CIVIL JUSTICE REFORM ACT PLAN
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

November 18, 1993

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I. INTRODUCTION:

The United States District Court for the District of Hawaii adopts this Civil Justice Expense and Delay Reduction Plan pursuant to the requirements of Section 471 of the Civil Justice Reform Act (CJRA) of 1990. In developing this plan, the Court has carefully evaluated and considered the report of the CJRA Advisory Group for the District of Hawaii and the recommendations contained therein. The Court has also considered the principles and guidelines of litigation management, and cost and delay reduction techniques contained in Sections 473(a) and 473(b) of the Act.

The Advisory Group, whose membership includes twenty-three persons representing a wide range of the legal profession and business community, devoted a substantial amount of energy and personal time in studying the Court's current docket, identifying sources of unnecessary cost and delay in civil litigation, and exploring possible means of reducing these costs and delays. The Court acknowledges these personal commitments and expresses its gratitude to the members individually, and collectively, for their assistance.

II. GENERAL PRINCIPLES OF THE PLAN

The purpose of this plan is to state specific procedures and techniques that the Court will implement to minimize unnecessary delay and expense of litigation within this district. The plan is not limited to procedural matters, as the Court is very cognizant of the fact that non-procedural principles are essential to any endeavor to reduce cost and delay. Accordingly, in implementing this plan, the Court will continue to evaluate the most efficient methods of utilizing existing court resources. The Court will periodically examine, in coordination with the Advisory Group, the overall workload of the Court to determine if it is of a type that requires action by an Article III Judge, or whether it may be more efficiently handled by delegation to the Magistrate Judges, law clerks, or support staff personnel.

The Court shall direct the Clerk of Court to proceed with the present program of updating the Court's automation plan to increase efficiency and accuracy of all court records, thereby reducing the time spent in administration of routine tasks.

The Court recognizes that reducing delays in civil litigation will require greater effort on the part of litigants, counsel, and the Court itself. Accordingly, the Judges and Magistrate Judges of this Court shall continue to rule promptly, as is consistent with a careful review of the issues and interests of justice, on all matters brought before the Court. The Court, however, will retain flexibility in all actions

contained within this plan to ensure that rigid enforcement of any portion of the plan does not increase the costs of litigation, or create an injustice for any party.

III. COMPLIANCE WITH THE STATUTORY LANGUAGE OF THE CIVIL JUSTICE REFORM ACT: 28 U.S.C. 473(a)(1-6)

Section 473(a), CJRA, sets forth the requirement that each United States District Court, in consultation with its Advisory Group, consider the specific inclusion of certain principles and guidelines of litigation management, and cost and delay reductions in their plan. Appendix A to this plan contains the Court's comment as to each of the six suggested principles and guidelines contained in Section 473(a).

IV. COMPLIANCE WITH THE STATUTORY LANGUAGE OF THE CIVIL JUSTICE REFORM ACT: 28 U.S.C. 473(b)(1-6)

Section 473(b), CJRA, sets forth the requirement that each United States District Court, in consultation with its Advisory Group, shall consider, and may include, certain litigation and management and cost and delay reduction techniques. Appendix B to this plan contains the Court's evaluation and comment concerning each of the five suggested techniques contained in Section 473(b).

V. RECOMMENDATIONS OF THE ADVISORY GROUP

The Advisory Group made twenty-four specific recommendations to the Court dealing with management, cost and delay reductions that the Advisory Group recommended for consideration in the Court's plan. Appendix C to this plan contains each recommendation, the Court's response, and proposed action as to each recommendation.

VI. SPECIFIC ACTIONS TO BE TAKEN BY THE COURT

1. EARLY AND ONGOING INVOLVEMENT OF ALL JUDICIAL OFFICERS IN THE PRETRIAL PROCESS, DISCOVERY, SETTLEMENT, AND MAINTENANCE OF FIRM TRIAL DATES.

a. The Court shall continue to emphasize its current policies, procedures, and orders concerning all procedural steps to be taken, at the earliest practical date, to insure that judicial actions are completed in a timely manner. Rule 16 conferences will continue to be held within 90 days after a complaint is filed.

b. Trial dates shall be set at the earliest available date on the presiding Judge's calendar. Every effort shall be made, in civil litigation, to initially set every case for a trial date to begin not more than 12 months after a complaint is filed; absent extraordinary circumstances, such as agreement between the parties that the complexity of the case requires a longer period before trial.

c. Mandatory pretrial and settlement conferences in all civil litigation cases shall be held on a regularly scheduled

basis. All parties will be held to compliance with the district's Scheduling Conference Order as set forth in Attachment 1.

d. The Court shall exercise greater control of depositions by litigants to ensure that the process is not abused by counsel.[1]

e. Continued judicial emphasis will be placed upon methods of maintaining firm trial dates. The Court shall continue to develop procedures, within this district, for determining alternate Judges to preside at a trial in the event that the presiding Judge is unable, due to conflicts, to meet the set trial date, and to encourage parties to consent to trial by a Magistrate Judge.

f. The Clerk of Court shall be directed to ensure initial notification to all parties of the provisions of Rule 73, FRCP, and Local Rule 403-2(a) which allows the parties to consent to trial by a Magistrate Judge. Consenting to trial by a Magistrate Judge would, in most instances, allow the parties to receive a firm early trial date not subject to continuance due to a preempting criminal trial. Such notice shall again be given, in each instance, where a trial date is vacated due to unavailability of the presiding Article III Judge.

g. The Court shall continue to emphasize early disposition of motions, including those for summary judgment and

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[1] Recommendation No. 22 of the Advisory Group, and the Court's Response, Page 14, Appendix C.

dismissal. Courtroom deputies and scheduling clerks will be instructed to carefully monitor such motions to insure that they are properly placed on the court's calendar at the earliest practical time.

h. The Court shall direct that Local Rule 220-11, Motions to Continue Trial, be amended to direct that "Any motion to continue trial shall include an affirmative statement that the client concurs in the request".

