

Individual Rules of Practice
Micah W.J. Smith, United States District Judge

District of Hawai‘i
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I. CIVILITY IN ALL PROCEEDINGS.

Parties must act with the highest degree of professionalism and courtesy in their dealings with other parties, the court and court staff, and anyone else involved in the litigation. Abusive conduct of any kind will not be tolerated and should be promptly brought to the court’s attention. This provision applies equally to discovery communications between the parties and to conduct in depositions.

II. TELEPHONIC AND VIDEO TELECONFERENCE APPEARANCES.

Counsel and pro se parties who wish to appear for hearings via telephone or video teleconference should file a letter request electronically on ECF at least one week prior to the hearing. Judge Smith disfavors telephonic and video teleconference appearances for hearings on dispositive motions, but does not disfavor video teleconference appearances for other types of hearings (e.g., status conferences). Despite these rules of thumb, Judge Smith will consider each request on a case-by-case basis, and requests therefore should articulate the reasons why any requested remote appearance is warranted.

If a party makes a request to appear remotely less than one week prior to the hearing, they should, in addition to filing electronically on ECF, also submit their request via email to smith_orders@hid.uscourts.gov. In that event, the letter request should explain why the party was unable to submit their request in a timely manner.

III. COMMUNICATIONS WITH CHAMBERS.

A. ECF Filings. Communications with the court shall be via filings made electronically on ECF, except as otherwise provided in these rules or as authorized by specific permission from the court.

B. Telephone Calls. Telephone calls to chambers are strongly disfavored and should be made only in time sensitive situations requiring immediate attention. Telephone calls to the courtroom manager are permitted, but must be limited to purely non-substantive, administrative matters.

C. Email. Although communications from parties generally must be made by electronic filings on ECF as directed by Rule III(A) above, there may be certain instances where email communication is reasonably necessary under the circumstances.

Such instances may include, for example, notifying the court of last-minute travel delays that will affect a party's ability to be present at a scheduled conference. Other instances are specifically identified in these rules: for example, Rule III(D) below allows parties to use email to alert the court to a matter requiring urgent attention.

Under such circumstances, parties are permitted to email smith_orders@hid.uscourts.gov. All email correspondence with the court must copy all counsel of record in the action; the court may not read or act upon any email that does not do so.

D. Urgent Communications. Matters filed via ECF are not necessarily reviewed the same day they are filed. If a matter requires urgent attention, parties should so alert chambers by email in accordance with the above rules, in addition to filing any related submission on ECF.

E. Stipulations and Orders. Stipulations and orders requiring the court's approval should be submitted to smith_orders@hid.uscourts.gov in Microsoft Word format, and, where applicable, include dates and the parties' and/or counsel's electronic signatures. If a stipulation is filed on the court docket, counsel should also submit that signed and completed stipulation in Word document form to smith_orders@hid.uscourts.gov.

F. Requests for Status Hearings. Status conferences or hearings can be useful in both civil and criminal cases, and parties are welcome to email chambers at smith_orders@hid.uscourts.gov if they believe it would be helpful to schedule one. As required by Rule III(C) above, any such email must copy all counsel of record in the action. Parties may, alternatively, jointly contact the courtroom manager by telephone.

G. Ex Parte Communications. Regardless of the means of communication used, no party, whether proceeding with or without counsel, may communicate *ex parte* with Judge Smith or any of his staff about any case pending before Judge Smith without prior leave to do so, except as expressly permitted by these rules or this court's local rules. Permissible *ex parte* communications include certain items in criminal matters. *E.g.*, CrimLR79.2 (authorizing *ex parte* motions to extend sealing orders). Counsel are permitted to contact chambers (via email to smith_orders@hid.uscourts.gov) for the limited purpose of clarifying whether an *ex parte* communication is appropriate.

Anyone found to be in violation of this provision without good cause will be subject to sanctions. This provision shall not prevent counsel in a proceeding pending before Judge Smith from communicating with the courtroom manager for purposes of hearing or trial continuances or other similar scheduling relief.

