e.g., pica, for fixed spaced type, or (ii) not more than 12 characters per linear inch, e.g., elite, for proportional spaced fonts or equivalent~~inch. All typewriting must be in a plain, Roman style, except that italics or boldface may be used for emphasis. In addition to the original, a legible conformed copy of all pleadings, except discovery pleadings, shall be filed for the judge's use. In a consolidated proceeding, the original pleading and a copy of each pleading for each numbered case shall be filed (in addition to a copy for the judge's use, as required above). Matter shall be presented by typewriting, printing, or other clearly legible reproduction process, and shall appear on one side of each sheet only. All papers shall be double-spaced except for the identification of counsel, title of the case, footnotes, quotations, and exhibits.

(b) **Counsel Identification.** The name, Hawaii bar identification number, address and telephone number, facsimile number, and e-mail address of counsel (or, if *in propria persona*, of the party) and the specific identification of each party represented by name and interest in the litigation (i.e., plaintiff, defendant, etc.) shall appear in the upper left-hand corner of the first page o~~r~~f each paper presented for filing, except that in multi-party actions or proceedings, reference may be made to the signature page for the complete list of parties represented.

c) **Caption and Title**. Following the counsel identification there shall appear:(1) the title of the court; (2) the title of the action or proceeding; (3) the file number of the action or proceeding, whether it is civil or criminal, followed by the initials of the district judge to whom it is currently assigned; (4) a title describing the paper; and (5) any other matter required by this rule.

(d) **Exhibits.** All exhibits attached to papers shall show the exhibit number or letter at the bottom thereof and shall have appropriate labeled tabs. Exhibits need not be typewritten and may be copies, but must be clearly legible and not unnecessarily voluminous. Counsel are required to reduce oversized exhibits to eight and one-half inches by eleven inches unless such reduction would destroy legibility or authenticity. An oversized exhibit that cannot be reduced shall be filed separately with a captioned cover sheet, identifying the exhibit and the document(s) to which it relates.

(e) **Fax Signatures.** When it is impracticable to submit an original signature along with a filing, a party and/or attorney may submit a fax signature and file the original signature within eleven (11) days.

(~~e~~f) **In camera submissions.** Papers submitted for in camera inspection shall have a captioned cover sheet that indicates the document is being submitted in camera and shall include an envelope large enough for the in camera papers to be sealed without being folded.

(~~f~~g) **Application for Temporary Restraining Order or Preliminary Injunction**.

An application for a temporary restraining order or preliminary injunction shall be made in a document separate from the complaint.

(~~g~~h) **Class Actions**. In any action sought to be maintained as a class action, the complaint, and any counterclaim or cross-claim, shall bear below the title of the pleading the legend "Class Action".

(~~h~~i) **Three-Judge Court**. If any party contends that a hearing before a three-judge court is required, the words Three-Judge Court shall be typed below the docket number on the first page of the complaint, answer, or other pleading making such allegation. The clerk shall forthwith notify the assigned district judge of such filing. In addition to the original

filed, three copies of all papers, including briefs, shall be lodged with the clerk.

(j) The thickness of a pleading or papers presented for filing, inclusive of all exhibits attached to the pleading, shall not exceed two inches. In the event a party desires to file thicker submissions, the pleading or papers shall be separated into two or more parts such that the thickness of each part shall not exceed two inches. Multiple parts of a separated pleading or papers presented for filing shall be identified, for example, as being “1 of 3,” “2 of 3,” and “3 of 3.”

LR10.3. Amended Pleadings.

Any party filing or moving to file an amended pleading shall reproduce the entire pleading as amended and may not incorporate any part of a prior pleading by reference, except with leave of court.

LR10.4. Stipulations.

A stipulation requiring approval of the court shall contain the words "APPROVED AND SO ORDERED," and a designated signature line for the judge. The caption and title of the document must appear on the signature page.

LR11.1. Sanctions and Penalties for Noncompliance With the Rules.

Failure of counsel or of a party to comply with any provision of these rules is a ground for imposition of sanctions. Sanctions may be imposed by the court *sua sponte*. Consistent with the Federal Rules of Civil Procedure—, failure to comply with these rules may result in a fine, dismissal, or other appropriate sanction.

LR16.1. Counsel's Duty of Diligence.

All counsel shall proceed with diligence to take all steps necessary to bring an action to readiness for pretrial and trial.

LR16.2. Scheduling Conference.

(a) Within one hundred twenty (120) days after an action or proceeding has been filed, the ~~assigned judge~~court shall set 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:

1. Service of process on parties not yet served;

2. Jurisdiction and venue;

3. Anticipated motions, and deadlines as to the filing and hearing of motions;

4. Appropriateness and timing of motions for dismissal or for summary judgment under Fed. R. Civ. P. 12 or 56;

5. Deadlines to join other parties and to amend pleadings;

6. Anticipated or remaining discovery, including discovery cut-off;

7. The control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Fed. R. Civ. P. 26 and 29 through 37 and LR26.1;

8. Further proceedings, including setting dates for pretrial and trial, and compliance with LR16.6, 16.8 and 16.9;

9. Appropriateness of special procedures such as consolidation of actions for discovery or pretrial, reference to a master or magistrate judge or to the Judicial Panel on Multidistrict Litigation, alternative dispute procedures, or application of the Manual for Complex Litigation;

10. Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the action or proceeding;

11. Prospects for settlement, including participation in the court's mediation program or any other ADR process;

12. Any other matters ~~which~~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 Fed. R. Civ. P. 16(c);

(b) Each party shall file with the court and serve on all parties a Scheduling Conference Statement no later than seven (7) calendar days prior to the scheduling conference. The Scheduling Conference Statement shall include the following:

1. A short statement of the nature of the case;

2. Statement of jurisdiction with cited authority for jurisdiction and a short description of the facts conferring venue;

3. Whether jury trial has been demanded;

4. A statement addressing the appropriateness, extent and timing of disclosures pursuant to Fed. R. Civ. P. 26 and LR26.1 ~~which~~that are not covered by the report(s) filed pursuant to Fed. R. Civ. P. 26(f);

5. A list of discovery completed, discovery in progress, motions pending and hearing dates;

6. A statement addressing the appropriateness of any of the special procedures or other matters specified in Fed. R. Civ. P. 16(c) and LR16.2 ~~which~~that are not covered by the joint report filed pursuant to Fed. R. Civ. P. 26(f);

7. A statement identifying any related case known to be pending in any state or federal court;

8. Additional matters at the option of counsel.

(c) Continuances of scheduling conferences shall be governed by LR40.4, unless otherwise ordered.

LR16.3. Scheduling Conference Order.

At the conclusion of the scheduling conference, the judge shall enter an order governing disclosures under Fed. R. Civ. P. 26(a) and LR26.1, the extent of discovery to be permitted, the discovery completion date, deadlines for motions to be filed and heard, deadlines to join other parties, and deadlines to amend pleadings. Unless otherwise ordered, all discovery must be completed no later than thirty (30) days prior to the scheduled trial date. The order may include other matters that the judge deems appropriate, including provisions for initiation of pretrial proceedings and trial settings, and reference of the case to the court mediation program or other ADR process pursuant to LR88.1.

LR16.4. Pretrial Conference.

One pretrial conference shall be held in any action or proceeding. The judge may order additional pretrial conferences *sua sponte* or upon the request of any party. Multiple pretrial conferences shall not be scheduled routinely. If any party files

such a request, a copy shall be served upon all other parties. Counsel having authority to bind his or her client regarding all matters identified by the court for discussion at the pretrial conference and all reasonably related matters shall appear at each pretrial conference.

LR16.5. Settlement Conferences.

(a) In General. In each civil action, a mandatory settlement conference shall be scheduled before the assigned magistrate judge or such other judicial officer as the court may direct. Such conference may be held before the assigned judge, except that, in a non-jury case, the written stipulation of counsel shall be necessary if the judge trying the case conducts the settlement conference. The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, to be present at the settlement conference.

(b) **Settlement Conferences Before Magistrate Judges.**

1. **Confidential Settlement Conference Statement.** At least five (5) court days before the settlement conference, each party shall deliver directly to the presiding magistrate judge a confidential settlement conference statement, which should not be filed nor served upon the other parties. The settlement conference statements shall be kept under seal and separate from the files maintained by the clerk of the court which are accessible to the public. The settlement conference statement will not be made a part of the record, and information of a confidential nature contained in the statement will not be disclosed to the other parties without express authority from the party submitting the statement.

The confidential settlement conference statement shall indicate the date of the settlement conference and shall include the following:

(a) A brief statement of the case.

(b) A brief statement of the claims and defenses, i.e., 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.

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

(d) An estimate of the time to be expended for further discovery, pretrial proceedings and trial.

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

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

2. **Required Attendance At The Settlement Conference.**

Unless otherwise permitted in advance by the court, lead trial counsel and all parties appearing pro se shall appear at the settlement conference with full authority to negotiate and to settle the case on any terms at the conference. Unless otherwise ordered by the court, parties may be present at the settlement conference. However, all parties shall be available by telephone to their respective counsel during the settlement conference. The parties must be immediately available throughout the conference until excused regardless of time zone difference. Any other special arrangements desired in cases where settlement authority rests with a governing body, shall also be proposed to the court in advance of the settlement conference.

3. **Sanctions.**

Any failure of the trial attorneys, parties or persons with authority to attend the conference or to be available by telephone will result in sanctions to include the fees and costs expended by the other parties in preparing for and attending the conference. Failure to timely deliver a confidential settlement conference statement will also result in sanctions.

LR16.6. Contents of Pretrial Statement.

At the time to be set by a scheduling conference order under LR16.3, or by stipulation of the parties approved by the assigned judge, the parties shall serve and file separate pretrial statements (copies to be lodged concurrently with the district judge's courtroom ~~deputy~~manager), which shall follow the form and contain the captions and information specified in this rule:

(a) **Party.** The name of the party or parties in whose behalf the statement is filed.

(b) **Jurisdiction and Venue.** The statutory basis of federal jurisdiction and venue, and a statement as to whether any party disputes jurisdiction or venue.

(c) **Substance of Action.** A brief description of the substance of the claims and defenses presented.

(d) **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.

(e) **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues.

(f) **Relief Prayed.** A detailed statement of the relief claimed, including a particularized itemization of all elements of damages claimed.

(g) **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.

(h) **Previous Motions.** A list of all previous motions made in the action or proceeding and the disposition thereof.

(i) **Witnesses to be Called.** A list of all witnesses likely to be called at trial, except for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(j) **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.

(k) **Further Discovery or Motions.** A statement of all remaining discovery or motions.

(l) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.

(m) **Amendments, Dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.

(n) **Settlement Discussion.** A statement summarizing the status of settlement negotiations ~~and~~and/or participation in any alternative dispute resolution process, indicating whether further participation or negotiations are likely to be productive.

(o) **Agreed Statement.** A statement as to whether presentation of the action or proceeding, in whole or in part, upon an agreed statement of facts is feasible and desired.

(p) **Bifurcation, Separate Trial of Issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.

(q) **Reference to Master or Magistrate Judge.** A statement whether reference of all or a part of the action or proceeding to a master or magistrate judge is feasible and agreeable.

(r) **Appointment and Limitation of Experts.** A statement whether appointment by the court of an impartial expert witness and whether limitation of the number of expert witnesses, is feasible and desired.

(s) **Trial.** A statement of the scheduled or, if not scheduled, requested trial date, and, if trial is to be by jury, that a timely request for a jury is on file in the action.

(t) **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 are expected to 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.

(u) **Claims of Privilege or Work Product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.

(v) **Miscellaneous.** Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient, and economical determination.

LR16.7. Pretrial Conference Agenda.

A pretrial conference shall be held on the date and at the time scheduled. The agenda for the pretrial conference shall consist of matters covered by Fed. R. Civ. P. 16, and LR16.6 and any other matter germane to the trial of the action or proceeding. Each party shall be represented at the pretrial conference by counsel having authority with respect to all matters on the agenda, including settlement of the action or proceeding.

LR16.8. Pretrial Order.

The judge may make such pretrial order or orders at or following the pretrial conference as may be appropriate, and such order shall control the subsequent course of the action or proceeding as provided in Fed. R. Civ. P. 16. Unless otherwise ordered, the parties shall complete the following not less than seven (7) calendar days prior to the day on which the trial is scheduled to commence:

(a) Serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities, a copy to be given concurrently to the judge's courtroom ~~deputy~~manager;

(b) In jury cases, serve and file proposed voir dire questions and forms of verdict at least seven (7) days prior to jury selection;

(c) In court cases, serve and file proposed findings of fact and conclusions of law, a copy to be given concurrently to the judge's courtroom ~~deputy~~manager;~~—~~

(d) Serve and file statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers, and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal, a copy to be given concurrently to the judge's courtroom ~~deputy~~manager;

(e) Exchange copies or, when appropriate, make available for inspection all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit shall be premarked for identification in a manner clearly distinguishing plaintiff's from defendant's exhibits. Upon request, a party

shall make the original or the underlying documents of any exhibit available for inspection and copying.

LR16.9. Objections to Proposed Testimony and Exhibits; Motions in Limine.

(a) Promptly after receipt of the statements and exhibits pursuant to LR16.8, any party objecting to any proposed testimony or exhibit shall advise the opposing party of such objection. The parties shall confer with respect to any objections in advance of trial and attempt to resolve them.

(b) ~~Any m~~Motions in limine shall be filed and served not less than ~~five~~ten (~~5~~10) business days prior to the date of trial, unless leave of court is obtained shortening the time for filing. Any opposition to any motion in limine shall be filed and served not less than five (5) business days prior to the date of trial, unless leave of court is obtained shortening the time for filing.

(c) The caption to a motion in limine or opposition to a motion in limine should reflect the general subject matter of the motion in limine.

LR16.10. Status Conference.

Status conferences may from time to time be scheduled in any action or proceeding. Such conference may be requested by any party and shall be called only as necessary to facilitate the progress of the case and shall not be held as a matter of routine. No pleading need be filed.

LR17.1. Actions Involving Minors or Incompetents

No action by or on behalf of a minor or incompetent shall be dismissed, discontinued, or terminated without the approval of the court. When required by state law, court approval shall also be obtained from the appropriate state court having jurisdiction over such matters for any settlement or other disposition of litigation involving a minor or incompetent.

