

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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HONOLULU, HAWAII 96850

CHAMBERS OF
SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE

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PROCEDURES FOR TRIALS BEFORE JUDGE SUSAN OKI MOLLWAY
(Revised 02/04/21 **Call chambers for current version**)

1. **Trial schedule**: Trial begins each day at 9 a.m. and runs until approximately 4:30 p.m. every day, unless otherwise announced. A lunch break will be taken from approximately noon to 1:30 p.m. One ten-minute break will be taken during the morning and another during the afternoon session. Trial hours are sometimes longer for nonjury trials, and the court may announce that certain civil jury trials will begin at 8:30 a.m. on days other than the day of jury selection. Sanctions may be imposed on any party, attorney, or witness for tardiness that delays the proceedings.

2. **Motions in limine**: All motions in limine shall be filed no later than 10 a.m. at least five working days before the hearing on the motions. Opposition memoranda shall be filed no later than 10 a.m. at least two working days before the hearing on the motions. Motions in limine will usually be heard the day before trial begins, but if an earlier hearing is scheduled, counsel should adjust the filing times in accordance with the preceding schedule. If this schedule requires earlier filings than provided for in the Final Pretrial Order, then (and only then) this schedule supersedes any schedule in the Final Pretrial Order.

3. **Exhibits**: Parties are required to meet and confer in an attempt to agree upon exhibits. No later than the time motions in limine are heard, counsel shall inform the court of the exhibit numbers of all exhibits that all counsel agree may be admitted into evidence at the trial or any other evidentiary hearing. Any party objecting to admission of any exhibits listed by another party shall inform the court of the exhibit numbers of those exhibits. If during trial or any other evidentiary hearing a party wishes to add exhibits not previously listed, that party shall include numbered tabs with copies of the additional exhibits and shall submit supplemental exhibit lists including the additional exhibits. Exhibits in a civil nonjury proceeding are also subject to the provision below for civil nonjury evidentiary proceedings.

4. **Voir dire of jurors**: After the judge has asked questions of the panel, each side will have a maximum of ten minutes for voir dire. This time limit will be strictly enforced and

includes both general questions to the panel as well as questions to individual jurors. Multiple parties on the same side must share the ten-minute period or may designate one attorney to ask questions for everyone on that side. In the normal civil case, there will be four peremptory challenges per side. In a criminal case, peremptory challenges are governed by Fed. R. Crim. P. 24. Peremptory challenges are exercised in writing but without any indication to jurors of which party struck which person.

5. **Notes by jurors:** Jurors will be allowed to take notes during trial. The court will provide notebooks and pens. The jurors will leave their notebooks on their chairs whenever they leave the courtroom during the trial. During jury deliberations, the jurors will be allowed to take their notebooks into the deliberation room.
6. **Folders provided by counsel:** In addition to using blow ups or electronic dissemination of exhibits to jurors, counsel may prepare binders or folders to be passed out to jurors containing no more than ten pages of key exhibits (as opposed to ten multi-page exhibits) that all parties stipulate may be included, as well as photocopies of photographs of witnesses who will testify live at trial. By agreement of all parties, the exhibits may be appropriately highlighted. Other documents may be included by agreement of the parties and with leave of court. Jurors are not allowed to take the folders into the deliberation room. The parties shall attempt to agree on the allocation of the costs of preparing the folders. In the event of a dispute, each side shall bear a pro rata share of the expense, but adjustments to this allocation may be sought by motion. As a general rule, the court will not allow an exhibit to be passed among the jurors.
7. **Use of charts, demonstrative evidence, or other materials not previously disclosed to opponents:** During opening statements, no exhibit, chart, demonstrative evidence, or other material may be shown to the jury without the agreement of all counsel or leave of court. Leave of court is not to be sought until an agreement of the parties has first been sought. Of course, parties need not seek an agreement or leave of court to write information (e.g., names of parties or witnesses, dates of events, and similar data) on a board as they present opening statements. If, during examination of a witness or closing argument, a party wishes to show a jury material that is not already in evidence, the proffering party should obtain the consent of other parties or leave of court in advance of the proffer. Again, leave of court may not be sought until an agreement of the parties has first been sought. Agreements of the parties or leave of court should be sought without delaying proceedings before the jury.
8. **Motions during trial:** Any motion shall be in writing, except one of an emergency nature, an evidentiary motion that arises during trial, or a motion for judgment on partial findings, for judgment as a matter of law, or for judgment of acquittal before submission of the matter to the jury.

9. **Objections**: Any objection made during trial shall be deemed to have been joined in by all parties on the same side without the need for any additional action, provided that any party wishing to be disassociated from an objection must so state for the record.
10. **Use of microphone**: Any examination, statement for the record, or argument shall be delivered into the microphone provided for counsel's use.
11. **Side bars**: Side bars are strongly discouraged. If a problem arises in the middle of an examination, counsel should, if possible, defer the matter and move to another line of questioning. If counsel anticipates a dispute, the matter should be raised in a jury recess, after the jury has left for lunch, or at the end of the day. Early morning conferences are available by arrangement.
12. **Witnesses**: No later than the close of each day's trial proceedings in any trial (civil, criminal, jury, or nonjury), the next day's witnesses should be disclosed by the proffering counsel to other counsel. The disclosure need not be made to the court. There should not be gaps or delays in trial proceedings caused by the unavailability of a witness or counsel's failure to have arranged for a sufficient number of witnesses for a particular day.
13. **Deposition Testimony**: In a civil jury trial, if deposition testimony is to be read, proffering counsel should notify other parties and the court no later than noon of the day before the deposition is to be read, to ensure that all objections to deposition designations may be timely resolved. Proffering counsel should give a list of the precise designations that remain in dispute to the court and other parties no later than noon of the day before the deposition will be read to the jury. Proffering counsel should also provide the court with two working copies of the complete deposition in issue. A miniscript is acceptable for this purpose. After the court has ruled on objections to the deposition designations, proffering counsel shall file with the court a declaration of counsel to which is attached as an exhibit a redacted copy of the deposition transcript reflecting the material received in evidence. A final redacted transcript may be filed after the deposition testimony has been read, but at least working versions of the redacted transcripts shall be provided by proffering counsel to the court and other parties before the transcript is read.