IV. SETTLEMENT.

Judge Smith will not retain jurisdiction to enforce confidential settlement agreements. If the parties request that Judge Smith retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public request. In advance of dismissal, the parties should request that the court grant their request to retain jurisdiction to enforce the agreement. These rules shall apply to cases assigned to Judge Smith regardless of whether he takes the settlement or the taking of the settlement is referred to a magistrate judge.

V. MOTIONS.

A. Pre-Filing Conferences (Local Rule 7.8). Local Rule 7.8 requires counsel to engage in a pre-filing conference “to discuss thoroughly, *preferably in person*, the substance of the contemplated motion and any

potential partial or complete resolution.” Counsel should discuss the issues with sufficient detail so that if a motion is still necessary, the briefing may be directed to those substantive issues requiring resolution by the court. All Local Rule 7.8 conferences shall be conducted by lead counsel and shall take place via a communication method that, at a minimum, allows all parties to be in real-time communication. Judge Smith will not consider letters or email to constitute a proper Local Rule 7.8 conference.

B. Requests for Hearings on Motions. Local Rule 7.1(c) allows, but does not require, parties to state their position (either in their motion or their opposition memorandum) on whether a hearing should be held on a motion. Although not required, Judge Smith strongly encourages parties to state their position on whether they believe a hearing should be held.

C. Dividing Argument at Hearings. Parties are welcome to request permission to divide their oral argument presentation at a hearing—that is, to have more than one counsel for a party present argument. Such requests can be made by email to chambers or by contacting the courtroom manager. Requests also can be made at the beginning of the hearing itself, and Judge Smith is likely to grant these requests even then.

For the sake of the professional development of attorneys who appear before the District of Hawai‘i, Judge Smith encourages counsel to consider affording junior attorneys an opportunity to present oral argument, where appropriate; in such cases, Judge Smith will permit more experienced attorneys to step in as needed during argument.

D. Motions to Dismiss. In civil cases, if a defendant files a motion to dismiss a plaintiff’s initial complaint, the plaintiff may amend the complaint within 14 days of the motion to dismiss to address the issues raised in the motion rather than answering the motion. Prior permission of the court is not required. If the plaintiff chooses to file an amended complaint, the court will deny the previously-filed motion to dismiss as moot without prejudice, and the defendant must within 14 days after service of the first amended complaint (1) answer; (2) file a new or supplemental motion to dismiss; or (3) submit a letter on ECF stating that it relies on the previously filed motion to dismiss. If the defendant chooses to file a supplemental motion to dismiss, the defendant may incorporate by reference any portions of the briefing, declarations, or exhibits filed with its original motion to dismiss. If the defendant chooses to file a new or supplemental motion to dismiss in

response to the first amended complaint, the plaintiff may not file a second amended complaint without prior leave of court.

E. *Daubert* Motions. Judge Smith treats *Daubert* motions as non-dispositive motions, and they must be filed in accordance with the deadlines set forth in the applicable Rule 16 Scheduling Order. *Daubert* issues may not be presented in motions in limine.

In civil cases, there are occasions when a *Daubert* motion has implications for dispositive motions—for instance, when a party’s contention is that summary judgment should be granted because the testimony of an expert should not be allowed under *Daubert*. A party whose dispositive motions are intertwined with a *Daubert* motion should contact the courtroom manager to request a status conference with Judge Smith to discuss deadlines and scheduling.

F. Motions in Limine. Memoranda in support of motions in limine and any opposition shall not exceed ten pages. The aim of this requirement is to allow the court to track and rule on individual issues within each motion in limine by a specific filing number; then, during trial, the court and the parties can ensure a clear record by referring, as needed, to the court’s rulings on specific motions in limine.

Accordingly, if a *single* issue cannot be adequately addressed within ten pages, a party may seek leave to submit an overlength memorandum in support or opposition. The court does not impose any limit on the *number* of motions in limine that any party may file, but parties are reminded that they must engage in an adequate pre-filing conference under Local Rule 7.8 before filing any such motion.

G. Motions to Withdraw as Counsel in Criminal Cases. When defense counsel moves to withdraw as counsel for a charged defendant in a criminal case, Judge Smith typically will not refer this to a magistrate judge; counsel should expect that Judge will handle the hearing on the motion himself. A motion of this sort must be filed as expeditiously as possible, so as to lessen—to the fullest extent possible—any effect on set trial dates.

