CIVIL JUSTICE REFORM ACT OF 1990

DISTRICT OF GUAM

ADVISORY GROUP

REPORT AND RECOMMENDED PLAN

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CJRA ADVISORY GROUP REPORT FOR THE DISTRICT OF GUAM

I. Assessment of Civil and Criminal Docket

A. Introduction:

The Civil Justice Reform Act of 1990, Public Law 101-650, arose as a result of what Congress perceived to be an increasingly inefficient federal judiciary. A Task Force was convened at the request of Senator Biden, head of the Senate Judiciary Committee. The Task Force was composed of a variety of individuals representing competing interests in the civil judicial system, i.e.; leading litigators, civil rights lawyers, insurance and consumer groups, academics, and former judges. The Task Force was guided by six principles aimed at improving the civil judicial system:

1. improvement from the "bottom up," that is, incorporating reformation coming from within the system, i.e.; assistant clerks, as well as coming from above, i.e.; the Congress;

2. promulgation of national policy favoring case active case management;

3. imposition of greater controls over the discovery process;

4. differentiated (tailored) case management system;

5. improvement and acceleration of motions practice;

6. enhanced use of alternative dispute resolution.

The "Biden Bill," 28 U.S.C. §471-482, requires each district court to create its own plan for reformation of the civil justice system in their district. Each district court must implement a "Civil Justice Expense and Delay Reduction Plan" within three years following the passage of the Act. The Plan is to incorporate two

tiers; it must consider six mandatory techniques and six discretionary techniques for better civil case management.

The District of Guam has an Article I (Legislative) Court located in Agana, Guam. The District of Guam was without a resident Chief Judge from the period of January, 1991, when the Honorable Cristobal C. Duenas retired, to December, 1992, when the Honorable John S. Unpingco, took the bench following his appointment by President Bush. Soon after his investiture, Judge Unpingco appointed the Advisory Group required by the CJRA. The Advisory Group consisted of:

District Court Staff:
The Honorable John S. Unpingco, Chief Judge, District Court of Guam
Mary L.M. Moran, Clerk of Court
Rosita P. San Nicolas, Chief Deputy Clerk of Court
B. Ann Galey Keith, Career Law Clerk to Judge Unpingco
Jane Fearn-Zimmer, Term Law Clerk to Judge Unpingco

Bar Members:
Frederick A. Black, Acting U.S. Attorney
Robert J. Torres, Guam Bar Association President
Jeffrey A. Cook, Guam Bar Association Vice-President
J. Patrick Mason, Deputy Attorney General in charge of Civil Division, Government of Guam
G. Patrick Civille, Private Practitioner, Large Firm
Anita P. Arriola, Private Practitioner, Medium Firm
James S. Brooks, Private Practitioner, Small Firm

The Advisory Group held their first meeting on May 12, 1993, and held five meetings thereafter. In the process of developing this Report and Plan, the Group decided to look to three sources to assemble the Report and Plan. The first was the Group meetings. The other sources of input would be two surveys. The first was a general survey on cost and delay in civil practice in the District Court of Guam, circulated among the Guam Bar for voluntary participation. This survey was compiled from samples used in other

districts. The second survey was completed only by Advisory Group members, and was limited to soliciting input on the mandatory techniques of reducing cost and delay in civil practice in the District of Guam.

In accordance with §§471-482 of Title 28, the CJRA Advisory Group of the District of Guam hereby submits this Report and Proposed Plan.

B. Statistics:

The Clerk of Court provided the following information as of March, 1993: There were 83 pending civil cases. Of those, 36 were three years or older. Of those, 30 were government of Guam land condemnation cases which had followed an anomalous track, and have since all been closed but one. Of the remaining six, five were stayed pending determination of interlocutory issues by the Ninth Circuit. These five have since been resolved by the Ninth Circuit, and are on a trial track. The last one is stayed pending a bankruptcy case.

Of the civil cases under three years old, 43 are under one year old, five are between one and two years old, and one is over two years old. Fifteen are appeals from the Superior Court and two are open for statistical purposes only (prisoner cases).

III. Identification of Causes of Excessive Cost and Avoidable Delay in Civil Litigation in the District of Guam:

A. Three Sources of Input: Feedback from the Guam Bar, Survey of the Advisory Group, and Meetings of Advisory Group:

1. Survey to the Guam Bar: At the Quarterly meeting of the Guam Bar Association, held on July 30, 1993, in Agana, Guam,

bar members who are involved in civil practice in the District Court of Guam were asked to complete the Guam Bar Survey on Possible Causes of Cost and Delay in this District. The results were surprisingly uniform and suggested some consensus among federal civil practitioners. The results can be summarized as follows[1]:

a) There was mild to strong disagreement that there is unnecessary cost and delay in civil litigation in the District Court of Guam. Answers ranged from neutral to strong disagreement.

b) There was slightly more consensus that discovery and motions practice was abused, both as a result of inexperience and intentional abuse. Answers ranged from mild agreement to mild disagreement; no Bar member strongly agreed.

c) With respect to non-compliance with local rules, court-created delay, fear of malpractice, failure of clients to control fees and failure to award sanctions, there was strong consensus that these do not contribute to excessive cost and delay in this district. Only one person agreed that this was a factor.

d) With respect to setting early and firm dates, there was very strong consensus that this **was** a cause of cost and delay in this district. Almost all answering bar members agreed that there should be a succession of pretrial orders entered at status conferences after due consideration of discovery and motion

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[1] Those responding comprised a very small percentage of the bar, approximately 10%, but all attorneys responding had handled two to seven cases, or greater, in the District Court of Guam in the last five years.

practice that would narrow issues, and there was unanimous consensus that there should be firm discovery, pretrial and trial dates. A large majority of those answering agreed with telephonic status conferences.

e) Contrary to the expectations of the Advisory Group, there was moderate agreement that this district should experiment with alternative dispute resolution, with the exception of mandatory non-binding arbitration, on which the responding members registered was strong disagreement.

f) There was mild agreement on early attorney-moderated settlement conferences, and again, very strong consensus on early and firm dates. There was strong agreement that the District Court should issue tentative rulings where this may achieve significant cost and delay reduction.

