

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
300 ALA MOANA BLVD.
HONOLULU, HAWAII 96850

WES REBER PORTER
UNITED STATES MAGISTRATE JUDGE

WRP CHAMBERS (3rd floor)
COURTROOM 7 (2nd floor)

**PRETRIAL PROCEDURES IN CIVIL CASES BEFORE
MAGISTRATE JUDGE PORTER (WRP)**

For questions about procedures and scheduling in civil cases, contact the chambers staff or courtroom manager:

WRP Chambers	(808) 541-1433	
Courtroom Manager Mary Feria	(808) 541-3087	mary_feria@hid.uscourts.gov

For additional numbers and information, consult the court's website (www.hid.uscourts.gov).

The purpose of this memorandum is to provide general information about the pretrial procedures for cases before Magistrate Judge Porter (generally, cases with **WRP** in the case number). The court also expects counsel and parties proceeding pro se to know and comply with the Federal Rules of Civil Procedure (FRCP), the Federal Rules of Evidence (FRE), and the Local Rules of Practice for the U.S. District Court for the District of Hawai'i (Local Rules *or* L.R.). These pretrial procedures and other forms can be found under [Judges' Requirements](#) on the U.S. District Court for the District of Hawaii website.

1. **Rule 16 Conferences:** The court holds a Rule 16 scheduling conference within 90 days after the initial filing for assigned civil cases (WRP cases). See FRCP 16. At the conference, counsel or parties proceeding pro se must be prepared to discuss, among other things, the following topics:
 - (1) the prospect of early settlement discussions or private mediation;
 - (2) any (anticipated) discovery problems;
 - (3) any pending (or anticipated) motions;
 - and (4) consenting to a trial or proceeding before a Magistrate Judge.
 - a. **Report of Meeting of the Parties:** At least **21 days before** the Scheduling Conference, the parties must meet to discuss the nature and basis of their claims and defenses and the possibilities for settlement or other resolution. See FRCP 26(f).

- b. Scheduling Conference Statement: The parties must file with the court and serve on all parties a Scheduling Conference Statement at least **7 days before** the conference. See L.R. 16.2. This statement includes a brief statement of the case, statement of jurisdiction, list of related cases, whether jury trial has been demanded, discovery (completed and anticipated) and motions pending with hearing dates.
 - c. Rule 16 Scheduling Conference Order: Following the conference, the court will issue an Order that sets forth dates and deadlines for:
 - (1) trial; (2) final pretrial conference; (3) motions to join or add parties or amend pleadings; (4) other nondispositive motions; (5) dispositive motions; (6) motions in limine; (7) expert disclosures; (8) discovery; (9) settlement conference; (10) settlement conference statements; (11) voir dire questions, special verdict form, concise statement of case and jury instructions (if jury trial); (12) final witness list; (13) exhibit and demonstrative aids; (14) stipulations about proposed exhibits; (15) deposition designations and counter-designations; (16) trial briefs; and (17) findings of fact and conclusions of law (if non-jury trial).
2. **Discovery**: The court presides over discovery disputes in assigned civil cases (WRP cases).
- a. E-Discovery (ESI) Guidelines: The [Guidelines](#), [Checklist](#) and [Model Stipulated Order](#) links on the “[How To Guidance](#)” page of the court’s website are court-approved and counsel should consult them at the beginning of a case. All counsel are expected to review the Guidelines. The Checklist and Model Stipulated Order themselves are highly recommended, but their use is voluntary.
 - b. Mandatory Meet and Confer Requirement: The court will ***not*** entertain a discovery motion nor hold a discovery conference unless counsel or pro se parties have met and conferred in a good faith effort to limit the disputed issues. See L.R. 37.1(a). If a party files a discovery motion, they also must certify compliance with this requirement with a declaration. See L.R. 37.1(b).
 - c. Expedited Discovery Assistance: The court encourages counsel to take advantage of the expedited discovery assistance available under

Local Rule 37.1(c). Local Rule 37.1 is intended to afford a swift but full opportunity for parties to present their positions through simultaneous, abbreviated letter briefing (*five pages or less of written materials including exhibits*). See L.R. 37.1(c)(1). Counsel seeking the court’s expedited assistance in resolving discovery issues should select an agreed-upon deadline for the simultaneous submission of letter briefs and inform chambers’ staff of the deadline. Id. After reviewing the letter briefs, the court will decide the matter or determine whether a conference, more formal briefing or hearing is necessary to decide the matter expeditiously. See L.R. 37.1(c)(3).

- d. Emergency Discovery Telephone Conferences: As set forth under Judges’ Requirements on the court’s website, the court also may address “emergency discovery disputes” by telephone conference if the following circumstances are met:

(1) The dispute must concern a narrow and discrete issue (e.g., improper objections or coaching during a deposition); (2) Counsel agree that if the dispute is not heard on an “emergency” basis the parties will incur avoidable expenses, delay proceedings in the case, or suffer other unfair prejudice as a result; (3) Counsel must be available (and flexible) to participate in a conference when the judge is available; and (4) Counsel must call chambers and make scheduling arrangements with the judge’s staff, including how the telephone conference will be memorialized (i.e., by the court reporter at a deposition or by the court’s FTR system).