VI. CONTINUANCES IN CIVIL CASES.

A. Continuances of Civil Motion Hearings. If parties are jointly seeking an unopposed continuance of a hearing, they may do so either by contacting the courtroom manager, or via email to smith_orders@hid.uscourts.gov. As required by Rule III(C) above, all counsel of record should be copied on any email requesting a continuance of a hearing.

If a request to continue a hearing is opposed, however, the request must be made via motion filed on ECF. Each such continuance request should indicate which number continuance is being requested (e.g., “Second Motion to Continue Summary Judgment Motion Hearing”).

Whether unopposed or opposed, parties should seek continuances well in advance of the hearing date, as the court will be less likely to grant a request that is made close in time to the hearing date.

B. Continuances of Civil Trial Dates. If the trial date is more than five months away, and the parties are in agreement that it should be continued, the parties may request a continuance via stipulation submitted to the assigned Magistrate Judge outlining the good cause for the continuance. If, however, a requested continuance is opposed by any party, or if a party seeks to continue a trial that is scheduled to begin in five months or less (whether opposed or not), then the requested continuance must be made via stipulation or motion submitted to Judge Smith.

The stipulation or motion should indicate how many prior continuances of the trial have been granted, and whether the parties seek to reopen any closed deadlines or extend any current deadlines. Motions should be accompanied by a proposed order.

Parties are advised that Judge Smith disfavors continuance requests that would push back a trial date by more than six months. If the parties believe a trial date must be continued that far out, their stipulation or motion should explain, with particularity, the reasons why such a lengthy continuance is warranted.

VII. CONTINUANCES IN CRIMINAL CASES.

A. The Setting of Criminal Trial Dates. In criminal cases in this District, trials are automatically scheduled to commence “within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.” 18 U.S.C. § 3161(c)(1). It is, however, exceedingly rare for a case to proceed to trial in that short timeframe, and 18 U.S.C. § 3161(h) identifies several reasons why a trial date might be continued. The parties, witnesses, and the court all benefit from an early determination of whether a trial is likely to commence within the default seventy days.

Accordingly, in criminal cases assigned to Judge Smith, a status conference before Judge Smith will be scheduled for some time shortly after a defendant’s initial appearance before the Magistrate Judge. The courtroom manager will reach out to counsel to find a date and time that is convenient for the parties. At this status conference, Judge Smith will inquire of the defendant and defense counsel whether they have carefully considered the consequences of proceeding to trial in such short order, and whether they have, in good faith, concluded that they could be prepared for trial within that short time. The defendant and defense counsel therefore must be prepared, at this status conference, to address these issues. If the defendant and defense counsel represent that they wish to proceed to trial as scheduled, the scheduled trial date will stay in place.

If, however, a defendant requests additional time—for example, to review discovery, conduct a defense investigation, and/or prepare pretrial motions—they should be prepared to propose, at the status conference before Judge Smith, the amount of time they believe they will need. Assuming the proposal is appropriate under the circumstances, the court will accept it, set a motions deadline consistent with the proposal, and exclude time under the Speedy Trial Act in the interests of justice. The court will then issue a scheduling order setting a trial date consistent with the defendant’s motion deadline, typically within 70 days of the motion deadline unless the defendant believes they will need additional time to prepare for trial.

B. Continuances of Criminal Trial Dates. Once a defendant has represented that they wish to keep their initially scheduled trial date at the

status conference with Judge Smith, or a different trial date has been set under the above procedures, the court will view with great disfavor any motion to continue the trial date. Parties seeking a continuance must file a motion, together with a proposed order, and should expect that the court will schedule a hearing on the motion before deciding it. The court is highly unlikely to grant a motion to continue based on reasons or conflicts that were known at the time the existing trial date was confirmed or set.

C. Continuances of Criminal Hearings. If parties are jointly seeking an unopposed continuance of a hearing (e.g., a sentencing hearing or a hearing on a suppression motion), they may do so either by contacting the courtroom manager, or via email to smith_orders@hid.uscourts.gov. As required by Rule III(C) above, all counsel of record should be copied on any email requesting a continuance of a hearing.