To summarize what was gleaned from the Bar Association survey:

- federal civil practitioners are not experiencing excessive cost and avoidable delay as impediments to civil litigation in the District Court of Guam. However,
- this District's Plan must include the setting of early and firm discovery, pretrial and trial dates.
- this District should further explore alternative dispute resolution in the coming years.

2. Survey of the Advisory Group:

At the third meeting of the Advisory Group, members were asked to complete a survey prepared by the Court staff members of the Group. This survey proposed several ways of incorporating the six

mandatory techniques for streamlining litigation as set forth in the CJRA.[2] Those members who did not attend the third CJRA Advisory Group meeting completed the survey at a later time and submitted it to Court staff. The results of the survey can be summarized as follows:

a) With respect to the first technique of the CJRA, Differentiated Case Management, the Group was unanimous in expressing that this is not necessary in this district because the civil caseload in this district is so small that all civil cases are treated on a case-by-case basis.

b) With respect to the second of the techniques of the CJRA, early and on-going judicial intervention, all members agreed that this is necessary. The technique agreed upon was that the Court

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[2] The six mandatory techniques are:

1. differential tailored treatment of cases depending on the complexity of the case;

2. early and ongoing involvement by a judicial officer, including early and firm setting of trial date (suggested to be 18 months from the date of filing);

3. routine monitoring (by way of regularly scheduled chambers conferences) of discovery in complex cases;

4. encouragement of cost effective, i.e.; voluntary discovery;

5. refusal to entertain discovery motions unless it is accompanied by a certification by the moving party that it has made a good faith and reasonable effort to reach agreement with the opposing party;

6. authorization to refer appropriate cases to alternative dispute resolution.

should adopt a local rule requiring all provisions from the current Local Rule 235 (except discretionary scheduling conference), and **adding** the following five requirements:

> 1. Nature of case
> 2. Posture of case.
> 3. Mandatory case management conference to be held in lieu of scheduling conference (to be held in the same period of time as the scheduling conference).
> 4. A provision whereby the parties may submit the matter to a neutral settlement conference.
> 5. Suggestions for shortening trial.

c) With respect to the third of the techniques of the CJRA, setting of firm trial dates, all members agreed that the court should set early and firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, and (ii) the trial cannot be reasonably held within such time because of the complexity of the case or the number or complexity of pending criminal cases.

d) With respect to the fourth of the techniques of the CJRA, control of discovery, the Group members all agreed that the suggested rule contained therein[3] should be incorporated in the

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[3] Local Rule ____:

a. Prediscovery disclosure:

> Before any party initiates discovery, that party must submit to the opponent (1) the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, together with a summary of that information; (2) a description, including the location, of all documents that are reasonably likely to

District Court Local Rules. The Group unanimously wanted to eliminate from that proposed rule the limit on discovery events, (the sentence that reads, "Discovery events shall, unless the court for good cause orders otherwise, be limited for each side (or grouping of parties with common interests) to five depositions, 15 interrogatories, and two requests for production").

e. With respect to the fifth of the techniques of the CJRA, controlling motion practice, the Group members all agreed that two changes should be made to the local rules: First, local rules 220 and 235 should add three items: (1) a limit on the number of pages in a memorandum in support of a motion to 25 pages, (2) a procedure by which the motion can be decided without oral argument, and (3) a procedure by which the attorneys will choose their own date for

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bear substantially on the claims or defenses; (3) a computation of any damages claimed; (4) the substance of any insurance agreement that may cover any resulting judgment; and (5) a copy of any report of an expert who may be called at trial. The disclosure obligation is reciprocal and continues throughout the case.

b. Joint Discovery Plan:
Counsel as part of their case management conference report or case management plan shall prepare and submit a joint discovery plan, scheduling the time and length for all discovery events. The plan shall conform to the obligation to limit discovery under F.R.C.P. 26(b). Counsel's plan shall consider the desirability of conducting phased discovery, limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare the case for trial.

c. Resolution of Discovery Disputes.
Counsel shall meet and confer to resolve discovery disputes. Any dispute not so resolved shall be presented by telephone to a judicial officer. No motion may be filed without leave of court.

oral argument if there is to be oral argument. Second, discovery motions will be handled under the existing Local Rule 220-15, which requires the parties to meet and confer and submit an affidavit prior to the filing of a discovery motion.

f) With respect to the sixth of the techniques of the CJRA, encouragement of alternative dispute resolution, there was consensus that no alternative dispute resolution technique should be mandatory. Most group members thought that the only alternative dispute resolution technique presently available and beneficial to practitioners was the use of neutral settlement conferences handled by visiting designated federal judges. The other proposed alternative dispute resolution techniques, (arbitration, mediation, mini-trial (non-binding), non-binding summary jury trial, and neutral evaluation program, were not easily used in this district. This is due to many factors, the most obvious of which is that these techniques are not available in this district. There are no known mediation professionals on Guam, and the Court's experience with arbitration is that it generates more litigation than it resolves.

g) Finally, all group members thought that the final pretrial conference provided for in Local Rule 237 should be made mandatory, rather than the present rule, which allows the final pretrial conference to be waived by counsel.

