

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII
300 ALA MOANA BOULEVARD, C-435
HONOLULU, HAWAII 96850

JILL A. OTAKE
UNITED STATES DISTRICT JUDGE

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GENERAL CIVIL CASE PROCEDURES **BEFORE JUDGE OTAKE**

(Last Revised: 3/24/2020)

I. Courtroom Activity

Requests for Telephonic Appearances:

Counsel and pro se parties who are not located on the island of O‘ahu who wish to appear for hearings via telephone must submit a **letter request** to otake_orders@hid.uscourts.gov at least **one week prior to the hearing**. Judge Otake disfavors telephonic appearances for hearings on dispositive motions.

Pro Hac Vice counsel are advised that any requests to appear by telephone based on convenience will be denied.

Continuances:

Any party seeking a continuance of a **motion hearing** must file a motion to continue the hearing, unless it is a joint request, in which case a letter should be sent to the court via otake_orders@hid.uscourts.gov, signed by counsel for all parties. Each continuance request should indicate which number continuance is being requested (e.g., “First Motion to Continue Summary Judgment Motion Hearing” or “Re: Third Joint Request to Continue Summary Judgment Motion Hearing”). Parties should seek continuances well in advance of the hearing date.

Motions, not letters, are required to seek a **trial** continuance, no matter how far in advance of trial the continuance is sought. Parties are advised that Judge Otake disfavors trial continuances in excess of six months. The motion should

indicate how many prior continuances of the trial have been granted and should be accompanied by a proposed order.

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 Otake'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. Examples of such appropriate usage include: paralegals texting other staff regarding *immediate* witness logistics; lawyers using a legal research database to search for caselaw mentioned by opposing counsel; lawyers referring to notes on a tablet regarding arguments for the hearing. Examples of inappropriate usage include: lawyers texting other litigation team members about courtroom events that do not require immediate attention; lawyers emailing or communicating with family members about personal matters; paralegals searching the internet to investigate witnesses who are on the stand. If counsel are in doubt as to whether the use of an electronic device is permissible, they should ask Judge Otake 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 Otake's courtroom or chambers.

Judge Otake 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.

II. Motions

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.

Many motions to dismiss or to strike could be avoided if the parties confer in good faith especially for perceived defects in a Complaint, Answer, or Counterclaim that could be corrected by amendment. *See, e.g., Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the Complaint could not be saved by any amendment). The Ninth Circuit requires that this policy favoring amendment be applied with “extreme liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). These principles require counsel for the plaintiff to carefully evaluate the defendant’s contentions as to the deficiencies in the Complaint, and in most instances, the moving party should agree to any amendment that would cure a curable defect. Counsel should, at the very least, resolve minor procedural or other nonsubstantive matters during the conference.

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 realtime communication. Judge Otake will not consider letters or e-mail to constitute a proper Local Rule 7.8 conference.

If the parties are unable to reach a resolution that eliminates the necessity for a **dispositive** motion, counsel for the movant shall include with the motion a statement indicating the date, duration, and communication method of the conference and the participants in the conference. In addition, the statement shall detail the issues discussed and resolved during the conference and the issues remaining. With regard to non-dispositive motions, the statement required under Local Rule 7.8 will suffice.

Failure to strictly comply with the Court’s requirements or Local Rule 7.8 will result in the striking and/or the denial of the motion.

Excess Word Requests (Local Rule 7.4)

Any requests to exceed the page/word count limit established by Local Rule 7.4 must specify the need for the additional pages/words. Leave should be requested sparingly, as relief will be granted only in limited circumstances. Any briefing that violates Local Rule 7.4 may be stricken.

Motions to Seal (Local Rule 5.2)

The Court will not consider any motions to seal until the requesting party fully complies with Local Rule 5.2(c). Courtesy copies, as well as the documents and/or exhibits that are the subject of the motion to seal, must be submitted immediately after the filing of the motion.

Mandatory Chambers Copies (Local Rule 10.3)

The Court imposes the following **additional** requirements for mandatory chambers copies:

- (1) Documents that are 50 pages or less may be stapled.
- (2) Documents exceeding 50 pages should 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.

Otake Orders Submissions

The Otake orders email should not be used for general informal correspondence with chambers. Letter requests and other formal correspondence may be electronically submitted with an explanatory email. Stipulations and orders requiring the Court's approval should be submitted in Microsoft Word format, and, where applicable, include dates and the parties' and/or counsel's electronic signatures.

Motions for Summary Judgment (Local Rule 56.1(b))

Among other things, 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 or a separate concise statement must list each fact in a separately numbered paragraph.

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.

III. Trials

Trial Procedures

1. Trial Schedule

Trials start on Mondays, unless Monday is a holiday. Judge Otake will not hold trials on Fridays, unless she directs otherwise. Jury trials will start at 8:45 a.m. and end at 2:30 p.m. except on days of jury selection, in which case the day will end at 4:30 p.m.

Matters that need to be addressed outside the presence of the jury will take place at 8:30 a.m. and at 2:30 p.m. The judge expects that attorneys will raise issues at 2:30 p.m. that must be addressed prior to the jury returning to court the next day and will determine a briefing deadline (with appropriate page limits) if needed.

Bench trials will start at 8:30 a.m. and end at 4:30 p.m.

There will be at least two breaks in the trial day, at the following approximate times:

10:30 a.m.- 15 minutes

12:00 p.m.- 20 minutes

The Court will likely take “stretch breaks” in the middle of the trial, during which everyone can stand up, but no one may leave the courtroom.

2. Length of Trial

Judge Otake will limit the number of hours each party has to present its case.

3. Jury Selection

Judge Otake will use the computerized system of randomly determining the order of jurors for jury selection. The Court will provide attorneys with an alphabetized list of prospective jurors.

Judge Otake will first address general requests to be excused. She will then conduct voir dire and will allow counsel to conduct voir dire. Each party will typically be allowed 10 minutes for voir dire, but that timeframe may be expanded upon request. During voir dire, Judge Otake will ask jurors to stand up and answer questions given to them on a sheet of paper. Those questions are available. If counsel wish to review them prior to trial, they are directed to contact the courtroom manager.

4. Jury Instructions

During trial, the Court will schedule a hearing to resolve jury instruction disputes. After ruling on the disputed issues, the Court will prepare a draft set of jury instructions for the parties' review. A further hearing will be held, if necessary, to address any concerns with the draft set of instructions. The Court will not entertain substantive arguments at the further hearing. 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.

Exhibits and Depositions

All trial exhibits shall be marked with the exhibit number and placed in a 3-ring binder(s) with tabs. The spine of the 3-ring binder(s) shall be clearly marked and labeled with the case name, binder volume and range of exhibits contained in the binder.

The parties must provide original depositions to the Court in manila folders. The folders should be clearly labeled with the deponent's name and should be placed in alphabetical order.

Physical exhibits do not need to be present in the courtroom until they will be shown to a witness.