LR26.1. ~~Disclosures; Discovery Limitations and Commencement; Meeting of Parties.~~

~~**(a) Required Disclosures.**~~

~~**1. Initial Disclosures. The initial disclosure requirements specified in Fed.R.Civ.P. 26(a)(1) shall not apply in any action, except that the court, at a scheduling conference,**~~

~~may require that each party, without awaiting a discovery request:~~

~~(A) provide to other parties the name and, if known, the address and telephone number of each individual believed by it to have non-privileged personal knowledge concerning any significant factual issue specifically raised in the pleadings or identified by the parties in their report to the court under Fed.R.Civ.P. 26(f), appropriately indicating the subjects about which the person has such knowledge;~~

~~(B) make available to other parties for inspection and copying, as under Fed.R.Civ.P. 34, all documents, data compilations, and tangible things in its possession, custody, or control that may be used by it (other than solely for impeachment purposes) to support its contentions with respect to any significant factual issue in the case;~~

~~(C) provide to other parties a computation of any category of damages claimed by it, making available for inspection and copying, as under Fed.R.Civ.P. 34, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and~~

~~(D) disclose to other parties the existence and extent of coverage of any insurance agreement under which any insurer may be liable to satisfy part or all of a judgment which may be entered against it in the action or to indemnify or reimburse it for payments made to satisfy the judgment.~~

~~Unless otherwise stipulated, these disclosures shall be made at the time directed by the court. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. These disclosures are subject to a duty of supplementation, as provided in Fed.R.Civ.P. 26(e)(1), at least 30 days before the end of the period allowed for discovery.~~

~~2. Expert Testimony. Unless otherwise ordered by the court in a particular case, the requirements of Fed.R.Civ.P. 26(a)(2), relating to disclosure of expert testimony, do not~~

~~apply in pending cases in which an initial scheduling conference is held on or before the effective date of this rule.~~

~~3. Pretrial Disclosures. Deadlines for pretrial disclosures required by Fed.R.Civ.P. 26(a)(3) shall be established at the scheduling conference and/or the final pretrial conference.~~

~~(b) Limits on Formal Discovery. Unless otherwise ordered by the court in a particular case, the limitations specified in Fed.R.Civ.P. 30, 31 and 33 as to the number of depositions and interrogatories do not apply in pending cases in which an initial scheduling conference was held on or before November 30, 1993.~~

~~(c) Commencement of Discovery. Except as otherwise stipulated in writing by the parties or ordered by the court in a particular case, formal discovery under Fed.R.Civ.P. 30, 31, 33, 34, and 36 may not be commenced before the meeting of the parties under Fed.R.Civ.P. 26(f), except in the following cases:~~

~~1. cases exempted under paragraph (d)(1) from the requirement of the meeting of the parties;~~

~~2. cases in which a temporary restraining order or preliminary injunction is sought or in which a motion under Fed.R.Civ.P. 56 has been filed;~~

~~3. cases in which discovery is needed to resolve a preliminary motion such as an objection to personal jurisdiction or venue.~~

~~(d) Meeting of the Parties. Unless otherwise ordered by the court in a particular case, the provisions of Fed.R.Civ.P. 26(f) requiring a meeting of and a report from the parties, apply to all civil actions in this court, subject to the following modifications:~~

~~1. Unless otherwise ordered by the court in a particular case, the requirement of a meeting and report does not apply in:~~

~~(A) cases filed in, removed to, or transferred to this court before the effective date of this rule;~~

~~(B) cases instituted by pro se prisoners; and~~

~~**(C) cases consolidated with a case in which the parties have met as provided in Fed.R.Civ.P. 26(f) or in which a scheduling order under Fed.R.Civ.P. 16(b) has been entered.**~~

~~**2.**~~ **Conference of Parties.**

(a) Unless otherwise ordered by the court in a particular case, the ~~meeting~~conference must be held no later than 2~~0~~1 days before any scheduling conference set by the court under Fed. R.~~Civ.P. 16(b).~~

~~3. "Meeting" for purposes of this rule may include a conference telephone call.~~

~~4.~~ Civ. P. 16(b).

(b) Unless otherwise agreed by the parties or ordered by the court, the plaintiff(s) shall prepare and file the report required by this rule no later than five (5) business days after the conference. The defendant(s) may file within five (5) business days a supplemental report if there are any objections to the report filed by plaintiff(s). Form 35 in ~~the~~ Fed. R. Civ. P.~~,~~ Appendix of Forms~~,~~ illustrates the type of report that is contemplated and may serve as a checklist for the meeting.

(c) In connection with their discussion pursuant to Fed. R. Civ. P. 26(f) of the possibilities for a prompt settlement or resolution of the case, the parties at the conference shall confer about alternative dispute resolution options, including, without limitation, the option of participation in the court's mediation program. The report format (as illustrated by Form 35) should therefore include the following information under "Other Matters":

> [Other Matters]
> The parties have discussed alternative dispute resolution options, including, without limitation, the option of participation in the court's mediation program. The [parties] [plaintiff] [defendant] are prepared to consider this matter further and discuss options at the Scheduling Conference.

LR26.2. Written Responses to Discovery Requests.

(a) Discovery requests served pursuant to Fed. R. Civ. P. 33, 34, and 36 shall be in a form providing sufficient space to respond following each request.

(b) Responses to discovery requests pursuant to Fed. R. Civ. P. 33, 34 and 36 shall set forth the interrogatory or request in full before the response. Each objection shall be followed by a statement of the reasons therefore.

(c) In a motion to compel discovery, only the pertinent interrogatories, requests for production, or requests for admissions, and answers or objections shall be set forth.

(d) Whenever a claim of privilege is made in response to any discovery request pursuant to Fed. R. Civ. P. 33, 34 and 36, the materials or information claimed to be privileged shall be identified with reasons stated for the particular privilege claimed. No generalized claim of privilege shall be allowed.

LR37.1. Abuse of or Failure to Make Discovery; Sanctions.

(a) **Conference Required**. The court will not entertain any motion pursuant to Fed. R. Civ. P. 26 through 37, including any request for expedited discovery assistance pursuant to LR37.1(c), unless counsel have previously conferred, either in person or by telephone, concerning all disputed issues, in a good faith effort to limit the disputed issues and, if possible, eliminate the necessity for a motion~~. If counsel for the moving party seeks to arrange such a conference and counsel for the party against whom the motion will be made refuses or fails to confer, or if any counsel does not make the good faith effort described in the preceding sentence, the judge may order an appropriate sanction pursuant to Fed.R.Civ.P. 26 and 37.~~ or expedited discovery assistance.

(b) **Certificate of Compliance.** ~~At the time of~~When filing any motion with respect to Fed. R. Civ. P. 26 through 37, or a letter brief in accordance with LR37.1(c), counsel for the moving party shall certify compliance with this rule.

(c) **Expedited Discovery Assistance.**

1. Counsel may ~~request the courtroom deputy of the assigned magistrate judge to arrange a time for a chambers or telephone conference to resolve~~seek resolution of disputed discovery issues expeditiously and economically. This expedited procedure is intended to afford a swift but full ~~hearing following~~opportunity for the parties to present their positions through abbreviated~~ and~~, simultaneous briefing ~~by the parties.~~

~~2. Except when impractical, the party calling such a expedited conference shall confirm by letter to the magistrate~~

~~judge and~~and, when appropriate, a conference. Counsel desiring such assistance shall contact opposing counsel ~~the date and time of the hearing and the deadline set by the courtroom deputy for filing~~to arrange a mutually agreeable deadline for the submission of letter briefs. Should counsel be unable to agree upon a deadline, counsel may contact the courtroom manager of the assigned magistrate judge who will assign a deadline for letter briefs. Counsel who obtains a deadline from the courtroom manager shall notify opposing counsel of the assigned deadline.

~~3~~2. Letter briefs ~~shall be filed~~ by all parties ~~simultaneously by a deadline set by the courtroom deputy, with conformed copies delivered to chambers~~shall be submitted to chambers and served on opposing counsel by the deadline. The letter brief shall contain all relevant information, including: confirmation of the deadline for submission of letter briefs; dates of discovery cut-off, and trial; and a discussion of the dispute. If a party opposes the use of this expedited procedure, such opposition should be included in the letter brief. Unless otherwise ordered by the court, the letter briefs shall be five pages or less, inclusive of all exhibits.

~~4. Pursuant to LR37.1, the court will not entertain discovery motions, including expedited procedures, unless the parties have previously conferred in a good faith effort to resolve the dispute and the motion or letter brief contains a certification to that effect.~~

~~5~~3. Upon receipt of the letter briefs, the magistrate judge shall determine a procedure for resolving the dispute. Should a conference be required, the courtroom manager of the assigned magistrate judge will schedule such a conference and shall specify whether counsel must attend in person or by telephone.

4. Any discovery order issued by a magistrate judge pursuant to such expedited procedure may be appealed to the assigned district judge pursuant to CrimLR57.3(b).

~~(d) **Declarations Re Expenses and Fees.** Where a party seeks an award of attorney's fees or other expenses pursuant to Fed.R.Civ.P. 37 , the motion shall be accompanied by a declaration itemizing with particularity the fees and expenses to which that party claims to be entitled. Such itemization should include, if practicable and not privileged, copies of time sheets.~~

LR40.1. Assignment of Civil Cases.

Cases will be assigned as determined by the court.

LR40.2. Assignment of Similar Cases.

Whenever it shall appear that civil actions or proceedings involve the same or substantially identical transactions, happenings, or events, or the same or substantially the same parties or property or subject matter, or the same or substantially identical questions of law, or for any other reason said cases could be more expeditiously handled if they were all heard by the same district judge, then the chief district judge or any other district judge appointed by the chief district judge in charge of the assignment of cases may assign such cases to the same district judge. Each party appearing in any such action may also request by appropriate motion that said cases be assigned or reassigned to the same district judge.

LR40.3. Trial Setting and Readiness Procedure.

All civil and criminal trials shall be considered placed on a two-week readiness calendar. The week in which a case is set for trial shall be considered that case's primary week. The week prior to the week a case is set for trial shall be considered that case's standby week. As the calendar moves forward, cases will rotate from standby to primary week status, with the succeeding week's cases moving into standby status. Cases not tried during their primary week shall be reset for trial in accordance with present court practice.

The court will consider all cases set on either the primary or standby calendar to be ready for trial, and any such case may be called for trial on one day's notice without further order of the court. Failure of a party to be ready to proceed to trial on any case set on the two-week readiness calendar may subject that party to sanctions as provided in LR11.1, which sanctions may include entry of adverse judgment or dismissal.

Cases not called to trial during their primary week shall be reset for trial at the earliest available date in accordance with court procedures.

LR40.4. Motions to Continue Trial.

Any motion to continue trial ~~filed~~heard within thirty (30) days of the scheduled trial date shall be decided by the trial district judge, unless the motion is designated to a magistrate

judge. All other motions to continue trial shall be decided by the assigned magistrate judge. Any motion to continue trial shall indicate that the client-party has consented to the continuance. Consent may be demonstrated by the client-party's signature on a motion to continue trial or by the personal appearance in court of the client-party.

LR40.5. Notice to the Court of Calendar Conflicts.

Upon learning of a scheduling conflict between the United States District Court for the District of Hawaii and the Hawaii State Courts, counsel shall within forty-eight (48) hours notify the judges involved in order that they may confer and resolve the conflict.

LR40.6. Scheduling Conflicts.

(a) Upon being advised of a scheduling conflict, the judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither the United States District Court nor the Hawaii State Courts have priority in scheduling, the following factors, which are not all-inclusive, may be considered in resolving the conflict:

~~1.~~ 1. Criminal cases versus civil cases and attendant Speedy Trial problems;

~~2.~~ 2. Out-of-town witnesses, parties, or counsel;

~~3.~~ 3. Age of cases;

~~4.~~ 4. Which matter was set first;

~~5.~~ 5. Any other factor which weighs in favor of one case over the other.

LR41.1 VOLUNTARY DISMISSAL OF ACTIONS

Any stipulation filed pursuant to Fed. R. Civ. P. 41(a)(1)(ii) shall be submitted to the trial judge for that judge to sign as "approved and so ordered."

LR48.1. Civil Juries.

In all civil actions in which a party is entitled to a jury trial, the jury shall be composed as mandated by Fed. R. Civ. P. 48 , as amended.

LR51.1. Jury Instructions.

All proposed jury instructions are required to be filed and served at least seven (7) ~~calendar~~business days before the trial begins, except for an isolated one or two whose need could not have been foreseen. Jury instructions are to be submitted in the following format:

(a) The parties are required to jointly submit one set of agreed upon instructions. To this end the parties are required to serve their proposed instructions upon each other no later than ~~eighteen~~fourteen (1~~8~~4) ~~calendar~~business days prior to trial. The parties should then meet, confer and submit one complete set agreed upon instructions.

(b) If the parties cannot agree upon one complete set of instructions, they are required to submit one set of those instructions that have been agreed upon, and each party should submit a supplemental set of instructions which are not agreed upon.

(c) It is not enough for the parties to merely agree upon the general instructions, and then each submit their own set of substantive instructions. The parties are expected to meet, confer, and agree upon the substantive instructions for the case.

(d) These joint instructions and supplemental instructions must be filed seven (7) ~~calendar~~business days prior to trial. Each party should then file, five (5) business days before trial, its objections to the non-agreed upon instructions proposed by the other party. Any and all objections shall be in writing and shall set forth the proposed instruction in its entirety. The objection should then specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation to authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable the objecting party shall submit an alternative instruction covering the subject or principle of law.

(e) The parties are required to submit the proposed joint set of instructions and proposed supplemental instructions in the following format:

(i) There must be two copies of each instruction;

(ii) The first copy should indicate the number of the proposed instruction, and the authority supporting the instruction; and

(iii) the second copy should contain only the proposed instruction -- there should be no other marks or writings on the second copy except for a heading reading "Instruction No. _____" with the number left blank.

(iv) To the extent practicable, parties shall submit a virus-free 3½″ diskette containing the foregoing instructions.

(f) On the day of trial ~~the parties~~each party may submit a concise argument supporting the appropriateness of ~~each parties'~~that party's proposed instructions to which ~~the other~~another party has objected ~~to~~.

(g) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

(h) Parties should note, in jointly agreeing upon instructions, that the court has designated a set of standard instructions, and otherwise generally prefers 9th Circuit Model Jury Instructions over Devitt and Blackmar.

(i) Parties should also note that any modifications of instructions from statutory authority, BAJI, or Devitt and Blackmar (or any other form instructions) must specifically state the modification made to the original form instruction and the authority supporting the modification.

(j) Failure to comply with any of the above instructions may subject the non-complying party and/or its attorneys to sanctions in accordance with LR11.1.

LR52.1. Settlement of Findings of Fact and Conclusions of Law.

Except as otherwise ordered by the judge, within seven (7) days after the announcement of the decision of the court awarding judgment in any action tried upon the facts without a jury, including actions in which a jury may have been called and may have acted only in an advisory capacity under Fed. R. Civ. P. 39(c), the prevailing party shall prepare a draft of the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a) and serve a copy thereof upon each party who has appeared in the

action and mail or deliver a copy to the judge and to the clerk. Any party receiving the proposed draft of findings of fact and conclusions of law shall, within five business (5) days thereafter, serve upon all other parties and mail or deliver to the judge and to the clerk a statement of any objections he or she may have to the proposed draft, the reasons therefor and a substitute proposed draft of the findings of fact and conclusions of law. The judge shall thereafter take such action as is necessary under the circumstances.