The Survey of the Advisory Group can be summarized as follows: Two of the techniques that the CJRA mandates that this District consider in streamlining civil litigation are not necessary in this

district **at this time:** differential case management and alternative dispute resolution (with the limited exception of neutral settlement conferences). The remaining four techniques were recommended to be adopted into our local rules at the earliest convenience: early and ongoing judicial intervention, control of discovery, control of motion practice, and setting of firm trial dates.

A second survey was circulated to the members of the Group at a later meeting, asking for input on the six discretionary techniques that the law encourages district courts to incorporate.[4] The results were as follows:

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[4] The six discretionary techniques that the law encourages district courts to incorporate are:

1. the presentation by the parties of a joint "discovery case management plan" at the first pretrial conference;

2. a requirement that at all conferences, an attorney be present that can bind the parties as to all matters previously identified by the court for discussion;

3. a requirement that all requests for continuances also be signed by the client;

4. a procedure whereby all cases can be submitted for a neutral settlement conference (i.e.; by another judge who is not assigned the case), early in the litigation;

5. a requirement that the client be available in person or by phone during all conferences for possible approval of settlement;

6. other suggestions as proposed by the advisory panel.

a) All members either agreed or strongly agreed that there should be a procedure whereby the parties present a joint "discovery case management plan" at the first pretrial conference.

b) There was strong agreement that at all conferences, an attorney be present that can bind the parties as to all matters previously identified by the court for discussion.

c) All members disagreed or strongly disagreed that all requests for continuances must also be signed by the client. Discussion on this point included the point that frequently, clients are not on-island, and it would be impossible to get their signatures.

d) All members but one agreed that there should be a procedure whereby all cases can be submitted for a neutral settlement conference early in the litigation.

e) There was mild agreement (with some disagreement) that the client be available in person or during all conferences for possible approval of settlement. Again, the concern appeared to be availability of the client in different times zones and hemispheres, etc.

f) No CJRA Group member had any additional suggestions.

3. Third Source of Input: Meetings of the Advisory Group:

Finally, the minutes of the meetings of the Advisory Group were consulted for ideas of (1) what sorts of cost and delay practitioners are experiencing in this district, and (2) possible ways of reducing the cost and delays. One of the most important

points to be brought out at the meeting was that though civil filings had declined in the last year or two, they are expected to rise soon for two reasons: first, it is increasingly difficult to get a case through the Superior Court system due to overloading of resources in that court, and second, litigants were less likely to file a civil suit in District Court when there was no resident Judge due to the uncertainty in how the case would be handled, with a new visiting judge each month. With a resident judge and some consistency and predictability in the District Court, civil cases are expected to be on the rise.

From the lively discussions that occurred at the meetings, there was some consensus on the chief causes of excessive cost and delay in civil practice in the District Court of Guam:

1. not enough voluntary discovery;
2. not enough use of neutral judges for settlement conferences;
3. little involvement by Judge until close to trial;
4. non-standard cases, such as pro se litigants, tax cases, and cases seeking injunctive relief;
5. attorneys seeking continuances because they had no control over the date on which a court appearance or conference is set;
6. excessive motion papers because there is no limit on the length of memoranda.

The methods of handling these problems were suggested to be the following: The Case Management conference to be built into the new local rule 235 is designed to explore the types of discovery that will be necessary in the case. Other techniques will be built into the new Rule 235, such as a succession of pretrial orders entered at status conferences after due consideration of discovery and motion practice that would narrow issues. The other concept

that would be built into the Plan was that the new discovery rule[5] would be adopted. In that rule is the concept that discovery should occur in two phases: the first phase should be limited to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare the case for trial. These techniques should encourage voluntary discovery so as to reduce cost and delay in civil cases.

With respect to the second cause commented on in the meetings, the Plan will include a provision in the new Rule 235 whereby the court will set each appropriate civil case up for a neutral settlement conference with a visiting District Court Judge, when available.

With respect to the third cause commented on in the meetings, insufficient judicial intervention, the technique that will be used to combat this is the case management conference and successive conferences as provided for in new Rule 235.

With respect to the fourth cause of delay commented on in the meetings, the problems posed by non-standard cases, such as pro se litigants, tax cases, and cases seeking injunctive relief, the new Rule 235 will eliminate the exemption for pro se cases and tax cases. Pro se cases and tax cases will now have to abide by the same rules as any other civil case. Cases where the plaintiff seeks injunctive relief should also always follow the scheduling requirements of Local Rule 235, and these are also not exempt.

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[5] See Footnote 2.

With respect to the fifth cause of delay commented on in the meetings, attorneys seeking continuances, there is overwhelming consensus that such delays are sought because attorneys have no control over the date on which a court appearance or conference is set in the first place. The Group proposed that attorneys have a free hand in choosing the court appearance dates, and that then no continuances be given. This will be accomplished by inserting a new provision in the Motions Rule of the Local Rules providing that when a motion is filed, **if** counsel request oral argument (which will no longer be automatic), they must file a "Certificate of Agreement of Court Appearance." This will contain the date of the proposed court appearance at which the motion will be argued. Because the attorneys themselves have chosen the date for oral argument after clearing the date with the office of the clerk, continuances will not be so easily entertained.