If a request to continue a hearing is opposed, however, the request must be made via motion filed on ECF. Each such continuance request should indicate which number continuance is being requested (e.g., “Second Motion to Continue Sentencing Hearing”).

Whether unopposed or opposed, parties should seek continuances well in advance of the hearing date, as the court will be less likely to grant a request that is made close in time to the hearing date.

VIII. THE SCHEDULE FOR TRIAL DAYS.

A. General Scheduling. Although general rules of thumb for trial scheduling are set forth below, Judge Smith is glad to discuss modifying the schedule based on the needs of any particular case or party. If parties wish to discuss tailoring a trial schedule to the needs of a case, they should email the courtroom manager to request a pretrial conference for that purpose. As required by Rule III(C) above, all counsel of record should be copied on any email requesting a conference of this sort.

B. Jury Trials. As a rule of thumb, jury trials will start on Mondays, unless there is reason not to do so in a particular case (e.g., the relevant Monday is a holiday). As another rule of thumb, jury trials will be Mondays through Fridays, unless there is reason to modify the schedule in a particular case.

Trial days will start at 9:00 a.m. and end at 3:45 p.m. There will be three breaks in the trial day, at the following approximate times: (1) a 10-minute morning break at 10:30 a.m., (2) a lunch break between 12:00 p.m. and 12:45 p.m., and a 10-minute afternoon break at 2:30 p.m. Other shorter “stretch” breaks may be taken throughout the day as needed.

Counsel must appear at 8:45 a.m. on each trial day and must be prepared to stay after 3:45 p.m. as needed. The court will use these periods of time to address any matters that should be handled outside the presence of the jury. If any counsel believes additional time is needed to handle a matter in the morning before a trial day, they should email the courtroom manager as early as possible in the preceding trial day to make a request to appear before 8:45 a.m.

C. Bench Trials. As a rule of thumb, bench trials generally will follow the same schedule as set forth above for jury trials. But Judge Smith will confer with the parties in advance to develop a trial schedule that is reasonable based on the needs of the particular case. For example, if a bench trial could be completed within a single long day, the court would entertain a request for such a schedule. The court is also more receptive to holding unusually long or unusually short trial days in bench trials, as the needs of a case dictate.

D. Voir Dire. In criminal trials, the court will conduct both the general and special voir dire; the parties will submit any general and individual questions for the jurors to the court, and the court will ask those questions determined to be appropriate. Counsel in a criminal case will not be permitted to ask jurors questions directly. In civil trials, the court will allow each side to conduct their own voir dire for a maximum of twenty minutes (unless, after discussion with counsel, more or less time is warranted under the circumstances of the particular case). But the court will conduct the majority of general and special voir dire even in civil cases, and so the parties will still be required to submit any general and individual questions they would like the court to ask.

IX. USE OF ELECTRONIC DEVICES.

Pursuant to the Order Adopting Electronic Device Policy, effective March 18, 2014, any person may bring into the courthouse an electronic device, such as a cellular phone, smartphone, laptop, tablet, or similar device

having wireless communications capability. Any such device is subject to security inspection.

Inside Judge Smith's courtroom, no person may use an electronic device for any purpose, except attorneys of record and members of their litigating team, who are authorized to use electronic devices only in connection with a then-ongoing, case-related proceeding. If counsel are in doubt as to whether the use of an electronic device is permissible, they should ask for permission.

Under no circumstances shall an electronic device disrupt any court proceedings. Under no circumstances shall any camera or audio/video recording equipment be used in Judge Smith's courtroom or chambers.

Judge Smith may modify these general provisions at his discretion in specific cases or for specific proceedings. Anyone found to be in violation of these provisions will be subject to sanctions.

X. FEEDBACK

Judge Smith would be glad to provide counsel feedback on their performances during hearings or trials. Judge Smith would also be glad to receive any feedback from counsel on how the court has handled any hearing or trial.

The court will meet either with individual attorneys or with all counsel in a case. Please note that the court will not schedule any such meeting until a case has been finally resolved, and even then, not unless all counsel of record either participate or consent to the meeting. Accordingly, if any counsel is interested in receiving or providing feedback after the resolution of a case, all counsel of record should email smith_orders@hid.uscourts.gov with a request for a meeting in chambers.