i. The judicial officers of this district shall continue to encourage greater civility and collegiality among legal practitioners, and ensure there is no gender, racial, ethnic, or religious bias. The Court will encourage counsel to comply with reasonable discovery requests without resorting to the Court for resolution of every discovery dispute.

j. The judicial officers of this district shall meet periodically to discuss such issues as the state of the docket, new and innovative methods of conducting settlement conferences, and procedures that might lead to a reduction in either cost or delays in the judicial administration of litigation.

k. The Court will expect all lawyers appearing before any judicial officer in this district to be familiar with the Local Rules of the district. The Court shall impose sanctions, as needed, to insure compliance with the rules, and to control litigation abuses. The Court shall encourage all judicial

officers to consider alternative forms of sanctions to include those recommended by the Advisory Group.[2]

2. RESOURCE NEEDS - COURT PERSONNEL AND EQUIPMENT.

a. The Court will continue to support the appointment of a Judge to fill the vacant temporary judgeship established by the Civil Justice Reform Act of 1990.

b. The Court anticipates that a part of the CJRA reduction plan will require greater utilization of existing staff personnel. The present budgetary reductions in court staff will have a severe impact upon the ability of the Court to follow an efficient management plan. Accordingly, the Court shall direct the Clerk of Court to reevaluate existing administrative procedures and practices, and provide the Court with a restructuring plan to alleviate the impact of these staff personnel reductions.

c. Requests for a position of staff attorney for this district have previously been deferred due to budgetary constraints. The Court shall continue to seek establishment of this position. The staff attorney, once approved, would be assigned to the case administration of pro se complaints to include all prisoner litigation, and other duties as directed by the Chief Judge.

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[2] Recommendation No. 18 of the Advisory Group, page 12, Appendix C.

d. Recognizing the present budgetary restrictions in effect for all U.S. District Courts, the Court, nevertheless, shall direct the Clerk of Court to seek funding for upgrading of equipment to include visual aid equipment which can be quickly and efficiently interchanged between the courtrooms.

e. The Court, through the assigned Magistrate Judges, shall continue to evaluate the impact of U.S. Military traffic and related cases presently heard by the Magistrate Judges to determine alternative cost effective methods of handling these cases.

3. CONTINUING UTILIZATION OF THE ADVISORY GROUP.

The Court recognizes the value of the work performed by the Advisory Group to this district.

Accordingly, the Advisory Group shall be declared to be an ongoing Group which shall meet periodically, but not less than twice per year, to provide additional assistance to the Court as requested or required by the Act.

VII. COURT DIRECTED PILOT STUDIES

The Court has considered several recommendations made by the Advisory Group which require additional study. It is the consensus of the Court that these recommendations can best be accomplished by establishing a pilot study of each recommendation.

1. The Advisory Group recommends that a rule be established setting out the requirement that in a settlement conference each party be required to submit offers of settlement.[3] Thereafter, if the settlement is rejected and the litigation proceeds to trial, the presiding Judge shall have discretion to award costs and attorney fees of litigation from the date of the offer of settlement to the party whose offer is nearest to the final judgment.

The Court considers the concept to have merit in reducing costs associated with litigation, by encouraging acceptance of offers of settlement. The Court has reservations[4] about implementing this recommendation as a mandatory rule, since it may be construed as an amendment to the Federal Rules of Civil Procedure. The Court shall direct the Standing Committee on Local Rules of Practice to evaluate this recommendation for possible implementation. Meanwhile, the Court considers it to be an innovative recommendation that can be done on a voluntary basis pending this study. Accordingly, parties in litigation shall be offered this option during settlement conferences. In those instances where the parties voluntarily agree to participate, the results will be analyzed during the next nine (9) months to determine the effectiveness of this program.

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[3] Advisory Group Recommendation No. 24, page 17, Appendix C.

[4] Page 17, Appendix C.

2. The second proposed pilot study is also based upon a recommendation by the Advisory Group.[5] The Advisory Group recommended that a study be undertaken by the Court to determine whether a form of arbitration could be effectively utilized by the Court in reducing both cost and delay in litigation.

The Court concurs in the recommendation. At the present time, several districts have implemented court-annexed arbitration programs. The early reports concerning these programs have been favorable. Accordingly, the Court shall direct the Advisory Group to continue to evaluate these programs, and submit a final report on its recommendation not later than June 30, 1994. In the event that the study is favorable, then the Advisory Group shall further provide suggested implementing procedures for use by the Court in initiating such a program.

3. The Advisory Group recommended a pilot program in which senior or retired litigators serve as settlement masters to conduct settlement conferences in selected civil cases.[6] The Court is familiar a with similar project being conducted in the United States District Court for the District of Connecticut.

The Court notes the successful expanded role of Magistrate Judges in conducting settlement conferences within this district. Accordingly, the Court shall direct that the Advisory Group prepare a template study as to whether such a pilot program, if

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[5] Recommendation No. 20, page 13, Appendix C.

[6] Recommendation No. 23, page 16, Appendix C.

implemented, would serve as an effective and efficient augmentation of the present settlement conference procedures.

VIII. OTHER ACTIONS TO BE REQUESTED BY THE COURT

1. The Court shall request that the Hawaii Chapter of the Federal Bar Association and the current Lawyer Representatives to the Ninth Circuit Judicial Council coordinate in establishing continuing legal education programs for practitioners before this Court.

2. The Court shall call upon the members of the Hawaii Bar Association and the Hawaii Chapter of the Federal Bar Association to provide input as to the means of establishing a pro bono referral service for pro per litigants, when the appointment of counsel is approved by the Court. The Court shall continue to pursue its efforts with the University of Hawaii, Richardson School of Law, to provide faculty supervised law student pro bono services, particularly in prisoner cases.

