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Dear Mr. Lee:

Enclosed is a copy of the Local Rules for the United States District Court for the District of Hawaii. These rules took effect on February 15, 1995.

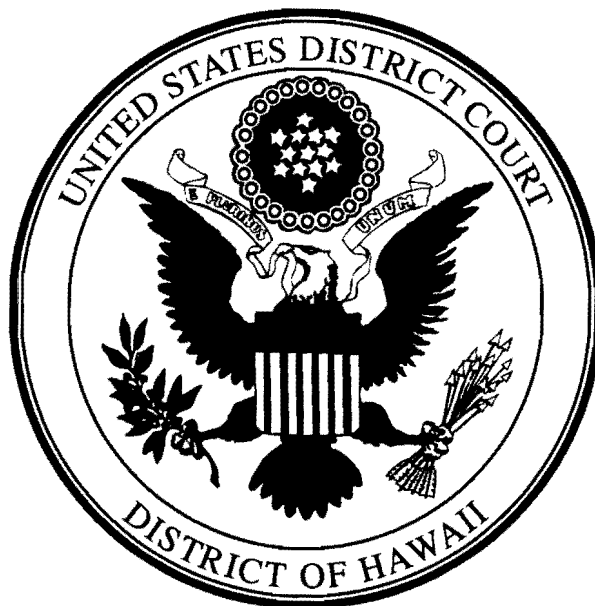
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**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF HAWAII**

LOCAL RULES



(Effective February 15, 1995)

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CHAPTER I. GENERAL RULES

RULE 100

TITLE - EFFECTIVE DATE OF THESE RULES -
COMPLIANCE AND CONSTRUCTION**100-1. Title.**

These are the Local Rules of Practice for the United States District Court for the District of Hawaii. They should be cited as "L.R. _____."

100-2. Effective Date; Transitional Provision.

These rules govern all actions and proceedings pending on or commenced after February 15, 1995. Where justice requires, a district judge may order that an action or proceeding pending before the court prior to that date be governed by the prior practice of the court.

100-3. Sanctions and Penalties for Noncompliance.

Failure of counsel or of a party to comply with any provision of these rules is a ground for imposition of sanctions. Sanctions may be imposed by the court *sua sponte*. Without limitation to the foregoing, failure to comply with these rules may result in a fine, dismissal, or other appropriate sanction.

100-4. Scope of the Rules; Construction.

These rules supplement the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Rules of Procedure for the Trial of Misdemeanors before United States Magistrate Judges, and shall be construed so as to be consistent with those Rules and to promote the just, efficient and economical determination of every action and proceeding. The provisions of the General and Civil Rules shall apply to all actions and proceedings, including criminal, admiralty and actions and proceedings before magistrate judges, except where they may be inconsistent with rules or provision of law specifically applicable thereto.

100-5. Computation of Time.

Unless otherwise specified in these rules, time periods prescribed or allowed shall be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure and Rule 45(a) of the Federal Rules of Criminal Procedure.

100-6. Definitions.

(a) The word "court" refers to the United States District Court for the District of Hawaii, and not to any particular judge of the court.

(b) The word "judge" refers to any United States District Judge or to a part-time or full-time United States Magistrate Judge to whom such action or proceeding has been assigned exercising jurisdiction with respect to a particular action or proceeding in the court.

CHAPTER II. CIVIL RULES

RULE 201

ACTIONS INVOLVING MINORS OR INCOMPETENTS

201-1. Order or Judgment Required.

No action by or on behalf of a minor or incompetent shall be dismissed, discontinued or terminated without the approval of the court. When required by state law, court approval shall also be obtained from the appropriate state court having jurisdiction over such matters for any settlement or other disposition of litigation involving a minor or incompetent.

RULE 205

ASSIGNMENT OF CIVIL CASES

205-1. Assignment of Civil Cases.

Cases will be assigned as determined by the court.

RULE 206

SIMILAR CASE RULE

206-1. Assignment of Similar Cases.

Whenever it shall appear that civil actions or proceedings involve the same or substantially identical transactions, happenings or events, or the same or substantially the same parties or property or subject matter, or the same or substantially identical questions of law, or for any other reason said cases could be more expeditiously handled if they were all heard by the same district judge, then the chief district judge or any other district judge appointed by the chief district judge in charge of the assignment of cases may assign such cases to the same district judge. Each party appearing in any such action may also request by appropriate motion that said cases be assigned or reassigned to the same district judge.

RULE 210

PROCESS - ISSUANCE AND SERVICE

210-1. Service of Process.

The sheriff of the State of Hawaii and his deputies are authorized to serve civil process.

RULE 220

**MOTION PRACTICE - EXTENSIONS, ENLARGEMENTS
OR SHORTENING OF TIME - SUBMISSION OF ORDERS****220-1. Format.**

The notice of motions shall appear on the first page of the moving document. Endorsement by counsel is not required. All related documents subsequently filed shall bear below the title of the document (1) the date and time of the hearing, and (2) the name of the presiding judge.

220-2. Notice, Hearing, Motion and Supporting Papers.

(a) Except as otherwise provided by this rule, all motions shall be entered on the motion calendar of the assigned judge for hearing not less than twenty-eight (28) days after service.

(b) The twenty-eight (28) day period may be shortened by order of court upon the submission of an *ex parte* application. Such an application must be accompanied by an affidavit or declaration setting forth the reasons necessitating shortened time.

(c) The twenty-eight (28) day period shall not apply to the following motions: those designated as non-hearing motions under subsections (d and e) of this rule; applications for a temporary restraining order; motions for protective order; motions for withdrawal of counsel; motions for an extension or shortening of time; motions made during the course of a trial or hearing.

(d) The court, in its discretion, may decide any motion without a hearing.

(e) The following motions shall be non-hearing motions to be decided on submissions: motions to alter, amend, reconsider, set aside or vacate a judgment or order; motions for judgment notwithstanding the verdict or for a new trial; motions for clarification of a judgment or order; motions for relief from judgment; motions to proceed *in forma pauperis*; motions for appointment of counsel; motions for certification of finality under Rule 54(b) of the Federal Rules of Civil Procedure; appeals from a magistrate judge's decision or order; objections to a magistrate judge's report and recommendation. The court, in its discretion, may set any of the foregoing motions for hearing *sua sponte*, or upon application by a party.

(f) All motions shall be accompanied, when appropriate, by affidavits or declarations sufficient to support material factual assertions and by a memorandum of law.

220-3. Deadline for Hearings on Dispositive Motions.

Unless otherwise ordered by the court, all dispositive motions shall be heard no later than thirty (30) days prior to the scheduled trial date.

220-4. Opposition and Reply.

An opposition to a motion set for hearing shall be served and filed not less than eighteen (18) days prior to the date of hearing. An opposition to a non-hearing motion shall be served and filed not more than eleven (11) days after service of the motion. When appropriate, the opposition shall include

affidavits or declarations and a memorandum of law. A party not opposing a motion shall instead file a statement of no opposition or no position within the time provided above.

Any reply in support of a motion set for hearing shall be served and filed by the moving party not less than eleven (11) days prior to the date of hearing. Any reply in support of a non-hearing motion shall be served and filed by the moving party not more than eleven (11) days after service of the opposition. A reply must respond only to arguments raised in the opposition. Any arguments raised for the first time in the reply shall be disregarded.

Any further or supplemental briefing shall not be submitted without leave of court.

220-5. Length of Briefs and Memoranda.

Briefs or memoranda in support of or in opposition to any motion shall not exceed thirty (30) pages in length. Reply memoranda shall not exceed fifteen (15) pages in length. The court may grant permission to exceed page limits upon showing of good cause. Briefs and memoranda exceeding fifteen (15) pages shall have a table of contents and a table of authorities cited. All attached exhibits shall have appropriate labeled tabs. Briefs not in compliance with this rule may be disregarded by the court.

220-6. Affidavits and Declarations.

Factual contentions made in support of or in opposition to any motion shall be supported by affidavits or declarations. Affidavits and declarations shall contain only facts, shall conform to the requirements of Rule 56(e) of the Federal Rules of Civil Procedure, and shall avoid conclusions and argument. Any statement made upon information or belief shall specify the basis therefor. Affidavits and declarations not in compliance with this rule may be disregarded by the court.

220-7. Filing; Lodging Extra Copy.

The original of each document provided for by this rule shall be filed with the clerk promptly after service and two (2) copies shall be submitted for the assigned district judge or magistrate judge.

220-8. Uncited Authorities.

A party who intends to rely at a hearing upon authorities not included in the brief or memorandum of law should provide to the court and opposing counsel copies of the authorities at the earliest possible time prior to the hearing.

220-9. Related and Counter Motions.

Any motion related to the subject matter of the original motion may be filed by the responding party together with the party's opposition and may be noticed for hearing on the same date as the original motion, provided that the motions would otherwise be heard by the same judge. The opposition to related or counter motions shall be served and filed together with any reply in support of the original motion not less than eleven (11) days prior to the date of hearing. The movant on a related or counter motion shall have three (3) days after receipt of opposition within which to file and serve a reply.

220-10. Motions for Summary Judgment.

(a) **Motion Requirements.** A motion for summary judgment shall be accompanied by a supporting memorandum and separate concise statement detailing each material fact as to which the moving party contends:

1. That there are no genuine issues to be tried; and
2. Are essential for the court's determination of the issue or issues presented on summary judgment (not the entire case).

(b) **Opposition Requirements.** Any party who opposes the motion shall file and serve with his or her opposing papers a separate document containing a concise statement that:

1. Accepts the facts set forth in the moving party's concise statement; or
2. Sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

(c) **Focus of the Concise Statement.** When preparing the separate concise statement, a party shall reference only the material facts which are absolutely necessary for the court to determine the limited issues presented in the motion for summary judgment (and no others) and each reference shall contain a citation to a particular affidavit, deposition, or other document which supports the party's interpretation of the material fact. Documents referenced in the concise statement shall not be filed in their entirety. Instead, the filing party shall extract and highlight only the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting will be adequate.

(d) **Limitation.** The concise statement shall be no longer than five (5) pages.

(e) **Scope of Judicial Review.** When resolving motions for summary judgment, the court shall have no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statements of the parties.

(f) **Admission of Material Facts.** For purposes of a motion for summary judgment, material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party.

220-11. Motions for Reconsideration.

Motions for reconsideration of interlocutory orders may be brought only upon the following grounds:

- (a) Discovery of new material facts not previously available;
- (b) Intervening change in law;
- (c) Manifest error of law or fact.

Motions asserted under Subsection (c) of this rule must be filed within ten (10) days of the court's written order.

220-12. Motions to Continue Trial.

Any motion to continue trial filed within thirty (30) days of the scheduled trial date shall be decided by the trial district judge, unless the motion is designated to a magistrate judge. All other motions to continue trial shall be decided by the designated magistrate judge. Any motion to continue trial shall indicate that the client-party has consented to the continuance. Consent may be demonstrated by the client-party's signature on a motion to continue trial or by the personal appearance in court of the client-party.

220-13. Extensions, Enlargements or Shortening of Time.

(a) **Stipulations Extending Time.** All stipulations extending time shall indicate on the face sheet the sequential number of such extensions; e.g., "Second Stipulation Extending Time." If the first two extensions do not collectively exceed sixty (60) days, these stipulations shall be routinely stamped with the judge's signature and filed. The third and following extensions shall be accompanied by an affidavit setting forth the reasons for the extension and the clerk shall submit the stipulation to the magistrate judge for disposition.

(b) **Applications for Enlargement of Time.** All applications for enlargement of time made by motion shall state (i) the total enlargement of time previously obtained by the parties and (ii) the reason for the particular enlargement requested.

(c) **Ex parte Applications.** Upon satisfactory showing that the enlargement of time could not be obtained by stipulation or duly noticed motion, a judge may grant *ex parte* an emergency enlargement sufficient to enable the party to apply for a further enlargement by stipulation or duly noticed motion.

(d) **Extension to Respond to Third-Party Claims.** Whenever a defendant causes a summons and complaint to be served pursuant to Rule 14, Federal Rules of Civil Procedure, on a person not a party to the action, no enlargement of time shall be granted to such person except on stipulation of all parties or motion duly noticed.

(e) **Orders Shortening Time.** Applications for orders shortening the time permitted or required for filing any paper or pleading or complying with any requirement under the Federal Rules of Civil Procedure shall be supported by a certificate stating the reasons therefor. When the application is made *ex parte*, the certificate shall state the reason that a stipulation could not be obtained or notice could not be given.

220-14. Notice to Pro se Prisoner Litigants.

In all cases where summary judgment motions are filed against *pro se* prisoner litigants, the moving papers shall include a separate notice in a form approved by the court which advises the prisoner: (1) of the contents of Rule 56(e) of the Federal Rules of Civil Procedure; (2) that the prisoner has the right to file counter-affidavits or other admissible evidence in opposition to the motion; and (3) that failure to respond might result in the entry of summary judgment against the prisoner.

RULE 221

RECEIVERSHIPS

221-1. Receiverships.

In the exercise of the authority vested in the district courts by Rule 66, Federal Rules of Civil Procedure, this rule is promulgated for the administration of estates by receivers or by the other similar officers appointed by the court. Except in the administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by these rules.

(a) **Inventories.** Unless the court otherwise orders, a receiver or similar officer as soon as practicable after his or her appointment and not later than thirty (30) days after he or she has taken possession of the estate, unless such time shall be extended by the court for good cause shown, shall file an inventory of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(b) **Reports.** Within one month after the filing of the inventory, and at regular intervals of three months thereafter until discharged, or at such other times as the court may direct, the receiver or other similar officer shall file reports of his or her receipts and expenditures and of the receiver's acts and transactions in his or her official capacity.

(c) **Compensation of Receivers, Commissioners, Attorneys and Others.** The compensation of receivers or similar officers, of their counsel, and of all those who may have been appointed by the court to aid in the administration of the estate, the conduct of its business, the discovery and acquirement of its assets, the formation of reorganization plans, and the like, shall be ascertained and awarded by the court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the court may direct. The notice shall state the amount claimed by each applicant.

(d) **Administration of Estates.** In all other respects, receivers or similar officers shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

RULE 230

DISCOVERY PROCEEDINGS

230-1. Disclosures; Discovery Limitations and Commencement; Meeting of Parties.**(a) Required Disclosures.**

1. **Initial Disclosures.** The initial disclosure requirements specified in Fed.R.Civ.P. 26(a)(1) shall not apply in any action, except that the court, at a scheduling conference, may require that each party, without awaiting a discovery request:

(A) provide to other parties the name and, if known, the address and telephone number of each individual believed by it to have non-privileged personal knowledge concerning any significant factual issue specifically raised in the pleadings or identified by the parties in their report to the court under Fed.R.Civ.P. 26(f), appropriately indicating the subjects about which the person has such knowledge;

(B) make available to other parties for inspection and copying, as under Fed.R.Civ.P. 34, all documents, data compilations, and tangible things in its possession, custody, or control that may be used by it (other than solely for impeachment purposes) to support its contentions with respect to any significant factual issue in the case;

(C) provide to other parties a computation of any category of damages claimed by it, making available for inspection and copying, as under Fed.R.Civ.P. 34, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) disclose to other parties the existence and extent of coverage of any insurance agreement under which any insurer may be liable to satisfy part or all of a judgment which may be entered against it in the action or to indemnify or reimburse it for payments made to satisfy the judgment.

Unless otherwise stipulated, these disclosures shall be made at the time directed by the court. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. These disclosures are subject to a duty of supplementation, as provided in Fed.R.Civ.P. 26(e)(1), at least 30 days before the end of the period allowed for discovery.