With respect to the sixth cause of delay commented on in the meetings, excessive motion papers because there is no limit on the length of memoranda, again, the new Rule 220 addresses this by setting a firm limit on the number of pages.

B) Special Features of Civil Practice on Guam

As should be evident from certain conclusions of the Report, there are distinct features of civil practice in the District Court of Guam that must be mentioned as the Plan is presented: First, it must be noted that there is no perceptible delay in civil practice in the District Court of Guam. The Bar Survey reflected the perception that there is no avoidable cost delay and unnecessary

cost in District Court civil litigation. Motion hearing dates are usually available, even on short notice to the Clerk's office. Trial dates are also widely available. In any event, due to the unique nature of this district, certain objectives of the Biden Bill simply do not apply to this district.

Second, because of the unique geographical location of Guam, the need to keep court dates firm and certain must be counterbalanced with the need to accommodate the travel schedules of counsel and witnesses. In addition, forces of nature affect civil litigation in this district more than many, i.e.; in 1992, the Court was closed for several days due to typhoons, and in 1993 the Court had to close for several days due to an earthquake measuring 8.2 on the Richter scale. For this reason, in adopting a firm stance against continuances, this Court allows counsel to set their own schedules with respect to trial dates and motion dates.

Third, the experience of the Court and the Advisory Group is that alternative dispute techniques are so nascent on Guam as to make their widespread use questionable at this time. The Court's experience with arbitration is that arbitration neither speeds things up nor cuts the expense. This is because those chosen as arbitrators are generally other lawyers, whose practices are flourishing in a healthy economy. In addition, the party who loses at arbitration usually pursues the matter to court in any event, so arbitration is an expensive intermediary step. Additionally, arbitrators cost money in a way that a court does not, and this

usually adds to the expense of conflict resolution. Finally, because the District Court is so readily available, there is no incentive to seek conflict resolution in other forums.

However, because the Guam Bar Association so enthusiastically embraced alternative dispute resolution for this district, the Advisory Group will continue to explore this option. The Group will work with the Guam Bar Association in continuing to get feedback from the legal community on the practicality and the efficiency of ADR.

III. Summary and Conclusion:

The feedback received by the Advisory Group from the Guam Bar, as well as the Court and the experiences of the Advisory Group members, led the Group to the conclusion that modifications of the present Local Rules would be sufficient to incorporate the objectives and techniques of the CJRA. There was unified consensus that it would be preferable to modify the existing local rules,

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with which the local Bar is already familiar, rather than to superimpose a new set of rules onto the existing Rules. Therefore, the above suggestions for change were incorporated into the Local Rules of Practice for the District Court of Guam, Rules 220, 230-7, and 235. The proposed Plan and the proposed new rules follow.

THE ADVISORY GROUP

JOHN S. UNPINGCO
Chief Judge, District Court of Guam

Mary L.M. Moran
Clerk of Court

Frederick A. Black
Acting U.S. Attorney

Robert J. Torres, Jr.
Guam Bar Association President

Jeffrey A. Cook
Guam Bar Association Vice-President

J. Patrick Mason
Deputy Attorney General in charge of Civil Division
Government of Guam

G. Patrick Civille
Moore, Ching, Boertzel, Dooley, Civille & Roberts

Anita P. Arriola
Arriola, Cowan & Bordallo

James S. Brooks
Brooks & Brooks

Jane Fearn-Zimmer
Law Clerk to Judge Unpingco

Rosita San Nicolas
Chief Deputy Clerk of Court

Prepared By:

B. Ann Galey-Keith
Law Clerk to Judge Unpingco

Proposed Amended Rule 235- Case Management Order and Discovery Conference

CJRA Note: Amended Local Rule 235 is designed to address the concern of the Advisory Group that there must be systematic ongoing early intervention by a judicial officer in all civil cases, as well as the other repeated concern of the Advisory Group that the Court set early and firm trial dates. Finally, this amended rule eliminates the recurring problem of constantly continuing of non-standard cases (i.e.; pro se cases, tax cases, injunctions, etc.).

Rule 235-1 Applicability.

Unless otherwise ordered, this rule is applicable to all civil cases pending in this district. Counsel are expected to commence discovery immediately and complete pretrial discovery in the shortest time reasonably possible with the least expense.

Rule 235-2 Exempt Actions.

The following actions are exempt from compliance with these procedures unless otherwise directed by the Court:

1. Any action filed on or behalf of a convicted prisoner, a pretrial detainee, or any other person confined in a territorial or federal institution challenging the validity or the conditions of confinement.

2. Any action challenging the validity of a criminal conviction or sentence.

Rule 235-3 Case Management Order and Discovery Conference.

(a) All parties are directed to confer as directed by Local Rule 235-5 and provide the Court with a **Case Management Order** within seventy-five days of the date of filing of the complaint. The Case Management Order shall be in substantially the same form as Attachment "D", attached hereto.

(b) In the event that the plaintiff is proceeding pro se, the Defendant shall contact the plaintiff and arrange a meeting to comply with this rule in the appropriate time frame.