3. The Clerk of Court shall be requested to obtain copies of pro se/pro per litigant handbooks in use within other districts, and in coordination with the Magistrate Judges provide an evaluation as to whether a handbook should be created for distribution within this district.

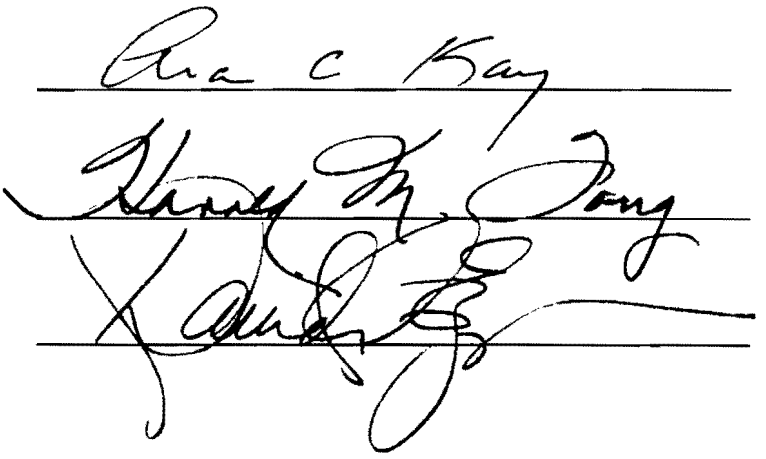
IX. PROMULGATION OF THE PLAN

1. The Report of the Civil Justice Advisory Group shall be made available to the public.

2. Pursuant to Title 28, United States Code, section 472(d) and section 474(a), the Court hereby ORDERS that this plan and the Report of the Civil Justice Advisory Group be submitted to the Chief Judge of this district for distribution to (a) the Director of the Administrative Office of the United States Courts; (b) the Judicial Council of the United States Ninth Circuit; and (c) the Chief Judge of all other United States District Courts located within the Ninth Circuit.

ADOPTED AND IMPLEMENTED BY THE COURT,

November 18, 1993



CIVIL JUSTICE REFORM ACT SUGGESTED PRINCIPLES AND GUIDELINES FOR THE COURT AND ADVISORY GROUP TO CONSIDER: 28 U.S.C. 473(a)

Section 473 of the CJRA sets forth the requirement that each United States District Court, in consultation with its Advisory Group, consider the specific inclusion of certain principles and guidelines of litigation management and cost and delay reductions in its plan. Each of these suggested principles and guidelines is set forth below together with the Court's comment thereto.

> (1). Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

COURT COMMENT:

a. The Court and the Advisory Group carefully evaluated the implementation of such a program within this district. It was the consensus of the Advisory Group that a specific program should not be implemented in this district at this time. The Court concurs with that recommendation.

b. Present management techniques followed by the judicial officers, in coordination with the litigants, at the initial scheduling conference allows the identification of complex issues, and provides for the orderly development of scheduling procedures to include discovery, motion deadlines, settlement

conferences, and trial dates. The Court's Order of November 2, 1992, contained in Attachment 1 to this plan sets forth the procedures utilized by the Court in establishing a scheduling plan tailored to the individual case.

> (2). Early and ongoing control of the pretrial process through involvement of a judicial officer in - (A) assessing and planning the progress of a case; (B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that -- (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or (ii) the trial cannot be held within such time because of the complexity of the case or the number or complexity of pending criminal cases; (C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and (D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

COURT COMMENT:

a. The present procedures in effect within this district meet the spirit and intent of section 473(a)(2). The Office of the Clerk, utilizing guidelines approved by the Court, sets the scheduling conference on the designated Magistrate Judges' calendar 90 days after a complaint is filed. At the scheduling conference, a trial date is set based upon the trial schedule of the individual Judge assigned to the case. Within this district, the initial trial date averages approximately 9 months from the date of the scheduling conference. Thus, trial dates for normal litigation are set well before the eighteen month mark recommended in section 473(2)(B). Complex litigation cases,

which are so noted by the Magistrate Judge and parties are set accordingly at an appropriate date which is determined by the Court and parties during the scheduling conference.

b. Requiring the certification of a judicial officer that the case is complex would add another procedural step to litigation without reducing the cost or timeliness of litigation.

c. This Court has established a practice wherein the Magistrate Judge conducting a Rule 16 conference establishes dates for completion of discovery, scope of discovery, and procedures for ensuring compliance.[1] Deadlines for filing other motions are also established during these Rule 16 Conferences. These procedures comport with the recommendations contained in subsections (C) and (D), 473(a)(2).

> (3). For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer -- (A) explores the parties' receptivity to, and the propriety of settlement or proceeding with the litigation; (B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure; (C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to -- (i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and (ii) phase discovery into two or more stages; and (D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

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[1] Scheduling Conference Order, Attachment 1.

COURT COMMENT:

a. The Court presently has sufficient guidelines established to meet this congressional suggestion. The Court has carefully considered the language of Section 473(a)(3) and does not consider it necessary to create additional Local Rules or procedures to meet the provision of section 473(a)(3).

> (4). Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.

COURT COMMENT:

a. The Court fully supports this concept and shall continue to place emphasis upon this area of cost reduction during conferences and hearings with the litigants and counsel.

> (5). Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

COURT COMMENT:

a. The Court fully supports this principle and has previously implemented it in the procedures to be followed within this district. Local Rule 230-4, ABUSE OF OR FAILURE TO MAKE DISCOVERY; SANCTIONS, states:

> (a) Conference Required: The court will not entertain any motion pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, unless counsel shall 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 the payment of reasonable expenses, including attorney's fees pursuant to Rule 37(a)(4) Federal Rules of Civil Procedure and L.R. 100-3.

b) Certification of Compliance. At the time of filing any motion with respect to Rules 26-37, FRCP, counsel for the moving party shall certify compliance with this rule.

(6). Authorization to refer appropriate cases to alternative dispute resolution programs that -- (A) have been designated for use in a district court; or (B) the court may make available, including mediation, mini-trial, and summary jury trial.