2. **Expert Testimony.** Unless otherwise ordered by the court in a particular case, the requirements of Fed.R.Civ.P. 26(a)(2), relating to disclosure of expert testimony, do not apply in pending cases in which an initial scheduling conference is held on or before the effective date of this rule.

3. **Pretrial Disclosures.** Deadlines for pretrial disclosures required by Fed.R.Civ.P. 26(a)(3) shall be established at the scheduling conference and/or the final pretrial conference.

4. **Filing.** Except as otherwise ordered by the court in a particular case, disclosures under paragraphs (a)(1) and (a)(2) of this rule shall be filed only when, and to the extent, ordered by the court or needed by a party in connection with a motion (or response thereto) or for use at trial.

(b) **Limits on Formal Discovery.** Unless otherwise ordered by the court in a particular case, the limitations specified in Fed.R.Civ.P. 30, 31 and 33 as to the number of depositions and interrogatories do not apply in pending cases in which an initial scheduling conference was held on or before November 30, 1993.

(c) **Commencement of Discovery.** Except as otherwise stipulated in writing by the parties or ordered by the court in a particular case, formal discovery under Fed.R.Civ.P. 30, 31, 33, 34 and 36 may not be commenced before the meeting of the parties under Fed.R.Civ.P. 26(f), except in the following cases:

1. cases exempted under paragraph (d)(1) from the requirement of the meeting of the parties;
2. cases in which a temporary restraining order or preliminary injunction is sought or in which a motion under Fed.R.Civ.P. 56 has been filed;
3. cases in which discovery is needed to resolve a preliminary motion such as an objection to personal jurisdiction or venue.

(d) **Meeting of the Parties.** Unless otherwise ordered by the court in a particular case, the provisions of Fed.R.Civ.P. 26(f) requiring a meeting of and a report from the parties, apply to all civil actions in this court, subject to the following modifications:

1. Unless otherwise ordered by the court in a particular case, the requirement of a meeting and report does not apply in:
 - (A) cases filed in, removed to, or transferred to this court before the effective date of this rule;
 - (B) cases instituted by *pro se* prisoners; and
 - (C) cases consolidated with a case in which the parties have met as provided in Fed.R.Civ.P. 26(f) or in which a scheduling order under Fed.R.Civ.P. 16(b) has been entered.
2. Unless otherwise ordered by the court in a particular case, the meeting must be held no later than 20 days before any scheduling conference set by the court under Fed.R.Civ.P. 16(b).
3. "Meeting" for purposes of this rule may include a conference telephone call.
4. Unless otherwise agreed by the parties or ordered by the court, the plaintiff(s) shall prepare and file the report required by this rule. The defendant(s) may file within five (5) business days a supplemental report if there are any objections to the report filed by plaintiff(s). Form 35 in the Appendix of Forms, Federal Rules of Civil Procedure, illustrates the type of report that is contemplated and may serve as a checklist for the meeting.

230-2. Nonfiling of Discovery Materials.

- (a) Interrogatories, requests for document production or inspection, and answers and responses thereto, shall not be filed with the court. Deposition transcripts shall not be filed with the court, but notices of depositions shall be filed. This rule shall not preclude their use as exhibits or as evidence with a motion or at trial.
- (b) During the pendency of any civil proceeding, any person, with leave of court, after notice served on all parties to the action, may obtain a copy of any deposition or discovery document not on file with the court upon payment of the expense of the copy.

230-3. Depositions: Original Transcripts.

Counsel for the party noticing any deposition pursuant to Rule 30, Federal Rules of Civil Procedure, shall be responsible for the preservation and storage of the original transcript, tape, or other means of preservation of such deposition. Counsel having custody of the original transcript, tape, or other means of preservation of the deposition shall produce it if needed for trial by any party.

230-4. Abuse of or Failure to Make Discovery; Sanctions.

(a) **Conference Required.** The court will not entertain any motion pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, unless counsel have previously conferred, either in person or by telephone, concerning all disputed issues, in a good faith effort to limit the disputed issues and, if possible, eliminate the necessity for a motion. If counsel for the moving party seeks to arrange such a conference and counsel for the party against whom the motion will be made refuses or fails to confer, or if any counsel does not make the good faith effort described in the preceding sentence, the judge may order an appropriate sanction pursuant to L.R. 100-3.

(b) **Certificate of Compliance.** At the time of filing any motion with respect to Rules 26 through 37, Federal Rules of Civil Procedure, counsel for the moving party shall certify compliance with this rule.

(c) **Discovery Assistance.**

1. Counsel may request the courtroom deputy of the assigned magistrate judge to arrange a time for a chambers or telephone conference to resolve disputed discovery issues expeditiously and economically. This expedited procedure is intended to afford a swift but full hearing following abbreviated and simultaneous briefing by the parties.

2. Except when impractical, the party calling such an expedited conference shall confirm by letter to the magistrate judge and opposing counsel the date and time of the hearing and the deadline set by the courtroom deputy for filing of letter briefs.

3. Letter briefs shall be filed by all parties simultaneously by a deadline set by the courtroom deputy, with conformed copies delivered to chambers. The letter brief shall contain all relevant information, including: dates of discovery cut-off, and trial; and a discussion of the dispute. Unless otherwise ordered by the court, the letter briefs shall be five pages or less, inclusive of all exhibits.

4. Pursuant to L.R. 230-4, the court will not entertain discovery motions, including expedited procedures, unless the parties have previously conferred in a good faith effort to resolve the dispute and the motion or letter brief contains a certification to that effect.

5. Any discovery order issued by a magistrate judge pursuant to such expedited procedure may be appealed to the assigned district judge pursuant to L.R. 304-1(b).

(d) **Declarations Re Expenses and Fees.** Where a party seeks an award of attorneys' fees or other expenses pursuant to Rule 37, Federal Rules of Civil Procedure, the motion shall be accompanied by a declaration itemizing with particularity the fees and expenses to which that party claims to be entitled. Such itemization should include, if practicable and not privileged, copies of time sheets.

230-5. Written Responses to Discovery Requests.

(a) Discovery requests served pursuant to Rule 33, 34 and 36, Federal Rules of Civil Procedure, shall be in a form providing sufficient space to respond following each request.

(b) Responses to discovery requests pursuant to Rules 33, 34 and 36, Federal Rules of Civil Procedure, shall set forth the interrogatory or request in full before the response. Each objection shall be followed by a statement of the reasons therefore.

(c) Broad general interrogatories, such as those which ask an opposing party to "state all facts on which a contention is based" or to "apply law to facts" shall not be allowed.

(d) In a motion to compel discovery, only the pertinent interrogatories, requests for production, or requests for admissions, and answers or objections shall be set forth.

(e) Whenever a claim of privilege is made in response to any discovery request pursuant to Rules 33, 34 and 36, Federal Rules of Civil Procedure, the materials or information claimed to be privileged shall be identified with reasons stated for the particular privilege claimed. No generalized claim of privilege shall be allowed.

RULE 233

STATUS CONFERENCE

233-1. Status Conference.

Status conferences may from time to time be scheduled in any action or proceeding. Such conference may be requested by any party and shall be called only as necessary to facilitate the progress of the case and shall not be held as a matter of routine. No pleading need be filed.

RULE 235

PRETRIAL AND SETTING FOR TRIAL

235-1. Application of this Rule.

Pretrial proceedings and setting of cases for trial will be governed by this rule, and by such orders as are issued pursuant thereto. This rule does not limit the power of the court to hold additional or supplemental scheduling and pretrial conferences or to issue supplemental or amended orders pursuant thereto.

235-2. Counsel's Duty of Diligence.

All counsel shall proceed with diligence to take all steps necessary to bring an action to readiness for pretrial and trial.

235-3. Scheduling Conference.

(a) Within one hundred twenty (120) days after an action or proceeding has been filed, the assigned judge shall set a scheduling conference. All parties receiving notice of the scheduling conference shall attend in person or by counsel and shall be prepared to discuss the following subjects:

1. Service of process on parties not yet served;

2. Jurisdiction and venue;
3. Anticipated motions, and deadlines as to the filing and hearing of motions;
4. Appropriateness and timing of motions for dismissal or for summary judgment under Fed.R.Civ.P. 12 or 56;
5. Deadlines to join other parties and to amend pleadings;
6. Anticipated or remaining discovery, including discovery cut-off;
7. The control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Fed.R.Civ.P. 26 and 29 through 37 and L.R. 230-1;
8. Further proceedings, including setting dates for pretrial and trial, and compliance with L.R. 235-7, 235-9 and 235-10;
9. Appropriateness of special procedures such as consolidation of actions for discovery or pretrial, reference to a master or magistrate judge or to the Judicial Panel on Multidistrict Litigation, alternative dispute procedures, or application of the Manual for Complex Litigation;
10. Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the action or proceeding;
11. Prospects for settlement;
12. Any other matters which may be conducive to the just, efficient and economical determination of the action or proceeding, including the definition or limitation of issues, or any of the other matters specified in Fed.R.Civ.P. 16(c);

(b) Each party shall file with the court and serve on all parties a Scheduling Conference Statement no later than seven (7) calendar days prior to the scheduling conference. The Scheduling Conference Statement shall include the following:

1. A short statement of the nature of the case;
2. Statement of jurisdiction with cited authority for jurisdiction and a short description of the facts conferring venue;
3. Whether jury trial has been demanded;
4. A statement addressing the appropriateness, extent and timing of disclosures pursuant to Fed.R.Civ.P. 26 and L.R. 230-1 which are not covered by the report(s) filed pursuant to Fed.R.Civ.P. 26(f);
5. A list of discovery completed, discovery in progress, motions pending and hearing dates;
6. A statement addressing the appropriateness of any of the special procedures or other matters specified in Fed.R.Civ.P. 16(c) and L.R. 235-3(a) which are not covered by the joint report filed pursuant to Fed.R.Civ.P. 26(f);
7. A statement identifying any related case known to be pending in any state or federal court;
8. Additional matters at the option of counsel.

(c) Continuances of scheduling conferences shall be governed by L.R. 220-12, unless otherwise ordered.

235-4. Scheduling Conference Order.

At the conclusion of the scheduling conference, the judge shall enter an order governing disclosures under Fed.R.Civ.P. 26(a) and L.R. 230-1, the extent of discovery to be permitted, the discovery completion date, deadlines for motions to be filed and heard, deadlines to join other parties, and deadlines to amend pleadings. Unless otherwise ordered, all discovery must be completed no later than thirty (30) days prior to the scheduled trial date. The order may include other matters that the judge deems appropriate, including provisions for initiation of pretrial proceedings and trial settings.

235-5. Pretrial Conference.

One pretrial conference shall be held in any action or proceeding. The judge may order additional pretrial conferences *sua sponte* or upon the request of any party. Multiple pretrial conferences shall not be scheduled routinely. If any party files such a request, a copy shall be served upon all other parties. Counsel having authority to bind his or her client regarding all matters identified by the court for discussion at the pretrial conference and all reasonably related matters shall appear at each pretrial conference.

235-6. Procedures to Facilitate Disposition of Civil Court Calendar Congestion.

(a) **Settlement Conference.** In each civil action, a mandatory settlement conference shall be scheduled before the assigned magistrate judge or such other judicial officer as the court may direct. The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, to be present at the settlement conference.

(b) Settlement Conferences Before Magistrate Judges.

1. **Confidential Settlement Conference Statement.** At least five (5) court days before the settlement conference, each party shall deliver directly to the presiding magistrate judge a confidential settlement conference statement, which should not be filed nor served upon the other parties. The settlement conference statement will not be made a part of the record, and the information contained in the statement will not be disclosed to the other parties without express authority from the party submitting the statement.

The confidential settlement conference statement shall include the following:

(a) A brief statement of the case.

(b) A brief statement of the claims and defenses, i.e., statutory and other grounds upon which claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute, including damages.

(c) A summary of the proceedings to date, including a statement as to the status of discovery.

(d) An estimate of the time to be expended for further discovery, pretrial proceedings and trial.

(e) A brief statement of present demands and offers and the history of past settlement discussions, offers and demands.

(f) A brief statement of the party's position on settlement.

2. **Required Attendance At The Settlement Conference.** Unless otherwise permitted in advance by the court, lead trial counsel and all parties appearing *pro se* shall appear at the settlement conference with full authority to negotiate and to settle the case on any terms at the conference. Unless otherwise ordered by the court, parties may be present at the settlement conference. However, all parties shall be available by telephone to their respective counsel during the settlement conference. The parties must be immediately available throughout the conference until excused regardless of time zone difference. Any other special arrangements desired in cases where settlement authority rests with a governing body, shall also be proposed to the court in advance of the settlement conference.

3. **Sanctions.** Any failure of the trial attorneys, parties or persons with authority to attend the conference or to be available by telephone will result in sanctions to include the fees and costs expended by the other parties in preparing for and attending the conference. Failure to timely deliver a confidential settlement conference statement will also result in sanctions.

(c) **Special Master.**

1. **Appointment of Special Master.** If all of the parties to an action stipulate in writing to the reference of the action to a special master, and if the special master and the court consent to the assignment, an order of reference shall be entered. If the parties cannot agree upon the selection of a special master but stipulate in writing that there be a reference to a special master, the court shall promptly designate a special master from the register and shall send notice of that designation to the special master and to all attorneys of record in the action.

2. **Powers and Duties.** The powers and duties of the special master and the effect of his report shall be as set forth in Rule 53, Federal Rules of Civil Procedure, except as the same may be modified or limited by agreement of the parties and incorporated in the order of reference.

3. **Time and Place.** The special master shall fix a time and place of hearing, and all adjourned hearings, which is reasonably convenient for the parties and shall give them at least fourteen (14) days written notice of the initial hearing.

4. **Discovery.** If discovery has not been completed, it may continue during the pendency of the matter before the special master, unless the special master concludes that the matters before him require no further discovery and discovery would impede the exercise of his powers and duties, in which event he may order a stay of discovery.

5. **Other Special Master Appointments.** This rule shall not limit the authority of the court to appoint compensated special masters to supervise discovery or for other purposes, under the provisions of Rule 53 of the Federal Rules of Civil Procedure.

6. **Register of Volunteer Attorneys.**

(i) **Selection Procedure.** The judges of the district shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as special masters in civil cases in this court in order to facilitate disposition of civil actions. The attorneys so registered shall be selected by the judges of the district from lists of qualified attorneys at law, who are members of the bar of this court, and who are recommended to the district judges by the Hawaii State Bar Association.

(ii) **Minimum Qualifications.** In order to qualify for service as a special master under this rule, an attorney shall have the following minimum qualifications: (1) Have been a member of the bar of a Federal District Court for at least seven (7) years; (2) Be a member of the Bar of the United States District Court for the District of Hawaii; and (3) A substantial portion of his or her practice has been, or is, in Federal Court.

7. **Criteria for Designations.** In designating a special master, the district judge shall take into consideration the nature of the action and the nature of the practice of the attorneys on the register. When feasible, the district judge shall designate an attorney who has had substantial experience in the type of action in which he is to act as special master.

235-7. Contents of Pretrial Statement.

