

**PRETRIAL PROCEDURES IN CRIMINAL AND CIVIL
CASES BEFORE U.S. DISTRICT JUDGE SHANLYN A. S. PARK**

The purpose of this memorandum is to provide general information regarding pretrial procedures before Judge Park. This information supplements, and does not replace, counsel and the parties' review and knowledge of the Local Rules for the District of Hawai'i ("Local Rules"), Federal Rules of Evidence, Federal Rules of Civil Procedure, and Federal Rules of Criminal Procedure ("Fed. R. Cr. P."). Counsel and any parties proceeding pro se are expected and required to be familiar and comply with the rules. Parties must act with the highest degree of professionalism, courtesy, and aloha in their dealings with other parties, the Court and Court staff, and anyone else involved in the litigation. *See also* Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers.

I. CONTACT INFORMATION AND COMMUNICATING WITH CHAMBERS

A. Courtroom Manager

Telephone calls and emails to the courtroom manager, Theresa Lam, are permitted for procedural matters and scheduling. Ms. Lam may be contacted via telephone at (808) 541-3577 or (808) 721-2633, or email at Theresa.Lam@hid.uscourts.gov. The Court expects a prompt response from the parties when contacted by the courtroom manager.

Telephone calls or emails directly to chambers are strongly disfavored and should be made only in time sensitive situations requiring immediate attention. For example, if the courtroom manager is not available and the parties need to notify the court of an urgent matter that will affect the litigation, then the parties may contact chambers directly either via telephone at (808) 541-1440 or email at park_orders@hid.uscourts.gov.

B. ECF Filings

Communications with the Court shall be via filings made electronically in ECF, except as otherwise provided in the rules or as authorized by specific permission from this Court.

Matters filed via ECF are not necessarily reviewed the same day they are filed. If a matter requires immediate attention, under such circumstance, the parties are permitted to email park_orders@hid.uscourts.gov. All email correspondence with the Court must copy all counsel of record in the case. The Court will not read or act upon any email that does not comply with this provision.

C. Stipulations and Orders

Stipulations and orders requiring the Court's approval should be submitted to park_orders@hid.uscourts.gov in Microsoft Word format, and, where applicable,

include the dates and parties' and/or counsel's electronic signature. The Park Orders email should not be used for general informal correspondence with chambers, and the parties are directed to contact the courtroom manager for procedural and scheduling matters.

D. Request for Status Hearings

Status conferences or hearings can be useful in both civil and criminal cases, and parties are encouraged to contact the courtroom manager if they believe it would be helpful to schedule one.

E. Ex Parte Communications

No party, whether proceeding with or without counsel, may communicate *ex parte* with Judge Park or any of her staff about any case pending before Judge Park without prior leave to do so, except as expressly permitted by the Local Rules and this memorandum.

Anyone found to be in violation of this provision without good cause will be subject to sanctions. This provision shall not prevent counsel from communicating with the courtroom manager for purposes of procedural or scheduling matters.

II. TELEPHONE AND VIDEO TELECONFERENCE APPEARANCES

Judge Park disfavors virtual and telephonic appearances for hearings on dispositive or substantive motions. Counsel and pro se parties who are not located on the island of O'ahu who wish to appear for hearings via telephone or video teleconference must submit a letter request to park_orders@hid.uscourts.gov at least one week prior to the hearing. Pro Hac Vice counsel are advised that any requests to appear remotely based on convenience will be denied. All requests for remote appearance should articulate the reasons why such appearance is warranted. The Court will consider each request on a case-by-case basis.

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

Electronic devices must be silenced or turned off prior to entry into Judge Park's courtroom to avoid disruption to court proceedings. Inside Judge Park'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 is in doubt as to

whether the use of an electronic device is permissible, they should contact the courtroom manager in advance of the hearing for the Court's 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 Park's courtroom or chambers.

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

IV. 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 are expected to 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. Letters or emails do not constitute a proper Local Rule 7.8 conference.

B. *Daubert* Motions

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

C. Motions *in Limine* ("MIL")

Should a party file a MIL, the motion must include the following: the specific evidence sought to be admitted or excluded, the grounds for admissibility or exclusion, and an explanation why an ordinary trial objection would be inadequate.

Counsel must inform their witnesses of the Court's rulings on the MILs and must admonish their witnesses to refrain from mentioning, commenting upon, or otherwise revealing any evidence deemed inadmissible by the Court's rulings on the MILs.