COURT COMMENT:

a. The Court and the Advisory Group have considered alternative dispute resolution programs. It should be noted that this district did not elect to be an early implementing district for any pilot alternative dispute resolution program.

b. The Court has considered the alternative dispute resolution programs set forth in "(6)(B)". The Advisory Group has recommended against the creation of such formal programs within the district, with the exception of the creation of a court-annexed arbitration pilot study.[2] The Court has directed in the Court's CJRA Plan that the Advisory Group conduct this

[2] Advisory Group Recommendation No. 20, Page 13, Appendix C.

study and submit a report to the Court not later than June 30, 1994.

c. The Advisory Group concluded and the Court concurs, that several of the pilot alternative dispute resolution programs presently under study in other districts do not appear to be tailored to the needs of this district, and would actually increase the cost and time of litigation. Accordingly, the use of alternative dispute resolution programs will not be implemented, pending completion of the pilot study on arbitration to be formulated by the Advisory Group in coordination with the Court.

RECOMMENDED TECHNIQUES THAT THE COURT SHOULD CONSIDER AND INCLUDE IN ITS PLAN[1]

Section 473(b) of the CJRA sets forth the requirement that each United States District Court, in consultation with its Advisory Group, consider five litigation management and cost and delay reduction techniques in its plan. Each of these suggested techniques is discussed below together with the Court's comment thereto.

I. REQUIREMENT THAT COUNSEL FOR EACH PARTY TO A CASE JOINTLY PRESENT A DISCOVERY-CASE MANAGEMENT PLAN FOR THE CASE AT THE INITIAL PRETRIAL CONFERENCE, OR EXPLAIN THE REASON FOR THEIR FAILURE TO DO SO.[2]

COURT COMMENT:

The Court has previously considered the use of joint discovery plans early in the litigation process. While the use of joint discovery plans has merit in complex litigation, the imposition of such a plan for every case would add to the cost of litigation. The Court adopts the recommendation of the Advisory

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[1] 28 U.S.C. 473(b).

[2] 28 U.S.C. 473(b)(1).

Group, contained in its report,[3] that this technique not be adopted as a mandatory part of the district's Local Rules.

II. REQUIREMENT THAT EACH PARTY BE REPRESENTED AT EACH PRETRIAL CONFERENCE BY AN ATTORNEY WHO HAS THE AUTHORITY TO BIND THAT PARTY REGARDING ALL MATTERS PREVIOUSLY IDENTIFIED BY THE COURT FOR DISCUSSION AT THE CONFERENCE AND ALL REASONABLY RELATED MATTERS.[4]

COURT COMMENT:

The Advisory Group expressed some reservations concerning this provision, especially as it would affect litigation in which city, state, and federal attorneys are participating. The Court has considered these reservations. The Court finds it imperative to good management of litigation that any attorney representing a party litigant, who appears at a pretrial conference in which specific matters will be discussed, be fully authorized, to the extent authorized by law, to bind said party to any matters discussed and settled during the conference.

The Court has previously experienced instances when lead counsel has not been able to attend a conference, and an associate counsel appears who maintains that he or she has no authority to bind the party. This is inexcusable as it constitutes a waste of both the Court and other litigants time.

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[3] The Advisory Group found, and the Court concurs, that the present procedures established by this district to be followed during Rule 16 conferences adequately meets the technique suggested for use during initial pretrial conferences. Advisory Group Report, page 50.

[4] 28 U.S.C. 473(b)(2).

The Court shall request that the Local Rules Committee study this recommendation, and consider a supplement to the Local Rules to include this requirement.

III. REQUIREMENT THAT ALL REQUESTS FOR EXTENSIONS OF DEADLINES FOR COMPLETION OF DISCOVERY OR FOR POSTPONEMENT OF THE TRIAL BE SIGNED BY THE ATTORNEY AND THE PARTY MAKING THE REQUEST.[5]

COURT COMMENT:

The Court has adopted the recommendation of the Advisory Group that "Any continuance of a trial date sought by an attorney shall contain an affirmative statement that the client concurs in the request".[6] The Court shall direct that the Local Rules Committee incorporate this provision into the Local Rules.

With regard to adding the requirement that the party litigant sign other requests for extensions of deadlines, the Advisory Group recommended against this provision[7] and the Court concurs. Deadlines for completion of discovery do not necessarily change the trial date. Imposing a requirement that counsel seek out a client to obtain a signature approving a motion for extension of discovery is not a cost savings, or necessarily a reduction in litigation time.

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[5] 28 U.S.C. 473(b)(3).

[6] Advisory Group Recommendation No. 4, Page 2, Appendix C.

[7] Page 51, Report of the Advisory Group, dated May 12, 1993.

IV. A NEUTRAL EVALUATION PROGRAM FOR THE PRESENTATION OF THE LEGAL AND FACTUAL BASIS OF A CASE TO A NEUTRAL COURT REPRESENTATIVE SELECTED BY THE COURT AT A NON-BINDING CONFERENCE CONDUCTED EARLY IN THE LITIGATION.[8]

COURT COMMENT:

The Court concurs in the recommendation of the Advisory Group that this technique appears to be of minimal value within this district and would not enhance cost reduction or reduce litigation time.[9]

Several districts are now studying this technique, and the Court shall request the Advisory Group, as part of its on-going participation, to reevaluate the reports on this program during the next year and report its findings to the Court.

V. A REQUIREMENT THAT, UPON NOTICE BY THE COURT, REPRESENTATIVES OF THE PARTIES WITH AUTHORITY TO BIND THEM IN SETTLEMENT DISCUSSIONS BE PRESENT OR AVAILABLE BY TELEPHONE DURING ANY SETTLEMENT CONFERENCE.[10]

COURT COMMENT:

This district has already adopted such a measure in the order promulgated by the Court on November 2, 1992, establishing procedures for settlement conferences.[11]

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[8] 28 U.S.C. 473(b)(4).