At the time to be set by a scheduling conference order under L.R. 235-4, or by stipulation of the parties approved by the assigned judge, the parties shall serve and file separate pretrial statements (copies to be lodged concurrently with the district judge's courtroom deputy) which shall follow the form and contain the captions and information specified in this rule:

- (a) **Party.** The name of the party or parties in whose behalf the statement is filed.
- (b) **Jurisdiction and Venue.** The statutory basis of federal jurisdiction and venue, and a statement as to whether any party disputes jurisdiction or venue.
- (c) **Substance of Action.** A brief description of the substance of the claims and defenses presented.
- (d) **Undisputed Facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (e) **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues
- (f) **Relief Prayed.** A detailed statement of the relief claimed, including a particularized itemization of all elements of damages claimed.
- (g) **Points of Law.** A concise statement of each disputed point of law with respect to liability and relief, with reference to statutes and decisions relied upon. Extended legal argument is not to be included in the pretrial statement.
- (h) **Previous Motions.** A list of all previous motions made in the action or proceeding and the disposition thereof.

- (i) **Witnesses to be Called.** A list of all witnesses likely to be called at trial, except for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.
- (j) **Exhibits, Schedules and Summaries.** A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each, describing its substance or purpose and the identity of the sponsoring witness.
- (k) **Further Discovery or Motions.** A statement of all remaining discovery or motions.
- (l) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
- (m) **Amendments, Dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
- (n) **Settlement Discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (o) **Agreed Statement.** A statement as to whether presentation of the action or proceeding, in whole or in part, upon an agreed statement of facts is feasible and desired.
- (p) **Bifurcation, Separate Trial of Issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- (q) **Reference to Master or Magistrate Judge.** A statement whether reference of all or a part of the action or proceeding to a master or magistrate judge is feasible and agreeable.
- (r) **Appointment and Limitation of Experts.** A statement whether appointment by the court of an impartial expert witness and whether limitation of the number of expert witnesses, is feasible and desired.
- (s) **Trial.** A statement of the scheduled or, if not scheduled, requested trial date, and, if trial is to be by jury, that a timely request for a jury is on file in the action.
- (t) **Estimate of Trial Time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, agreed statements of facts, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.
- (u) **Claims of Privilege or Work Product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.
- (v) **Miscellaneous.** Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient and economical determination.

235-8. Pretrial Conference Agenda.

A pretrial conference shall be held on the date and at the time scheduled. The agenda for the pretrial conference shall consist of matters covered by Rule 16, Federal Rules of Civil Procedure, and L.R. 235-7 and any other matter germane to the trial of the action or proceeding. Each party shall be

represented at the pretrial conference by counsel having authority with respect to all matters on the agenda, including settlement of the action or proceeding.

235-9. Pretrial Order.

The judge may make such pretrial order or orders at or following the pretrial conference as may be appropriate, and such order shall control the subsequent course of the action or proceeding as provided in Rule 16 of the Federal Rules of Civil Procedure. Unless otherwise ordered, the parties shall complete the following not less than seven (7) calendar days prior to the day on which the trial is scheduled to commence:

(a) Serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities, a copy to be given concurrently to the judge's courtroom deputy;

(b) In jury cases, serve and file proposed *voir dire* questions and forms of verdict at least seven (7) days prior to jury selection;

(c) In court cases, serve and file proposed findings of fact and conclusions of law, a copy to be given concurrently to the judge's courtroom deputy;

(d) Serve and file statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal, a copy to be given concurrently to the judge's courtroom deputy;

(e) Exchange copies or, when appropriate, make available for inspection all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit shall be premarked for identification in a manner clearly distinguishing plaintiff's from defendant's exhibits. Upon request, a party shall make the original or the underlying documents of any exhibit available for inspection and copying.

235-10. Objections to Proposed Testimony and Exhibits; Motions in Limine.

(a) Promptly after receipt of the statements and exhibits pursuant to L.R. 235-9, any party objecting to any proposed testimony or exhibit shall advise the opposing party of such objection. The parties shall confer with respect to any objections in advance of trial and attempt to resolve them.

(b) Any motions *in limine* shall be filed not less than five (5) days prior to the date of trial, unless leave of court is obtained shortening the time for filing.

235-11. Jury Instructions.

All proposed jury instructions are required to be filed and served at least seven (7) calendar days before the trial begins, except for an isolated one or two whose need could not have been foreseen. Jury instructions are to be submitted in the following format:

(a) The parties are required to jointly submit one set of agreed upon instructions. To this end the parties are required to serve their proposed instructions upon each other no later than eighteen (18) calendar days prior to trial. The parties should then meet, confer and submit one complete set agreed upon instructions.

(b) If the parties cannot agree upon one complete set of instructions, they are required to submit one set of those instructions that have been agreed upon, and each party should submit a supplemental set of instructions which are not agreed upon.

(c) It is not enough for the parties to merely agree upon the general instructions, and then each submit their own set of substantive instructions. The parties are expected to meet, confer, and agree upon the substantive instructions for the case.

(d) These joint instructions and supplemental instructions must be filed seven (7) calendar days prior to trial. Each party should then file, five (5) days before trial, its objections to the non-agreed upon instructions proposed by the other party. Any and all objections shall be in writing and shall set forth the proposed instruction in its entirety. The objection should then specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation to authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable the objecting party shall submit an alternative instruction covering the subject or principle of law.

(e) The parties are required to submit the proposed joint set of instructions and proposed supplemental instructions in the following format:

(i) There must be two copies of each instruction;

(ii) The first copy should indicate the number of the proposed instruction, and the authority supporting the instruction; and

(iii) the second copy should contain only the proposed instruction—there should be no other marks or writings on the second copy except for a heading reading "Instruction No. _____" with the number left blank.

(f) On the day of trial the parties may submit a concise argument supporting the appropriateness of each parties' proposed instructions which the other party objected to.

(g) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

(h) Parties should note in jointly agreeing upon instructions that the Court has designated a set of standard instructions, and otherwise generally prefers 9th Circuit Model Jury Instructions over Devitt and Blackmar.

(i) Parties should also note that any modifications of instructions from statutory authority, BAJI, or Devitt and Blackmar (or any other form instructions) must specifically state the modification made to the original form instruction and the authority supporting the modification.

(j) Failure to comply with any of the above instructions may subject the noncomplying party and/or its attorneys to sanctions in accordance with L.R. 100-3.

RULE 240**SETTLEMENT****240-1. Settlement Conferences.**

At any time after an action or proceeding has been filed, any party may file a request for a settlement conference. Such conference may be held before the assigned judge, except that in a non-jury case, the written stipulation of counsel shall be necessary if the judge trying the case conducts the settlement conference. Each party attending such a conference shall be represented by counsel authorized to participate in settlement negotiations.

RULE 245**TRIAL - JURORS AND JURIES****245-1. Civil Juries.**

In all civil actions in which a party is entitled to a jury trial, the jury shall be composed as mandated by Rule 48, Federal Rules of Civil Procedure, as amended.

245-2. Jury Cost Assessment.

Where a civil case set for jury trial is settled or otherwise disposed of, notice of such agreement or disposition shall be filed in the clerk's office at least one (1) full business day before the date on which the case is set; otherwise juror costs, including service fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, except for good cause shown. Where a continuance of a case is applied for on the day set for trial and granted by the court, the payment of juror costs by the party applying for the continuance may be one of the conditions of the continuance unless the continuance was not due to any fault of the moving party.

RULE 260**ORDERS - FINDINGS OF FACT -
CONCLUSIONS OF LAW - JUDGMENTS****260-1. Entry of Judgments and Orders.**

(a) In all cases the notations of judgments and orders in the civil docket by the clerk shall be made at the earliest practicable time. The notations of judgment shall not be delayed pending taxation of costs, but there may be inserted in the judgment a clause reserving jurisdiction to tax and apportion the costs by subsequent order.

(b) Orders under subdivision (a) of this rule will be noted in the civil docket immediately after the clerk has signed them. The clerk may require any party obtaining a judgment or order which does not require approval as to form by the judge to supply him with a draft thereof.

(c) No judgment or order, except orders grantable by the clerk pursuant to authorization by the court and judgments which the clerk is authorized by the Federal Rules of Civil Procedure to enter without direction of the court will be noted in the civil docket until the clerk has received from the court a specific direction to enter it. Unless the court's direction is given to the clerk in open court and noted in the minutes, it should be evidenced by the signature or initials of the judge on the form of judgment or order.

(d) Every order and judgment shall be filed in the clerk's office, and if the clerk so requests, a copy shall also be delivered to the clerk for insertion in the civil order book.

(e) Attorneys shall endeavor to notify the clerk in advance of substantial sums to be deposited as registry account funds, to ensure that the depository has pledged sufficient collateral under Treasury regulations, otherwise, funds will be retained in a non-interest-bearing account pending verification of such pledge. All orders for the deposit of registry account funds in interest-bearing accounts shall contain the following provisions:

1. "IT IS FURTHER ORDERED that counsel presenting this order shall serve a copy thereof on the clerk of this court or his chief deputy personally at the time the money is deposited with the clerk's office. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order. "

2. "IT IS FURTHER ORDERED that the clerk shall deduct from the income earned on the account, a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, equal to the first forty-five (45) days income earned on the account, whenever such income becomes available for distribution. "

(f) Orders distributing registry funds which have accumulated interest income in the amount of \$10.00 or more, shall contain the name, address and social security or taxpayer's identification number of the party or parties entitled thereto.

260-2. Settlement of Judgments and Orders by the Court.

(a) Except as otherwise ordered by the judge, within seven (7) days after the announcement of the decision of the court awarding any judgment or order which requires settlement and approval as to form by the judge, the prevailing party shall prepare a draft of the order or judgment embodying the court's decision and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the judge and to the clerk. Any party receiving the proposed draft of judgment or order shall within five (5) days thereafter serve upon all other parties and mail or deliver to the judge and to the clerk a statement of any objection he or she may have to the proposed draft, the reasons therefor and a substitute proposed draft. Thereafter, the judge shall take such further action as is necessary under the circumstances.

(b) The judgment or order shall be signed or initialed by the judge and shall be the direction to the clerk to enter it.

260-3. Settlement of Findings of Fact and Conclusions of Law.

Except as otherwise ordered by the judge, within seven (7) days after the announcement of the decision of the court awarding judgment in any action tried upon the facts without a jury, including actions in which a jury may have been called and acted only in an

advisory capacity under Rule 39(c), Federal Rules of Civil Procedure, the prevailing party shall prepare a draft of the findings of fact and conclusions of law required by Rule 52(a), Federal Rules of Civil Procedure, and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the judge and to the clerk. Any party receiving the proposed draft of findings of fact and conclusions of law shall within five (5) days thereafter serve upon all other parties and mail or deliver to the judge and to the clerk a statement of any objections he or she may have to the proposed draft, the reasons therefor and a substitute proposed draft of the findings of fact and conclusions of law. The judge shall thereafter take such action as is necessary under the circumstances.

RULE 290

BONDS AND SURETIES

290-1. When Required.

The court, on motion or of its own initiative, may order any party to file an original bond or additional security for costs in such an amount and so conditioned as the court by its order may designate.

290-2. Qualifications of Surety.

Every bond for costs under this rule must have as surety either: (1) a cash deposit equal to the amount of the bond; or (2) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under the act of August 13, 1894 (28 Stat 279), as amended, U.S.C. Title 6 §§ 1-13; or (3) two individual residents of the district, each of whom own real or personal property within the district sufficient in value above any incumbrances to justify the full amount of the suretyship; or (4) any insurance, surety or bonding company licensed to do business in the State of Hawaii.

290-3. Suits as Poor Persons.

At the time application is made, under the Acts of Congress providing for suits by poor persons, for leave to commence any civil action without being required to prepay fees and costs or give security for them, the applicant shall file a written consent that the recovery, if any, in the action, to such amounts as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff and, to plaintiff's attorney, the amount which the court allows or approves as compensation for the attorney's services.

*Ch III.
CIVIL RULES*

CHAPTER III. CRIMINAL RULES

RULE 300

DUTIES OF MAGISTRATE JUDGES

300-1. Duties of Magistrate Judges.

In criminal cases, each United States Magistrate Judge shall exercise all the powers conferred or imposed by law and the Federal Rules of Criminal Procedure and may:

- (a) Exercise general supervision of criminal calendars when requested by a district judge.
- (b) Conduct arraignments, enter not guilty pleas, and schedule trial dates.
- (c) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure.
- (d) Conduct preliminary hearings, removal and necessary procedures leading to potential revocation of probation.
- (e) Preside over misdemeanor cases in accordance with these rules.
- (f) Issue subpoenas, writs of habeas corpus *ad testificandum* or *ad prosequendum* or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings, or to obtain services sought by indigent defendants under the Criminal Justice Act, 18 U.S.C. § 3006A.
- (g) Order the exoneration or forfeiture of bonds.
- (h) Perform all functions specified in 18 U.S.C. §§ 4107, 4108 and 4109 regarding prisoner transfers.
- (i) Hear motions and enter orders relative to mental competency under 18 U.S.C. §§ 4241 *et seq.*
- (j) Conduct all initial bail and detention proceedings pursuant to 18 U.S.C. §§ 3142 *et seq.*
- (k) Conduct hearings on discovery motions and, when designated by the district court, conduct hearings on any other pretrial motions.
- (l) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure.
- (m) Perform any additional duty not inconsistent with these rules or with the Constitution and Laws of the United States.

RULE 301

ASSIGNMENT OF CRIMINAL CASES TO MAGISTRATE JUDGE

301-1. Assignment of Criminal Cases to Magistrate Judge.

(a) **Misdemeanor Cases.** All misdemeanor cases shall be assigned to a magistrate judge upon the filing of an information, complaint or violation notice or upon the return of an indictment.

(b) **Felony Cases.** Upon the return of an indictment for the filing of an information or complaint, all felony cases shall be assigned to a magistrate judge for the conduct of bail or detention proceedings, preliminary hearings, arraignment, and entry of not guilty pleas as are permitted by these rules.

RULE 303

MISDEMEANOR OFFENSES

303-1. Trial of Misdemeanor Offenses.

Subject to the limitation of 18 U.S.C. § 3401, magistrate judges are specifically designated to try persons accused of, and sentence persons convicted of, misdemeanor offenses committed within this district. In addition, magistrate judges may dispose of misdemeanor offenses which are transferred to this district under Rule 20 of the Federal Rules of Criminal Procedure.

303-2. Appeal from Misdemeanor Conviction by Magistrate Judge.

(a) **Notice of Appeal.** Pursuant to 18 U.S.C. § 3402 and Rule 7(b), Rules of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges, a defendant who has been convicted by a magistrate judge may appeal to a district judge by filing a notice of appeal within ten (10) days after entry of judgment.

(b) **Record.** The record on appeal shall consist of the original papers and exhibits filed with the court and the mechanical or stenographic recording of the proceedings. If a reporter was in attendance before the magistrate judge, a transcript, if desired, shall be ordered as prescribed by Rule 10(b) of the Federal Rules of Appellate Procedure. The magistrate judge may, if requested, order that a transcript be prepared from a mechanical recording in which case the transcript will be prepared as directed by the magistrate judge.

Within thirty (30) days after a transcript has been ordered, the original and one copy shall be filed with the magistrate judge and all recordings shall be returned to the magistrate judge. All other documents and exhibits shall be held by the magistrate judge pending the receipt of the transcript.

Upon receipt of the transcript, the record on appeal shall be deemed complete and the magistrate judge shall forthwith transmit the record to the clerk.

If no transcript is ordered within ten (10) days after the notice of appeal is filed or if the parties advise the magistrate judge that no transcript will be ordered, the record on appeal shall be deemed

complete and the magistrate judge shall forthwith transmit the record to the clerk without a transcript.

(c) **Assignment to a District Judge.** The clerk at the time of filing of the record shall assign the appeal to a district judge in the same manner as any indictment and shall notify the parties of the filing of the record and of the time for filing of briefs in accordance with this rule.