LR53.1. Magistrate Judges; Special Master References, Motions for Attorneys' Fees and Related Nontaxable Expenses.

A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a district judge to serve as special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b)~~—~~.

Unless otherwise ordered by a district judge, the magistrate judge designated to handle non-dispositive matters in a civil case is, in accordance with 28 U.S.C. ~~636~~§ 636(b)(2) and Fed. R. Civ. P. 53, 54(d)(~~1~~2)(A), and 54(d)(2)(D)~~—~~, designated to serve as special master to adjudicate any motion for attorneys' fees and related nontaxable expenses filed in the civil case. The motion for attorneys' fees and related non-taxable expenses shall be ~~accompanied by a declaration itemizing with particularity the fees and expenses to which that party claims to be entitled. Such itemization should include, if practicable and not privileged, copies of time sheets and invoices~~filed in accordance with LR54.3.

LR53.2. Magistrate Judges; Special Master Reports - 28 U.S.C. § 636(b)(2).

Any party may seek review of, or action on, the special master's report filed by a magistrate judge in accordance with the provisions of Fed. R. Civ. P. 53(e).

LR53.3 Special Masters Appointment.

1. **Appointment of Special Master.** If all of the parties to an action stipulate in writing to the reference of the action to a special master, and if the special master and the court consent to the assignment, an order of reference shall be entered. If the parties cannot agree upon the selection of a

special master but stipulate in writing that there be a reference to a special master, the court shall promptly designate a special master from the register and shall send notice of that designation to the special master and to all attorneys of record in the action.

2. **Powers and Duties.** The powers and duties of the special master and the effect of his report shall be as set forth in Fed. R. Civ. P. 53 except as the same may be modified or limited by agreement of the parties and incorporated in the order of reference.

3. **Time and Place.** The special master shall fix a time and place of hearing, and all adjourned hearings, which is reasonably convenient for the parties and shall give them at least fourteen (14) days' written notice of the initial hearing.

4. **Other Special Master Appointments**. This rule shall not limit the authority of the court to appoint compensated special masters to supervise discovery or for other purposes, under the provisions of Fed. R. Civ. P. 53.

5. **Register of Volunteer Attorneys**.

(i) **Selection Procedure**. The judges of the district shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as special masters in civil cases in this court in order to facilitate disposition of civil actions. The attorneys so registered shall be selected by the judges of the district from lists of qualified attorneys at law, who are members of the bar of this court, and who are recommended to the district judges by the Hawaii State Bar Association.

(ii) **Minimum Qualifications**. In order to qualify for service as a special master under this rule, an attorney shall have the following minimum qualifications: (1) Have been a member of the bar of a Federal District Court for at least seven (7) years; (2) Be a member of the Bar of the United States District Court for the District of Hawaii; and (3) ~~A~~Have had, or has, a

substantial portion of his or her practice ~~has been, or is,~~ in Federal Court.

6. **Criteria for Designations**. In designating a special master, the district judge shall take into consideration the nature of the action and the nature of the practice of the attorneys on the register. When feasible, the district judge shall designate an attorney who has had substantial experience in the type of action in which the attorney is to act as special master.

LR53.4. Settlement Masters Program

When settlement would be facilitated by the use of a settlement master, the court may designate a settlement master from a list of retired and/or senior litigators appointed to serve on a pro bono basis. The settlement master is authorized to conduct settlement discussions, require the parties to attend a settlement conference conducted by the settlement master and require the parties to exchange position statements concerning settlement and/or provide confidential position statements concerning settlement to the settlement master. The settlement master shall report to the court on the prospects for and progress toward settlement.

LR54.1. Jury Cost Assessment.

Where a civil case set for jury trial is settled or otherwise disposed of, notice of such agreement or disposition shall be filed in the clerk's office at least one (1) full business day before the date on which the case is set; otherwise juror costs, including service fees, mileage, and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, except for good cause shown. Where a continuance of a case is applied for on the day set for trial and granted by the court, the payment of juror costs by the party applying for the continuance may be one of the conditions of the continuance, unless the continuance was not due to any fault of the moving party.

LR54.2 Taxation of Costs

(a) Entitlement. Costs shall be taxed as provided in Rule 54(d)(1) of the Federal Rules of Civil Procedure. The party entitled to costs shall be the prevailing party in whose favor judgment is entered, or shall be the party who prevails in connection with a motion listed in LR54.2(b). Unless otherwise ordered, the court will not determine the party entitled to costs

in an action terminated by settlement; the parties must reach agreement regarding entitlement to taxation of costs, or bear their own costs.

(b) Time For Filing. Unless otherwise ordered by the court, a Bill of Costs shall be filed and served within thirty (30) days of the entry of judgment, the entry of an order denying a motion filed under Fed. R. Civ. P. 50(b), 52(b), or 59, or an order remanding to state court any removed action. Non-compliance with this time limit shall be deemed a waiver of costs.

(c) Contents. The Bill of Costs must state separately and specifically each item of taxable costs claimed. It must be supported by a memorandum setting forth the grounds and authorities supporting the request and an affidavit that the costs claimed are correctly stated, were necessarily incurred, and are allowable by law. The affidavit must also contain a representation that counsel met and conferred in an effort to resolve any disputes about the claimed costs, and the prevailing party shall state the results of such a conference, or that the prevailing party made a good faith effort to arrange such a conference, setting forth the reasons the conference was not held. Parties may use the Bill of Costs Form AO 133, which is available from the Clerk's Office and the Court's website. Any vouchers, bills, or other documents supporting the costs being requested shall be attached as exhibits.

(d) Objections.

1. Within eleven (11) days after a Bill of Costs is served, the party against whom costs are claimed must file and serve any specific objections, succinctly setting forth the grounds and authorities for each objection. Upon the timely filing of any objections, the Clerk of Court will refer both the Bill of Costs and objections to the court for a determination of taxable costs. If no such memorandum is filed within the required time, the Clerk of Court may without notice or hearing tax all of the requested costs.

(e) Review. Taxation of costs may be reviewed by the court upon motion filed and served within five (5) business days after taxation by the Clerk, in accordance with Fed. R. Civ. P. 54(d)(1).

(f) Standards. Costs are taxed in conformity with 28 U.S.C. §§ 1821, 1920-1925, and other applicable statutes, with the following clarifications:

1. Fees for the service of process and service of subpoenas by someone other than the marshal are allowable, to the extent they are reasonably required and actually incurred.

2. The cost of a stenographic and/or video original and one copy of any deposition transcript necessarily obtained for use in the case is allowable. A deposition need not be introduced in evidence or used at trial, so long as, at the time it was taken, it could reasonably be expected that the deposition would be used for trial preparation, rather than mere discovery. The expenses of counsel for attending depositions are not allowable.

3. Per diem, subsistence, and mileage payments for witnesses are allowable to the extent reasonably necessary and provided for by 28 U.S.C. § 1821. Unless otherwise provided by law, fees for expert witnesses are not taxable in an amount greater than that statutorily allowable for ordinary witnesses.

4. The cost of copies necessarily obtained for use in the case is taxable provided the party seeking recovery submits an affidavit describing the documents copied, the number of pages copied, the cost per page, and the use of or intended purpose for the items copied. The practice of this court is to allow taxation of copies at $.15 per page or the actual cost charged by commercial copiers, provided such charges are reasonable. The cost of copies obtained for the use and/or convenience of the party seeking recovery and its counsel is not allowable.

5. Electronic or computer research costs are not taxable.

6. Fees paid to the clerk of the state court prior to removal are taxable in this court, unless the removed case is remanded back to state court.

LR54.3 Motion For Attorneys' Fees And Related Non-taxable Expenses

(a) Time For Filing. Unless otherwise provided by statute or ordered by the court, a motion for an award of attorneys' fees and related non-taxable expenses must be filed within fourteen (14) days of entry of judgment. Filing an appeal from the judgment does not extend the time for filing a motion.

(b) Statement of Consultation. The court will not consider a motion for attorneys' fees and related non-taxable expenses until moving counsel shall first advise the court in writing

that, after consultation, or good faith efforts to consult, the parties are unable to reach an agreement with regard to the fee award or that the moving counsel has made a good faith effort, but has been unable, to arrange such a conference. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys, and the specific results achieved, or shall describe the efforts made to arrange such conference and explain the reasons why such conference did not occur. The moving party shall initiate this consultation after filing a motion for attorneys' fees and related non-taxable expenses. The statement of consultation shall be filed and served by the moving party within eleven (11) days after the conclusion of such consultation. If the parties reach an agreement, they may file an appropriate stipulation and request for an order.

(c) Contents. A motion for attorneys' fees and related non-taxable expenses shall specify the applicable judgment and statutory or contractual authority entitling the moving party to the requested award and the amount of attorneys' fees and related non-taxable expenses sought. In addition, the moving party shall file a memorandum in support and an affidavit of counsel.

(d) Memorandum in Support. The memorandum in support shall set forth the nature of the case; the claims as to which the moving party prevailed; the claims as to which the moving party did not prevail; the applicable authority entitling the moving party to the requested award; a description of the work performed by each attorney and paralegal, broken down by hours or fractions thereof expended on each task; the attorney's customary fee for like work; the customary fee for like work prevailing in the attorney's community; any additional factors required by case law; a listing, in sufficient detail to enable the court to rule on the reasonableness of the request, of any expenditures for which reimbursement is sought; any additional factors that are required by case law; and any additional factors the moving party wishes to bring to the court's attention.

1. Itemization of Work Performed. Descriptions of work performed shall be organized by litigation phase[1] as follows: (A)

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[1]In general, preparation time should be reported under the category to which it relates. For example, time spent preparing for a court hearing should be recorded under the category "court hearings." Factual investigation should also be listed under the specific category to which it relates. For example, time spent with a witness to obtain an affidavit for a summary judgment

case development, background investigation and case administration (includes initial investigations, file setup, preparation of budgets, and routine communications with client, co-counsel, opposing counsel and the court); (B) pleadings; (C) interrogatories, document production, and other written discovery; (D) depositions; (E) motions practice; (F) attending court hearings; (G) trial preparation and attending trial; and (H) post-trial motions.

2. Description of Services Rendered. The party seeking an award of fees must describe adequately the services rendered, so that the reasonableness of the requested fees can be evaluated. In describing such services, counsel should be sensitive to matters giving rise to attorney-client privilege and attorney work product doctrine, but must nevertheless furnish an adequate non-privileged description of the services in question. If the time descriptions are incomplete, or if such descriptions fail to describe adequately the services rendered, the court may reduce the award accordingly. For example, time entries for telephone conferences must include an identification of all participants and the reason for the call; entries for legal research must include an identification of the specific issue researched and, if possible, should identify the pleading or document for which the research was necessary; entries describing the preparation of pleadings and other papers must include an identification of the pleading or other document prepared and the activities associated with such preparation.

3. Description of Expenses Incurred. In addition to identifying each requested non-taxable expense, the moving party shall set forth the applicable authority entitling the moving party to such expense and should attach copies of invoices and receipts, if possible.

(e) Affidavit of Counsel. The affidavit of counsel shall include: (1) a brief description of the relevant qualifications, experience and case-related contributions of each attorney and paralegal for whom fees are claimed, as well as any other factors relevant to establishing the reasonableness of the requested rates; (2) a statement that the affiant has reviewed and approved

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motion or opposition should be indicated under the category "motions practice." Similarly, a telephone conversation or a meeting with a client held for the purpose of preparing interrogatory answers should be included under the category "interrogatories, document production, and other written discovery."

the time and charges set forth in the itemization of work performed and that the time spent and expenses incurred were reasonable and necessary under the circumstances; and (3) a statement identifying all adjustments, if any, made in the course of exercising "billing judgment."

(f) Responsive and Reply Memoranda. Unless otherwise ordered by the court, any opposing party may file a responsive memorandum within eleven (11) days after service of the statement of consultation. The responsive memorandum in opposition to a motion for attorneys' fees and related non-taxable expenses shall identify with specificity all disputed issues of law and fact, each disputed time entry, and each disputed expense item. The moving party, unless otherwise ordered by the court, may file a reply memorandum within eleven (11) days after service of the responsive memorandum. Thereafter, unless otherwise ordered by the court, the motion and supporting and opposing memoranda will be taken under advisement and a ruling will be issued without a hearing.

LR56.1. Motions for Summary Judgment.

(a) **Motion Requirements.** A motion for summary judgment shall be accompanied by a supporting memorandum and separate concise statement detailing each material fact as to which the moving party contends~~:1. T~~ that there are no genuine issues to be tried~~; and 2. Which~~ that are essential for the court's determination of the ~~issue or issues presented on~~ summary judgment motion (not the entire case).

(b) **Opposition Requirements.** Any party who opposes the motion shall file and serve with his or her opposing papers a separate document containing a concise statement that:

1. Accepts the facts set forth in the moving party's concise statement; or

2. Sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

(c) **Focus of the Concise Statement.** When preparing the separate concise statement, a party shall reference only the material facts which are absolutely necessary for the court to determine the limited issues presented in the motion for summary judgment (and no others) and each reference shall contain a citation to a particular affidavit, deposition, or other document which supports the party's interpretation of the material fact. Documents referenced in the concise statement shall not be filed

in their entirety. Instead, the filing party shall extract and highlight only the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting will be adequate.

(d)~~)~~ **Limitation.** The concise statement shall be no longer than five (5) pages, unless it contains no more than 1500 words. When a concise statement is submitted pursuant to the foregoing word limitation, the number of words shall be computed in accordance with LR 7.5(d), and the concise statement shall include the certificate provided for in LR7.5(e).

(e) **Format**. A separate concise statement may utilize a single space format for the presentation of the facts and evidentiary support when set out in parallel columns.

(f) **Scope of Judicial Review.** When resolving motions for summary judgment, the court shall have no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statements of the parties.

(g) **Admission of Material Facts.** For purposes of a motion for summary judgment, material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

(h) Affidavits or declarations setting forth facts and/or authenticating exhibits, as well as exhibits themselves, shall only be attached to the concise statement.

LR56.2. Notice to Pro Se Prisoner Litigants Re Motions for Summary Judgment.

In all cases where summary judgment motions are filed against pro se prisoner litigants, the moving ~~papers~~party shall ~~include~~either file a separate notice ~~in a form approved by the court which~~using the court's preapproved form or lodge for the magistrate judge's review and signature, and then file, a separate notice, which in ordinary, understandable language advises the prisoner: (1) of the contents of Fed. R. Civ. P. 56~~(e)~~ and LR56.1; (2) that the prisoner has the right to file counter-affidavits or other admissible evidence in opposition to the motion~~;~~, and ~~(3)~~ that failure to respond might result in the entry of summary judgment against the prisoner; and (3) that if the motion for summary judgment is granted, the prisoner's case will be over. The moving party shall serve the prisoner with the notice simultaneously with the summary judgment motion. A

preapproved form of the notice is provided at the end of these rules.