(c) The Clerk of Court will schedule a Discovery Conference to be held ninety days after the complaint is filed. The Clerk

shall mail, no later than forty days after the complaint has been filed, a Scheduling Notice in the form set forth in Attachment "C," setting forth (1) the date on which the Case Management Order shall be filed by the parties, and (2) the date for the Discovery Conference. The Case Management Order to be submitted by the parties shall contain the following information:

1. The nature of the case;

2. The posture of the case including hearings, motions, and discovery;

3. The following dates:

(a) a proposed date limiting the joinder of parties and claims;

(b) a proposed date limiting the filing of motions to amend the pleadings;

(c) a Joint Discovery Plan, scheduling the time and length for all discoverable events. The Joint Discovery Plan shall contain a description, including a schedule, of all pretrial discovery each party intends to initiate prior to the close of discovery, including time and length of discoverable events. The plan shall conform to the obligation to limit discovery under F.R.C.P. 26(b). Counsel's plan shall consider the desirability of conducting phased discovery, limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare the case for trial. Areas of disagreement with respect to discovery shall be included and denoted as such in the Discovery Plan.

(d) the assigned date for the required Discovery Conference with the District Judge, to be set no later than fifteen days after the filing of the Case Management Order.

(e) discovery cut-off dates (defined as the last day to file responses to discovery);

(f) discovery and dispositive motion cut-off dates (the last day to file motions);

(g) pretrial conference dates;

(h) dates for filing the pretrial statement as required by Local Rule 237, memoranda of contentions of fact and law, joint exhibit lists, witness lists, and the proposed

joint pretrial order.

(i) the trial date, and in no event shall the trial date be later than 18 months after the complaint is filed, unless the Court otherwise allows;

4. Whether the trial is jury or non-jury;

5. The number of trial days required;

6. The names of trial counsel;

7. Whether the parties desire to submit the case early in the litigation to a neutral settlement conference;

8. Suggestions for shortening trial;

It is the responsibility of Plaintiff's counsel to serve a copy of the Clerk's Notice of Discovery Conference on all parties who may appear after the entry of the Notice of Discovery Conference. It is also the responsibility of plaintiff's counsel to initiate the communication necessary to prepare the Case Management Order.

If on the due date the defendant(s) or respondent(s) have been served and no answer or appearance has been filed, counsel for the Plaintiff shall file an independent status report setting forth the above information in subsections 1 through 8 to the extent possible. The report shall also include the current status of the non-appearing parties.

Rule 235-4 Authority to Settle at Discovery Conference and Pretrial Conferences.

Each party appearing at all conferences shall have full authority with respect to all matters on the agenda, including settlement of the action or proceeding. The Court may require, by Order issued prior to the scheduled conference, the client or its authorized representative to personally attend certain conferences.

Rule 235-5 Meeting of Counsel and Preparation of Proposed Joint Status Report

(a) Meeting of Counsel: Within fifteen (15) days after the receipt of the clerk's Scheduling Notice, counsel for the parties shall meet in person for the purposes set forth below:

1. Documents: To exchange all documents then reasonably available to a party which are contemplated to be used in support of the allegations of the pleading filed by the party. Documents later shown to be reasonably available to a party

and not exchanged may be subject to exclusion at the time of trial.

2. Discovery: To exchange preliminary schedules of discovery.

3. Other evidence: To exchange any other evidence then reasonably available to a party to obviate the filing of unnecessary discovery motions.

4. List of Witnesses: To exchange a list of witnesses then known to have knowledge of the facts supporting the material allegations of the pleading filed by the party. The parties will then be under a continuing obligation to advise the opposing party of other witnesses as they may become known.

5. Settlement: To discuss settlement of the action.

6. Complicated cases: To discuss whether the action is sufficiently complicated so that all or part of the procedures of the Manual for Complex Litigation should be utilized. counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action.

7. Proposed Case Management Order: To discuss the contents and preparation of the proposed Case Management Order.

(b) After consultation with all counsel, plaintiff's counsel, or if plaintiff is pro se, the plaintiff, shall prepare a draft of the proposed Case Management Order required by this rule. Plaintiff's draft shall be presented to all parties for amendments and modifications. If all parties do not agree on a proposed Case Management Order, the parties shall sign and file, on the date that the Case Management Order is due, a mutual Statement re: Disagreement of Case Management Order, stating that the parties have been unable to agree despite good faith efforts to do so. To this Statement shall be attached each party's Proposed Case Management Order. If a party disagrees but does not attach a Proposed Case Management Order, that party will be considered to have not taken a position with respect to the dates and matters contained therein. All matters required to be taken care of by the Case Management Order will be addressed at the Discovery Conference, after which the final Case Management Order will be entered.

Rule 235-6. Failure to Cooperate - Sanctions

The failure of a party or a party's counsel to participate in good faith in the framing of the proposed Case Management Order required by this Rule and Rule 16(b) of the Federal Rules of Civil Procedure may result in the imposition of appropriate sanctions.

See Local Rule 100-3 and Rules 16(f) and 37(g), Federal Rules of Civil Procedure.

Rule 235-7 Filing of Motions Does Not Excuse Counsel from the Requirements of this Rule

Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, will not excuse the parties from complying with this rule and any Case Management Order entered in the case.

Rule 235-8 Extension of Deadlines Fixed in Joint Status Report/Scheduling Order.

In the absence of urgent and unforeseeable circumstances, a deadline fixed by the Case Management Order will not be extended for any reason. In the presence of such circumstances, the dates contained in the Case Management Order will not be extended unless the parties can prove that there has been active discovery since the initiation of the suit. Further, in the event of such circumstances, the deadline for completing discovery will be extended only if the remaining discovery is specifically described and scheduled, i.e.; the names of each remaining deponent, and the date, time and place of the remaining deposition. The Court, in its discretion, may order that the client consent in writing to any continuance proposed by counsel.