(d) **Abbreviated Appeals.** An "abbreviated appeal" may be taken, if elected by the appellant, in which case the appeal will be considered without briefs. In the case of an abbreviated appeal, the appellant shall make an election to proceed by abbreviated appeal at the time of filing notice of appeal and may do so by including the election as part of the notice.

(e) **Briefs.** When the appellant has not elected to proceed without briefs by an "abbreviated appeal," the appellant shall serve and file a brief within twenty-one (21) days after the filing of the record with the clerk. The appellee shall serve and file a responsive brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the brief of the appellee. Each brief shall not exceed twenty (20) pages in length unless otherwise ordered by the court. These periods may be altered by order of the assigned district judge.

(f) **Notice of Hearing.** Oral argument may be scheduled by order of the court.

RULE 304

DECISIONS BY MAGISTRATE JUDGES; APPEAL

304-1. Decision by a Magistrate Judge on Non-Dispositive Pretrial Matters.

(a) **Orders by the Magistrate Judge.** Any non-dispositive pretrial matter assigned to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) shall be decided by a written order filed at least fourteen (14) days prior to the date upon which the case is then set for trial. Any motion still pending within fourteen (14) days of trial, in which no decision or order has been filed, will be deemed to be pending before the district court, and any order or decision must be made by the district court and not by the magistrate judge.

(b) Appeals from a Magistrate Judge's Decision on Non-Dispositive Matters.

1. Any party may appeal from any pretrial non-dispositive matter assigned to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A). Such an appeal shall be entitled "Appeal and Request to the District Court to Reconsider a Pretrial Matter Determined by the Magistrate Judge" and shall be filed within ten (10) days after the filing of the magistrate judge's written order. A memorandum of points and authorities or supporting memorandum of law must be filed in every appeal filed under this section, which memorandum must accompany the filing of the appeal unless the district court, in its discretion, permits a later filing of such memorandum.

2. The clerk shall serve all parties with any written order by the magistrate judge under this rule. It shall be presumed that such orders are received by the parties within three (3) days of mailing by the clerk.

304-2. Dispositive Pretrial Motions.

(a) All dispositive motions in criminal cases shall be heard by a district judge, unless specifically designated to a magistrate judge.

1. In any dispositive motion assigned to a magistrate judge, the magistrate judge must file written proposed findings and recommendations at least fourteen (14) days prior to the date upon which the case is then set for trial. If such proposed written findings and recommendations have not been filed prior to that date, the matter will immediately be set by the clerk of the court for a *de novo* hearing before the district court and no proposed findings and recommendations may be filed by the magistrate judge.

2. The clerk shall serve all parties with copies of reports and recommendations by the magistrate judge under this rule. It shall be presumed that such reports and recommendations are received by the parties within three (3) days of mailing by the clerk.

(b) **Objections to Reports and Recommendations in Dispositive Matters.** A magistrate judge may be assigned dispositive pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(B). Any party who objects to any portion of a magistrate judge's proposed findings and recommendations must serve and file written objections to such proposed findings and recommendations within ten (10) days after being served with a copy of the same. An appropriate statement of points and authorities relied on or memorandum of law must be filed in support of such objections, which statement or memorandum must be filed at the same time as the objections, unless the district court, in its discretion, permits a later filing.

304-3. Shortening of Time to File Appeals and Objections to Decisions by a Magistrate Judge.

If the parties agree, and with the consent of the magistrate judge, the time for appeal from non-dispositive decisions of the magistrate judge, and/or the time for filing objections to proposed findings and recommendations, may be shortened to five (5) days. In such a case, the oral or written order of the magistrate judge described in L.R. 304-1(a) above, or the written proposed findings and recommendations described in L.R. 304-2(a)(1) above, may be issued not less than seven (7) days before the date upon which the trial is then set. The consent of the parties, however, may not operate retroactively, and must be obtained prior to the fourteen (14) days before the date upon which the trial is then set.

304-4. Orders Filed After the Time Provided by This Rule.

Notwithstanding any other provision of these rules, if a magistrate judge makes a written or oral ruling on a non-dispositive pretrial motion after the date set in this rule, such orders or findings shall have the same effect as if they were done in a timely fashion, unless a party makes an objection to their untimely nature to the district court within five (5) days of being served with a copy of the written order, or written proposed findings and recommendations, or of being informed of an oral order.

304-5. Expedited Appeals.

With the exception of L.R. 304-6 governing expedited appeals of detention or release orders, any other provision of these rules notwithstanding, a defendant or the government may file a Notice of an Expedited Appeal to the district court from any oral or written ruling of the magistrate judge. Such a notice shall bear the caption "Notice of Expedited Appeal" and shall be accompanied by a declaration of counsel setting forth the reasons that such an expedited appeal is necessary, together with proof of service on the opposing party.

Upon receipt of the notice, the district court shall promptly determine whether an expedited appeal is justified. If so, it shall set an expedited briefing schedule, or order an immediate hearing of the appeal without briefs.

304-6. Appeal of Detention or Release Orders.

Any party is entitled to an expedited review of, or appeal from, an order of a magistrate judge releasing or detaining a defendant pursuant to the Bail Reform Act of 1984, 18 U.S.C. §§ 3143 *et seq.* Such an appeal or review shall be *de novo*.

In the case of an oral or written order detaining or releasing a defendant, the district court on request of any party shall hear the appeal on the same day the magistrate judge ordered the detention or release except for good cause in which case the appeal shall be heard within twenty-four (24) hours.

304-7. CJA Voucher Reduction.

No judicial officer or clerk shall reduce the payment of any CJA voucher without first communicating the reasons for the reduction in writing to the affected attorney and giving the attorney an opportunity to respond.

RULE 305**BAIL****305-1. Appearance Bond.**

A person required to give bail shall execute the type of bond or promise to appear required by the judicial officer specifying the conditions thereof. The bond or promise to appear shall substantially conform in both form and content to the appropriate form approved by the court.

305-2. Posting Security.

When the release of a defendant is conditioned upon the deposit of cash or other security with the court, such deposit shall be made with the clerk or the marshal, as authorized.

305-3. Types of Bonds in Criminal Cases.

A person charged with a criminal offense in which a secured bond has been required may, in the discretion of the court, furnish in lieu of cash a commercial surety bond or a secured interest in real estate, which shall be referred to as a "property bond."

(a) **Surety Bonds.** Surety bonds for the appearance of a person charged with a criminal offense shall require the execution of a bail bond or equivalent security as provided in L.R. 290-2.

(b) **Property Bonds.** For real property to qualify as adequate security:

1. The real property, whether located within the State of Hawaii or a Sister State, Territory or Commonwealth, must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, in an amount not less than the principal amount of the bail set.

2. The title owner of the property shall furnish a mortgage on the property in favor of the Clerk of the Court and shall deliver to the court such mortgage note as security for the bond.

3. Prior to release of the person charged, the mortgage shall be recorded in the State of Hawaii Bureau of Conveyances or filed with Registrar of the State Land Court. In the event that the property is located in a Sister State, Territory or Commonwealth, the mortgage or deed of trust shall be recorded in the designated office required by the law of such State, Territory or Commonwealth, and evidence thereof shall be furnished to the court.

4. The value of the property must be established by evidence satisfactory to the court.

RULE 310

ARRESTS

310-1. Arrest by Federal Agencies and Others.

It shall be the duty of all federal agencies and others who arrest any person as a federal prisoner in this district to give prompt notice without unnecessary delay to the appropriate pretrial services officer.

When an arrested person is not represented by counsel and requests to be represented by a court-appointed attorney as an indigent, the federal arresting agency shall inform the magistrate judge of the request without unnecessary delay.

RULE 312

APPOINTMENT, APPEARANCE AND WITHDRAWAL OF COUNSEL

312-1. Right to and Appointment of Counsel.

If a defendant appearing without counsel in a criminal proceeding desires to obtain his or her own counsel, a reasonable continuance for arraignment, not to exceed one week at any one time, shall be granted for that purpose. If the defendant requests appointment of counsel by the court, or fails for an unreasonable time to appear with his or her own counsel, the assigned district judge or magistrate judge shall, subject to the applicable financial eligibility requirements, appoint counsel, unless the defendant elects to proceed without counsel and signs and files the court-approved form of waiver of right to counsel. In an appropriate case, the district judge or magistrate judge may nevertheless designate counsel to advise and assist a defendant who elects to proceed without counsel to the extent

the defendant might thereafter desire. Appointment of counsel shall be made in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 on file with the clerk.

RULE 313

APPEARANCE AND WITHDRAWAL OF RETAINED COUNSEL

313-1. Appearance and Withdrawal of Retained Counsel.

An attorney who has been retained and has appeared in a criminal case may thereafter withdraw only upon notice to the defendant and all parties and upon an order of court finding that good cause exists and granting leave to withdraw. Until such leave is granted, the retained attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted, or, if convicted, the time for making post-trial motions and for filing notice of appeal, as specified in Rule 4(b) of the Federal Rules of Appellate Procedure, has expired and until counsel has satisfied the requirements of § 3(d) of the Federal Rules of Appellate Procedure, Appendix.

RULE 320

PLEADINGS AND MOTIONS BEFORE TRIAL

320-1. Standing Order for Routine Discovery in Criminal Cases.

The government and the defendant shall make available discovery materials pursuant to Rules 16 and 26.2 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500, which are within their possession, custody or control, the existence of which is known, or by the exercise of due diligence may become known to the attorneys as hereinafter provided.

(a) **The Government's Duty.** A request for discovery set out in this paragraph and in Rule 16 of the Federal Rules of Criminal Procedure, is entered for the defendant to the government by this rule so that the defendant need not make a further request for such discovery. If the defendant does not request such discovery, he or she shall file a notice to the government that he or she does not request such discovery within five (5) days after arraignment. If such a notice is filed, the government is relieved of any discovery obligations to the defendant imposed by this paragraph or Rule 16 of the Federal Rules of Criminal Procedure. If the defendant does not file such a notice, within seven (7) days after arraignment unless otherwise ordered by the court or promptly upon subsequent discovery, the government shall permit the defendant to inspect and copy or photograph, or, in the case of the defendant's criminal record, shall furnish a copy, and provide the information listed in the subparagraphs enumerated immediately below. Upon providing the information required by this paragraph, the government shall file and serve notice of compliance with discovery mandated under this paragraph.

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government;

2. The substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after the arrest in response to interrogation by any person then known to the defendant to be a government agent;

3. Recorded testimony of the defendant before a grand jury which relates to the offense charged;

4. A copy of the defendant's prior criminal record, if any, which is within the possession, custody or control of the government;

5. All books, papers, documents, photographs, tangible objects, buildings or places, or copies of portions thereof, which are within the possession, custody or control of the government, and that are material to the preparation of the defense or are intended for use by the government as evidence in chief at trial, or were obtained from or belong to the defendant;

6. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial;

7. Brady material, as it shall be presumed that defendant has made a general *Brady v. Maryland*, 373 U.S. 83 (1963) request. Specific requests shall be made in writing to the government or by motion;

8. Photographs used in any photograph line-up, show-up, photospread or any other identification proceeding or if no such photographs can be produced, the government shall notify the defendant whether any such identification proceeding has taken place and the results thereof;

9. Any search warrants and supporting affidavits which resulted in the seizure of evidence which is intended for use by the government as evidence in chief at trial or which was obtained from or belongs to the defendant;

10. Advise whether the defendant was the subject of any electronic eavesdrop, wiretap, or any other communications of wire or oral interception as defined by 18 U.S.C. §§ 2510, *et seq.*, in the course of the investigation of the case.

(b) **The Defense Duty.** Unless the defendant has filed notice that he or she does not request discovery under Paragraph (a) of this rule or Rule 16 of the Federal Rules of Criminal Procedure, or unless otherwise ordered by the court, within thirty (30) days after the filing of the notice of compliance with discovery under Paragraph (a) above, or promptly on subsequent discovery, the defendant shall: (1) inform the government if any of the following exists; and (2) permit the government to inspect and copy or photograph the information listed in the subparagraphs enumerated immediately below. Upon providing the information required by this paragraph, the defendant shall file and serve notice of compliance with discovery mandated under this paragraph.

1. All books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial;

2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the

possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial;

3. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, or intends to introduce expert testimony relating to a mental disease, defect or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall give written notice thereof to the government and file a copy of such notice with the clerk.

(c) **Continuing Duty to Disclose.** If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) **Sanctions for Failure to Comply with Request.**

1. **Against a Party.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such order as it deems just under the circumstances.

2. **Against an Attorney for a Party.** If at any time during the course of the proceedings it is brought to the attention of the court that an attorney for a party has unjustifiably failed to comply with this rule, which failure was after a specific request for compliance with this rule by opposing counsel specifically for the material which is the subject of non-compliance, in addition to the sanctions imposed against the party as provided above, the court may punish any such counsel or attorney with a fine not exceeding \$250.00. The imposition of such a fine is not to be deemed a finding of contempt.

(e) **Statement of Witnesses.**

1. **Order of Production.** Production of statements of witnesses by the government and the defendant pursuant to Rule 26.2 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500 is hereby ordered.

2. **Time of Production.** Statements of witnesses including material covered by Rule 6, Federal Rules of Criminal Procedure, under this rule are to be exchanged:

(i) During the time of trial as provided by Rule 26.2 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500 or,

(ii) At any time if the parties agree.

(f) **Statements of Witnesses at Suppression Hearing.** Production of statements of witnesses at a hearing on a motion to suppress evidence will be governed by Rule 12(i) of the Federal Rules of Criminal Procedure.

(g) **Impeachment Material.**

1. **Order of Production.** The production of the following is hereby ordered: Cooperation agreements, plea agreements, impeachment material, promises of leniency, under *Giglio v. United*

States, 405 U.S. 150 (1972) and its progeny, and records of criminal convictions which may be admissible under Rule 609 of the Federal Rules of Evidence.

2. **Time of Production.** Impeachment material under this rule shall be provided as ordered by the court.

(h) **Further Discovery Not Covered by This Rule.**

1. **Further Discovery.** Discovery of all material not ordered pursuant to this rule shall be by motion.

2. **Time for Filing Further Discovery Motions.**

(i) **By the Defendant.** Any defense motions for additional discovery shall be filed no later than ten (10) days after the government files notice of compliance with discovery under paragraph (a) of this rule. Such motions may only be filed after this time when (1) the motion sets forth the specific facts and circumstances giving rise to good cause for filing out of time and (2) where the court finds good cause is in fact shown.

(ii) **By the Government.** Any government motions for additional discovery shall be filed no later than ten (10) days after the defendant files notice of compliance with discovery under paragraph (b) of this rule. Such motions may only be filed after this time when (1) the motion sets forth the specific facts and circumstances giving rise to good cause for filing out of time and (2) where the court finds good cause is in fact shown.

RULE 325

HEARINGS ON NON-DISCOVERY PRETRIAL MOTIONS

325-1. Hearings on Non-Discovery Pretrial Motions.

All dispositive motions shall be heard by a district judge and all non-dispositive matters shall be heard by a magistrate judge, except as otherwise provided or unless otherwise ordered by a district judge. Dates for hearings shall be set, except for good cause shown, between the 40th and 50th days following arraignment. In cases involving defendants arraigned on substantially different dates, the court shall make appropriate adjustments regarding the date of the hearing.

325-2. Memoranda in Support of or in Opposition to Motions.

(a) **Memoranda in Support of Motions.** Each party filing any motion shall file, and serve the adverse party with, an accompanying memorandum setting forth a brief and complete statement of the facts and all points and authorities upon which he or she intends to rely unless the facts, points and authorities are included in the motion.