LR58.1. Entry of Judgments and Orders.

(a) Orders will be noted in the civil docket immediately after the clerk has signed them. The clerk may require any party obtaining a judgment or order which does not require approval as to form by the judge to supply him with a draft thereof.

(b) No judgment or order, except orders grantable by the clerk pursuant to authorization by the court and judgments which the clerk is authorized by the Federal Rules of Civil Procedure to enter without direction of the court will be noted in the civil docket until the clerk has received from the court a specific direction to enter it. Unless the court's direction is given to the clerk in open court and noted in the minutes, it should be evidenced by the signature initials of the judge on the form of judgment or order.

(c) Every order and judgment shall be filed in the clerk's office, and if the clerk so requests, a copy shall also be delivered to the clerk for insertion in the civil order book.

(d) Attorneys shall endeavor to notify the clerk in advance of substantial sums to be deposited as registry account funds, to ensure that the depository has pledged sufficient collateral under Treasury regulations~~,~~; otherwise, funds will be retained in a non-interest-bearing account pending verification of such pledge. All orders for the deposit of registry account funds in interest-bearing accounts shall contain the following provisions:

1. IT IS FURTHER ORDERED that counsel presenting this order shall serve a copy thereof on the clerk of this court or the chief deputy, personally, at the time the money is deposited with the clerk's office. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

2. IT IS FURTHER ORDERED that the clerk shall deduct from the income earned on the account, a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

(e) Orders distributing registry funds which have accumulated interest income in the amount of $10.00 or more~~,~~ shall contain the name, address, and social security or

taxpayer’s identification number of the party or parties entitled thereto.

LR58.2. Settlement of Judgments and Orders by the Court.

(a) Except as otherwise ordered by the judge, within seven (7) days after the announcement of the decision of the court awarding any judgment or order which requires settlement and approval as to form by the judge, the prevailing party shall prepare a draft of the order or judgment embodying the court's decision and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the judge and to the clerk. Any party receiving the proposed draft of judgment or order shall within five (5) days thereafter serve upon all other parties and mail or deliver to the judge and to the clerk a statement of any objection he or she may have to the proposed draft, the reasons therefor, and a substitute proposed draft. Thereafter, the judge shall take such further action as is necessary under the circumstances.

(b) The judgment or order shall be signed or initialed by the judge and shall be the direction to the clerk to enter it.

(c) Judgments and orders prepared by the court or clerk shall be served by the clerk on all parties appearing in the action. Judgments and orders prepared by a party shall be served by that party on all other parties appearing in the action immediately upon receipt of a copy of the judgment or order signed by the judge.

LR60.1. Motions for Reconsideration.

Motions for reconsideration of interlocutory orders may be brought only upon the following grounds:

(a) Discovery of new material facts not previously available;

(b) Intervening change in law;

(c) Manifest error of law or fact.

Motions asserted under Subsection (c) of this rule must be filed ~~within~~not more than ten (10) business days ~~of~~after the court's written order is filed.

LR65.1.1. When a Bond or Security is Required.

The court, on motion or of its own initiative, may order any party to file an original bond or additional security for costs in such an amount and so conditioned as the court by its order may designate.

LR65.1.2. Qualifications of Surety.

Subject to approval of the court, every bond for costs under this rule must have as surety either: (1) a cash deposit equal to the amount of the bond; or (2) a corporation authorized by the Secretary of the Treasury of the United States, to act as surety on official bonds pursuant to 31 U.S.C. §§ 9301-09; or (3) a resident of the district, who owns real or personal property within the district sufficient in value above any incumbrances to justify the full amount of the suretyship; or (4) any insurance, surety or bonding company licensed to do business in the State of Hawaii.

LR65.1.3. Suits as Poor Persons.

At the time application is made, under the Acts of Congress providing for suits by poor persons, for leave to commence any civil action without being required to prepay fees and costs or give security for them, the applicant shall file a written consent that the recovery, if any, in the action, to such amounts as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff and, to plaintiff's attorney, the amount which the court allows or approves as compensation for the attorney's services.

LR66.1.— Receiverships.

In the exercise of the authority vested in the district courts by Fed. R. Civ. P. 66 , this rule is promulgated for the administration of estates by receivers or by the other similar officers appointed by the court. Except in the administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by these rules.

(a) **Inventories.** Unless the court otherwise orders, a receiver or similar officer as soon as practicable after his or her appointment and not later than thirty (30) days after he or she has taken possession of the estate, unless such time shall be extended by the court for good cause shown, shall file an inventory of all the property and assets in the receiver's possession or in the possession of others who hold possession as

his or her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(b) **Reports.** Within one month after the filing of the inventory, and at regular intervals of three months thereafter until discharged, or at such other times as the court may direct, the receiver or other similar officer shall file reports of his or her receipts and expenditures and of the receiver's acts and transactions in his or her official capacity.

(c) **Compensation of Receivers, Commissioners, Attorneys and Others.** The compensation of receivers or similar officers, of their counsel, and of all those who may have been appointed by the court to aid in the administration of the estate, the conduct of its business, the discovery and acquirement of its assets, the formation of reorganization plans, and the like, shall be ascertained and awarded by the court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the court may direct. The notice shall state the amount claimed by each applicant.

(d) **Administration of Estates.** In all other respects, receivers or similar officers shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

LR72.1. Magistrate Judges; Jurisdiction Under 28 U.S.C. § 636(a).

Each magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

(a) Exercise all the powers and duties conferred or imposed on magistrate judges by law and the Federal Rules of Criminal Procedure;

(b) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits and depositions;

(c) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

LR72.2. Procedures Before the Magistrate Judge.

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes, rules, and to the general procedural rules of this court.

LR72.3. Magistrate Judges; Determination of Non-Dispositive Pretrial Matters - 28 U.S.C. § 636(b)(1)(A).

Unless otherwise ordered, a magistrate judge shall hear and determine any pretrial motions, including discovery motions, in a civil or criminal case, other than the motions which are specified in LR72.4.

LR72.4. Magistrate Judges; Determination of Case-Dispositive Pretrial Matters - 28 U.S.C. § 636(b)(1)(B).

(a) A district judge may designate a magistrate judge to hear and determine, and to submit to a district judge of the court proposed findings of fact and recommendations for ~~the~~ disposition~~,~~ by a district judge, the following pretrial motions in civil and criminal cases:

1. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

2. Motions for judgment on the pleadings;

3. Motions for summary judgment;

4. Motions to dismiss or permit the maintenance of a class action;

5. Motions to dismiss for failure to state a claim upon which relief may be granted;

6. Motions to dismiss an action involuntarily;

7. Motions made by a defendant to dismiss or quash an indictment or information;

8. Motions to suppress evidence in a criminal case.

(b) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

LR72.5. Magistrate Judges; Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255.

A magistrate judge may perform any or all of the duties imposed upon a district judge by the rules governing proceedings in the district courts under 28 U.S.C. §§ 2254 and 2255. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a proposed order containing findings of fact and recommendations for disposition of the petition by the district judge. Any order disposing of the petition may only be made by a district judge.

LR72.6. Magistrate Judges; Prisoner Cases Under 42 U.S.C. § 1983.

A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

LR72.7. Magistrate Judges; Civil Cases.

(a) Upon filing, civil cases shall be assigned by the clerk to a magistrate judge. The magistrate judge shall hear and determine pretrial motions made pursuant to LR72.3.

(b) Where designated by a district judge, the magistrate judge may conduct additional pretrial conferences and hear the motions and perform the duties set forth in LR72.4 through 72.6.

(c) Where the parties consent to trial and disposition of a case by a magistrate judge under LR73.1, such case shall be set before the magistrate judge for the conduct of all further proceedings and the entry of judgment.

LR72.8. Magistrate Judges; Authority of U.S. District Judges.

Nothing in these rules shall preclude the court or a district judge from reserving any proceedings for conduct by a district judge, rather than a magistrate judge. The court, moreover, may by general order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

LR73.1. Magistrate Judges; Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties - 28 U.S.C. § 636(c).

Upon the consent of the parties, a full-time magistrate judge or a part-time magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he or she serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in 28 U.S.C. § 631(b)(1) and the chief district judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one district judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the district judges of such district court, and when there is no such concurrence, then by the chief district judge.

A magistrate judge is also authorized to:

(a) Exercise general supervision of the civil calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the district judge;

(b) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil cases;

(c) Conduct voir dire and select petit juries for the court;

(d) Accept petit jury verdicts in civil cases in the absence of a district judge;

(e) Issue subpoenas or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(f) Order the exoneration or forfeiture of bonds;

(g) Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(h) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69 ;

(i) Conduct naturalization hearings, but all orders from any naturalization hearing shall be submitted to a district judge of this court for approval;

(j) Grant motions to dismiss in civil cases when authorized by statute or rule and when such dismissal is within the jurisdiction of the magistrate judge;

(k) Perform any additional duty not inconsistent with the Constitution and Laws of the United States.

LR73.2. Magistrate Judges; Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties - 28 U.S.C. § 636(c)(2).

(a) **Notice.** The clerk shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(b) **Execution of Consent.** The clerk shall not accept a consent form unless it has been signed by all the parties or their respective counsel in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk. ~~No consent form will be made available, nor will its contents be made known to any judicial officer, unless all parties have consented to the reference to a magistrate judge.~~ No judicial officer or other court official may ~~attempt to persuade or induce~~compel any party to consent to the reference of any civil matter to a magistrate judge.

LR73.3. Magistrate Judges; Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties - 28 U.S.C. § 636(c).

Appeal to the Court of Appeals. Subject to provisions of 28 U.S.C. § 636(c), upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. § 636(c) and LR73.1, an aggrieved party

may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of this court.

LR74.1. Magistrate Judges; Appeal of Non-Dispositive Matters - 28 U.S.C. § 636(b)(1)(A).

A magistrate judge may hear and determine any pretrial matter pending before the court, except those motions delineated in ~~LR72~~LR 72.4(a). Any party may appeal from a magistrate judge~~'~~'s order determining a motion or matter under LR72.3 within ~~ten~~eleven (1~~0~~1) calendar days after issuance of the magistrate judge~~'~~'s order, which the clerk shall serve on all parties. ~~Such~~The appealing party shall file with the clerk, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from ~~and the basis for any objection thereto~~after having been served with a copy thereof. Any party in interest may file a response within ~~ten~~eleven (1~~0~~1) calendar days after having been served with a copy thereof. Each of the above ~~ten~~eleven (1~~0~~1) day periods may be altered by the magistrate judge or a district judge. Filing of a response shall be governed by LR7.4. The eleven (11) calendar day period may be altered by the magistrate judge or a district judge. Oral argument will not be scheduled unless requested by the court. A district judge shall consider the appeal and shall set aside any portion of the magistrate judge~~'~~'s order found to be clearly erroneous or contrary to law. The district judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule. Any cross-appeal shall be filed within two (2) working days of the receipt of an appeal or within eleven (11) calendar days after service of the magistrate judge's order, whichever is later. Any opposition to a cross-appeal shall be filed within eleven (11) calendar days of receipt of the cross-appeal. No reply in support of an appeal or cross-appeal shall be filed without leave of court.

LR74.2~~.~~ Magistrate Judges; Review of Recommendations for Disposition~~ - 28 U~~ 28 U.S.C.~~ § 636~~ § 636(b)(1)(B)~~.~~

Any party may object to a magistrate judge~~'~~'s case dispositive~~ proposed~~ order, findings, or recommendations under ~~LR72~~LR 72.4, 72.5 and 72.6 within ~~ten~~eleven (1~~0~~1) calendar days after ~~being served with a copy thereof~~the date of service of the order on all parties. ~~Such~~The objecting party shall file with the clerk, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions

of the ~~proposed~~ order, findings, or recommendations to which objection is made and the basis for such objections. ~~Any party may respond to another party's objections within ten (10) days after being served with a copy thereof. Each of the above ten (10~~Filing of a response shall be governed by LR7.4. Each of the eleven (11) day periods may be enlarged by a district judge. A district judge shall make a de novo determination of those portions of the report or specified ~~proposed~~ findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district judge, however, will not conduct a new hearing unless required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The district judge may exercise discretion to receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions. Cross-objections shall be filed within two (2) working days of the receipt of an objection or within eleven (11) calendar days after service of the magistrate judge's order. Any opposition to a cross-objection shall be filed within eleven (11) calendar days of receipt of the original objection. No reply in support of objections of cross-objections to a magistrate judge's case dispositive proposed order, findings, or recommendations shall be filed without leave of court.

LR74.3. Magistrate Judges; Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule or decisional law.

LR77.1. Sessions of the Court.

The court shall be in continuous regular session in Honolulu, Hawaii, and in special session at other locations when ordered by the chief judge or the chief judge's designee.

LR77.2. Clerk's Office; Location and Hours.

The offices of the clerk of this court shall be at 300 Ala Moana Blvd., Room ~~C-304, Unit 50129~~C-338, Honolulu, Hawaii, 96850, facsimile no: (808) 541-1303. The regular hours shall be from 8:00 a.m. to 4:30 p.m. each day, except Saturdays, Sundays, legal holidays and other days or times so ordered by the court.

LR77.3. Court Library; Operation and Use.

The court maintains a law library for the primary use of judges and personnel of the court. In addition, attorneys admitted to practice in this court may use the library where circumstances require while actively engaged in actions or proceedings pending in the court. The library is operated in accordance with such rules and regulations as the court may from time to time adopt.

LR79.1. Disposition of Exhibits and Depositions.

(a) **Custody of Exhibits and Depositions.** ~~E~~Unless otherwise ordered by the court, each exhibit offered in evidence and all depositions and transcripts shall be held in the custody of the clerk. Unless reason exists for retaining originals, the judge will, upon application, order them returned to the party to whom they belong upon the filing of copies thereof approved by counsel for all parties concerned. All exhibits received in evidence that are in the nature of narcotic drugs, illegal or counterfeit money, firearms, or contraband of any kind shall be entrusted to the custody of the arresting or investigative agency of the government pending disposition of the action and for any appeal period thereafter.

(b) **Delivery to Person Entitled.** In all cases in which final judgment has been entered and the time for filing a motion for new trial or rehearing and for appeal has passed, any party or person may withdraw any exhibit or deposition originally produced by him, without court order, upon ten (10) days written notice to all parties, unless within that time another party or person files notice of claim thereto with the clerk. In the event of competing claims, the court shall determine the person entitled and order delivery accordingly. For good cause shown, the court may allow withdrawal or determine competing claims in advance of the time above specified.

(c) **Unclaimed Exhibits.** If exhibits and depositions are not withdrawn within forty (40) days after the time when notice may first be given under subdivision (b) of this rule, the clerk may destroy them or make other disposition as he or she sees fit.