Proposed Amended Rule 220 -MOTION PRACTICE

CJRA Note: Amended Local Rule 220 is designed to address the concern of the Advisory Group over attorney-generated continuances due to the attorneys' lack of control over their court appearance dates. Amended Rule 220 also addresses the recurring problem of excessive motion papers, as excessive filings were identified to be one of the main sources of expense in civil cases in the District Court of Guam.

220-1. Applicability

The provisions of this rule shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute, the Federal Rules of Civil Procedure or the Local Rules.

220-2. Notice and Service of Motion

Every motion shall be presented in writing. If oral argument is requested, the moving party must present a notice of motion, containing the date on which the motion will be heard, as provided for in Rule 220-5. The notice of motion and motion papers shall be served on each of the parties either by mail or in person and filed with the clerk with the motion not later than twenty-one days prior to the day on which oral argument is scheduled, unless the Court orders a shorter time.

220-3. Moving Papers

There shall be served and filed with the motion and with the opposing party's opposition to the motion:

(1) memorandum in support thereof containing the points and authorities upon which the moving party relies;

(2) the evidence upon which the moving party relies;

(3) any affidavits required by the Federal Rules of Civil Procedure; and

(4) the Proposed Order granting the relief requested in the motion.

220-4: Opposition and Reply

(a) Motions set for oral argument:

1. The opposing party shall not less than fourteen days preceding the noticed date of oral argument, serve upon all parties and file with the clerk:

(A) memorandum in support thereof containing the points and authorities upon which the moving party relies;

(B) if desired, the evidence upon which the moving party relies;
(C) any affidavits required by the Federal Rules of Civil Procedure.

2. The moving party may, not less than seven calendar days preceding the noticed date of oral argument, serve and file a reply to the opposing party's opposition.

(b) Motions not set for oral argument:

1. If a motion is not set for oral argument, the opposing party shall have fourteen days from the date of the filing of the Motion to serve and file an Opposition, consisting of
(A) memorandum in support thereof containing the points and authorities upon which the moving party relies;
(B) if desired, the evidence upon which the moving party relies;
(C) any affidavits required by the Federal Rules of Civil Procedure.

2. The moving party may, not less than seven calendar days after service of the opposition, serve and file a reply to the opposing party's opposition.

220-5. Oral Argument

(a) Oral argument not automatic: Oral argument must be requested by the parties, and may be denied in the discretion of the judge, except where oral argument is required by the statute or the Federal Rules of Civil Procedure.

(b) Request for oral argument; Certificate of Agreement of Oral Argument Date: If either party requests oral argument, they must file the notice of motion referred to in Rule 220-2 above. Each notice of motion must be accompanied by an "Agreement of Hearing Date," in a form shown below in Attachment "F." It shall be the responsibility of the moving party to contact the attorney for each party who has entered an appearance, or if the party(ies) are pro se, it is the moving party's responsibility to contact the pro se party and propose a date for oral argument. Once the parties have agreed on a date for oral argument, the moving party shall clear the date with the deputy clerk of court. When the date has been cleared with the clerk of court, that date shall be inserted in the Certificate of Agreement of Hearing Date and on the notice of motion. If the parties do not agree on a date for oral argument, no oral argument shall be scheduled and the motion shall proceed to briefing and disposition under Rule 220-4(b).

(c) Court's cancellation of oral argument: In cases where the parties have requested oral argument, such oral argument may be taken off calendar by Order of the Court, in the discretion of the

Court, and a decision rendered on the basis of the written materials on file. Any such Order cancelling oral argument will be issued in writing and served by the clerk of court on the parties no later than fourteen days following the filing of the motion.

(d) Oral Argument taken off calendar by the Court: In case where the Court cancels oral argument, as referred to in subsection (c) above, the Opposition is due to be served on the opposing party(ies) and filed with the Court fourteen days prior to the originally scheduled date of oral argument, and the reply shall be served and filed seven calendar days prior to the originally scheduled day of oral argument.

220-6. Failure to file required papers

Papers not timely filed by a party including any memoranda or other papers required to be filed under this rule will not be considered and such tardiness may be deemed by the Court as consent to the granting or denial of the motion, as the case may be.

220-7. Length of briefs and memoranda

Each party may submit briefs or memoranda in support of or in opposition to any pending motion which shall not exceed a total of twenty pages in length without leave of court to file additional pages. The moving party's twenty-page limit on the brief or memoranda includes the moving party's reply brief or memoranda. All briefs and memoranda in excess of ten pages shall contain a table of authorities cited.

220-8. Advance notice of withdrawal or non-opposition; Continuances

(a) Any moving party who does not intend to press the motion or who intends to withdraw before the hearing date, any opposing party who does not intend to oppose the motion, and any party who intends to move for a continuance of the hearing of a motion shall, not later than five working days preceding the oral argument date, notify opposing counsel and the court clerk in writing.

(b) In the absence of urgent and unforeseeable circumstances, a deadline fixed by the notice of motion and the "Certificate of Agreement on Hearing Date" will not be extended for any reason.

220-9. Summary Judgment Motions

(a) Papers Required from Moving Party. There shall be served and lodged with each notice of motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, a proposed "Statement of Uncontroverted Facts and Conclusions of Law" and the proposed judgment. Such proposed Statement shall set forth the material

facts as to which the moving party contends there is no genuine issue.