- e. Formal Discovery Motions: While parties may file formal motions to compel and motions for protective orders to address each and every discovery dispute, collectively these motions are often less efficient and more time consuming (thus, more costly). The court will likely set a briefing schedule in the normal course for each formal discovery motion and will decide these motions without the need for a hearing. See L.R. 7.1.

3. **Stipulated Protective Order:** Where practicable, counsel or pro se parties should seek agreement for production of confidential documents pursuant to a stipulated protective order.
 - a. A form of a stipulated protective order can be found under [Judges' Requirements](#) on the court's website.
 - b. Under Local Rule 5.2(b), “[a] stipulation or blanket protective order that allows a party to designate matters to be filed under seal will ***not*** suffice to allow the filing of the matter under seal.” L.R. 5.2(b) (emphasis added); see [How to Move to File a Document Under Seal](#).

4. **Settlement Conferences:** The court schedules a settlement conference in the normal course (*typically, 9-12 months out*) at the Rule 16 Scheduling Conference.
 - a. During the Rule 16 conference, the court will ask counsel and pro se parties whether an early settlement conference may be productive. Parties routinely schedule with the court an additional, earlier settlement conference, after some limited discovery (*typically, 3-9 months out*), to save time and costs in the litigation.
 - b. The court issues an order describing the procedures for the settlement conference including who must be present and the requirements of confidential settlement statements.
 - c. Parties must submit confidential settlement conference statements at least **7 days before** the conference *in hard-copy to chambers* and follow the requirements in Local Rule 16.5. See L.R. 16.5(b)(1).
 - d. If a WRP case settles, parties shall notify chambers as soon as possible. Before the court will vacate all dates and deadlines, counsel and parties proceeding pro se should be prepared to place the material terms of the settlement on the record, by telephone or in person, or submit a settlement agreement or joint letter that sets forth the material terms. An attorney who fails to give the court prompt notice of settlement may be subject to such discipline as the court deems appropriate.

5. **Trial (Other Deadline) Continuances:** The parties must file a motion or joint stipulation to continue trial or other related deadlines. Even if by stipulation or an unopposed motion, the parties must provide sufficient information for the court to find “good cause” for modifying a schedule under Rule 16(b)(4).

6. **Status Conferences:** In accordance with Local Rule 16.10, the court may hold status conferences only as necessary to facilitate the progress of the case. See L.R. 16.10. Status conferences may be requested by a party and, if necessary, the court may request letter submissions from the parties in advance.

7. **Final Pretrial Conferences:** The court sets the final pretrial conference and all trial related deadlines at the Rule 16 Scheduling Conference. At the final pretrial conference, counsel or parties should be prepared to discuss, among other things, the following: (1) status of settlement discussions; (2) estimated number of trial days; (3) number and scheduling of witnesses; (4) special needs such as interpreters or audiovisual equipment; and (5) exhibits and motions in limine.

8. **Forms:** The court advises counsel and parties to consult the clerk’s office and review the forms found under [Judges’ Requirements](#) and [Forms](#) tabs on the court’s website for the following forms, among others: Bill of Costs, Witness and Exhibit Lists, Application to Proceed In Forma Pauperis, Waiver of Service of Summons, Summons in a Civil Action, Third Party Summons in a Civil Action, Motion to Appear Pro Hac Vice, Subpoena in a Civil Case, and Civil Cover Sheet.

9. **Consent Trials (and Other Proceedings):** If the parties consent, Magistrate Judges are available to conduct *all proceedings* in a civil case, including: (1) jury and non-jury trial; (2) dispositive motions; (3) entering a final judgment; and (5) post-judgment proceedings, particularly attorney fee applications. See 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; L.R. 73.1, 73.2.
- a. Deciding to Consent to a Magistrate Judge: The parties must weigh several factors when making the decision to consent to a Magistrate Judge including scheduling considerations. See [How To Consent to a Magistrate Judge in a Civil Case](#) (guidance from our district); see also [Choosing to Consent to a Magistrate Judge](#), *Federal Lawyer* (2014).
 - b. Scheduling Considerations: District Judges are assigned both civil and criminal cases, and criminal cases are given a calendar priority. Magistrate judges are not assigned felony criminal trials and do not “double book” their trial calendars; thus, Magistrate Judges may be more readily available. In other words, a Magistrate Judge can offer a firm trial date while a District Judge cannot.
 - c. Choose a Magistrate Judge: After a case is initially assigned, the parties may consent to a particular Magistrate Judge. That is, the parties need not consent to the Magistrate Judge assigned to the case. See LR 73.1(a). Chambers staff can assist the parties with looking into available trial dates for the district’s three Magistrate Judges.
 - d. Consent Form: To consent to a magistrate judge for trial or nondispositive motion, the parties must sign and file a consent form from the Clerk’s office, a courtroom manager, or the [forms](#) tab on the court’s website: [trial](#), [motion](#).
 - e. Appeals: If all parties consent to a Magistrate Judge, the Magistrate Judge then has the same jurisdiction over a civil case or matter as the District Judge. Any matter ruled on by a Magistrate Judge by consent must be appealed directly to the Ninth Circuit Court of Appeals. See 28 U.S.C. § 636(c)(3); Fed. R. Civ. P. 73(c).