LR83.1.~~—~~ Attorneys; Admission to the Bar of this Court.

(a) **Admission to Practice.** Admission to and continued membership in the bar of this court is limited to attorneys of good moral character who are members in good standing of the bar of this court prior to October 1, 1997 and those attorneys who are admitted to membership after October 1, 1997.

(b) **Eligibility for Membership.** After October 1, 1997, an applicant for admission to membership in the bar of this court must be an attorney who is ~~an active~~a member in good standing of the bar of the State of Hawaii.

(c) **Procedure for Admission.** Each ~~A~~applicant for admission to the bar of this court shall file with the clerk a verified petition for admission, stating the applicant's full name, residence address, office address, the names of the courts before which the applicant is admitted to practice, and the respective dates of admission to those courts. The petition shall be accompanied by proof of membership in the bar of the State of Hawaii.

(d) **Attorneys for the United States, Students at an Accredited School of Law**. Any attorney who is ~~a~~an active member in good standing of the bar of the highest court of any State and who is employed by the United States or one of its agencies in a professional capacity and who, while being so employed, may have occasion to appear in this court on behalf of the United States, shall be eligible for leave to practice before this court during the period of such employment. Leave of court shall be granted upon written notice, accompanied by an affidavit verifying eligibility. Any student at an accredited school of law shall be eligible for leave to practice before this court under the provisions set forth in LR83.7.

(e) ***Pro hac vice.*** An attorney who is a member in good standing of, and eligible to practice before, the bar of any United States Court or of the highest court of any State or of any Territory or Insular Possession of the United States, who is of good moral character, and who has been retained to appear in this court, may, upon written application and in the discretion of the district judge, be permitted to appear and participate in a particular case subject to the conditions of this rule. Unless authorized by the Constitution of the United States or Acts of Congress, an attorney is not eligible to practice pursuant to this section if any one or more of the following apply:

1. the attorney resides in Hawaii;

2. the attorney is regularly employed in Hawaii; or

3. the attorney is regularly engaged in business, professional, or law-related activities in Hawaii.

———The *pro hac vice* application shall be presented to the clerk and shall state under penalty of perjury:

1. the attorney's residence and office addresses;

2. by what court(s) the attorney has been admitted to practice and the date(s) of admission;

3. that the attorney is in good standing and eligible to practice in said court(s);

4. that the attorney is not currently suspended or disbarred in any other court; and

5. ~~if~~whether the attorney has concurrently or within the year preceding the current application made any *pro hac vice* application in this court, and if so, the title and the number of each matter wherein the attorney made application, the date of application, and whether or not the application was granted. The attorney shall also designate in the application a member in good standing of the bar of this court who maintains an office within the district to serve as associate counsel. The application shall include the address, telephone number, and ~~the~~ written consent of such associate counsel. The associated attorney shall at all times meaningfully participate in the preparation and trial of the case with the **authority** and **responsibility** to act as attorney of record for all purposes. The associated attorney shall participate in all court proceedings unless otherwise ordered by the court, but need not attend depositions or participate in other discovery. Any document required or authorized to be served upon counsel by the Federal Rules of Civil or Criminal Procedure, or by these rules, shall be served upon the associated attorney which shall be deemed proper and effective service. The *pro hac vice* application shall also be accompanied by payment to the clerk of any required assessment which the clerk shall place to the credit of the Court Library Fund. If the *pro hac vice* application is denied, the court may refund any and all of the assessment paid by the attorney. If the application is granted, the attorney is subject to the jurisdiction of the court with respect to the attorney's conduct to the same extent as a member of the bar of this court.

(f) **Notice of Change of Status.** An attorney who is a member of the bar of this court or who has been permitted to practice in this court under LR83.1(e) hereof shall promptly notify the court of any change in his (or her) status in another jurisdiction which would make him (or her) ineligible for membership in the bar of this court under LR83.1(a) hereof or ineligible to practice in this court under LR83.1(e) hereof.

(g) **Reinstatement**. Any person who has been suspended, or disbarred or is otherwise ineligible to practice law before this court may be reinstated upon such terms and conditions as may be prescribed by the court.

(h) **Changes in Address of Attorney or Firm Affiliation.** An attorney shall file and serve on all other parties who have appeared in the action any change in the attorney's business address or firm affiliation, and the effective date of the change. This notice shall appear in each case in which the attorney represents a party. The notice required by this rule shall be filed within eleven (11) days of the change.

LR83.2. Attorneys; Practice in this Court.

Only a member of the bar of this court or any attorney otherwise authorized by these rules to practice before this court may enter an appearance for a party, sign stipulations or receive payment or enter satisfaction of judgment, decree or order. In every action or proceeding in which a party is represented by an attorney who is a member of the bar of this court but who does not maintain an office within the district, the court may order the attorney to designate in the pleadings a member in good standing of the Bar of the State of Hawaii who maintains an office within the district, and is a member of the bar of this court upon whom copies of pleadings may be served and with whom the district judge and opposing counsel may communicate concerning the conduct of the action. The associated attorney shall participate in all court proceedings unless otherwise ordered by the court, but need not attend depositions or participate in other discovery. Any document required or authorized to be served upon counsel by the Federal Rules of Civil or Criminal Procedure, or by these rules, shall be served upon the associated attorney which shall be deemed proper and effective service. Nothing in these rules shall prohibit any individual from appearing in propria persona.

LR83.3. Attorneys; Standard of Professional Conduct.

Every member of the bar of this court and any attorney permitted to practice in this court pursuant to LR83.1(d) shall be governed by and shall observe the standards of professional and ethical conduct required of members of the Hawaii State Bar, except as follows:

1. Rule 1.6 of the Hawaii Rules of Professional Conduct ("Hawaii Rules") is not adopted by this district. In lieu thereof, Rule 1.6 of the American Bar Association's Model

Rules of Professional Conduct ("Model Rules") shall apply. Rule 1.6 of the Model Rules provides as follows:

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge, or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

2. Rule 8.4 of the Hawaii Rules is not adopted by this District. In lieu thereof, Rule 8.4 of the Model Rules shall apply. Rule 8.4 of the Model Rules provides as follows:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trust-worthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

LR83.4. Attorneys; Discipline.

(a) For good cause shown and after an opportunity to be heard, any member of the bar of this court may be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper.

(b) The court may at any time appoint three members of the bar of this court as a Committee on Discipline. Such Committee may be dissolved by the court at any time. Said Committee shall have power to and shall conduct investigations relating to the discipline of members of the bar of this court, either on its own motion or pursuant to a reference by the court. The court may refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice.

(c) If the Committee concludes that there is probable cause for disciplinary action, formal charges shall be filed and served upon such member. A member of the bar of this court so charged shall have twenty (20) days within which to answer and the matter shall then be tried to the court. All disciplinary proceedings shall be secret unless the court shall direct otherwise.

(d) Whenever it comes to the attention of the court that any member of the bar of this court has been disbarred or suspended from practice by any court or that he has been convicted of a felony or of an offense involving moral turpitude, a notice shall be mailed to such member at the member's last known residence and office addresses, requiring the member to show cause within fifteen (15) days after the mailing of such notice, why the member should not be disbarred or suspended from practice before this court. Upon the member's failure to respond or upon a response to said notice, the court may, as in the opinion of the court the circumstances warrant, disbar or suspend the member from practice before this court.

(e) Any person who has not been admitted to the bar of this court, or who has been so admitted but is an inactive member of the bar of this court, or who has been suspended or disbarred therefrom and not reinstated or readmitted to active membership in such a bar, and who, without complying with, or in violation of, the requirements of this rule, exercises in this district any of the privileges of a member of said bar, or pretends to be entitled to do so, is guilty of contempt of court.

(f) In all proceedings by the court hereunder, written findings of fact and an order based thereon shall be filed.

(g) Except as otherwise provided in this rule, all proceedings hereunder shall be governed by the Federal Rules of Civil Procedure.

(h) Disciplinary proceedings under this rule shall not affect or be affected by any proceedings for contempt under Title 18 of the United States Code or under Fed. R. Civ. P. 42.

LR83.5. Attorneys; Sanctions for Unauthorized Practice.

Any person who before admission to the bar of this court or obtaining leave of court to appear in a particular action or proceeding, or during the person's disbarment or suspension, exercises within this district in any action or proceeding pending in this court any of the privileges of a member of the bar of this court or who pretends to be entitled to do so may be found guilty of contempt of court and suffer appropriate punishment thereof.

LR83.6. Attorneys; Appearances, Substitutions and Withdrawal of Attorneys.

(a) **Appearances.** Whenever a party has appeared by an attorney, the party may not thereafter appear or act in his or her own behalf in the action, or take any step therein, unless an order of substitution shall first have been made by the court, after notice to the attorney of such party, and to all parties; provided that the court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared or is represented by an attorney.

(b) ~~**Substitutions**~~**Substitution and Withdrawal**. ~~When an~~No attorney will be permitted to be substituted as attorney of record ~~for any person ceases to act for a party, such a party shall appear in person or appoint another attorney by a written substitution of attorney signed by the party, the attorney ceasing to act, and the newly appointed attorney, or by a written designation filed in the cause and served upon the attorney ceasing to act unless said attorney is deceased, in which event the designation of a new attorney shall so state. Until such substitution is approved by the court, the authority of the attorney of record shall continue for all proper purposes.~~

~~(c) **Withdrawal from Case.** The court for good cause shown may authorize the withdrawal of an attorney of record upon such notice and hearing as the court may require. The attorney seeking to withdraw must file a motion but should leave the hearing date on the motion blank. The attorney must serve the motion on the client at his (or her) last known address and on all opposing counsel. The motion must be accompanied by an affidavit or declaration setting forth the reasons for the~~in any pending action without leave of court. An attorney who has

appeared in a case may seek to withdraw on motion showing good cause. Withdrawal shall be effective only on court order entered after service by the withdrawing attorney of a notice of withdrawal on all counsel of record and on the withdrawing attorney's client. A motion to withdraw ~~and to the extent applicable specify whether the client intends to proceed pro se~~must specify the reasons for withdrawal, unless that would violate the rules of professional conduct, and the name, address, and telephone number of the client. Notice to the attorney's client must include the warning that the client personally is responsible for complying with all court orders and time limitations established by any applicable rules. Where the withdrawing attorney's client is a corporation, partnership, or other legal entity, the notice shall state that such entity cannot appear without counsel admitted to practice before this court, and absent prompt appearance of substitute counsel, pleadings, motions, and other papers may be stricken and default judgment or other sanctions may be imposed against the entity. It is within the court~~'~~'s discretion to hold a hearing on a motion to withdraw as counsel.

LR83.7. Attorneys; Supervised Student Practice of Law.

(a) **Definitions.**

1. A "law student intern" is a person who is enrolled and in good standing as an undergraduate at any accredited school of law, who has completed legal studies amounting to substantially one-third of the requirements for graduation from that law school, who is enrolled in a clinical program at that law school, and with respect to whom the order referred to in Subsection (c)2 is in effect.

2. A "clinical program" is a practice-oriented law activity administered under the direction of a faculty member of any accredited school of law, participation in which activity entitles qualified students to receive academic credit.

3. A "supervising lawyer" is a member of the bar of this court who has been approved as a supervisor of law student interns by any accredited school of law or this court.

(b) **Activities of Law Student Interns.**

1. In connection with a clinical program, a law student intern may appear before this court or any district judge on behalf of a client, provided that:

(i) the client has consented in writing to such appearance; and

(ii) a supervising lawyer has indicated in writing approval of such appearance.

In every such appearance the law student intern shall be accompanied by a supervising lawyer, unless the court or district judge consents to the law student intern appearing without a supervising lawyer.

2. Unless prohibited by statute or ordinance, the term "client" includes the United States, the State of Hawaii, or any political subdivision of the State of Hawaii, subject to the requirements of Subsection 1 of this section.

3. In every such appearance by a law student intern, the written consents and approvals referred to in Subsection 1 of this section shall be filed in the record of the proceeding and shall be brought to the attention of the district judge.

(c) **Qualification Procedures for Law Student Interns.**

1. To become a law student intern, each eligible person shall file with the clerk of this court a typewritten application setting forth, together with such other information as may be required by order of this court, his or her name, age, that he or she is enrolled and in good standing as an undergraduate at a school of law accredited by the American Bar Association, that he or she has completed substantially one-third of the requirements for graduation therefrom, that he or she has read and is familiar with the standards of professional and ethical conduct required of members of the Hawaii State Bar, and that he or she is enrolled in a clinical program at the law school. A letter from the Dean of the law school certifying that the applicant is in good academic standing as stated in the application and appears to be competent to engage in the activities of law student interns as defined by this rule must accompany each application.

2. This court shall issue an order designating each qualified applicant as a law student intern, subject to taking such oath of office as may be prescribed.

(d) **Duration of Law Student Intern Authorization and Compensation Limitations.**

1. Unless the order referred to in Subsection (c)2 is revoked or modified, it shall remain in effect so long as the law student intern is enrolled as an undergraduate in a clinical program at any accredited school of law, and shall cease to be in effect upon any termination of such enrollment. However, after the clinical semester ends, the law student intern may continue to represent a client in cases initiated before the semester ended if such representation is deemed appropriate by the supervising lawyer.

(i) The certification referred to in Subsection (c)1 may be withdrawn by the Dean by notice to that effect to the clerk of this court. It is not necessary that such notice state the cause for withdrawal. Upon receipt of such notice, the order referred to in Subsection (c)2 shall be automatically revoked.

(ii) The order referred to in Subsection (c)2 with respect to any law student intern may be terminated by this court for cause consisting of violation of this rule or any act or omission which, on the part of any attorney, would constitute misconduct and ground for discipline. The effectiveness of such order may be suspended by this court during any proceedings to terminate such order.

2. A law student shall neither ask for nor receive any compensation or remuneration of any kind for services rendered to a client, but this shall not prevent a lawyer, law school, or public agency from paying compensation to a law student intern or from making such charges for services as such lawyer, law school, or public agency may otherwise properly require.

(e) **Other Law Student Intern Activities.** Any law student intern may, with the knowledge and approval of the supervising lawyer and the client, engage in the following activities:

1. Counseling and advising clients, interviewing and investigating witnesses, negotiating the settlement of claims, and preparing and drafting legal instruments, pleadings, briefs, abstracts, and other documents. Any document requiring signature of counsel, and any settlement or compromise of a claim, must be signed by a supervising lawyer.

2. Rendering assistance to clients who are inmates of penal institutions or other clients who request such assistance in preparing applications for and supporting documents for post-conviction legal remedies.

(f) **Supervision of Law Student Practice.** The supervising lawyer shall counsel and assist the law student who practices law pursuant to this rule and shall provide professional guidance in every phase of such practice with special attention to matters of professional responsibility and legal ethics.