(b) **Memoranda in Opposition to Motions.** Each party opposing any motion shall serve the adverse party with and file a memorandum in opposition to the motion that includes a brief and complete statement of the facts and all points and authorities upon which he or she intends to rely.

(c) **Non-Opposition.** The party not opposing a motion shall file a statement of no opposition within the time provided for responding to the motion.

(d) **Notice, Time for Reply.** With the exception of motions to continue trial, motions in limine and oral motions made during the course of the trial, all motions, absent leave of court for good cause shown, shall be filed and served not less than eighteen (18) days prior to the hearing date. Except for good cause shown, all responses shall be filed and served not less than six (6) calendar days prior to the hearing date and any reply to the opposition shall be filed and served not less than four (4) calendar days prior to the hearing date.

(e) **Other Motions Prior to Plea.** Nothing in this rule prohibits the filing and hearing of appropriate motions prior to plea.

325-3. Local Civil and Magistrate Judge Rules Applicable to Motions.

The local rules pertaining to civil motions are applicable to motions in criminal cases, specifically L.R. 220-5 (Length of Briefs and Memoranda), L.R. 220-7 (Filing and Lodging of Extra Copies) and L.R. 220-9 (Related and Counter Motions).

RULE 330

JURY INSTRUCTIONS

330-1 Jury Instructions.

See the text of Chapter II, Civil Rules, L.R. 235-11 which text and rule is incorporated herein in its entirety.

RULE 340

PRETRIAL CONFERENCE

340-1. Pretrial Agenda.

The trial district judge shall conduct at least one pretrial conference. Where practicable, such conference shall be held no later than seven (7) calendar days prior to trial. Other pretrial conferences may be conducted by the trial district judge at the request of any of the parties or on the court's own motion. The agenda at the pretrial conference shall consist of any or all of the following items, so far as practicable:

(a) Date of production of statements or reports of witnesses under the Jencks Act, 18 U.S.C. § 3500;

(b) Date of production of grand jury testimony of witnesses intended to be called at the trial;

(c) Date of production of evidence favorable to the defendant on the issue of guilt or punishment, as required by *Brady v. Maryland*, 373 U.S. 83 (1963) and related authorities and impeachment material, cooperation agreements, plea agreements, promises of leniency and records of criminal convictions, required by *Giglio v. United States*, 405 U.S. 150 (1972) and its progeny;

(d) Stipulation of facts that may be deemed proved at the trial without further proof by either party;

- (e) Appointment by the court of interpreters under Rule 28 of the Federal Rules of Criminal Procedure;
- (f) Dismissal of certain counts and elimination from the case of certain issues, e.g., insanity, alibi, and statute of limitations;
- (g) Severance of trial as to any co-defendant or counts, and joinder of any related cases;
- (h) Use or identification of informant, use of line-up or other identification procedures, use of evidence of prior convictions of defendant or of any witness;
- (i) Pretrial resolution of objections to exhibits or testimony to be offered at trial;
- (j) Preparation of trial briefs on controversial points of law likely to arise at trial;
- (k) Scheduling of the trial and of witnesses;
- (l) Submission of jury instructions and *voir dire* jury questions;
- (m) The government's intention to introduce evidence of other crimes, wrongs or acts under Rule 404(b) of the Federal Rules of Evidence;
- (n) Whether there are percipient witnesses whom the government does not intend to call in its case-in-chief.

340-2. Disclosure of Witnesses and Exhibits.

Except for good cause shown, the parties shall at a pretrial conference conducted at least seven (7) calendar days prior to trial:

- (a) Exchange the names of witnesses intended to be called to testify at trial in each respective case-in-chief;
- (b) Exchange lists of exhibits and copies of the documentary exhibits.

340-3. Pretrial Orders.

After conducting the pretrial conference, the trial district judge may make such pretrial order or orders relating to any of the matters discussed.

RULE 350

POST TRIAL PLEADINGS AND MOTIONS

350-1. Responses to Motions for Reconsideration and Reduction of Sentence.

No response to a motion for a reduction of sentence is required unless requested by the court. A motion for reduction of sentence will ordinarily not be granted in the absence of such a request.

RULE 360

SENTENCING PROCEDURE

360-1. Sentencing Procedure.

The following rules apply in all cases where presentence investigations and reports are ordered by a district judge or magistrate judge:

(a) To assist the court in fulfilling the standards for acceptance of plea agreements as set forth in the Sentencing Commission Guidelines (Section 6B1.2), the parties shall be responsible for the following:

1. In Rule 11(e)(1)(A) of the Federal Rules of Criminal Procedure, plea agreements wherein the agreement includes dismissal of charges or an agreement not to pursue potential charges, the written plea agreement shall include a statement, on the basis of the information then known by the parties, as to why the remaining charges adequately reflect the seriousness of the actual offense behavior and why accepting the agreement will not undermine the statutory purposes of sentencing;

2. In Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure, plea agreements wherein the agreement includes a nonbinding sentencing recommendation, the written plea agreement shall include a statement, on the basis of the information then known by the parties, that the recommended sentence is within the applicable guideline range, or shall set forth justifiable reasons why the recommended sentence departs from the presumed applicable guideline range;

3. In Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, plea agreements wherein the agreement includes a specific sentence which is binding upon the court, the written plea agreement shall include a statement, on the basis of the information then known by the parties, that the recommended sentence is within the applicable guideline range, or shall set forth justifiable reasons why the recommended sentence departs from the presumed applicable guideline range.

(b) As part of the plea agreement, it is appropriate for the parties to stipulate to factors which affect the sentence computation. Any such stipulation shall be set forth in the manner prescribed by Section 6B1.4 of the Sentencing Commission Guidelines.

(c) A presentence investigation and report to the court will be conducted before the imposition of sentence, except as otherwise permitted by Section 6A1.1 of the Sentencing Commission Guidelines. The defendant may not waive preparation of a presentence report. The probation officer shall report the facts disclosed by the presentence investigation in the presentence report, and the parties shall not be permitted to stipulate to the elimination of relevant facts from the report.

(d) The parties shall review the completed presentence report and offer their respective objections. The probation officer will then revise the report where appropriate and attempt to resolve disputed facts. To provide sufficient time for this process, the sentencing date, except for good cause, shall be set not less than ninety-eight (98) calendar days following an adjudication.

(e) No less than thirty-five (35) calendar days prior to the sentencing date, the probation officer shall provide a copy of the proposed presentence report to counsel for the government and to counsel for the defendant. Defense counsel shall be responsible for disclosing the report to the defendant. The presentence report shall be deemed to have been provided to counsel when a copy of the report is physically delivered or one (1) day after the report's availability is orally communicated or three (3) days after a copy of the report is mailed.

(f) Within fourteen (14) calendar days after receiving the report, counsel for the defendant and the government shall file their sentencing statement(s) which shall include objections, if any, concerning factual information, sentencing classification, sentencing guideline ranges and policy statements which remain in dispute. A copy shall be submitted to the Probation Department and served upon all other counsel. Counsel for the government and counsel for the defendant shall seek to resolve the controverted issues with respect to the contents of the report or items omitted therefrom. Each sentencing statement will also include:

1. All sentencing factors, facts and other matters material to sentencing that remain in dispute, including a statement, and calculation if appropriate, showing how the dispute affects the calculation of the applicable guidelines range.

2. Whether an evidentiary hearing is requested and, if so, an estimate of the time required for such hearing and a summary of the evidence to be produced.

Upon receipt of any such objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that are deemed necessary.

(g) Not less than eleven (11) calendar days prior to the sentencing date, the completed presentence report shall be submitted to the court and to all parties. This report shall be accompanied by an addendum setting forth any objections raised by counsel which are unresolved and any written materials provided by counsel in support of their respective positions. Any earlier proposed presentence reports furnished to counsel shall be returned to the probation officer.

(h) At or prior to the sentencing hearing, the court shall address each controverted matter pursuant to Rule 32(c)(3)(D), Federal Rules of Criminal Procedure, and make a tentative finding as to each such matter or make a determination that no such finding is necessary because the controverted matter will not be taken into account in sentencing. The parties shall be prepared at the sentencing hearing to proceed with evidence and argument for the resolution of any remaining disputed matters upon which the court intends to rely. The court shall provide a reasonable opportunity to the parties for the submission of oral or written objections to the court's findings and determinations. For good cause, the court may continue the sentencing hearing for a reasonable time.

(i) The courtroom deputy shall be responsible for recording the court's findings and determinations, and shall prepare an appropriate minute order, which will thereafter be appended to all copies of the presentence report. A transcript of the court's findings and determinations at the sentencing hearing may be filed as the required minute order.

(j) Except as otherwise ordered by the court, all copies of presentence reports that have been furnished to counsel shall be returned to the probation officer upon the expiration of the time within which to appeal. A copy of the completed presentence report shall be filed with the clerk of the court

and kept under seal as part of the record of the case. A copy of the confidential recommendation of the U.S. Probation Officer shall be filed and sealed separately and shall not be disclosed to anyone other than the presiding judge.

(k) In the case of a *pro se* defendant, reference to counsel for defendant shall be taken to refer to the *pro se* defendant.

(l) Except for good cause, any motion for a departure pursuant to the Sentencing Guidelines shall be filed not less than fifteen (15) days prior to the scheduled sentencing date. A copy of a motion for a departure, as well as any sentencing memorandum, shall be served on the Probation Department.

RULE 370

THE DISTRICT COURT ALWAYS IN SESSION

370-1. The District Court Always in Session.

The district court shall always be in session. The chief judge shall establish an evening and weekend duty roster for judicial officers, one of whom shall be available twenty-four (24) hours a day for the purpose of emergencies, including, but not limited to, warrant applications and bail hearings. The emergency duty phone number shall be listed by the clerk and shall be available to all members of the bar.

CHAPTER IV. MAGISTRATE JUDGE RULES

RULE 401

GENERAL POWERS

401-1. Jurisdiction Under 28 U.S.C. § 636(a).

Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

- (a) Exercise all the powers and duties conferred or imposed on United States magistrate judges by law and the Federal Rules of Criminal Procedure;
- (b) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits and depositions;
- (c) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

401-2. Disposition of Misdemeanor Cases — 18 U.S.C. § 3401.

A magistrate judge may:

- (a) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;
- (b) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case;
- (c) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and Laws of the United States;
- (d) Dispose of minor offenses which are transferred to this district under Rule 20 of the Federal Rules of Criminal Procedure.

401-3. Determination of Non-Dispositive Pretrial Matters — 28 U.S.C. § 636(b)(1)(A).

Unless otherwise ordered, a magistrate judge shall hear and determine any pretrial motions including discovery motions in a civil or criminal case, other than the motions which are specified in L.R. 401-4.

401-4. Determination of Case-Dispositive Pretrial Matters — 28 U.S.C. § 636(b)(1)(B).

- (a) A district judge may designate a magistrate judge to hear and determine and to submit to a district judge of the court proposed findings of fact and recommendations for the disposition, by a district judge, the following pretrial motions in civil and criminal cases:
 - 1. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
 - 2. Motions for judgment on the pleadings;

3. Motions for summary judgment;
4. Motions to dismiss or permit the maintenance of a class action;
5. Motions to dismiss for failure to state a claim upon which relief may be granted;
6. Motions to dismiss an action involuntarily;
7. Motions made by a defendant to dismiss or quash an indictment or information;
8. Motions to suppress evidence in a criminal case.

(b) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

401-5. Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255.

A magistrate judge may perform any or all of the duties imposed upon a United States district judge by the rules governing proceedings in the United States district courts under 28 U.S.C. §§ 2254 and 2255. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a United States district judge a proposed order containing findings of fact and recommendations for disposition of the petition by the United States district judge. Any order disposing of the petition may only be made by a United States district judge.

401-6. Prisoner Cases Under 42 U.S.C. § 1983.

A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a United States district judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

401-7. Special Master References, Motions for Attorneys' Fees and Related Nontaxable Expenses.

A magistrate judge may be designated by a United States district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a United States district judge to serve as special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

Unless otherwise ordered by a district judge, the magistrate judge designated to handle non-dispositive matters in a civil case is, in accordance with 28 U.S.C. § 636(b)(2) and Rules 53, 54(d)(1)(A), and 54(d)(2)(D) of the Federal Rules of Civil Procedure, designated to serve as special master to adjudicate any motion for attorneys' fees and related nontaxable expenses filed in the civil case. The motion for attorneys' fees and related nontaxable expenses shall be accompanied by a declaration itemizing with particularity the fees and expenses to which that party claims to be entitled. Such itemization should include, if practicable and not privileged, copies of time sheets and invoices.

401-8. Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties — 28 U.S.C. § 636(c).

Upon the consent of the parties, a full-time magistrate judge or a part-time magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he or she serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in 28 U.S.C. § 631(b)(1) and the chief district judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one United States district judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the United States district judges of such district court, and when there is no such concurrence, then by the chief district judge.

A magistrate judge is also authorized to:

- (a) Exercise general supervision of the civil calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the United States district judge;
- (b) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil cases;
- (c) Conduct *voir dire* and select petit juries for the court;
- (d) Accept petit jury verdicts in civil cases in the absence of a United States district judge;
- (e) Issue subpoenas or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (f) Order the exoneration or forfeiture of bonds;
- (g) Conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);
- (h) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;
- (i) Conduct naturalization hearings, but all orders from any naturalization hearing shall be submitted to a United States district judge of this court for approval;
- (j) Grant motions to dismiss in civil cases when authorized by statute or rule and when such dismissal is within the jurisdiction of the magistrate judge;
- (k) Perform any additional duty not inconsistent with the Constitution and Laws of the United States.

RULE 402

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

402-1. Civil Cases.

(a) Upon filing, civil cases shall be assigned by the clerk to a magistrate judge. The magistrate judge shall hear and determine pretrial motions made pursuant to L.R. 401-3.

(b) Where designated by a United States District Judge, the magistrate judge may conduct additional pretrial conferences and hear the motions and perform the duties set forth in L.R. 401-4 through 401-6.

(c) Where the parties consent to trial and disposition of a case by a magistrate judge under L.R. 401-8, such case shall be set before the magistrate judge for the conduct of all further proceedings and the entry of judgment.

402-2. General.

Nothing in these rules shall preclude the court or a United States district judge from reserving any proceedings for conduct by a United States district judge, rather than a magistrate judge. The court, moreover, may by general order modify the method of assigning proceedings to a magistrate judge as changing conditions may warrant.

RULE 403

PROCEDURES BEFORE THE MAGISTRATE JUDGE

403-1. In General.

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes, rules, and to the general procedural rules of this court.

403-2. Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties —28 U.S.C. § 636(c)(2).

(a) **Notice.** The clerk shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(b) **Execution of Consent.** The clerk shall not accept a consent form unless it has been signed by all the parties or their respective counsel in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk. No consent form will be made available, nor will its contents be made known to any judicial officer, unless all parties have consented to the reference to a magistrate judge. No judicial officer or other court official may

attempt to persuade or induce any party to consent to the reference of any civil matter to a magistrate judge.

RULE 404

REVIEW AND APPEAL

404-1. Appeal of Non-Dispositive Matters — 28 U.S.C. § 636(b)(1)(A).

A magistrate judge may hear and determine any pretrial matter pending before the court, except those motions delineated in L.R. 401-4(a). Any party may appeal from a magistrate judge's order determining a motion or matter under L.R. 401-3 within ten (10) days after issuance of the magistrate judge's order. Such party shall file with the clerk, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. Any party in interest may file a response within ten (10) days after having been served with a copy thereof. Each of the above ten (10) day periods may be altered by the magistrate judge or a United States district judge. Oral argument will not be scheduled unless requested by the court. A United States district judge shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The United States district judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this rule.