(b) Statement of Genuine Issues of Material Fact by Opposing Party. Any party who opposes the motion shall serve and file with his opposing papers a separate document containing a concise "Statement of Genuine Issues" setting forth all material facts as to which is it contended there exists a genuine issue necessary to be litigated.

(c) Determination of Motion. In determining any motion for summary judgment, the Court will assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are

1. included in the "Statement of Genuine Issues" and
2. controverted by declaration or other written evidence filed in opposition to the motion.

(d) This rule shall apply to motions for orders specifying material facts that appear without substantial controversy pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, except that the proposed "Statement of Uncontroverted Facts and Conclusions of Law" and "Statement of Genuine Issues" shall be limited to the facts which the moving party asserts to be without substantial controversy and the moving party shall submit a proposed order instead of a proposed judgment.

220-10. Motion for Reconsideration

A motion for reconsideration of the decision on any motion may be made only on the grounds of

1. a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or,

2. the emergence of new material facts or a change of law occurring after the time of such decision, or,

3. a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

220-11. Preliminary Injunctions

When a temporary restraining order ("TRO") is not sought, an application for a preliminary injunction shall be made by notice of motion and not by order to show cause. When a TRO is sought,

application for a preliminary injunction shall be made by order to show cause. If the TRO is granted, the hearing on the order to show cause will be set within ten (10) days after the entry of the TRO unless otherwise agreed by the parties. If the TRO is denied, the Court may set the hearing on the order to show cause re: preliminary injunction without regard to the twenty-one days' notice of motion requirement of Local Rule 220-2.

220-12. Ex Parte Applications

Applications for ex parte orders shall be accompanied by a memorandum containing the name of counsel for the opposing party, if known, the reasons for the seeking of an ex parte order, and points and authorities in support thereof. There shall also be attached, within a separate cover, the proposed ex parte order. The proposed order shall bear the signature of the attorney presenting it preceded by the words, "presented by" on the left side of the last page.

1. Notice of application. It shall be the duty of the attorney so applying to

(A) make a good faith effort to advise counsel for all other parties, if known, of the date, time and substance of the proposed ex parte application, and

(B) advise the Court in writing of efforts to contact other counsel and whether any other counsel, after such advice, opposes the application or has requested to be present when the application is presented to the Court.

2. Waiver of notice. If the judge to whom the application is made finds that the interest of justice requires that the ex parte application be heard without notice, the judge may waive the notice requirement of subpart 1. above, Local Rule 220-12(a).

220-13. Orders shortening time

Applications for orders shortening the time permitted or required by these Local Rules or the Federal Rules of Civil Procedure for the filing of any paper or pleading or the doing of any act shall be supported by a certificate stating the reasons therefor. When the application is made ex parte, the certificate shall state the reasons why a stipulation could not be obtained or notice could not be given.

220-14. Sanctions

The Court need not consider motions, oppositions to motions or briefs or memoranda that do not comply with this rule. The

presentation to the Court of frivolous motions or opposition to motions or the failure to comply fully with this rule subjects the offender at the discretion of the Court to the sanctions of Local Rule 100-3.

Proposed Local Rule 230-7: DISCOVERY MOTIONS

CJRA Note: Local Rule 230, entitled "Discovery Proceedings," addresses all discovery proceedings in the District Court of Guam in a general fashion. All sections of that rule, except 230-7, remain unchanged. Only section 230-7 is changed, to accommodate the concerns of the CJRA and the Advisory Group.

Amended Local Rule 230-7 is designed to address the consensus of the Advisory Group that a chief cause of expense and delay in the District Court of Guam is that the parties are not conducting enough voluntary discovery in civil cases.

a. Prediscovery disclosure:

Before any party initiates discovery, that party must submit to the opponent (1) the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, together with a summary of that information; (2) a description, including the location, of all documents that are reasonably likely to bear substantially on the claims or defenses; (3) a computation of any damages claimed; (4) the substance of any insurance agreement that may cover any resulting judgment; and (5) a copy of any report of an expert who may be called at trial. The disclosure obligation is reciprocal and continues throughout the case.

b. Joint Discovery Plan:

Counsel as part of their Case Management Order shall prepare and submit a Joint Discovery Plan, scheduling the time and length for all discoverable events. The plan shall conform to the obligation to limit discovery under F.R.C.P. 26(b). Counsel's plan shall consider the desirability of conducting phased discovery, limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare the case for trial.

c. Resolution of Discovery Disputes:

Counsel shall meet and confer to resolve discovery disputes in accordance with Local Rule 230-7(d). Any dispute not so resolved shall be presented to a judicial officer. No motion may be filed without leave of court.

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d. Discovery Motions:

-1- Prior to the filing of any motion relating to a discovery dispute, counsel for the parties shall meet in person in a good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes as possible. It shall be the responsibility of counsel for the moving party to arrange for the conference.

-2- If counsel are unable to settle their differences, they shall formulate a written stipulation specifying separately and with particularity each issue that remains to be determined at the hearing and the contentions and points and authorities of each party. The stipulation shall not refer the Court to other documents in the file. By way of example only, if the sufficiency of an answer to an interrogatory is in issue, the stipulation shall contain verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated. The stipulation shall be filed and served with the notice of motion. In the absence of such stipulation, or a declaration of counsel of non-cooperation by the opposing party, the Court will not consider any discovery motion unless otherwise ordered upon good cause shown.