(g) **Law Students Employed by the United States Attorney and the Federal Public Defender.**

Any other local rule notwithstanding, in any criminal case any law student under the supervision of the United States Attorney or the Federal Public Defender, who has completed at least two years of study at any American Bar Association accredited law school, may appear in court provided that the United States Attorney or the Federal Public Defender personally approves, and provided further that:

1. the particular district judge before whom the student is to appear consents;

2. the student is supervised by an assistant United States Attorney or assistant Federal Public Defender who is present in court; and

3. in the case of the Federal Public Defender, the written consent of the defendant is filed with the court.

(h) **Miscellaneous.**

1. Law students practicing pursuant to this rule shall be governed by the rules of conduct applicable to lawyers generally, but the termination of practice referred to in Subsection (d)1(ii) shall be the exclusive sanction for disciplinary infractions that occur during authorized practice; except that such disciplinary infractions may be considered by a court or agency authorized to entertain applications for admission to the practice of law.

2. Nothing contained in this rule shall affect the right of any person to do anything that he or she might lawfully do were this rule not in existence.

LR83.8.— Broadcasting, Televising, Recording, or Photographing Judicial and Grand Jury Proceedings.

The taking of photographs, operation of tape recorders, or radio or television broadcasting in the courtrooms, in grand jury rooms, and their environs (i.e., the second, third, fourth, and

fifth floors of the United States Courthouse) during the progress of or in connection with any proceeding, including proceedings before a magistrate judge and a grand jury, whether or not in session, are prohibited. A district judge may, however, permit (1) the use of electronic or photographic means for the presentation of the evidence or the perpetuation of a record by a court reporter and, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings. Attorneys for the government may use recording devices for the purpose of the presentation of evidence to the grand jury.

LR83.9. Publicity.

Courthouse supporting personnel, including, among others, marshals, clerks and ~~deputies~~managers, law clerks, messengers, and court reporters, shall not disclose to any person information relating to any pending proceeding that is not part of the public records of the court without specific authorization of the court.

LR83.10. Gratuities.

No person shall directly or indirectly give or offer to give, nor shall any judge, employee, trustee, or anyone appointed by the court or by any judge for any purpose accept on his behalf or on behalf of the court any gift or gratuity, regardless of value, directly or indirectly related to services performed by or for the court.

LR88.1 Mediation.

(a) Purposes and Scope. Pursuant to the findings and directives of Congress in the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651, et seq., use of alternative dispute resolution (hereinafter "ADR") is hereby authorized for all civil actions pending before the United States District Court for the District of Hawaii. This rule implements court-sponsored mediation in accordance with the ADR Act. This rule does not preclude (i) parties from agreeing to private ADR or (ii) the court from ordering non-binding ADR other than as provided in this rule.

(b) Duty To Consider ADR. The parties shall consider mediation and/or other ADR processes in accordance with L.R. 16.2 and 26.1.

(c) Program Administration.

(1) Mediation Judge.

(A) Appointment. A magistrate judge shall be appointed to serve as Mediation Judge and ADR Administrator. When necessary, the chief district judge shall appoint another judge to temporarily perform the duties of the Mediation Judge.

(B) Duties. The Mediation Judge shall serve as the primary liaison between the court and the Mediation Committee on matters of policy, program design and evaluation, education, training, and administration.

(2) Mediation Committee. The court shall establish a Mediation Committee that shall be responsible for:

(A) making recommendations to the mediation judge for implementing, administering, overseeing, and evaluating the mediation program, mediator performance, and procedures covered by this rule;

(B) educating litigants, lawyers, judges, and court staff about the mediation program and rules; and

(C) making recommendations for recruiting, screening, and training mediators, as well as for evaluating mediator performance.

(d) Submission To Mediation Under This Rule.

(1) By Stipulation. Parties may stipulate to submit a civil action to mediation. The parties may stipulate to the appointment of a mediator from the panel of mediators provided in this rule, subject to the consent of the selected mediator. If the parties have stipulated to mediation but are unable to agree on a mediator, the court may appoint a mediator from the panel.

(2) By Court Order. Notwithstanding the provision of subsection (d)1 above, at any time before the entry of final judgment, the court may, on its own motion or at the request of any party after affording the parties an opportunity to express their views, order the parties to participate in mediation and/or any other non-binding ADR process.

(e) Mediator Panel. The Clerk shall publish and maintain a list of mediators who have been recommended by the Mediation Judge and approved by the court. The mediator's role is to facilitate the voluntary resolution of cases.

(f) Mediation Procedure. Upon the submission of an action to mediation and the appointment of a mediator as provided in this rule, the plaintiff shall provide a copy of the stipulation or order, as the case may be, to the mediator together with a list of the names, addresses, and telephone and facsimile numbers of counsel for all appearing parties and/or pro se parties. Thereafter, all procedures within the mediation, including, but not limited to, deadlines and the form and content of any written submissions, shall be determined by the mediator.

Parties shall meaningfully participate in any mediation submitted under this rule.

(g) Attendance At Mediation. Lead counsel and clients, representatives, or third persons with full settlement authority shall attend, in person, all mediation conferences scheduled by the mediator, unless excused by the mediator.

A governmental entity satisfies the attendance requirement if its lead counsel is in attendance and has been delegated full settlement authority, or has reasonable access to the person who has full settlement authority. In the event that the mediator determines it appropriate, the mediator shall have reasonable access to the person who has full settlement authority with appropriate accommodation given to the person's competing public duties.

(h) Mediator’s Report Upon Completion.

Within five (5) business days of the completion of a mediation conducted under this rule, the mediator shall file and serve a report addressing the date of completion and the following items:

(1) Whether or not a settlement has been reached.

(2) If a complete settlement has been reached, the date by which the parties have agreed to complete documentation of the settlement, including the full execution and lodging of any stipulation for dismissal.

(3) If less than a complete settlement is reached, a brief statement of whether or not the mediator recommends further mediation or other ADR efforts.

(i) Compensation Of Mediators. Unless otherwise stipulated by the parties and/or ordered by the court, each party will be responsible for a pro-rata share of the mediator's fees and expenses. Any dispute regarding the mediator’s fees or expenses may be submitted to the mediation judge for disposition.

(j) Immunity Of Mediators. All persons serving as mediators under this rule shall be deemed to be performing quasi-judicial functions and shall be entitled to all of the privileges, immunities, and protections that the applicable law accords to persons serving in such capacity.

(k) Confidentiality. Except as otherwise provided by this rule and/or applicable law, all communications made in connection with any mediation under this rule shall be subject to Rule 408 of the Federal Rules of Evidence.

Mediators and parties shall not communicate with the court about the substance of any position, offer, or other matter related to mediation without the consent of all parties, unless such disclosure is required to enforce a settlement agreement, to adjudicate a dispute over mediator fees, or to provide evidence in an attorney disciplinary proceeding, but only to the extent required to accomplish that purpose.

(l) Disclosure By Mediator.

Before commencing a mediation, an individual who is requested to serve as a mediator shall make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation. The mediator shall disclose any such fact known or learned by the mediator to the parties as soon as is practical.

(m) Objections For Cause. Within seven (7) business days after learning the identity of a mediator selected by the court, a party who objects to the selection of that mediator must file an objection that specifies the reason for the objection. Promptly after the close of the period for submitting objections, the court shall determine whether the proposed mediator or another mediator will be selected.

(n) Protection Against Unfair Financial Burdens. The court shall ensure that no referral to mediation results in imposition on any party of an unfair or unreasonable economic burden. A party who cannot afford to pay any fee charged under this rule may file a motion to be excused from paying or to pay at an appropriately reduced amount or rate.

CHAPTER II - CRIMINAL RULES

CrimLR5.1. Arrest by Federal Agencies and Others.

It shall be the duty of all federal agencies and others who arrest any person as a federal prisoner in this district to give prompt notice without unnecessary delay to the appropriate pretrial services officer.

When an arrested person is not represented by counsel and requests to be represented by a court-appointed attorney as an indigent, the federal arresting agency shall inform the magistrate judge of the request without unnecessary delay.

CrimLR12.1. Hearings on Non-Discovery Pretrial Motions.

All dispositive motions shall be heard by a district judge and all non-dispositive matters shall be heard by a magistrate judge, except as otherwise provided or unless otherwise ordered by a district judge. Dates for hearings shall be set, except for good cause shown, between the 40th and 50th days following arraignment. In cases involving defendants arraigned on substantially different dates, the court shall make appropriate adjustments regarding the date of the hearing.

CrimLR12.2. Memoranda in Support of or in Opposition to Motions.

(a) **Memoranda in Support of Motions.** Each party filing any motion shall file, and serve the adverse party with, an accompanying memorandum setting forth a brief and complete statement of the facts and all points and authorities upon which he or she intends to rely unless the facts, points and authorities are included in the motion.

(b) **Memoranda in Opposition to Motions.** Each party opposing any motion shall serve the adverse party with and file a memorandum in opposition to the motion that includes a brief and complete statement of the facts and all points and authorities upon which he or she intends to rely.

(c) **Non-Opposition.** The party not opposing a motion shall file a statement of no opposition within the time provided for responding to the motion.

(d) **Notice, Time for Reply.** With the exception of motions to continue trial, motions in limine, and oral motions made during the course of the trial, all motions, absent leave of court for good cause shown, shall be filed and served not less than eighteen (18) days prior to the hearing date. Except for good cause shown, all responses shall be filed and served not less than six (6) calendar days prior to the hearing date, and any reply to the opposition shall be filed and served not less than four (4) calendar days prior to the hearing date.

(e) **Other Motions Prior to Plea.** Nothing in this rule prohibits the filing and hearing of appropriate motions prior to plea.

CrimLR12.3. Local Civil and Magistrate Rules Applicable to Motions.

The local rules pertaining to civil motions are applicable to motions in criminal cases, specifically LR7.5 (Motions; Length of Briefs and Memoranda), LR7.7 (Motions; Filing and Lodging of Extra Copies) ~~and~~, LR7.9(Motions; Related and Counter Motions), and LR 10.2 (Form of Papers; Copy). LR7.4 (Motions; Opposition and Reply) is also applicable to appeals from and objections to magistrate judges' orders and proposed orders undertaken pursuant to CrimLR57.3 and 57.4.

CrimLR16.1. Standing Order for Routine Discovery in Criminal Cases.

The government and the defendant shall make available discovery materials pursuant to Fed. R. Crim. P. 16 and 26.2 and 18 U.S.C. § 3500, which are within their possession, custody, or control, the existence of which is known, or by the exercise of due diligence may become known to the attorneys as hereinafter provided. This local rule shall not be construed as obligating the government or the defendant to disclose materials protected from disclosure by 18 U.S.C. § 3500 or Fed. R. Crim. P. 16 or 26.2.

(a) **The Government's Duty.** A request for discovery set out in this paragraph and in Fed. R. Crim. P. 16 is entered for the defendant to the government by this rule so that the defendant need not make a further request for such discovery. If the defendant does not request such discovery, he or she shall file a notice to the government that he or she does not request such discovery within five (5) days after arraignment. If such a

notice is filed, the government is relieved of any discovery obligations to the defendant imposed by this paragraph or Fed. R. Crim. P. 16. If the defendant does not file such a notice, within seven (7) days after arraignment unless otherwise ordered by the court or promptly upon subsequent discovery, the government ~~shall~~ permit the defendant to inspect and copy or photograph, or, in the case of the defendant's criminal record, shall furnish a copy, and provide the information listed in the subparagraphs enumerated immediately below. Upon providing the information required ~~by this paragraph~~in the enumerated subparagraphs below, the government shall file and serve notice of compliance with discovery mandated under this paragraph.

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government;

2. The substance of any oral statement ~~which~~that the government intends to offer in evidence at the trial made by the defendant whether before or after the arrest in response to interrogation by any person then known to the defendant to be a government agent;

3. Recorded testimony of the defendant before a grand jury ~~which~~that relates to the offense charged;

4. A copy of the defendant's prior criminal record, if any, which is within the possession, custody, or control of the government;

5. All books, papers, documents, photographs, tangible objects, buildings, or places, or copies of portions thereof, ~~which~~that are within the possession, custody, or control of the government, and that are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial, or were obtained from or belong to the defendant;

6. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof ~~which~~that are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial;—

7. Brady material, as it shall be presumed that defendant has made a general Brady v. Maryland, 373 U.S. 83 (1963) request. Specific requests shall be made in writing to the government or by motion;

8. Photographs used in any photograph line-up, show-up, photospread, or any other identification proceeding, or if no such photographs can be produced, the government shall notify the defendant whether any such identification proceeding has taken place and the results thereof;

9. Any search warrants and supporting affidavits ~~which~~that resulted in the seizure of evidence ~~which~~that is intended for use by the government as evidence in chief at trial or ~~which~~that was obtained from or belongs to the defendant;

10. ~~Advise~~ A statement as to whether the defendant was the subject of any electronic eavesdrop, wiretap, or any other communications of wire or oral interception as defined by 18 U.S.C. § 2510, et seq., in the course of the investigation of the case.

(b) **The Defense Duty.** Unless the defendant has filed notice that he or she does not request discovery under paragraph (a) of this rule or Fed. R. Crim. P. 16 , or unless otherwise ordered by the court, within thirty (30) days after the filing of the notice of compliance with discovery under paragraph (a) above, or promptly on subsequent discovery, the defendant shall: (1) inform the government if any of the following exists; and (2) shall permit the government to inspect and copy or photograph the information listed in the subparagraphs enumerated immediately below. Upon providing the information required by this paragraph, the defendant shall file and serve notice of compliance with discovery mandated under this paragraph.

1. All books, papers, documents, photographs, tangible objects, or copies or portions thereof, ~~which~~that are within the possession, custody or control of the defendant and ~~which~~that the defendant intends to introduce as evidence in chief at the trial;

2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within

the possession or control of the defendant, ~~which~~that the defendant intends to introduce as evidence in chief at the trial;

3. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government and file a copy of such notice with the clerk.

(c) **Continuing Duty to Disclose.** If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) **Sanctions for Failure to Comply with Request.**

1. **Against a Party.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, prohibit the party from introducing evidence not disclosed, or ~~it~~ may enter such order as it deems just under the circumstances.

2. **Against an Attorney for a Party.** If at any time during the course of the proceedings it is brought to the attention of the court that an attorney for a party has unjustifiably failed to comply with this rule, which failure was after a specific request for compliance with this rule by opposing counsel specifically for the material which is the subject of non-compliance, in addition to the sanctions imposed against the party as provided above, the court may punish any such counsel or attorney with a fine not exceeding $250.00. The imposition of such a fine is not to be deemed a finding of contempt.

(e) **Statement of Witnesses.**

1. **Order of Production.** Production of statements of witnesses by the government and the defendant pursuant to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500 is hereby ordered.

2. **Time of Production.** Statements of witnesses including material covered by Fed. R. Crim. P. 6 under this rule are to be exchanged:

(i) During the time of trial as provided by Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500 or,

(ii) At any time if the parties agree.