404-2. Review of Recommendations for Disposition — 28 U.S.C. § 636(b)(1)(B).

Any party may object to a magistrate judge's case dispositive proposed order, findings, or recommendations under L.R. 401-4, 401-5 and 401-6 within ten (10) days after being served with a copy thereof. Such party shall file with the clerk, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed order, findings, or recommendations to which objection is made and the basis for such objections. Any party may respond to another party's objections within ten (10) days after being served with a copy thereof. Each of the above ten (10) day periods may be enlarged by a United States district judge. A United States district judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The United States district judge, however, will not conduct a new hearing unless required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The United States district judge may exercise discretion to receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

404-3. Special Master Reports — 28 U.S.C. § 636(b)(2).

Any party may seek review of, or action on, the special masters report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

404-4. Appeal from Judgments in Misdemeanor Cases — 18 U.S.C. § 3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal within ten (10) days after entry of judgment. The procedure and scope of

appeal shall be the same as on an appeal from a judgment of the district court to the United States Court of Appeals.

404-5. Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties — 28 U.S.C. § 636(c).

(a) **Appeal to the Court of Appeals.** Subject to provisions of 28 U.S.C. § 636(c), upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. § 636(c) and L.R. 401-8, an aggrieved party may appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of this court.

(b) **Appeal to a United States District Judge.**

1. **Notice of Appeal.** In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a United States district judge rather than directly to the United States Court of Appeals for the Ninth Circuit. In such case the appeal shall be taken by filing a notice of appeal with the clerk within thirty (30) days after entry of the magistrate judge's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty (60) days of entry of the judgment. For good cause shown, the magistrate judge or a district judge may extend the time for filing the notice of appeal for an additional twenty (20) days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for new trial is timely filed, the time for appeal from the judgment of the magistrate judge shall be extended to thirty (30) days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

2. **Service of the Notice of Appeal.** The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.

3. **Record on Appeal.** The record on appeal to a United States district judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).

4. **Memoranda.** Within thirty (30) days of the filing of the notice of appeal the appellant shall file and serve a typewritten memorandum with the clerk, together with two (2) additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellees shall file and serve an answering memorandum within thirty (30) days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

5. Disposition of the Appeal by a United States District Judge. The United States district judge shall consider the appeal on the record in the same manner as if the case had been appealed from a judgment of the district court to the Court of Appeals for the Ninth Circuit and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings.

404-6. Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule or decisional law.

RULE 409

DEFINITIONS

409-1. Definitions Under 28 U.S.C. § 639.

As used in this chapter—

- (a) "Full-time magistrate judge" shall mean a full-time United States magistrate judge;
- (b) "Part-time magistrate judge" shall mean a part-time United States magistrate judge;
- (c) "United States magistrate judge" and "magistrate judge" shall mean both full-time and part-time United States magistrate judges.

CHAPTER V. [RESERVED]

CHAPTER VI. ADMIRALTY RULES

RULE 600

SCOPE AND DEFINITIONS

600-1. Scope.

The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

600-2. Officers of Court.

As used in the local admiralty rules, "judicial officer" means a United States district judge or a United States magistrate judge; "clerk of court" means the Clerk of the District Court and includes deputy clerks of court; and "marshal" means United States Marshal and includes deputy marshals.

RULE 601

ATTACHMENT AND GARNISHMENT

601-1. Affidavit that Defendant Is Not Found Within the District.

The affidavit required by Supplemental Rule B(1) to accompany the complaint shall list the efforts made by and on behalf of plaintiff to find and serve the defendant within the district.

RULE 602

ACTIONS *IN REM*: SPECIAL PROVISIONS**602-1. Undertaking in Lieu of Arrest.**

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for his foregoing the arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with local rules and has been approved by a district judge or clerk.

602-2. Intangible Property.

The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than ten (10) days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause

shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants of the property may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to or retained by the court.

602-3. Notice of Action and Arrest.

(a) **Publication.** The notice required by Supplemental Rule C(4) shall be published once in a newspaper to be specified by the United States District Court for the District of Hawaii, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

1. The court, title, and number of the action;
2. The date of arrest;
3. The identity of the property arrested;
4. The name, address and telephone number of the attorney for plaintiff;

5. A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6) must be filed with the clerk and served on the attorney for plaintiff within ten (10) days after publication;

6. A statement that an answer to the complaint must be filed and served within twenty (20) days after publication, and that otherwise, default may be entered and condemnation ordered;

7. A statement that applications for intervention under Rule 24 of the Federal Rules of Civil Procedure, by persons claiming maritime liens or other interests, shall be filed within the time fixed by the court; and

8. The name, address and telephone number of the marshal.

(b) **Filing of Proof of Publication.** Plaintiff shall cause to be filed with the clerk no later than thirty (30) days after the date of publication sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

602-4. Default in Action *In Rem*.

(a) **Notice Required.** A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given: (1) by publication as required in L.R. 602-3; (2) by service upon the master or other person having custody of the property; and (3) by service, under Rule 5(b) of the Federal Rules of Civil Procedure, upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) **Persons with Recorded Interests.** (1) If the defendant property is a vessel documented under the laws of the United States, the plaintiff must attempt to notify all persons named in the United

States Coast Guard certificate of ownership. (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority. (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

602-5. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. Default will be entered upon showing that:

- (a) notice has been given as required by L.R. 602-4(a); and
- (b) notice has been attempted as required by L.R. 602-4(b), where appropriate; and
- (c) the time for answer has expired; and
- (d) no one has appeared to claim the property.

Judgment may be entered, under Rule 55(b) of the Federal Rules of Civil Procedure, at any time after default has been entered.

RULE 603

POSSESSORY, PETITORY, AND PARTITION ACTIONS

603-1. Return Date.

In an action under Supplemental Rule D, a judicial officer may order that the claim and answer be filed on a date earlier than twenty (20) days after arrest. The order may also set a date for expedited hearing of the action.

RULE 604

ACTIONS *IN REM* AND *QUASI IN REM*: GENERAL PROVISIONS

604-1. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under Supplemental Rule B or C, except a demand for salvage award, shall allege the dollar amount of the debt of damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

604-2. Verification of Pleadings.

Every complaint in Supplemental Rule B, C, and D actions shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is reasonably available within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall

state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

604-3. Review by Judicial Officer.

(a) **Authorization to Issue Process.** Except in actions by the United States for forfeitures, before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under supplemental Rules B and C, the pleadings, the affidavit required by L.R. 601-1, and accompanying supporting papers must be reviewed by a judicial officer. If the judicial officer finds the conditions set forth in Rules B or C appear to exist, as appropriate, the judicial officer shall authorize the clerk to issue process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

(b) **Exigent Circumstances.** If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

(c) **Personal Appearance.** Unless otherwise required by the judicial officer, the review by the judicial officer will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) **Order.** Upon approving the application of arrest, attachment or garnishment, the judicial officer will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment, or garnishment. The form of the order of arrest, attachment, or garnishment shall be submitted with the other documents for review.

(e) **Request for Review.** Except in the case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with Supplemental Rule B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judicial officer to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed and, upon approval, presented to the clerk for issuance of the appropriate order.

604-4. Process Held in Abeyance.

If a party does not wish the process to be issued at the time of filing the action, the party shall request issuance of process be held in abeyance. It will not be the responsibility of the clerk or marshal to ensure that process is issued at a later date.

604-5. Service by Marshal Required.

Only a marshal shall arrest or attach a vessel, cargo or other tangible property.

604-6. Instructions to the Marshal.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal.

604-7. Property in Possession of United States Officer.

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody to the property until ordered to do otherwise by a judicial officer.

604-8. Security for Costs.

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$500. 00. The party so ordered shall post the security with the clerk at the time the process is presented to the clerk for filing. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

604-9. Adversary Hearing.

The adversary hearing following arrest or attachment or garnishment that is called for in Supplemental Rule E(4)(f) shall be conducted upon three (3) days' written notice to plaintiff, unless otherwise ordered. This Rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to 46 U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

604-10. Appraisal.

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed that it is a taxable cost of the action.

604-11. Security Deposit for Arrest or Attachment of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance, and insurance for at least ten (10) days. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E.

604-12. Intervenor's Claims.

(a) **Presentation of Claim.** When a vessel or other property has been arrested, attached or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. The clerk shall forthwith deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Intervenor's shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) **Sharing Marshal's Fees and Expenses.** An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If the plaintiff permits vacation of an arrest, attachment, or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

604-13. Custody of Property.

(a) **Safekeeping of Property.** When a vessel, cargo or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

(b) **Insurance.** The marshal may procure insurance to protect the marshal, the deputies, keepers and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo or other property, and in performing whatever services may be undertaken to protect the vessel, cargo or other property, and to maintain the court's custody. The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in custody of the court.

(c) **Vessel Operations.** Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of

the applicant to indemnify the marshal for liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel or other operations. Before or after the marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer shall require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) **Claims by Suppliers for Payment of Charges.** A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the clerk in the form of a verified claim at any time before the vessel, cargo or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

604-14. Sale of Property.

(a) **Notice.** Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a district judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least six (6) days before the date of sale.

(b) **Payment of Bid.** Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of the full purchase price if it does not exceed \$500.00, and otherwise \$500.00 or 10 percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check within three (3) days after confirmation of the sale or within three (3) days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in, the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than ten (10) days prior to the date of sale.

(c) **Confirmation of Sale.** A sale shall be confirmed by order of the court within five (5) court days but no sooner than three (3) court days after the sale unless an objection to the sale has been filed, in which case the court shall hold a hearing on the confirmation of the sale. The marshal shall transfer title to the purchaser upon the order of the court.

(d) **Penalty for Late Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed under these rules, or a different time specified by the court, shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

(e) **Penalty for Default in Payment of Balance.** A successful bidder who fails to pay the balance of the bid within the time allowed is in default, and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) **Opposition to Sale.** A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also, prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least five (5) days. Pending the court's determination of the opposition, such party shall also advance any further expense at such time and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) **Disposition of Deposits.**

1. **Objection Sustained.** If an objection is sustained, sums deposited by the successful bidder shall be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

2. **Objection Overruled.** If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(h) **Title to Property.** Failure of a party to give the required notice of the action and arrest of the vessel, cargo or other property, or required notice of the sale, may afford ground for objecting to the sale but does not affect the title of a bona fide purchaser of the property without notice of the failure.

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CHAPTER VII. BANKRUPTCY RULES

TITLE AND APPLICABILITY OF RULES

7-001. **Scope of Rules; Short Title; Construction.**

(a) **Scope of Rules.** The Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms, promulgated under 28 U.S.C. § 2075, together with these local rules govern practice and procedure in all bankruptcy cases and adversary proceedings in this district. These rules supersede all previous local bankruptcy rules for the District of Hawaii.

(b) **Relationship to District Court Rules.** These rules constitute Chapter VII of the Local Rules of the United States District Court for the District of Hawaii and each rule is therefore preceded by the prefix "7". They may be cited as "L.R. 7-__."

(c) **Relationship to Federal Rules of Bankruptcy Procedure.** These rules are divided into nine parts to be consistent in format with the Federal Rules of Bankruptcy Procedure. These rules supplement the Federal Rules of Bankruptcy Procedure and they shall be construed so as to be consistent with those rules and to promote the just, efficient, and economical determination of every bankruptcy case and adversary proceeding. In certain instances where there is a relationship between a local rule and a particular Federal Rule of Bankruptcy Procedure, a corresponding rule number is utilized and a reference to the Federal Rule of Bankruptcy Procedure is included at the end of the local rule.

(d) **Relationship to Federal Rules of Civil Procedure.** Whenever a Federal Rule of Civil Procedure is incorporated, it shall be incorporated as modified by the Federal Rules of Bankruptcy Procedure.

(e) **Amendment.** Local rules incorporated from other chapters of these local rules shall be the rules in effect on the effective date of these rules and as such other local rules are thereafter amended, unless otherwise provided by such amendment or by these rules.

(f) **Effective Date.** These rules shall apply to all bankruptcy cases and adversary proceedings pending on the date of adoption.

7-002. **Applicability of Rules.**

(a) **Incorporation of Rules from Other Chapters.** Except as hereinafter set forth or otherwise ordered by the court, the following rules from other chapters of these local rules shall apply in all bankruptcy cases and adversary proceedings:

- (1) 110-1(d) *Pro Hac Vice*;
- (2) 110-5 Sanctions for Unauthorized Practice;
- (3) 110-6 Gratuities;
- (4) 110-8 Supervised Student Practice of Law;
- (5) 120-1 Applicability of Rule; Effect of Noncompliance;

- (6) 120-2 Form; Copy;
- (7) 120-3 Amended Pleadings;
- (8) 120-4 Stipulations;
- (9) 125-2 Disposition of Exhibits and Depositions;
- (10) 130-1 Broadcasting, Televising, Recording, or Photographing
Judicial and Grand Jury Proceedings (first sentence only);
- (11) 220-5 Length of Briefs and Memoranda;
- (12) 220-6 Affidavits and Declarations;
- (13) 220-8 Uncited Authorities; and
- (14) 260-1 Entry of Judgments and Orders by the Court.

References in the incorporated rules to the United States District Court, the judge, the clerk, or "civil actions or proceedings" shall be treated as references to the United States Bankruptcy Court the bankruptcy judge, the clerk of the Bankruptcy Court, or to "bankruptcy cases or adversary proceedings," as the case may be.

(b) **Modification.** The court may, in any bankruptcy case or adversary proceeding, direct that additional local rules from other chapters apply.

PART I. SESSIONS OF THE COURT; FILING OF PETITIONS AND PLEADINGS

7-101. Sessions of the Court.

(a) **Sessions.** The court shall be in continuous session in Honolulu, Hawaii, and as required in Wailuku, Hilo, Kailua-Kona, and Lihue, Hawaii.

(b) **Filing.** Documents shall be filed with the clerk of the Bankruptcy Court. The clerk's office is located at 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, 96813.

7-102. Petitions.

(a) Captions of Petitions.

(1) Captions shall conform to the requirements of Fed.R.Bankr.P. 1005. In addition, the chapter of the Bankruptcy Code under which the case is filed shall be indicated in parentheses directly beneath the case docket number.

(b) Names.

(1) If debtor is an individual: The full name shall be used, followed by all names, assumed names, trade names, or designations by or under which the debtor is or has been known or has conducted any business within the six (6) years preceding the filing of the petition. (Reference Fed.R.Bankr.P. 1005)

(2) If debtor is a general partnership: The words "a (domicile) general partnership" shall follow the name.

(3) If debtor is a limited partnership: The words "a (domicile) limited partnership" shall follow the name.

(4) If debtor is a corporation: The words "a (domicile) corporation" shall follow the name.

(c) **Petition Filed by a Corporation.** When a voluntary petition is filed by a corporation, there shall be attached to the petition as an exhibit the original or a copy of a resolution of the board of directors or equity security holders, authorizing the filing of the petition.

(d) **Petition Filed by a Partnership.** When a voluntary petition is filed by a partnership, there shall be attached to the petition, as an exhibit, a verified document evidencing the consent of all general partners to the filing of the petition.

(e) **List of Creditors.**

(1) A voluntary petition shall be accompanied by a matrix of names and addresses of all creditors, if known, and, if applicable, all equity security holders. (The form of the matrix is available from the clerk of the Bankruptcy Court.)

(2) The list of creditors and equity security holders may be submitted in an electronic form, such as tape or disk, acceptable to the clerk of the Bankruptcy Court.