-3- Briefing and oral argument of all discovery motions shall be scheduled pursuant to Local Rule 220.

-4- If the discovery disputes are found to be frivolous or based on counsel's failure to cooperate with each other in good faith, sanctions will be imposed at the discretion of the Court.

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

In re:
AMENDED LOCAL RULES
220, 230-7 and 235.

PROPOSED
General Order No.
93-0000__

IT IS HEREBY ORDERED that Rules 220, 230-7 and 235 of the Local Rules of Practice for the District Court of Guam are hereby amended as shown in the attached Exhibit "A."

IT IS FURTHER ORDERED that this amendment shall take effect sixty days following the filing of this order with the Clerk of Court.

IT IS FURTHER ORDERED that all interested persons may make comments on the proposed amendments within forty five days following the issuance of this Order in writing, submitted to the Clerk of Court, Sixth Floor, Pacific News Building, Agana, Guam, or in person at a meeting of the Guam Bar Association, to be held on the ____ day of _____, 199__, at _:___ __.m.

SO ORDERED this ____ day of _____, 1993.

JOHN S. UNPINGCO
District Judge

ATTACHMENT "F"

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

(TITLE OF CASE) _____	Civil Case No. ___-_____ AGREEMENT OF HEARING DATE

Pursuant to Local Rule 220-5, the parties hereby acknowledge the following:

1. I, _____, am the attorney for the Plaintiff in this matter. I contacted the attorney(s) for the opposing parties in this action, or if the defendant is pro se, I contacted the pro se defendant(s), to agree upon a date for oral argument of my Motion _____.

2. The attorney(s) for the opposing party(ies) (or the pro se parties) is/are:

3. We agreed upon the following date:_____.

4. I called the deputy clerk of court to ensure that the court is available on that date.

DATED:

_____
Attorney for Moving Party

ATTACHMENT "D"

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

(TITLE OF CASE)	Civil Case No. ___-_____
	CASE MANAGEMENT ORDER

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, and Rule 235 of the Local Rules of Practice for the District Court of Guam, the parties hereby submit the following Case Management Order:

1. The nature of the case is as follows:

2. The posture of the case is as follows:

   a) The following motions are on file:

   b) The following motions have been resolved:

   c) The following discovery has been initiated:

3. All motions to file parties and claims shall be filed on or before:

4. All Motions to amend pleadings shall be filed on or before:

5. **Joint Discovery Plan:**

Each party intends to initiate the following discovery (include a schedule, including time and length, of discoverable events):

Phase I: Developing information needed for a realistic assessment of the case:

Plaintiff:

Defendant:

Phase II: Information needed to prepare the case for trial:

Plaintiff:

Defendant:

6. The parties shall appear before the District Court on _____ at __:__ _.m. for the Discovery Conference.

7. The discovery cut-off date (defined as the last day to file responses to discovery) is:

8. a) The anticipated discovery motions are:

All discovery motions shall be filed on or before _____ and heard on or before _____:

b) The anticipated dispositive motions are:

All dispositive motions shall be filed on or before _____ and heard on or before _____:

9. The prospects for settlement are:

10. The final pretrial conference shall be held on the ____ day of _____, at __:__ _.m. and the parties' pretrial materials (memoranda of contentions of fact and law, witness

list, exhibit list and pretrial statement) shall be filed on or before _____:

11. The Proposed Joint Pretrial Order shall be filed on or before the ____ day of _____, 19___.

12. The trial shall be held on the _____ day of _____, 199__, at __:__ _.m. (in no event shall the trial be later than 18 months after the complaint is filed, unless the Court otherwise allows).

13. The trial is / is not a jury trial.

14. It is anticipated that it will take _____ days to try this case.

15. The names of counsel on this case are:

16. The parties do / do not wish to submit this case to a settlement conference before a neutral judge.

17. The parties present the following suggestions for shortening trial:

18. The following issues will also affect the status or management of the case:

Dated this ____ day of _____, 199__.

_____
JOHN S. UNPINGCO
District Judge

APPROVED AS TO FORM AND CONTENT:

_____ _____
Attorney for Plaintiff Attorney for Defendant

_____ _____
Attorney for (indicate) Attorney for (indicate)

ATTACHMENT "C"

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

(TITLE OF CASE)	Civil Case No. ___-_____
	SCHEDULING NOTICE

Local Rule 235 establishes procedures for complying with Rule 16(b), Federal Rules of Civil Procedure. Counsel should study Local Rule 235 before attempting to process cases in this Court.

Pursuant to Local Rule 235, it is hereby ORDERED that:

1. Discovery shall commence immediately.

2. A Case Management Order shall be filed on or before the ____ day of _____, 19___. Careful and immediate attention should be given to the directions in Local Rule 235 to ensure complete and timely compliance with Rule 16(b) and Local Rule 235.

3. Plaintiffs' counsel, or if the plaintiff is pro se, then the pro se plaintiff, must take the lead in the preparation of the Case Management Order. The failure of a party or its counsel to participate in good faith in the framing of a Case Management Order may result in the imposition of sanctions.

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4. A Discovery Conference shall be held on the ____ day of _____, 19____, at __:___ _.m.

5. Counsel are reminded that:

a) The filing of motions does not postpone discovery.

b) Local Rule 230-7 governs discovery motions.

c) The number and form of interrogatories are governed by Local Rule 230-2.

MARY L.M. MORAN
Clerk of Court

By: _____
Deputy Clerk