[9] Page 51, Report of the Advisory Group, dated May 12, 1993.

[10] 28 U.S.C. 473(b)(5).

[11] Contained in Attachment 1.

VI. CONSIDERATION OF ADVISORY GROUP RECOMMENDATIONS.

COURT COMMENT:

The Court's consideration and comments as to all Advisory Group recommendations are contained in Appendix C to this plan.

CONSIDERATION OF THE ADVISORY GROUP RECOMMENDATIONS

Pursuant to Section 473(b)(6) of the Civil Justice Reform Act, the Court has carefully considered each of the recommendations contained in the Report made by the Advisory Group for the District of Hawaii. Each recommendation of the Advisory Group is set forth verbatim together with the Court's response.[1]

RECOMMENDATION NO. 1: Trial dates shall be set by the Magistrate Judge at the initial scheduling conference.

RESPONSE:

The Court has previously adopted Recommendation No. 1. Present policy within the district provides that Magistrate Judges shall set trial dates at the initial scheduling conference.

RECOMMENDATION NO. 2: The presiding Judge, upon noting that a trial date cannot be met due to matters outside the control of the parties, shall immediately (within 24 hours) notify all parties and the Chief Judge, that a conflict in holding the trial on the established date is anticipated.

RESPONSE:

The Court fully concurs with the Advisory Group that maintaining a firm trial date is essential to a reduction in civil litigation delays and costs of litigation. The Court

[1] Numbering of the recommendations corresponds to the number sequence utilized in the Advisory Group Report.

adopts the recommendation that all parties should be placed on notice of any conflict in holding the trial as soon as possible. Accordingly, the Court will adhere to the spirit of timely notification, but does not adopt the rigidity of a "24 hour" notification rule.

RECOMMENDATION NO. 3: In the event the trial cannot proceed as scheduled, the Chief Judge shall first ascertain whether another District Court Judge is available to conduct the trial, and if so, direct that the trial be reassigned to that judge for hearing on the date previously set. If no District Court Judge is available, the parties will be offered a trial by a Magistrate Judge during the scheduled week or at an early firm date.

RESPONSE:

The Court presently seeks alternate Judges to preside at trials when the presiding Judge has a scheduling conflict. The administrative procedure now utilized by the Court adequately meets the suggestion of the Advisory Group. In that regard, Local Rule 403-2(a) provides that 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 final judgment. Notice is to be given immediately to the party filing the complaint, and sent to all other parties as service is made. The Court has directed, in its plan, that the Clerk again furnish such notice whenever it becomes known to the Court that a trial date must be continued, not due to requests of the parties to the litigation.

RECOMMENDATION NO. 4: Any continuance of a trial date sought by an attorney shall contain an affirmative statement that the client concurs in the request.

RESPONSE:

The Court adopts this recommendation. A change to Local Rule 220-11, Motions to Continue Trial, will be prepared setting forth this requirement.

RECOMMENDATION NO. 5: One District Judge shall be designated to handle exclusively civil trials on a rotating schedule provided that a fourth Judge is appointed.

RESPONSE:

The Court fully appreciates the basis for this recommendation, however the Court has reservations as to implementing such a restrictive proposal in a numerically small judicial jurisdiction.

A review of calendar year (CY) 1991 and 1992 trial statistics for this district indicates that 71 percent of trials in CY 91 conducted by the three active Article III Judges were criminal trials as were 76 percent of the trials in CY 92.

Based upon this historical data, the addition of a fourth active Article III Judge would allow a trial court calendar approaching 50 percent civil and 50 percent criminal for each active Article III Judge without restriction. This would be a more satisfactory administrative position than that of designating one Article III Judge to maintain an exclusive civil

calendar for a specific period of time, and would allow the Court added flexibility of limited judicial resources.

RECOMMENDATION NO. 6: The Clerk of Court shall maintain, for the next nine months, a log of all civil cases in which the trial dates are reset, with the reason listed for each such action, together with a notation as to whether another district Judge was available to try the case on the initial date set.

RESPONSE:

The Court has been advised that the data from this log might be utilized by the Advisory Group as a possible tool in future studies conducted by the Advisory Group. The Clerk of Court has advised that this data is available on a case by case basis on the docket sheets. Imposing another administrative requirement, to create such a log, would be of doubtful benefit; and would be outweighed by the additional burden on the already constrained human resources available to the Clerk of Court. Accordingly, this recommendation shall not be adopted by the Court at the present time.

RECOMMENDATION NO. 7: The current Temporary Order Regarding Trial Settings and Readiness Calendar issued November 5, 1992, directs that all civil and criminal cases shall be placed on a Readiness Calendar one week prior to the date of scheduled trial, and be subject to call on one day notice during that Readiness Week. We recommend that the Order be modified by the Court so that the Readiness Week begins and the case "trails" the fixed trial date by one week.

RESPONSE:

On November 5, 1992, this district issued a readiness ORDER directing that all civil and criminal cases be placed on a readiness calendar one week prior to the date of a scheduled trial, and be subject to call on one day notice during that readiness week.[2]

The Advisory Group recommended that the ORDER be modified to place the readiness week behind the week set for trial in essence to create a "trailer week". The Advisory Group was of the opinion that the costs, and inconvenience to the parties would be far greater by requiring them to be prepared for an earlier trial date than it would be for a later trial date.

The purpose of the ORDER, as promulgated, was to speed up the judicial process by insuring that in the event a Judge's trial calendar became vacant, a pending trial could immediately be called one week earlier then scheduled. This would avoid what is commonly referred to as "dark courtroom weeks".

The Court recognizes the concern set forth by the Advisory Group. The Court notes, however, that there have been no problems associated with the ORDER since it went into effect. Should the Court find that added costs to litigants are in fact associated with the ORDER, the Court will consider modifying the ORDER to establish the week following the scheduled trial date as a week of readiness.