In a civil nonjury trial or evidentiary proceeding, the procedure outlined above for deposition reading shall be followed, except that objections to deposition designations shall be resolved as early in the case as possible and not necessarily the day preceding the offer of the testimony. In a civil nonjury trial or evidentiary proceeding, the redacted transcript will not be read into the record but instead will only be filed with the court clerk. Deposition testimony will be received in evidence during civil nonjury proceedings only if the declarations described below for civil nonjury proceedings are unavailable.

14. **Jury instructions:** At the same time hard copies of proposed jury instructions and proposed special verdict forms are submitted to the court, electronic versions of those documents must be submitted to the court in WordPerfect or Word format via a disk, flash drive, or email. The parties shall call chambers to arrange such delivery. As soon as possible, counsel shall inform the court of the anticipated date by which the evidence will close. As early as possible, but no later than the night before closing arguments are to begin, the court will meet with counsel to resolve disputed jury instructions. Each juror will be given a copy of the final jury instructions.
15. **Additional instructions for civil nonjury trials and civil nonjury evidentiary hearings (e.g., preliminary injunction hearings involving live evidence):**
- a. Written submissions by parties:** In a civil nonjury trial or a civil nonjury evidentiary hearing, each party must file its proposed findings of fact and conclusions of law at least three working days before the start of the trial or hearing, and must deliver to chambers two extra copies of the document together with an electronic version of the documents in WordPerfect or Word format via a disk, flash drive, or email. The findings and conclusions shall be in numbered paragraphs, with authority stated for each paragraph (e.g., name of witness, exhibit number, case citation, etc.). No later than two working days before the trial begins, the parties will file a set of any facts to which they have stipulated. In addition, no later than 4:30 p.m. on the working day before a witness is to be called, the party calling the witness shall file and provide the court and opposing counsel with a declaration setting forth the direct testimony of the witness. The declaration shall be in lieu of live direct testimony. **The witness shall be available the next day for live cross-examination, unless the opposing counsel stipulates that no cross-examination is requested. Redirect testimony shall be live if cross-examination is live.** An out-of-state witness may appear for cross-examination by telephone or video only with leave of court. The court encourages the parties to enter into an agreement that permits cross-examination to be presented by an additional declaration of the witness, rather than by questions and answers. The parties may orally raise appropriate objections to declaration testimony on the day the witness is to appear for cross-examination, but the parties are urged to try to resolve any objections by agreement. **For further discussion of this procedure, the court refers parties to Kuntz v. Sea Eagle Diving Adventures Corp., 199 F.R.D. 665 (D. Haw. 2001).**
- b. Hostile witnesses:** If a party wishes to call a hostile witness or a nonparty witness, the party seeking to call such a witness must attempt to obtain a declaration from that witness. Upon a showing by the party that it is unable to obtain a declaration, the court will permit deposition testimony to be designated in lieu of a declaration setting forth the direct testimony. Cross-examination and redirect examination will be by cross-designations of deposition testimony unless (a) the cross-examining party makes a showing that effective cross-examination is not possible through cross-designation (for example, if counsel examined a witness only for discovery, not preservation, purposes

and therefore has reserved matters for trial), or (b) the party calling the witness makes a showing as to why the cross-examining party should not be permitted to use deposition testimony as its cross-examination. Upon such a showing, cross-examination may be live, by video, or by telephone, as ordered by the court.

c. Waiver: The above requirements will be waived by the court only upon a showing of good cause. Any waiver must be sought in a written motion filed no later than ten working days before trial begins.

d. Exhibits: No exhibit will be deemed received in evidence unless expressly offered by a party and received by the court. That is, exhibits attached to deposition transcripts or declarations are not automatically received in evidence simply because they are so attached, even if the deposition testimony or the text of the declaration is included in the trial record. The deposition testimony and declarations should be considered equivalent to live testimony, and just as exhibits mentioned in live testimony would not automatically be in evidence, attachments to the depositions and declarations are not automatically in evidence.

e. Court's ruling: The court's findings of fact and conclusions of law will usually be placed orally on the record in open court as soon as possible after the evidentiary proceeding has concluded. Parties and counsel will be notified of, but not required to be present for, the announcement of findings and conclusions. In many civil nonjury proceedings, written findings and conclusions will not thereafter be filed, and the transcript of the oral findings and conclusions will then serve as the formal record of the findings and conclusions.

16. **Telephone numbers:** Counsel shall exchange direct business telephone numbers as well as cellular or other telephone numbers through which counsel may be reached in the evenings and on weekends and shall provide this information to the court so that notice may be given of changes in schedules or early morning conferences. An unlisted home telephone number shared with opposing counsel shall not be divulged by that opposing attorney to his or her client. In lieu of an unlisted home telephone number, counsel may provide opposing counsel with a cellular phone or pager number or the number of an answering service or equivalent through which counsel can be reached after normal business hours.
17. **Faxes to the Court:** No material may be faxed to chambers without prior permission from chambers staff.