7-103. Format of Pleadings and Papers.

(a) **Caption Requirements.** In addition to the information generally required by these rules, the caption of each paper filed in a bankruptcy case or adversary proceeding shall contain all of the following information:

(1) The chapter of the Bankruptcy Code under which the case is currently pending; and

(2) The date and time of the hearing or trial, where applicable, and the name of the presiding judge.

(b) **Court Automation Requirements.** The clerk of the Bankruptcy Court is authorized to promulgate such additional requirements for papers as may be necessary to comply with court automation systems.

7-104. Number of Copies.

(a) **Initial Documents.** The petition, statements, schedules, and lists required by Fed.R.Bankr.P. 1002, 1003, 1004, and 1007 shall be filed in the following numbers:

(1) Chapter 7 - an original and 4 copies.

(2) Chapter 9 - an original and 6 copies (7 for a corporation).

(3) Chapter 11 - an original and 6 copies (7 for a corporation).

(4) Chapter 12 - an original and 4 copies.

(5) Chapter 13 - an original and 4 copies.

(b) **All Other Documents.** All documents, other than those identified in subsection (a), shall be filed in an original and two (2) copies.

(c) **Conformed Copies of Documents.** Only one conformed copy of filed documents will be returned to counsel.

7-105. Related Cases.

(a) **Notice of Related Cases.** In the event there are related bankruptcy cases, the debtor shall file a Notice of Related Cases at the time of filing of the petition, and shall serve a copy of the notice upon the U.S. Trustee. The notice shall list the name, filing date, and case docket number of any related cases.

(b) **Definition of Related Cases.** Related cases shall include cases commenced by: spouses; a partnership and one or more of its general partners; two or more general partners; two or more debtors having an interest in the same asset; and affiliates.

7-106. Amendments.

(a) **Amendment of Petition, Lists, Schedules, or Statements.**

(1) A party filing an amended petition, list, schedule, or statement shall give notice of the amendment to all parties in interest and serve a copy of the notice of commencement of the case, the meeting of creditors, and any deadlines set by the court upon all added parties.

(2) When presented for filing, all amended lists and schedules must be accompanied by a certificate evidencing compliance with subsection (a)(1).

(b) **Exemptions.** If the schedule of exemptions is amended, the amending party shall serve a copy of the amendment upon all creditors and other parties in interest, including the case trustee and the U.S. Trustee.

PART II. ADMINISTRATION; PROFESSIONAL FEES

7-201. Mail Redirection.

(a) **Consent of Debtor.** The filing of a petition under Title 11 by a debtor engaged in business is deemed to be the debtor's consent to mail redirection by the interim trustee and the trustee.

(b) **Objection by Debtor.** If the debtor does not consent to mail redirection, the debtor shall file a written objection with the clerk of the Bankruptcy Court. Upon the filing of the debtor's objection, the court shall promptly set a hearing on notice to the debtor, the trustee, and the U.S. Trustee. After the filing of the objection, and pending order of court, the redirection shall continue, but the trustee shall hold, and not open, the debtor's mail.

7-202. Designation of Responsible Individual For Corporation or Partnership Debtor.

(a) Every corporate or partnership debtor or debtor-in-possession shall designate a natural person to be responsible for performing the duties and obligations of the debtor or debtor-in-possession. The designation shall include the responsible individual's name, address, telephone number, and position within the organization.

(b) If the duties are to be shared by two or more individuals, the responsibilities of each shall be specified.

(c) The designation shall be filed with the petition, or promptly thereafter. When the designation is filed, it shall be accompanied by each designated individual's consent to the designation.

(d) Unless the court otherwise orders, at least one of the responsible individuals must reside in the District of Hawaii.

7-203. Funds of the Estate.

(a) **Account Identification.** The signature card (or if there is none, the depository agreement) for any account containing funds which are the property of a bankruptcy estate must clearly indicate that the depositor or investor is a "debtor-in-possession" or a trustee in bankruptcy.

(b) **Registry Account Funds.** When the court orders or approves holding of funds by the clerk of the Bankruptcy Court as registry account funds, counsel shall give to the clerk of the Bankruptcy Court reasonable advance notice of the amount to be deposited. Any requests that funds be held in a particular type of account or designated depository must be delivered to the clerk of the Bankruptcy Court in writing.

7-204. Monthly Operating Reports.

(a) **Cases in Which Reports Are Required.** Monthly operating reports shall be filed by the trustee or debtor-in-possession in the following cases:

- (1) All cases under Chapter 11 and Chapter 12;
- (2) Chapter 7 cases, where a business is being operated by the trustee;
- (3) Chapter 13 business cases, if the court so orders.

(b) **Filing Deadline.** In a case for which a monthly operating report is required pursuant to subparagraph (a) of this rule, the report shall be filed no later than the 20th day of the month following the month to which the report pertains. A separate report must be filed for each calendar month, or portion thereof, during which the case is pending, up to and including the month in which an order of confirmation or dismissal is entered.

(c) **Service of Reports.** A copy of each monthly report shall be served, no later than the day upon which it is filed with the court, upon the U.S. Trustee, the chair and counsel of record of each committee of creditors and each committee of equity security holders appointed by the U.S. Trustee,

and such other persons or entities as may be ordered by the court. In a Chapter 12 or Chapter 13 case, service of a copy of each monthly report also must be made on the case trustee.

(d) Form and Content of Reports.

(1) Unless the court otherwise orders, monthly operating reports shall include an accrual basis profit and loss statement, a balance sheet, and a statement of receipts and disbursements.

(2) Any motion to modify this requirement shall be served on all parties upon whom the monthly operating report is required to be served.

(e) Certificate of Counsel. Monthly operating reports filed with the court shall be accompanied by a certificate of counsel. The certificate shall affirmatively state that counsel has reviewed the report and that it has been prepared in compliance with this local rule. Counsel's certificate shall not be deemed to be a representation by counsel that the entries contained in the report are accurate or that the report has been prepared in compliance with applicable accounting standards and principles.

7-215. Debtor's Books and Records.

(a) Voluntary Cases. In a case filed pursuant to 11 U.S.C. § 301 or § 302, the books and records of the debtor shall be closed on the day immediately preceding the day on which the petition is filed, whether or not a separate estate is created for tax purposes. Prepetition liabilities shall be segregated and reported separately from postpetition liabilities.

(b) Involuntary Cases. In a case filed pursuant to 11 U.S.C. § 303, the books and records of the debtor shall be closed on the day on which relief is ordered or an interim trustee is appointed, whichever occurs first. Notwithstanding the foregoing, liabilities incurred before the commencement of the case shall be segregated and, in the event relief is granted, reported separately from liabilities incurred after the commencement of the case.

7-216. Professional Fees and Expenses.

The court, in consultation with a committee appointed by the Bankruptcy Law Section of the Hawaii State Bar Association and the Assistant U.S. Trustee for this district, may adopt and, as needed, revise guidelines concerning the allowance and disallowance of professional fees and reimbursement of expenses and the contents and format of applications for compensation filed pursuant to 11 U.S.C. §§ 330(a) and 331 and Fed.R.Bankr.P. 2016(a). A copy of the guidelines shall be available in the office of the clerk of the Bankruptcy Court. (Reference Fed.R.Bankr.P. 2016)

PART III. CLAIMS; DISCLOSURE STATEMENTS AND PLANS

7-303. Chapter 9 and 11 Claims and Interests.

Unless the court otherwise orders, proofs of claim or interest required to be filed by Fed.R.Bankr.P. 3003 shall be filed within ninety (90) days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. § 341. Notice of the deadline for the filing of proofs of claim or interest shall be included by the clerk of the Bankruptcy Court in the notice of commencement of the case. (Reference Fed.R.Bankr.P. 2002(a)(1) and 2002(a)(8); 3003(c))

7-307. Objections to Claims.

Where a factual dispute is involved, the initial hearing on an objection to the allowance of a claim shall be deemed a status conference at which the court will not receive evidence or testimony. Where the objection involves only a matter of law, the judge may allow the matter to be argued at the initial hearing. Any notice of hearing on an objection to the allowance of a claim shall include a statement of the substance of this rule. (Reference Fed.R.Bankr.P. 3007)

7-315. Chapter 13 Plans.

(a) **Notice by Debtor.** Not less than 25 days before the first date set for the confirmation hearing, and in addition to the filing and service requirement of Rule 3015(b) and (d) of the Federal Rules of Bankruptcy Procedure, copies of the Chapter 13 Plan and a Plan Summary shall be served by the debtor upon all parties in interest. The debtor shall certify to the court that service has been made in accordance with this rule and pursuant to Fed.R.Bankr.P. 2002(b).

The Plan Summary for a Chapter 13 Plan shall include the following information:

- (1) the number of unsecured creditors and the total amount of all unsecured claims;
- (2) the number of secured creditors and the total amount of all secured claims;
- (3) the proposed percentage payment to unsecured creditors under the plan;
- (4) the proposed duration of payments under the plan; and
- (5) the estimated percentage payment to unsecured creditors upon liquidation.

(b) **Amended Chapter 13 Plans.** Amendments to a Chapter 13 Plan shall be submitted in the form of an amended plan which restates the entire Plan. The first amended plan shall be titled First Amended Chapter 13 Plan. Subsequent plans, if any, shall be sequentially titled. Not less than twenty-five (25) days before the hearing to consider confirmation of the Amended Plan, the debtor shall serve the Amended Plan and an Amended Plan Summary on all parties in interest and the trustee along with notice of the continued meeting of creditors and confirmation hearing.

(c) **Objections.** Not less than seven (7) days prior to the scheduled confirmation hearing on a Chapter 13 Plan, a creditor objecting to confirmation shall file with the court and serve upon the debtor, the debtor's counsel, and the trustee any written objections to confirmation, stating the basis for the objection. Except for an objection based upon information revealed at a meeting of creditors held less than ten (10) days prior to the confirmation hearing, the court may disregard any objections to confirmation which have not been filed and served in accordance with this rule.

(d) **Confirmation Orders.** Proposed orders confirming Chapter 13 plans must contain the written approval of the Chapter 13 trustee. (Reference Fed.R.Bankr.P. 3015)

7-317. Chapter 11 Disclosure Statement Hearing.

Unless the court otherwise orders, the plan proponent shall comply with the following procedures:

(a) Notice of the disclosure hearing shall be served on all parties in interest. The notice shall contain the information required by Official Form No. 12 and, unless the court orders otherwise, shall state that the deadline for the filing of objections to the disclosure statement is seven (7) days prior to the hearing.

(b) The proposed plan and proposed disclosure statement shall be served only on the debtor, the United States Trustee, and the persons designated in Bankruptcy Rule 3017(a).

(c) A certificate of service showing compliance with this rule must be filed at least three (3) business days prior to the hearing.

(d) Three (3) business days prior to the hearing (and any continued hearing), the plan proponent shall advise the court by telephone whether the proponent intends to go forward with the hearing.

(e) In the event the plan proponent receives an objection to the disclosure statement, the proponent and the objecting party must confer and make a good faith effort to resolve the objection.

(f) A plan proponent desiring a continuance of the hearing on a disclosure statement shall appear at the scheduled hearing to request a continuance.

(g) The plan proponent may establish that the disclosure statement meets the applicable requirements of Bankruptcy Code Sections 1125(a) and (b) by offer of proof, declaration or, if the court so requires, live testimony. In all cases, a witness competent to testify must be present. Briefs are not required.

(h) At the conclusion of the disclosure hearing, counsel for the plan proponent shall be prepared to advise the court of the amount of court time the confirmation hearing will require. If a contested confirmation hearing is anticipated, the court will entertain requests that scheduling procedures be established concerning the filing of briefs, exchange and marking of exhibits, disclosure of witnesses and discovery.

(i) Upon approval of the disclosure statement, the plan proponent shall submit to the court a proposed Order Approving Disclosure Statement and notice, containing the information required by Official Form No. 13. At the hearing, counsel shall be prepared to advise the court concerning the proposed date for the confirmation hearing and deadlines to be included in the order.

7-320. Chapter 11 Confirmation Hearing.

(a) Unless the court otherwise orders, the plan proponent shall comply with the following procedures:

(1) All ballots and a ballot tabulation showing the percentages of acceptances and rejections for each impaired class, in number and dollar amount, must be filed at least three (3) business days prior to the confirmation hearing. The tabulation should also identify any unimpaired classes.

(2) A certificate of service of the plan, disclosure statement, official ballot, and Order Approving Disclosure Statement must be filed at least three (3) business days prior to the confirmation hearing.

(3) Three (3) business days prior to the hearing (and any continued hearing), the plan proponent shall advise the court by telephone whether the proponent intends to go forward with the hearing.

(4) The plan proponent and any party objecting to confirmation shall make a good faith effort to confer prior to the confirmation hearing regarding disputed issues and the conduct of the confirmation hearing.

(5) A plan proponent desiring a continuance of the confirmation hearing shall appear at the scheduled hearing to request a continuance.

(6) If the plan has been accepted by the requisite majorities and no objections to confirmation have been filed, the plan proponent may establish that the plan meets the applicable requirements of Chapter 11 by offer of proof, declaration, or, if the court so requires, live testimony. In all cases, a witness competent to testify must be present. (Reference Fed.R.Bankr.P. 3020)

(b) Unless the court otherwise orders, any objections to confirmation of the plan must be filed not later than seven (7) days prior to the confirmation hearing.

7-322. Chapter 11 Final Decree.

At the confirmation hearing, the proponent of the plan shall advise the court when all post-confirmation court proceedings can be completed. The court may set deadlines for filing reports and an application for a final decree. (Reference Fed.R.Bankr.P. 3022)

PART IV. THE DEBTOR: DUTIES AND BENEFITS

7-401. Motions For Relief From Stay.

(a) Procedure and Supporting Documents.

(1) Motion.

(A) Unless the court otherwise orders, a motion for relief from the automatic stay shall not be combined with any other request.

(B) A motion for relief from the automatic stay shall describe the relief sought and shall be accompanied by the declaration of an individual, competent to testify, which sets forth the factual basis for the motion.

(2) Notice.

(A) The moving party shall obtain a hearing date and give notice of the hearing as required by Bankruptcy Rule 4001(a)(1). Service shall be made by placing the notice and motion in the mail on the day the motion is filed or by hand delivering the notice and motion within twenty-four (24) hours of the filing of the motion. If the motion seeks to

enforce a lien, notice shall be given to all other creditors, known to the moving party, who claim a security interest in the same collateral.

(B) The notice shall contain the following in bold print or in all capital letters:

IF YOU OPPOSE THE RELIEF SOUGHT IN THIS MOTION, YOU MUST FILE A STATEMENT OR MEMORANDUM, SETTING FORTH THE GROUNDS FOR SUCH OPPOSITION, WITHIN 12 DAYS AFTER THE DATE THIS MOTION WAS FILED. YOUR OPPOSITION STATEMENT OR MEMORANDUM MUST BE SERVED ON THE MOVING PARTY BY MAIL ON THE SAME DAY IT IS FILED OR BY HAND DELIVERY WITHIN 24 HOURS OF FILING. FAILURE TO FILE AN OPPOSITION STATEMENT OR MEMORANDUM WILL RESULT IN THE GRANTING OF THE RELIEF SOUGHT WITHOUT HEARING.

(C) No order for relief from the automatic stay will be entered pursuant to this rule unless the moving party has complied with the notice provisions of subsections (2)(A) and (2)(B).

(3) Opposition Statement and Reply.