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[2] Temporary Order Regarding Trial Setting and Readiness Calendar, November 5, 1992, Attachment 2 to the plan.

RECOMMENDATION NO. 8: Mandatory settlement conferences shall be held in all cases.

RECOMMENDATION NO. 9: At least once every six months, each District Judge in the District shall set aside one full week for the exclusive purpose of holding settlement conferences on civil cases assigned to that Judge.

RESPONSE:

The Court recently promulgated an ORDER titled Procedures for Settlement Conferences Before United States Magistrate Judges.[3] The purpose of this ORDER was to establish procedures to be utilized in settlement conferences. The Court believes that it is working quite effectively, and does establish mandatory settlement conferences. The Court considered it essential that Magistrate Judges have full authority and finality of action in settlement conferences. The Magistrate Judges of this district are exceedingly qualified to conduct settlement conferences, and they maintain flexible calendars for that purpose. The ORDER was not issued with the intent of inferring that Article III Judges would not continue to participate in settlement conferences. All Judges within this district shall continue to exercise settlement jurisdiction over properly postured litigation requiring their judicial assistance. Rather, the Order was promulgated to insure that all parties were familiar with the procedures that will be utilized within this

[3] Order dated November 2, 1992. A copy of the Order may be found in Attachment 1 to the plan.

district, and to emphasize the expanded role of the Magistrate Judges in this district.

The Court fully agrees with the Advisory Group comments that early and effective settlement of litigation not only saves the parties money, but also time for both the parties and the Court. The Court shall continue to encourage settlement negotiations at every opportunity, and will continue to study new settlement techniques. However, the recommendation that each Judge set aside one full week every six months exclusively for settlement conferences would not be an effective use of limited judicial resources and would interfere with the timely scheduling of trials.

RECOMMENDATION NO. 10: The processing of traffic violations occurring on United States Military Reservations shall be studied to determine whether the use of full time Magistrate Judges for such cases can be reduced or eliminated.

RESPONSE:

The Advisory Group has properly noted that the United States Army, Navy, and Marine Corps routinely bring traffic violators to Federal Court, while the United States Air Force seldom refers traffic offenders to the court.

At present, the Magistrate Judges alternate weeks for holding military traffic court. Two mornings per week are set aside for such matters, with demands for full hearings scheduled on those afternoons. The Advisory Group recommended that a study be made as to the need for these matters to come before the court. It further recommended that if the present practice is to

be continued that: (1) the two part-time Magistrate Judges be called upon to perform these duties (2) that the hearings be set semi-monthly rather than weekly, (3) that a new part-time Magistrate Judge position be sought for the island of Oahu, with principal duties encompassing the military traffic and related cases, and (4) discussions be held with the military services, locally, concerning their individual procedures.

The Court is aware of the time involved in this litigation. Pending further study, the Court will retain the present procedures that are in place. Current budgetary constraints imposed upon all U.S. District Courts prevent the consideration of seeking additional staffing for the judicial administration of these cases. Part-time Magistrate Judges will continue to be called upon to perform this judicial task when the regularly scheduled Magistrate Judges are unavailable due to other court commitments.

RECOMMENDATION NO. 11: Increase, where feasible, the retention of prisoner petitions by Article III Judges.

RESPONSE:

The Court is cognizant of the increasing number of prisoner complaints filed within this district. The present policy utilized within this district is working quite well utilizing an expanded role by the Magistrate Judges in handling initial prisoner petitions. Initial retention of prisoner petitions by Article III Judges would impact upon other areas of litigation by

reducing the time available to Article III Judges without a resultant savings of time or judicial economy as sought by this recommendation.

RECOMMENDATION NO. 12: Establish the position of a staff attorney to the United States District Court.

RECOMMENDATION NO. 13: Prepare a pro se litigant handbook which addresses solely procedural matters for distribution to pro se litigants.

RESPONSE:

The Advisory Group has identified the fact that this district has no staff attorney position. As the Advisory Group noted, the addition of a staff attorney position would greatly assist the Court in the administration of pro se/pro per litigation to include prisoner complaints.

The Court has been advised that present budgetary constraints preclude funding for a staff attorney position. The Court fully supports the need for this position and will continue to seek such an authorization in the future. Prisoner case filings now constitute approximately 17 percent of the new civil cases filed annually, and the addition of a permanent staff attorney position to assist in the administration of these cases would be beneficial.

The Court concurs with the Advisory Group that a pro se/pro per litigant handbook would be of value to all such litigants. The Court shall direct the Clerk of Court to explore whether such

handbooks may have been developed by other districts which could be appropriately modified for usage within this district.

RECOMMENDATION NO. 14: Nominate and fill the Fourth Judgeship for the District of Hawaii.

RESPONSE:

The Court fully supports the filling of the vacancy for a temporary Judgeship established by the Civil Justice Reform Act, 1990. However, the Court is not in a position to act upon this recommendation since it falls outside the jurisdiction of the Court to implement.

RECOMMENDATION NO. 15: Current state of art communications equipment should be provided by the Court and available for use in the courtroom(s).

RESPONSE:

The Court is cognizant of the fact that certain districts have more modern courtroom communication equipment than that found in this district. The Court believes that the present equipment meets the minimal standards, but agrees that an upgrade of the communication equipment to include such items as video presenters, larger projection screens, and document/slide projectors would be beneficial to all parties during a trial.

The Court shall direct the Clerk to analyze the needs of the court and seek the necessary appropriations. The Court notes however, that during this period of austere funding only the most essential equipment will be proposed for purchase.

RECOMMENDATION NO. 16: Rulings on motions for summary judgment and motions to dismiss shall be made within ten days of argument, or submission for decisions without argument, absent extraordinary circumstances.

RECOMMENDATION NO. 17: The Court shall make greater use of partial summary judgment rulings.