Memoranda in support of MILs and any opposition shall not exceed five (5) pages. If a single issue cannot be adequately addressed within the given pages, a party may seek leave to submit a memorandum in support or opposition that exceeds the five-page limit. Parties are reminded that they must engage in an adequate pre-filing conference under Local Rule 7.8 before filing any such motion.

D. Mandatory Chambers Copies

The parties are to submit no more than one (1) chambers copy of motions and related attachments. Courtesy copies are not necessary for the following: in civil cases, answers, notices of appearance, motions to exceed page limits, and motions to continue; in criminal cases, notices of appearance, applications to appear on behalf of the United States of America, motions to continue a hearing, motions to continue trial, and sentencing statements.

For motions referred to the assigned magistrate judge, the parties must comply with the respective judge's rules regarding chambers copies.

Judge Park imposes the following additional requirements for chambers copies:

- (1) Documents that are fifty (50) pages or less may be stapled.
- (2) Documents exceeding fifty (50) pages must be placed in binders. Documents requiring multiple binders should be labeled in such a manner to indicate that the documents are separated into multiple binders, i.e., binder 1 of 3, 2 of 3, 3 of 3.

E. Motions for Summary Judgment

Parties are prohibited from filing multiple motions for summary judgment that address fewer than all claims for which summary judgment is sought. For example, if a party moves for summary judgment on five claims, a single motion should be filed, not five motions each addressing a single claim, or even multiple motions addressing less than five claims.

Concise Statement of Facts:

Local Rule 56.1(b) states that each factual assertion in a concise statement of facts "shall be a single sentence, followed by a citation to a particular affidavit, deposition, or other document that supports the assertion." In addition to this requirement, any party submitting a concise statement must list each fact in a separately numbered paragraph.

Any party who opposes a motion for summary judgment or partial summary judgment must file an Opposing Concise Statement of Facts pursuant to Local Rule 56.1(e). In addition to the requirements stated in Local Rule 56.1(e), an Opposing Concise Statement of Facts must be in the form of a chart with two columns. The left-hand column of the chart shall include every fact in the moving party's Concise Statement of Facts (in the same order, using the same numbers, and with all citations to the supporting evidence identified by the moving party). The right-hand column of the chart shall include whether the fact is undisputed, disputed (and why), or disputed in part (and why). For each disputed or partially disputed fact, the Opposing Concise Statement of Facts must provide citations (including page and

line numbers, if available) to evidence in the record that supports the claim that the fact is disputed. The following is an example:

MOVING PARTY’S CONCISE STATEMENT OF FACTS	OPPOSING PARTY’S RESPONSE
1. Plaintiff X and Defendant Y met in Lihue on January 5, 2012, to discuss a joint real estate business venture. Evidence: Declaration of Mary Jones (“Jones Decl.”), Ex. A (7/13/18 Def. Dep.) at 5:5-10.	1. Undisputed.
2. At the January 5, 2012, meeting, Plaintiff X and Defendant Y verbally agreed to partner in a joint real estate business venture. Evidence: 7/13/18 Def. Dep. at 13:4- 12.	2. Disputed. At the January 5, 2012, meeting, Plaintiff X and Defendant Y only discussed the possibility of a joint real estate business venture; they did not verbally agree to anything. Evidence: Declaration of Jennifer Sato (“Sato Decl.”), Ex. A (7/25/18 Pl. Dep.) at 23:1-15.

In addition to the requirements set forth in Local Rule 56.1(e), any party responding to an opposition to a motion for summary judgment or partial summary judgment must file a Reply to Opposing Concise Statement of Facts, in the form of a chart with three columns. For ease, the party may choose to utilize the landscape (rather than portrait) orientation for the chart. The left-hand column of the chart shall include every fact in the moving party’s Concise Statement of Facts (in the same order, using the same numbers, and with all citations to the supporting evidence identified by the moving party). The middle column of the chart shall include every fact included in the opposing party’s Opposing Concise Statement of Facts (in the same order, using the same numbers, identifying the opposing party’s position as to the fact, with all citations to the supporting evidence identified). The right-hand column shall include the moving party’s reply to any facts the opposing party asserts are disputed in whole or in part and shall include citations (including page and line numbers, if available) to evidence in the record that supports the claim that the fact is undisputed. The following is an example:

MOVING PARTY'S CONCISE STATEMENT OF FACTS	OPPOSING PARTY'S RESPONSE	MOVING PARTY'S REPLY
1. Plaintiff X and Defendant Y met in Lihue on January 5, 2012, to discuss a joint real estate business venture. Evidence: Declaration of Mary Jones ("Jones Decl."), Ex. A (7/13/18 Def. Dep.) at 5:5-10.	1. Undisputed.	
2. At the January 5, 2012, meeting, Plaintiff X and Defendant Y verbally agreed to partner in a joint real estate business venture. Evidence: 7/13/18 Def. Dep. at 13:4-12.	2. Disputed. At the January 5, 2012, meeting, Plaintiff X and Defendant Y only discussed the possibility of a joint real estate business venture; they did not verbally agree to anything. Evidence: Declaration of Jennifer Sato ("Sato Decl."), Ex. A (7/25/18 Pl. Dep.) at 23:1-15.	2. In the section of the deposition cited by Plaintiff, Plaintiff stated that she "wasn't sure" whether there was a verbal agreement made at the January 5, 2012, meeting. But she changed her testimony later in the deposition and said there was a verbal agreement made then. Evidence: 7/25/18 Pl. Dep. at 34:8-12.

V. CONTINUANCE IN CIVIL CASES

A. Continuances of Civil Motion Hearings

If parties are jointly seeking an unopposed continuance of a hearing, they may do so by contacting the courtroom manager.

If a request to continue a hearing is opposed, however, the request must be made via motion filed in 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 seeking continuances should do so 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. Continuance of Civil Trial Dates

If the trial date is more than five (5) months away, and all parties agree, 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 (via park_orders@hid.uscourts.gov) or motion.

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 Park disfavors continuance requests that would continue a trial date by more than six (6) 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.

VI. **FED. R. CR. P. 17.1 PRETRIAL CONFERENCE AND CONTINUANCES IN CRIMINAL CASES**

A. Setting of a Rule 17.1 Pretrial Conference

Following a defendant's initial appearance before the Magistrate Judge, a Rule 17.1 pretrial conference will be scheduled before Judge Park. The purpose of the pretrial conference is to promote a fair and expeditious trial and to assist the Court in understanding issues that may be unique to the case. At the pretrial conference, the parties should be prepared to discuss pretrial matters that include the status of discovery, possible motions, any defense issues, and whether the defendant will be able to proceed to trial as originally scheduled. If a trial continuance is anticipated, the defense should be prepared to state the reason for the additional time and propose the amount of time they believe they will need. Should the Court determine that a continuance is justified, the Court will set a new trial date and deadlines and exclude time under the Speedy Trial Act in the interests of justice.

Any party seeking a continuance of the trial date following the Rule 17.1 pretrial conference must file a motion. The Court is highly unlikely to grant a motion to continue based on reasons or conflicts that were known at the Rule 17.1 pretrial conference.

B. Continuances of Criminal Hearings

If parties are jointly seeking an unopposed continuance of a hearing, they may do so by contacting the courtroom manager. If a request to continue a hearing is opposed, however, the request must be made via motion filed in 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 seeking continuances should do so 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.

VII. TRIAL

A. Trial Schedule

Jury trials start on Tuesdays. Trial will commence at 9:00 a.m. and end at 2:30 p.m. or 3:00 p.m., except on days of jury selection, in which case the day will end at 4:30 p.m.

There will be at least two (2) breaks in the trial day, at the following approximate times: 11:00 a.m., for fifteen (15) minutes, and 12:30 p.m., for twenty (20) minutes.

Brief additional breaks will be taken when necessary. The Court will take “stretch breaks” in the middle of the trial, during which everyone can stand up, but no one may leave the courtroom.

In general, counsel will meet daily with the Court at either 8:30 a.m. or at the conclusion of the day, to discuss matters that need to be addressed outside the presence of the jury.

In a civil case, Judge Park will limit the number of hours each party has to present its case.

In a bench trial, trial will start at 8:30 a.m. and end at 4:30 p.m. There will be a lunch break from 12:00 p.m. to 1:30 p.m., along with short breaks in the morning and afternoon.

B. Voir Dire

The Court conducts the general voir dire and will incorporate special voir dire based on questions submitted by the parties. Each side will then have twenty (20) minutes for voir dire, which shall include both general and individual questioning of the jurors. The Court may consider additional voir dire time in complex cases.

C. Bench Conferences

Bench conferences or side bars are highly discouraged and not generally permitted. If a problem arises during examination, counsel should defer the matter and move to another line of questioning, and the dispute will be resolved during a recess. In general, counsel will meet daily with the Court at 8:30 a.m. prior to the start of trial day, during recess, or after the jury is dismissed for the day to discuss any anticipated disputes.