(A) A debtor, trustee, or other party in interest opposing a motion for relief from the automatic stay shall file with the court, within twelve (12) days after the filing of the motion, a statement setting forth the party's opposition and the grounds therefor. The opposition statement shall be served on the moving party, and the parties referred to in L.R. 7-401(a)(2)(A), by mail on the same day it is filed or by hand delivery within twenty-four (24) hours of filing.

(B) If no opposition statement is timely filed, then the moving party shall promptly lodge an appropriate order. The court will enter such order or notify the parties that the scheduled hearing will be held. The order shall state that there will be no enforcement of any deficiency judgment without further order of the Bankruptcy Court.

(C) If an opposition statement is timely filed, the moving party may file a memorandum, declarations, or other materials in reply not later than three (3) days before the hearing. The reply materials shall be served by telefacsimile or hand delivery within twenty-four (24) hours of filing upon all parties who filed an opposition statement.

(b) **Oral Testimony.** Unless the court otherwise orders, no oral testimony will be received by the court at any hearing on a motion for relief from stay. (Reference Fed.R.Bankr.P. 4001)

7-403. Exempt Property.

Orders Setting Apart Exempt Property. If no objection to a claim of exemption has been made within the time provided in Fed.R.Bankr.P. 4003 (b), the court may, at any time, without a hearing and without reopening the case, enter an order approving claimed exemptions and setting apart exempt property as claimed.

PART V. COURTS AND CLERKS**7-511. General Reference.**

(a) **General Reference.** Pursuant to 28 U.S.C. § 157(a), all cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges of this district, except as provided in paragraph (b) of this rule.

(b) **Pending District Court Proceedings.** Any civil proceeding arising in or related to a case under Title 11 that is pending in the district court on the date the Title 11 case is filed shall be referred to a bankruptcy judge only upon order of the district judge before whom the proceeding is pending. Such an order may be entered upon the motion of a party, the district judge's own motion, or upon the recommendation of a bankruptcy judge.

(c) **Automatic Stay.** Nothing in this rule shall modify any automatic stay imposed by Title 11 U.S.C. §§ 362(a), 922, 1201(a), or 1301(a). (Reference Fed.R.Bankr.P. 5011)

7-512. Withdrawal of Reference.

A motion to withdraw the reference of a case or proceeding shall be filed with the clerk of the district court. (Reference Fed.R.Bankr.P. 5011)

PART VI. COLLECTION AND LIQUIDATION OF THE ESTATE**7-604. Motions for Authority to Sell Free and Clear of Liens or Other Interests.**

(a) **Procedure.** A motion for authority to sell free and clear of liens or other interests under 11 U.S.C. § 363(f) shall identify by name, immediately below the caption, the holder of the lien or other interest whose property rights are or may be affected by the motion. The holders of the affected liens or other interests shall be served with a complete set of moving papers pursuant to Fed.R.Bankr.P. 7004(b).

(b) **Supporting Papers.** The motion shall be supported by the declaration of an individual, competent to testify, which sets forth the factual basis for the motion and which demonstrates that the moving party satisfies one or more of the conditions established by 363(f)(1)-(5). The motion shall identify which subsection of 363(f) the moving party claims to satisfy and shall be supported, unless the court otherwise orders, by a current Uniform Commercial Code financing statement report, with respect to personal property, and a current title report, with respect to real property, or other satisfactory evidence of the status of the title to the real or personal property which is the subject of the motion. (Reference Fed.R.Bankr.P. 6004, 9014, and 7004)

7-606. Motions to Assume or Reject Executory Contracts.**(a) Assumption and Rejection.**

(1) Notice of a motion or stipulation to assume, reject, or assign an executory contract or unexpired lease shall be served upon: (1) those entities known to the movant to be entitled to receive notice of a default, termination, or assignment of the contract or lease under the terms of the contract or lease itself or under the terms of any related contract with the debtor; (2) in a Chapter 9 or Chapter 11 case, the creditors that hold the 20 largest unsecured claims or the chair

and counsel of record of each committee of creditors and each committee of equity security holders appointed by the U.S. Trustee, if any have been appointed; and (3) those entities entitled to notice under Fed.R.Bankr.P. 6006(c).

(2) Any party seeking assumption of an executory contract or unexpired lease shall be prepared to present evidence and testimony concerning the ability of the debtor or trustee to meet the obligations imposed by such executory contract or unexpired lease.

(b) **Compelling Performance of Obligations.** Unless the court otherwise orders, notice of a motion to compel performance of a lease of non-residential real property or to extend the time for performance under 11 U.S.C. § 365(d)(3) shall be served upon: (1) all parties to such lease; (2) those entities known to the movant to be entitled to receive notice of a default, termination, or assignment of the lease under the terms of the lease itself or under the terms of any related contract with the debtor; (3) in a Chapter 9 or Chapter 11 case, the creditors that hold the 20 largest unsecured claims or the chair and counsel of record of each committee of creditors and each committee of equity security holders appointed by the U.S. Trustee, if any have been appointed; and (4) those entities entitled to notice under Fed.R.Bankr.P. 6006(c).

(c) **Extensions.** Unless the court otherwise orders, notice of any motion under 11 U.S.C. § 365(d)(4) to extend the 60-day period to assume or reject an unexpired lease of nonresidential real property shall be served only on those entities entitled to receive notice of a default, termination, or assignment under the terms of the lease itself or under the terms of any other contract with the debtor, and to the chair and counsel of record of each committee of creditors and each committee of equity security holders appointed by the U.S. Trustee, if any have been appointed. (Reference Fed.R.Bankr.P. 6006)

PART VII. ADVERSARY PROCEEDINGS

7-701. Incorporation of Rules.

(a) **Incorporation of Other Rules.** Unless the court otherwise orders, the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms, together with the following rules of practice from other chapters of the Local Rules of the District Court for the District of Hawaii shall apply in all adversary proceedings:

- (1) The rules incorporated by L.R. 7-002;
- (2) 110-7 Appearances, Substitutions, and Withdrawal of Attorneys;
- (3) 210-1 Service of Process;
- (4) 220-2 Notice, Hearing, Motion, and Supporting Papers;
- (5) 220-3 Deadline for Hearings on Dispositive Motions;
- (6) 220-4 Opposition and Reply;
- (7) 220-9 Related and Counter Motions;
- (8) 220-10 Motions for Summary Judgment;

- (9) 220-11 Motions to Reconsideration;
- (10) 220-12 Motions to Continue Trial;
- (11) 230-1 Disclosures; Discovery Limitations and Commencement; Meeting of Parties;
- (12) 230-2 Nonfiling of Discovery Materials;
- (13) 230-3 Depositions: Original Transcripts;
- (14) 230-4 Abuse of or Failure to Make Discovery; Sanctions;
- (15) 230-5 Written Responses to Discovery Requests;
- (16) 235-1 through 235-11 Pretrial and Setting for Trial, except for 235-6;
- (17) 290-1 through 290-2 Bonds and Sureties.

(b) **Modification.** The court may direct that additional local rules apply.

7-702. Cover Sheet.

Every complaint initiating an adversary proceeding shall be accompanied by a completed Adversary Proceeding Cover Sheet in a form prescribed by the clerk of the Bankruptcy Court. Adversary Proceeding Cover Sheets are available in the clerk's office.

7-703. Statement of Non-Opposition

If a motion in an adversary proceeding is unopposed, the respondent shall file a statement of non-opposition not later than the date when the opposition may be filed pursuant to L.R. 220-4.

PART VIII. APPEALS

7-804. Record on Appeal.

The record on appeal shall include a transcript of the hearing(s) resulting in the order or judgment from which the appeal is taken or a summary thereof agreed upon by all parties.

7-805. Processing of Bankruptcy Appeals.

(a) At any time before an appeal has been docketed in the district court as provided in Fed.R.Bankr.P. 8007, the bankruptcy court is authorized and directed, on motion of a party or its own motion:

- (1) to dismiss an appeal filed after the time specified in Fed.R.Bankr.P. 8002;
- (2) to dismiss an appeal in which appellant has failed to file a designation of the items for the record or a statement of the issues as required by Fed.R.Bankr.P. 8006;
- (3) to hear, under Fed.R.Bankr.P. 9006(b), motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record.

(b) Bankruptcy court orders entered under subsection (a) may be reviewed by the district court on motion filed within 10 days after entry of the order sought to be reviewed.

PART IX. GENERAL PROVISIONS

7-910. Representation

(a) **Attorneys.** Unless admitted *pro hac vice*, attorneys who appear in this court shall be in good standing and shall have been admitted to practice before the United States District Court for the District of Hawaii.

(b) **Pro se.** Individuals may appear *pro se*, under such conditions as the court may impose, and shall notify the clerk of the Bankruptcy Court in writing of their names, their mailing and residence addresses, and their telephone numbers, and shall keep the clerk of the Bankruptcy Court and opposing parties and counsel informed by proper written notice of changes in the addresses or telephone numbers or both. All such notices shall be indexed and filed in the matrix and the case docket.

(c) **Artificial Entities.** A corporation, partnership, or any entity other than a natural person may not appear as a party in an adversary proceeding or a contested matter or as a debtor in a bankruptcy case except through counsel admitted to practice in this district.

(d) **Chapter 11 Cases.** A corporation, partnership, or any entity other than a natural person may not serve as a debtor-in-possession in a Chapter 11 case unless represented by counsel appointed by the court pursuant to 11 U.S.C. § 327(a).

(e) **Excepted Matters.** Nothing herein shall preclude a corporation, partnership, or any entity other than a natural person from filing a proof of claim, an application for compensation, or a reaffirmation agreement, or from appearing at a meeting of creditors through an officer or other authorized agent. (Reference Fed.R.Bankr.P. 9010)

(f) **Appearances.** The filing of any document in a bankruptcy case or adversary proceeding shall constitute an appearance by the attorney who signs the document.

(g) **Substitution of Counsel.**

(1) Counsel appointed with court approval pursuant to 11 U.S.C. § 327 may be replaced by substitute counsel only with court approval. An application for substitution of counsel shall include the same documentation required for approval of the original appointment.

(2) Except as provided in subdivision (g)(1) of this rule, court approval is not required for substitution of counsel. Substitution may be accomplished by filing a notice of substitution of counsel which shall contain the signatures of both the original and substituting counsel and the client.

(3) Notice of substitution of counsel shall be given to all parties and separately filed in all adversary proceedings in which the substitution is effective.

(h) **Withdrawal of Counsel.** Withdrawal of counsel for the debtor, trustee, or any committee shall require approval by the court. The court for good cause shown may authorize the withdrawal of such counsel upon such notice and hearing as the court may require. The motion shall be accompanied by an affidavit or declaration of counsel stating the reasons for the withdrawal and shall be noticed to the client. An individual appearing *pro se* after withdrawal of counsel must comply with subsection (b) of this rule. Counsel for parties other than the debtor,

trustee, or a committee may withdraw by filing a notice of withdrawal and serving a copy of such notice on the client and all other parties.

7-913. Certificate of Service

A certificate of service upon counsel shall identify counsel's client; provided that the failure to identify a client on the certificate of service shall not mean that such client has not been served or not received notice. (Reference Fed.R.Bankr.P. 9013).

7-914. Case Motions and Objections.

(a) **Matters Covered by Rule.** This Rule shall apply to any motion, application, or objection with respect to which the Bankruptcy Code provides that relief may be obtained after "notice and a hearing," but does not apply to: (1) motions for relief from the automatic stay; (2) proceedings that must be initiated by complaint under Fed.R.Bankr.P. 7001 (adversary proceedings) or motions therein; and (3) matters that may properly be presented to a judge *ex parte*.

(b) Hearing Required.

(1) Unless the court otherwise orders, the following matters shall be set for hearing:

(A) Motions governed by Fed R. Bankr. P. 4001;

(B) Hearings on applications for compensation or reimbursement in excess of \$500, other than applications for compensation of appraisers, auctioneers and real estate brokers;

(C) All motions to convert or dismiss unless the debtor can so move as a matter of right and except for a motion by the Office of the United States Trustee pursuant to Bankruptcy Code § 1112(e);

(D) Motions to appoint a trustee or an examiner;

(E) Motions to sell property free and clear of liens;

(F) Hearings on Chapter 11 disclosure statements, and confirmation hearings in cases under Chapter 11, 12 and 13 and;

(G) Objections to a debtor's claim of exemption.

(2) With court approval, any matter within the scope of this Rule may be set for hearing.

(3) Except where a different time period is provided by the Federal Rules of Bankruptcy Procedure, these rules, or court order, service shall be made at least 28 days before the hearing date, any opposition must be filed and served on the party requesting relief at least 18 days prior to the hearing date, and any reply must be filed and served not less than 11 days before the hearing date.

(4) A Chapter 7 trustee may, without necessity of an order shortening time, set for hearing on 10 days notice any motion to sell personal property of the estate free and clear of, or subject to, liens, if the subject property is situated on leased premises.

(c) Notice and Opportunity for Hearing.

(1) Unless otherwise ordered, a party in interest may file a request for relief, without setting a hearing, regarding any matter within the scope of this rule, other than those matters set forth in subparagraph (b)(1).

(2) The notice shall state conspicuously, on the first page, that:

(A) Any objection or request for hearing must be filed and served within 15 days of mailing of the notice and state with particularity the basis of the objection or request for hearing;

(B) Unless an objection or request for hearing is filed and served in a timely manner, the court may enter an order granting the requested relief by default; and

(C) If there is a timely objection or request for hearing, the moving party will give at least 15 days written notice of hearing to the requesting party, any trustee, any committee appointed in the case, and any other parties directed by the court.

(3) If an objection or request for hearing is filed and the motion is set for hearing, the moving party may file and serve a reply memorandum not later than seven (7) days prior to the hearing.

(4) If notice is given in compliance with this rule and no interested party objects or requests a hearing, the moving party shall file a request for entry of order by default with the clerk and shall submit a proposed order. The request shall be accompanied by an affidavit or declaration regarding the date and place of mailing of the notice, the addresses to which it was mailed and the lack of response.

7-921. Settlement of Judgments, Orders, Findings of Fact and Conclusions of Law.

(a) Unless the court otherwise orders, within seven (7) days after the announcement of a decision by the court which is to be embodied in a judgment or order, the prevailing party shall prepare a draft of the judgment or order and circulate it for approval as to form by all parties who appeared at the hearing. If any party who appeared at the hearing fails or refuses to approve the proposed judgment or order as to form within seven (7) days after receipt thereof, the prevailing party shall submit the proposed judgment or order to the court and give notice of such submission to all parties who appeared at the hearing. Any party receiving such notice who objects to the proposed form of judgment or order shall, within five (5) days after service of the notice, serve upon all other parties and submit to the court a statement of any objections he or she may have to the proposed judgment or order, the reasons therefor, and an alternate proposed judgment or order. Thereafter, the court shall take such further action as is appropriate in the circumstances.

(b) Within seven (7) days after the announcement of the decision of the court on any matter in which the court is required or elects to enter written findings of fact and conclusions of law, the prevailing party shall prepare a draft of the findings of fact and conclusions of law, and circulate the same for approval as to form by all parties who appeared at the hearing. If any party who appeared at the hearing fails or refuses to approve the proposed findings of fact and

conclusions of law as to form within seven (7) days after receipt thereof, the prevailing party shall submit the proposed findings of fact and conclusions of law to the court and give notice of such submission to all parties who appeared at the hearing. Any party receiving such notice shall, within five (5) days after service of the notice, serve upon all other parties and submit to the court a statement of any objection he or she may have to the proposed findings of fact and conclusions of law, the reasons therefor, and alternate proposed findings of fact and conclusions of law. Thereafter, the court shall take such further action as is appropriate in the circumstances.