RESPONSE:

The Court concurs with the recommendation that motions for summary judgment should be dealt with in a speedy, but orderly manner. The Advisory Group has suggested a ten day maximum period for the Court to act on such motions after argument, or submission for decisions without argument, absent extraordinary circumstances which would require a delay in making the final ruling. The Court shall continue the policy of speedy judicial rulings, however the Court does not adopt the setting of an arbitrary ten day rule. The Court notes a possible misperception as to disposition of such motions; as a relatively high percentage of summary judgment motions are in fact granted. Moreover, while the majority of rulings are made from the bench, or otherwise made within one week, it is the practice of each Judge to make thorough rulings, and in some cases this requires further research. As stated in the plan, the Court will continue the policy of expediting rulings on summary judgment motions and motions to dismiss. In this regard, the Court shall also issue partial summary judgment rulings when appropriate to the situation.

Additionally, all judicial support personnel will be reminded that, in the setting of hearing dates on such motions, they must insure that the date is set at the earliest available time prior to the established trial date.

RECOMMENDATION NO. 18: The Court shall consider and impose nonmonetary sanctions where appropriate.

RESPONSE:

The Advisory Group has properly noted that the Court is placing greater emphasis upon the utilization of Rule 11 sanctions when the occasion warrants such action. The Advisory Group's recommendation supports the need for sanctions where appropriate, and suggests that the Court consider other than monetary sanctions. The Court is also imposing more sanctions for breaches of the Local Rules.

The Court concurs with the Advisory Group that each sanction imposed by the Court should be tailored to the individual violation to include breaches of the Local Rules. Accordingly, the Court will consider alternative corrective sanctions such as imposing mandatory attendance at a legal education program on court procedures.

The Advisory Group's suggestion, that when the offender is an attorney, the Court consider directing that the attorney perform specified hours of pro bono legal work for pro per litigants is meritorious.

RECOMMENDATION NO. 19: Creation of a program of continuing legal education for practitioners in the United States District Court.

RESPONSE:

The Court fully supports such a program. At present the Court has two programs in effect. One is conducted by the Clerk of Court in which newly admitted members of the Bar are provided an indoctrination on court administrative procedures. The other is a newly instigated "Federal Practice" presentation made by the Magistrate Judges in conjunction with the Hawaii Chapter of the Federal Bar Association of Hawaii and the Hawaii Institute For Continuing Legal Education.

The Court concurs with the Advisory Group that a more comprehensive program would be of benefit to all practitioners, and would enhance their knowledge of federal rules and procedures. The Court shall direct that the Lawyer Representatives to the Ninth Circuit Judicial Council in coordination with the Hawaii Chapter of the Federal Bar Association prepare a suggested agenda for such a program together with a plan of implementation.

RECOMMENDATION NO. 20: A pilot study be made to determine whether a form of arbitration could be effectively utilized by the Court in reducing both costs and delays in civil litigation.

RESPONSE:

In making this recommendation, the Advisory Group stated that it considered various alternative dispute resolutions and

found that court-annexed arbitration might be of value in reducing litigation costs and delays.

The Court is aware of the many alternative dispute resolutions presently being tested in the various districts. While the final analyses of these programs have not been made, the Court believes that court-annexed arbitration may be a viable solution to certain forms of litigation. Accordingly the Court has included in its plan a provision that a study group be established by the Advisory Group to prepare a suggested plan of implementation for the Court to evaluate.

RECOMMENDATION NO. 21: In the event Federal Rule of Civil Procedure 26 is modified to require disclosure of attorney-client privileged information, a local rule should be adopted to opt out of the requirement to disclose attorney-client privileged information.

RESPONSE:

The Court concurs with the concern of the Advisory Group concerning disclosure of attorney-client privileged information. The proposed changes to the discovery rules contained in Rule 26, FRCP have not been implemented. The Court will reserve further comment on this recommendation at the present time.

RECOMMENDATION NO. 22: At the initial scheduling conference or as soon thereafter as practical under the circumstances, the Magistrate Judge shall establish limitations on the taking of depositions. Specific limitations shall be set on the number of depositions, the scope of the deposition, the number of hours for depositions or the time within which all depositions must be completed.

RESPONSE:

The Court shares the opinion of the Advisory Group that unlimited discovery, regardless of the method utilized, greatly increases the cost of litigation and leads to delay. The taking of depositions of witnesses is an area where abuse of discovery can occur, through both poor preparation or lack of cooperation between the parties to the deposition. The Court is often made aware, after the fact, of depositions that were taken of non-relevant witnesses, excessive in nature, punctuated by endless questioning on irrelevant matters.

The Court also recognizes that the establishment of a rigid rule concerning the number, length, and scope of deposition discovery may have a chilling effect upon legitimate discovery. However, the Court considers this to be a matter which can be tailored, within certain parameters, to the individual circumstances of each civil litigation case. Further, the Court considers that the current language of Rule 30, FRCP, concerning depositions upon oral examination, and Rule 26(c), FRCP, allow certain discretionary powers to the Court which include reasonable limitations upon the taking of depositions.

Accordingly, the Court shall direct the Magistrate Judges to inquire about the discovery plans of each party to include matters pertaining to depositions at the Rule 16 scheduling conference. This inquiry will include, but not be limited to names of parties sought to be deposed, summary of subject matter which is sought by the deposition, hours anticipated to be

utilized in deposing a witness, and the anticipated date when the deposition will be sought. Based upon this information, the Magistrate Judge may tailor a deposition plan with the parties. This may be done in non-complex litigation at the initial scheduling conference, or it may, at the discretion of the Magistrate Judge, be accomplished at a subsequently called conference.

RECOMMENDATION NO. 23: Adoption of a pilot project in which respected senior, or retired litigators serve as settlement masters to conduct settlement conferences in civil cases selected for referral to them by the District Judges or Magistrate Judges.