D. Witnesses and the Witness Exclusionary Rule

The next day's witnesses shall be disclosed by the proffering counsel to opposing counsel by no later than the close of each day's trial proceedings. Counsel should arrange for a sufficient number of witnesses for each day, and there should not be any delay in trial proceedings caused by witness unavailability. Any witness present must be available for the duration of a full, complete examination by the parties.

The witness exclusionary rule shall be in effect from the hearing on any motions and/or jury selection, through closing arguments.

E. Use of Demonstrative Aids during Trial

Unless the Court has granted permission or the parties have stipulated, demonstrative aids (such as exhibits, charts, or other materials) shall not be displayed to the jury. The parties shall seek agreements prior to trial to prevent any delay in trial proceedings.

F. Use of Microphone

Counsel shall use the microphone provided when addressing the Court or the jury, such as in any examination, objection, statement for the record, or argument. Counsel shall remain at the podium unless prior court permission is sought and granted.

G. No Speaking Objections

Attorneys shall only state the basis of an objection. All arguments shall be presented outside of the jury's presence.

H. Offers of Proof

All offers of proof shall be outside the presence of the jury.

I. Trial Exhibits

Parties are required to meet and confer to agree upon a common set of exhibits. Counsel shall inform the Court, no later than the hearing on the motions *in limine*, of

the exhibits that all counsel have agreed may be admitted into evidence and any disputed exhibits. Any party objecting to the admission of any exhibits listed shall inform the Court of the exhibits in dispute by exhibit number. A party may seek, during trial or an evidentiary hearing, to add exhibits not previously listed by asking for leave of court. The party seeking to add exhibits shall provide the Court and all parties with copies of the additional exhibits, mark the additional exhibits with appropriate exhibit numbers, and submit supplemental exhibit lists reflecting the additional exhibits.

- a. Exhibit Binders and Folders: The parties are required to provide one set of exhibits to the Court to be shown to witnesses during testimony, when necessary. Each exhibit must be placed in a separate manila folder that is labeled with the exhibit number. The parties are also required to provide one set of binders of exhibits, separated by tabs, to the Court.
- b. Jury Evidence Recording System (“JERS”): The parties are also required to submit electronic versions of exhibits for display during trial and for the jury’s use during deliberations. The electronic exhibits must be submitted in accordance with the directions provided by the Clerk’s Office, and they must be submitted on the same day that the hard-copy exhibits are provided.
- c. Physical exhibits do not need to be ready and available in the courtroom until they will be shown to a witness.
- d. In general, the Court will not permit an exhibit to be passed among the jurors.
- e. Once an exhibit is admitted into evidence, it may be freely published to the jury if counsel so indicates for the record.

J. Motions during Trial

Generally, motions should be in writing.

K. Jury Instructions and Special Verdict Forms

The parties’ jury trial submissions that are derived from model instructions (from the Ninth Circuit or elsewhere) shall include redlined edits reflecting how the submissions differ from the standard or model instructions. During trial, the Court will schedule a hearing to resolve jury instruction disputes. Before the jury instructions are presented to the jury, the Court will provide hard copies to the parties. Jurors will also receive hard copies of the instructions.

Proposed jury instructions and proposed special verdict forms shall be submitted in writing in Word format through both email to park_orders@hid.uscourts.gov and computer disk or thumb drive to the courtroom manager.

L. Juror Note Taking

Jurors will be permitted to take notes during trial if they desire to do so. The Court will provide notebooks and pens. These notebooks shall be left face-down on the jurors' chairs when they leave the courtroom. The jurors may, if they wish, take their notes into the jury deliberation room. After the conclusion of the trial, these notes will be destroyed.

M. Special Equipment

Permission to use special equipment (such as television monitors, overhead projectors, and easels) must be obtained in advance from the Court. Counsel are responsible for obtaining, setting up, and removing special equipment.

N. Special Instructions for a Civil Bench Trial

The parties shall file trial briefs by the deadline set forth in the Rule 16 Scheduling Order, which shall include citations to case law and other authorities that the party asserts should be applied.

After the non-jury trial, the Court will issue its ruling and direct the prevailing party to prepare a draft of the Findings of Fact and Conclusions of Law ("FOF/COL") consistent with the rulings and annotate, where appropriate, to the trial transcript. The opposing party thereafter shall file any objections and propose revisions to the draft FOF/COL. The Court will consider the submissions and issue its FOF/COL.