(f) **Statements of Witnesses at Suppression Hearing.** Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Fed. R. Crim. P. 12(I) .

(g) **Impeachment Material.**

1. **Order of Production.** The production of the following is hereby ordered: Cooperation agreements, plea agreements, impeachment material, promises of leniency, under Giglio v. United States, 405 U.S. 150 (1972), and its progeny, and records of criminal convictions which may be admissible under Fed. R. Evid. 609.

2. **Time of Production.** Impeachment material under this rule shall be provided as ordered by the court.

(h) **Further Discovery Not Covered by This Rule.**

1. **Further Discovery.** Discovery of all material not ordered pursuant to this rule shall be by motion.

2. **Time for Filing Further Discovery Motions.**

(i) **By the Defendant.** Any defense motions for additional discovery shall be filed no later than ten (10) days after the government files notice of compliance with discovery under paragraph (a) of this rule. Such motions may only be filed after this time when (1) the motion sets forth the specific facts and circumstances giving rise to good cause for filing out of time, and (2) ~~where~~ the court finds good cause is in fact shown.

(ii) **By the Government.** Any government motions for additional discovery shall be filed no later than ten (10) days after the defendant files notice of compliance with discovery under paragraph (b) of this rule. Such motions may only be filed after this time when (1) the

motion sets forth the specific facts and circumstances giving rise to good cause for filing out of time, and (2) ~~where~~ the court finds good cause is in fact shown.

CrimLR17.1.1. Pretrial Agenda.

The trial district judge shall conduct at least one pretrial conference. Where practicable, such conference shall be held no later than seven (7) calendar days prior to trial. Other pretrial conferences may be conducted by the trial district judge at the request of any of the parties or on the court's own motion. The agenda at the pretrial conference shall consist of any or all of the following items, so far as practicable:

(a) Date of production of statements or reports of witnesses under the Jencks Act, 18 U.S.C. § 3500;

(b) Date of production of grand jury testimony of witnesses intended to be called at the trial;

(c) Date of production of evidence favorable to the defendant on the issue of guilt or punishment, as required by Brady v. Maryland, 373 U.S. 83 (1963), and related authorities and impeachment material, cooperation agreements, plea agreements, promises of leniency, and records of criminal convictions, required by Giglio v. United States, 405 U.S. 150 (1972), and its progeny;

(d) Stipulation of facts that may be deemed proved at the trial without further proof by either party;

(e) Appointment by the court of interpreters under Fed. R. Crim. P. 28 ;

(f) Dismissal of certain counts and elimination from the case of certain issues, e.g., insanity, alibi, and statute of limitations;

(g) Severance of trial as to any co-defendant or counts, and joinder of any related cases;

(h) Use or identification of informant, use of line-up or other identification procedures, use of evidence of prior convictions of defendant or of any witness;

(i) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(j) Preparation of trial briefs on controversial points of law likely to arise at trial;

(k) Scheduling of the trial and of witnesses;

(l) Submission of jury instructions and voir dire jury questions;

(m) The government's intention to introduce evidence of other crimes, wrongs or acts under Fed. R. Evid. 404(b);

(n) Whether there are percipient witnesses whom the government does not intend to call in its case-in-chief.

CrimLR17.1.2. Disclosure of Witnesses and Exhibits.

Except for good cause shown, the parties shall at a pretrial conference conducted at least seven (7) calendar days prior to trial:

(a) Exchange the names of witnesses intended to be called to testify at trial in each respective case-in-chief;

(b) Exchange lists of exhibits and copies of the documentary exhibits.

CrimLR17.1.3. Pretrial Orders.

After conducting the pretrial conference, the trial district judge may make such pretrial order or orders relating to any of the matters discussed.

CrimLR30.1. Jury Instructions.

See the text of Chapter I, General and Civil Rules, LR51.1 which text and rule is incorporated herein in its entirety. —

CrimLR32.1. Sentencing Procedure.

The following rules apply in all cases where presentence investigations and reports are ordered by a district judge or magistrate judge:

(a) To assist the court in fulfilling the standards for acceptance of plea agreements as set forth in the U.S. Sentencing Guidelines Manuals § 6B1.3 (1995), the parties shall be responsible for the following:

1. In Fed. R. Crim. P. 11(e)(1)(A) , plea agreements wherein the agreement includes dismissal of charges or an agreement not to pursue potential charges, the written plea agreement shall include a statement, on the basis of the information then known by the parties, as to why the remaining charges adequately reflect the seriousness of the actual offense behavior and why accepting the agreement will not undermine the statutory purposes of sentencing;

2. In Fed. R. Crim. P. 11(e)(1)(B) , plea agreements wherein the agreement includes a nonbinding sentencing recommendation, the written plea agreement shall include a statement, on the basis of the information then known by the parties, that the recommended sentence is within the applicable guideline range, or shall set forth justifiable reasons why the recommended sentence departs from the presumed applicable guideline range;

3. In Fed. R. Crim. P. 11(e)(1)(C) , plea agreements wherein the agreement includes a specific sentence ~~which~~that is binding upon the court, the written plea agreement shall include a statement, on the basis of the information then known by the parties, that the recommended sentence is within the applicable guideline range, or shall set forth justifiable reasons why the recommended sentence departs from the presumed applicable guideline range.

(b) As part of the plea agreement, it is appropriate for the parties to stipulate to factors ~~which~~that affect the sentence computation. Any such stipulation shall be set forth in the manner prescribed by U.S. Sentencing Guidelines Manuals § 6B1.4 (1995).

(c) A presentence investigation and report to the court will be conducted before the imposition of sentence, except as otherwise permitted by U.S. Sentencing Guidelines Manual § 6A1.1 (1995). The defendant may not waive preparation of a presentence report. The probation officer shall report the facts disclosed by the presentence investigation in the presentence report, and the parties shall not be permitted to stipulate to the elimination of relevant facts from the report.

(d) The parties shall review the completed presentence report and offer their respective objections. The probation officer will then revise the report where appropriate and attempt to resolve disputed facts. To provide sufficient time for this process, the sentencing date, except for good cause, shall be set not less than ninety-eight (98) calendar days following an adjudication.

(e) No less than thirty-five (35) calendar days prior to the sentencing date, the probation officer shall provide a copy of the proposed presentence report to counsel for the government and to counsel for the defendant. Defense counsel shall be responsible for disclosing the report to the defendant. The presentence report shall be deemed to have been provided to counsel when a copy of the report is physically delivered or one (1) day after the report's availability is orally communicated or three (3) days after a copy of the report is mailed.

(f) Within fourteen (14) calendar days after receiving the report, counsel for the defendant and the government shall file their sentencing statement(s), which shall include objections, if any, concerning factual information, sentencing classification, sentencing guideline ranges and policy statements which remain in dispute. A copy shall be submitted to the Probation Department and served upon all other counsel. Counsel for the government and counsel for the defendant shall seek to resolve the controverted issues with respect to the contents of the report or items omitted therefrom. Each sentencing statement will also include:

1. All sentencing factors, facts, and other matters material to sentencing that remain in dispute, including a statement, and calculation if appropriate, showing how the dispute affects the calculation of the applicable guidelines range.

2. Whether an evidentiary hearing is requested and, if so, an estimate of the time required for such hearing and a summary of the evidence to be produced.

Upon receipt of any such objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that are deemed necessary.

(g) Not less than eleven (11) calendar days prior to the sentencing date, the completed presentence report shall be

submitted to the court and to all parties. This report shall be accompanied by an addendum setting forth any objections raised by counsel ~~which~~that are unresolved, and any written materials provided by counsel in support of their respective positions. Any earlier proposed presentence reports furnished to counsel shall be returned to the probation officer.

(h) At or prior to the sentencing hearing, the court shall address each controverted matter pursuant to Fed. R. Crim. P. 32(c)(3)(D), and make a tentative finding as to each such matter or make a determination that no such finding is necessary because the controverted matter will not be taken into account in sentencing. The parties shall be prepared at the sentencing hearing to proceed with evidence and argument for the resolution of any remaining disputed matters upon which the court intends to rely. The court shall provide a reasonable opportunity to the parties for the submission of oral or written objections to the court's findings and determinations. For good cause, the court may continue the sentencing hearing for a reasonable time.

(i) The courtroom ~~deputy~~manager shall be responsible for recording the court's findings and determinations, and shall prepare an appropriate minute order, which will thereafter be appended to all copies of the presentence report. A transcript of the court's findings and determinations at the sentencing hearing may be filed as the required minute order.

(j) Except as otherwise ordered by the court, all copies of presentence reports that have been furnished to counsel shall be returned to the probation officer upon the expiration of the time within which to appeal. A copy of the completed presentence report shall be filed with the clerk and kept under seal as part of the record of the case. A copy of the confidential recommendation of the probation officer shall be filed and sealed separately and shall not be disclosed to anyone other than the presiding judge.

(k) In the case of a pro se defendant, reference to counsel for defendant shall be taken to refer to the pro se defendant.

l. Except for good cause, any motion for a departure pursuant to the U.S. Sentencing Guidelines Manual shall be filed not less than fifteen (15) days prior to the scheduled sentencing date. A copy of a motion for a departure, as well as any

sentencing memorandum, shall be served on the Probation Department.

CrimLR35.1. Responses to Motions for Reconsideration and Reduction of Sentence.

No response to a motion for a reduction of sentence is required unless requested by the court. A motion for reduction of sentence will ordinarily not be granted in the absence of such a request.

CrimLR44.1. Right to and Appointment of Counsel.

If a defendant appearing without counsel in a criminal proceeding desires to obtain his or her own counsel, a reasonable continuance for arraignment, not to exceed one week at any one time, shall be granted for that purpose. If the defendant requests appointment of counsel by the court, or fails for an unreasonable time to appear with his or her own counsel, the assigned district judge or magistrate judge shall, subject to the applicable financial eligibility requirements, appoint counsel, unless the defendant elects to proceed without counsel and signs and files the court-approved form of waiver of right to counsel. In an appropriate case, the district judge or magistrate judge may nevertheless designate counsel to advise and assist a defendant who elects to proceed without counsel to the extent the defendant might thereafter desire. Appointment of counsel shall be made in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 on file with the clerk.

CrimLR44.2. CJA Voucher Reduction.

No judicial officer or clerk shall reduce the payment of any CJA voucher without first communicating the reasons for the reduction in writing to the affected attorney and giving the attorney an opportunity to respond.

CrimLR46.1. Appearance Bond.

A person required to give bail shall execute the type of bond or promise to appear required by the judicial officer specifying the conditions thereof. The bond or promise to appear shall substantially conform in both form and content to the appropriate form approved by the court.

CrimLR46.2. Posting Security.

When the release of a defendant is conditioned upon the deposit of cash or other security with the court, such deposit shall be made with the clerk or the marshal, as authorized.

CrimLR46.3. Types of Bonds in Criminal Cases.

A person charged with a criminal offense in which a secured bond has been required may, in the discretion of the court, furnish in lieu of cash a commercial surety bond or a secured interest in real estate, which shall be referred to as a "property bond."

(a) **Surety Bonds.** Surety bonds for the appearance of a person charged with a criminal offense shall require the execution of a bail bond or equivalent security as provided in LR65.1.2.

(b) **Property Bonds.** For real property to qualify as adequate security:

1. The real property, whether located within the State of Hawaii or a sister state, territory, or commonwealth, must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, in an amount not less than the principal amount of the bail set.

2. The title owner of the property shall furnish a mortgage on the property in favor of the clerk and shall deliver to the court such mortgage note as security for the bond.

3. Prior to release of the person charged, the mortgage shall be recorded in the State of Hawaii Bureau of Conveyances or filed with Registrar of the State Land Court. In the event that the property is located in a sister state, territory, or commonwealth, the mortgage or deed of trust shall be recorded in the designated office required by the law of such state, territory, or commonwealth, and evidence thereof shall be furnished to the court.

4. The value of the property must be established by evidence satisfactory to the court.

CrimLR56.1. The District Court Always in Session.

The district court shall always be in session. The chief judge shall establish an evening and weekend duty roster for judicial officers, one of whom shall be available twenty-four (24) hours a day for the purpose of emergencies, including, but not limited to, warrant applications and bail hearings. The emergency duty phone number shall be listed by the clerk and shall be available to all members of the bar.

CrimLR57.1. Duties of Magistrate Judges.

In criminal cases, each magistrate judge shall exercise all the powers conferred or imposed by law and the Federal Rules of Criminal Procedure and may:

(a) Exercise general supervision of criminal calendars when requested by a district judge.

(b) Conduct arraignments, enter not guilty pleas, and schedule trial dates.

(c) Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f) .

(d) Conduct preliminary hearings, removal and necessary procedures leading to potential revocation of probation.

(e) Preside over misdemeanor cases in accordance with these rules.

(f) Issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings, or to obtain services sought by indigent defendants under the Criminal Justice Act, 18 U.S.C. § 3006A.

(g) Order the exoneration or forfeiture of bonds.

(h) Perform all functions specified in 18 U.S.C. §§ 4107, 4108 and 4109 regarding prisoner transfers.

(i) Hear motions and enter orders relative to mental competency under 18 U.S.C. § 4241 et seq.

(j) Conduct all initial bail and detention proceedings pursuant to 18 U.S.C. § 3142 et seq.

(k) Conduct hearings on discovery motions and, when designated by the district court, conduct hearings on any other pretrial motions.

(l) Accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b).

(m) Perform any additional duty not inconsistent with these rules or with the Constitution and Laws of the United States.

CrimLR57.2. Assignment of Criminal Cases to Magistrate Judge.

(a) **Misdemeanor Cases.** All misdemeanor cases shall be assigned to a magistrate judge upon the filing of an information, complaint or violation notice or upon the return of an indictment.

(b) **Felony Cases.** Upon the return of an indictment for the filing of an information or complaint, all felony cases shall be assigned to a magistrate judge for the conduct of bail or detention proceedings, preliminary hearings, arraignment, and entry of not guilty pleas as are permitted by these rules.

CrimLR57.3. Magistrate Judges; Decision by a Magistrate Judge on Non-Dispositive Pretrial Matters.

(a) **Orders by the Magistrate Judge.** Any non-dispositive pretrial matter assigned to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) shall be decided by a written order filed at least fourteen (14) days prior to the date upon which the case is then set for trial. Any motion still pending within fourteen (14) days of trial, in which no decision or order has been filed, will be deemed to be pending before the district court, and any order or decision must be made by the district court and not by the magistrate judge.

(b) **Appeals from a Magistrate Judge's Decision on Non-Dispositive Matters.**

1. Any party may appeal from any pretrial non-dispositive matter assigned to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A). Such an appeal shall be entitled "Appeal and Request to the District Court to Reconsider a Pretrial Matter Determined by the Magistrate Judge" and shall be filed within ~~ten~~eleven (1~~0~~1) days after the date of filing of the magistrate

judge's written order. A memorandum of points and authorities or supporting memorandum of law must be filed in every appeal filed under this section, which memorandum must accompany the filing of the appeal unless the district court, in its discretion, permits a later filing of such memorandum. Filing of a response shall be governed by LR7.4. No reply in support of an appeal shall be filed without leave of court.

2. The clerk shall serve all parties with any written order by the magistrate judge under this rule. It shall be presumed that such orders are received by the parties within three (3) days of mailing by the clerk.

CrimLR57.4. Magistrate Judges; Dispositive Pretrial Motions.

(a) All dispositive motions in criminal cases shall be heard by a district judge, unless specifically designated to a magistrate judge.

1. In any dispositive motion assigned to a magistrate judge, the magistrate judge must file written proposed findings and recommendations at least fourteen (14) days prior to the date upon which the case is then set for trial. If such proposed written findings and recommendations have not been filed prior to that date, the matter will immediately be set by the clerk of the court for a de novo hearing before the district court and no proposed findings and recommendations may be filed by the magistrate judge.

2. The clerk shall serve all parties with copies of reports and recommendations by the magistrate judge under this rule. It shall be presumed that such reports and recommendations are received by the parties within three (3) days of mailing by the clerk.

(b) **Objections to Reports and Recommendations in Dispositive Matters.** A magistrate judge may be assigned dispositive pretrial matters pursuant to 28 U.S.C. § 636 (b)(1)(B). Any party who objects to any portion of a magistrate judge's proposed findings and recommendations must serve and file written objections to such proposed findings and recommendations within ~~ten~~eleven (1~~0~~1) days after ~~being served with a copy of the same~~the date of service of the proposed order, which the clerk shall serve on all parties. An appropriate statement of points and authorities relied on or memorandum of law must be filed in support of such objections, which statement or memorandum must be filed at the

same time as the objections, unless the district court, in its discretion, permits a later filing. Filing of a response shall be governed by LR7.4. No reply in support of objections shall be filed without leave of court.

CrimLR57.5. Shortening of Time to File Appeals and Objections to Decisions by a Magistrate Judge.

If the parties agree, and with the consent of the magistrate judge, the time for appeal from non-dispositive decisions of the magistrate judge, and/or the time for filing objections to proposed findings and recommendations, may be shortened to five (5) days. In such a case, the oral or written order of the magistrate judge described in CrimLR57.3(a) above, or the written proposed findings and recommendations described in CrimLR57.3(b) above, may be ~~issued~~filed and served not less than seven (7) days before the date upon which the trial is then set. The consent of the parties, however, may not operate retroactively, and must be obtained prior to the fourteen (14) days before the date upon which the trial is then set.

CrimLR57.6. Orders Filed After the Time Provided by This Rule.

Notwithstanding any other provision of these rules, if a magistrate judge makes a written or oral ruling on a non-dispositive pretrial motion after the date set in this rule, such orders or findings shall have the same effect as if they were done in a timely fashion, unless a party makes an objection to their untimely nature to the district court within five (5) days of being served with a copy of the written order, or written proposed findings and recommendations, or of being informed of an oral order.

CrimLR57.7. Expedited Appeals from Magistrate Judge Rulings.

With the exception of CrimLR57.8 governing expedited appeals of detention or release orders, any other provision of these rules notwithstanding, a defendant or the government may file a Notice of an Expedited Appeal to the district court from any oral or written ruling of the magistrate judge. Such a notice shall bear the caption "Notice of Expedited Appeal" and shall be accompanied by a declaration of counsel setting forth the reasons that such an expedited appeal is necessary, together with proof of service on the opposing party.

Upon receipt of the notice, the district court shall promptly determine whether an expedited appeal is justified. If so, it shall set an expedited briefing schedule, or order an immediate hearing of the appeal without briefs.

CrimLR57.8. Appeal of Detention or Release Orders.

Any party is entitled to an expedited review of, or appeal from, an order of a magistrate judge releasing or detaining a defendant pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3143 et seq. Such an appeal or review shall be de novo.

In the case of an oral or written order detaining or releasing a defendant, the district court on request of any party shall hear the appeal on the same day the magistrate judge ordered the detention or release except for good cause, in which case the appeal shall be heard within twenty-four (24) hours.

CrimLR57.9. Appearance and Withdrawal of Retained Counsel.

An attorney who has been retained and has appeared in a criminal case may thereafter withdraw only upon notice to the defendant and all parties and upon an order of court finding that good cause exists and granting leave to withdraw. Until such leave is granted, the retained attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted, or, if convicted, the time for making post-trial motions and for filing notice of appeal, as specified in Fed. R. App. P. 4(b), has expired, and until counsel has satisfied the requirements of Fed. R. App. P. 3(d), Appendix.

CrimLR58.1. Magistrate Judges; Disposition of Misdemeanor Cases - 18 U.S.C. § 3401.

A magistrate judge may:

(a) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;

(b) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case;

(c) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and Laws of the United States;

(d) Dispose of minor offenses ~~which~~that are transferred to this district under Fed. R. Crim. P. 20 .

CrimLR58.2. Trial of Misdemeanor Offenses.

Subject to the limitation of 18 U.S.C. § 3401, magistrate judges are specifically designated to try persons accused of, and sentence persons convicted of, misdemeanor offenses committed within this district. In addition, magistrate judges may dispose of misdemeanor offenses ~~which~~that are transferred to this district under Fed. R. Crim. P. 20.

CrimLR58.3. Appeal from Misdemeanor Conviction by Magistrate judge.

(a) **Notice of Appeal**. Pursuant to 18 U.S.C. § 3402 and Fed. R. Crim. P. 58(g)(2), a defendant who has been convicted by a magistrate judge may appeal to a district judge by filing a notice of appeal within ten (10) days after entry of judgment.

(b) **Record.** The record on appeal shall consist of the original papers and exhibits filed with the court and the mechanical or stenographic recording of the proceedings. If a reporter was in attendance before the magistrate judge, a transcript, if desired, shall be ordered as prescribed by Fed. R. App. P. 10(b). The magistrate judge may, if requested, order that a transcript be prepared from a mechanical recording in which case the transcript will be prepared as directed by the magistrate judge.

Within thirty (30) days after a transcript has been ordered, the original and one copy shall be filed with the magistrate judge and all recordings shall be returned to the magistrate judge. All other documents and exhibits shall be held by the magistrate judge pending the receipt of the transcript.

Upon receipt of the transcript, the record on appeal shall be deemed complete and the magistrate judge shall forthwith transmit the record to the clerk.

If no transcript is ordered within ten (10) days after the notice of appeal is filed, or if the parties advise the magistrate judge that no transcript will be ordered, the record on appeal shall be deemed complete and the magistrate judge shall forthwith transmit the record to the clerk without a transcript.

(c) **Assignment to a District Judge.** The clerk at the time of filing of the record shall assign the appeal to a district judge in the same manner as any indictment and shall notify the parties of the filing of the record and of the time for filing of briefs in accordance with this rule.

(d) **Abbreviated Appeals.** An "abbreviated appeal" may be taken, if elected by the appellant, in which case the appeal will be considered without briefs. In the case of an abbreviated appeal, the appellant shall make an election to proceed by abbreviated appeal at the time of filing notice of appeal and may do so by including the election as part of the notice.

(e) **Briefs.** When the appellant has not elected to proceed without briefs by an "abbreviated appeal," the appellant shall serve and file a brief within twenty-one (21) days after the filing of the record with the clerk. The appellee shall serve and file a responsive brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the brief of the appellee. Each brief shall not exceed twenty (20) pages in length unless otherwise ordered by the court. These periods may be altered by order of the assigned district judge.

(f) **Notice of Hearing.** Oral argument may be scheduled by order of the court.

CHAPTER III - ADMIRALTY RULES

A.1. Scope.

The local admiralty rules apply only to civil actions that are governed by Fed. R. Civ. P., Supp. R. A (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

A.2. Officers of Court.

As used in the local admiralty rules, "judicial officer" means a district judge or a magistrate judge; "clerk " means the Clerk of the District Court and includes deputy clerks ; and "marshal" means United States Marshal and includes deputy marshals.

B.1. Affidavit that Defendant Is Not Found Within the District.

The affidavit required by Fed. R. Civ. P., Supp. R. B(1) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.

C.1. Undertaking in Lieu of Arrest.

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for his foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with local rules and has been approved by a district judge or clerk.

C.2. Intangible Property.

The summons issued pursuant to Fed. R. Civ. P., Supp. R. C(3) shall direct the person having control of intangible property to show cause no later than ten (10) days after service

why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants of the property may show cause as provided in Fed. R. Civ. P., Supp. R. C(6) why the property should not be delivered to or retained by the court.

C.3. Notice of Action and Arrest.

(a) **Publication.** The notice required by Fed. R. Civ. P., Supp. R. C(4) shall be published once in a newspaper to be specified by the United States District Court for the District of Hawaii, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

1. The court, title, and number of the action;

2. The date of arrest;

3. The identity of the property arrested;

4. The name, address and telephone number of the attorney for plaintiff;

5. A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Fed. R. Civ. P., Supp. R. C(6) must be filed with the clerk and served on the attorney for plaintiff within ten (10) days after publication;

6. A statement that an answer to the complaint must be filed and served within twenty (20) days after publication, and that otherwise, default may be entered and condemnation ordered;

7. A statement that applications for intervention under Fed. R. Civ. P. 24—, by persons claiming maritime liens or other interests, shall be filed within the time fixed by the court; and

8. The name, address and telephone number of the marshal.

(b) **Filing of Proof of Publication.** Plaintiff shall cause to be filed with the clerk no later than thirty (30) days after the date of publication sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

C.4. Default in Action In Rem.

(a) **Notice Required.** A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given in accordance with Fed. R. Civ. P., Supp. R. C(4).

(b) **Persons with Recorded Interests.** (1) If the defendant property is a vessel documented under the laws of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership. (2) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

C.5. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under Fed. R. Civ. P. 55(a)—. Default will be entered upon showing that:

(a) notice has been given as required by LRC.4(a)~~;~~, and

(b) notice has been attempted as required by LRC.4(b), where appropriate, and

(c) the time for answer has expired, and

(d) no one has appeared to claim the property. Judgment may be entered, under Fed. R. Civ. P. 55(b)—, at any time after default has been entered.

D.1. Return Date.

In an action under Fed. R. Civ. P., Supp. R. D, a judicial officer may order that the claim and answer be filed on a date earlier than twenty (20) days after arrest. The order may also set a date for expedited hearing of the action.

E.1. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under Fed. R. Civ. P., Supp. R. B or C, except a demand for salvage award, shall allege the dollar amount of the debt of damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Fed. R. Civ. P., Supp. R. E(5)(a) may be based upon these allegations.

E.2. Verification of Pleadings.

Every complaint in Fed. R. Civ. P., Supp. R. B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party in accordance with Hawaii law. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

E.3. Review by Judicial Officer.

(a) **Authorization to Issue Process.** Except in actions by the United States for forfeitures, before the clerk will issue a summons and process of arrest, attachment, or garnishment to any party, including intervenors, under Fed. R. Civ. P., Supp. R. B and C, the pleadings, the affidavit required by LRB.1, and accompanying supporting papers must be reviewed by a judicial officer. If the judicial officer finds the conditions set forth in Rules B or C appear to exist, as appropriate, the judicial officer shall authorize the clerk to issue process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

(b) **Exigent Circumstances.** If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a

summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

(c) **Personal Appearance.** Unless otherwise required by the judicial officer, the review by the judicial officer will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) **Order.** Upon approving the application of arrest, attachment, or garnishment, the judicial officer will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment, or garnishment. The form of the order of arrest, attachment, or garnishment shall be submitted with the other documents for review.

(e) **Request for Review.** Except in the case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with Supplemental Rule B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judicial officer to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed and, upon approval, presented to the clerk for issuance of the appropriate order.

E.4. Process Held in Abeyance.

If a party does not wish the process to be issued at the time of filing the action, the party shall request issuance of process be held in abeyance. It will not be the responsibility of the clerk or marshal to ensure that process is issued at a later date.

E.5. Service by Marshal Required.

Only a marshal shall arrest or attach a vessel, cargo, or other tangible property.

E.6. Instructions to the Marshal.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal.

E.7. Property in Possession of United States Officer.

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody to the property until ordered to do otherwise by a judicial officer.

E.8. Security for Costs.

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Fed. R. Civ. P., Supp. R. E(2)(b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security with the clerk at the time the process is presented to the clerk for filing. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

E.9. Adversary Hearing.

The adversary hearing following arrest or attachment or garnishment that is called for in Fed. R. Civ. P., Supp. R. E(4)(f) shall be conducted upon three (3) days' written notice to plaintiff, unless otherwise ordered. This rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

E.10. Appraisal.

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial

discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed that it is a taxable cost of the action.

E.11. Security Deposit for Arrest or Attachment of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance, and insurance for at least ten (10) days. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Fed. R. Civ. P., Supp. R. E.

E.12. Intervenors' Claims.

(a) **Presentation of Claim.** When a vessel or other property has been arrested, attached or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. The clerk shall forthwith deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) **Sharing Marshal's Fees and Expenses.** An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If the plaintiff permits vacation of

an arrest, attachment, or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

E.13. Custody of Property.

(a) **Safekeeping of Property.** When a vessel, cargo, or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

(b) **Insurance.** The marshal may procure insurance to protect the marshal, the deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and to maintain the court's custody. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the court.

(c) **Vessel Operations.** Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer shall require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) **Claims by Suppliers for Payment of Charges.** A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

E.14. Sale of Property.

(a) **Notice.** Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a district judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least six (6) days before the date of sale.

(b) **Payment of Bid.** Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check, or cashier's check, of the full purchase price if it does not exceed $500.00, and otherwise $500.00 or 10 percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check, or cashier's check within three (3) days after confirmation of the sale or within three (3) days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays, and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in, the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than ten (10) days prior to the date of sale.

(c) **Confirmation of Sale.** A sale shall be confirmed by order of the court within five (5) court days but no sooner than three (3) court days after the sale unless an objection to the sale has been filed, in which case the court shall hold a hearing on the confirmation of the sale. The marshal shall transfer title to the purchaser upon the order of the court.

(d) **Penalty for Late Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed under these rules, or a different time specified by the court, shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

(e) **Penalty for Default in Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed is in default, and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) **Opposition to Sale.** A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also, prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least five (5) days. Pending the court's determination of the opposition, such party shall also advance any further expense at such time and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) **Disposition of Deposits.**

1. **Objection Sustained.** If an objection is sustained, sums deposited by the successful bidder shall be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will

be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

2. **Objection Overruled.** If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(h) **Title to Property.** Failure of a party to give the required notice of the action and arrest of the vessel, cargo, or other property, or required notice of the sale, may afford ground for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.