RESPONSE:

This recommendation was based upon a program initiated by the United States District Court for the District of Connecticut. The Court is aware of the program which utilizes the expertise of retired litigators who voluntarily serve as settlement Judges in selected civil litigation matters. Designated as "Para-judicial Officers" these volunteers assess the litigation, and assist the parties in settlement negotiations. They are empowered to discuss the litigation with the Court and provide, where appropriate, recommendations to the Court on matters such as discovery issues.

The reports concerning this program have been very favorable. The continuing successful expansion of settlement conferences held by Magistrate Judges within this district cannot be overstated. Prior to moving upon this Advisory Group

recommendation, the Court shall direct the Advisory Group to prepare a template study as to whether such a pilot program, if implemented, would serve as an effective and efficient augmentation to the present settlement conference procedures now in practice within this district. The results of the study will then be evaluated by this Court.

RECOMMENDATION NO. 24: Adoption of a pilot project for a period of one year which would require parties in litigation to make written offers of settlement at a time designated by the Magistrate Judge in the initial Scheduling Conference or later conference. At the conclusion of the trial of the matter, the Court may award attorney's fees and costs against the party whose offer of settlement was farthest from the ultimate verdict.

RESPONSE:

This recommendation has been carefully considered by the Court. The concept as explained in the Advisory Report has merit. The parties in litigation would be required to submit offers of settlement, at a time to be designated by the judicial officer conducting settlement in the case. In the event that the parties do not settle, based upon the offers made, the case would proceed to trial. After judgment of award, the presiding Judge would have the discretion of awarding attorney fees and costs, from the date of the settlement offers, to the party whose offer of settlement was nearest to the final judgment award.

This proposal would have several salutary effects on litigation. It would cause the parties to be realistic in their settlement offers. It would also cause each party to carefully weigh the settlement offer of the opposing party, in light of the

possible costs and fees that could be incurred and awarded, if the other parties' offer is nearer to the final judgment award.

The court has reservations as to whether this is an amendment to the Federal Rules of Civil Procedure which would require implementation by the Judicial Conference, the U.S. Supreme Court and Congress. Obviously, several members of the Advisory Group have similar reservations as noted by the "Minority Report" attached to Recommendation No. 24.[4]

The concept, however, is worthy of further study. Accordingly, the Court shall request that the Standing Committee on Local Rules evaluate this proposal. During the continued study of this proposal, consideration should be given as to whether the fees and costs portion of the proposal should be triggered only when the judgment award differs from the settlement offer (plus or minus) by a specific percentage such as 20 percent.

Pending further study, the court will defer final action upon this recommendation. However, the Court shall direct in its plan that parties in litigation be offered this voluntary option during settlement conference. In those instances where the parties voluntarily consent to participate, the results will be analyzed to determine the effectiveness of the program.

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[4] Pages 45-47, Report of the Advisory Group, dated May 12, 1993.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In the Matter of Scheduling Conferences, Settlement Conferences, Final Pretrial Conferences, and Expedited Hearings on Discovery Motions Before U.S. Magistrate Judges.	)

ORDER

IT IS HEREBY ORDERED that the following shall be applicable in matters before Magistrate Judges:

1. Attached "Report of Scheduling Conference, Minutes and Order";

2. Attached "Procedures for Settlement Conferences before U.S. Magistrate Judges";

3. Attached "Report of Final Pretrial Conference, Minutes and Order (Bench Trial)";

4. Attached "Report of Final Pretrial Conference, Minutes and Order (Jury Trial)"; and

5. Attached "Expedited Hearings on Discovery Motions before U.S. Magistrate Judges".

DATED: Honolulu, Hawaii, NOV 2 1992.

Chief United States District Judge

United States District Judge

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Plaintiff_,	CIVIL NO.
vs.	
Defendant_.	REPORT OF SCHEDULING CONFERENCE, MINUTES AND ORDER

REPORT OF SCHEDULING CONFERENCE, MINUTES AND ORDER

Pursuant to the Federal Rules of Civil Procedure, Rule 16 and L.R. 235-3, a scheduling conference was held in chambers on _____, 199__, before the Honorable _____, United States Magistrate Judge. Appearing at the conference were _____.

Pursuant to Federal Rules of Civil Procedure, Rule 16(e) and L.R. 235-4, the Court enters this scheduling conference order:

1. Bench/Jury trial in this matter will commence before the Honorable _____, United States _____ Judge on _____, 199___ at ___:____ __.m.

2. A final pre-trial conference shall be held on _____, 199___, at ___:___ __.m. before the Honorable _____, United States Magistrate Judge.

3. Pursuant to L.R. 236-7, each party herein shall serve and file a separate pre-trial statement by _____, 199___.

4. Pursuant to the Federal Rules of Civil Procedure, Rule 16(c)(5) and (e), the plaintiff(s) herein shall serve and file a disclosure of non-expert witnesses reasonably expected to be called by the plaintiff(s) on or before _____, 199___.

Pursuant to the Federal Rules of Civil Procedure, Rule 16(c)(5) and (e), the defendant(s) herein shall serve and file a disclosure of non-expert witnesses reasonably expected to be called by the defendant(s) on or before _____, 199___.

The disclosure of non-expert witnesses shall include the full name, address, and telephone number of each witness, and a short summary of anticipated testimony. If certain required information is not available, the disclosure shall so state. Each party shall be responsible for updating its disclosures as such information becomes available. Such duty to update such disclosure shall continue up to and including the date that trial herein actual terminates.

5. Pursuant to the Federal Rules of Civil Procedure, Rule 16(c)(5) and (e), each party shall serve and file a disclosure of the names, addresses, and field of expertise of all expert witnesses to be called by _____, 199___.

6. Pursuant to the Federal Rules of Civil Procedure, Rule 16(b)(1), all parties shall file any motion to join additional parties or to amend the pleadings by _____, 199___.

7. Pursuant to the Federal Rules of Civil Procedure, Rule 16(b)(2), all motions not otherwise provided herein shall be filed by _____, 199___.

8. All motions deadline stated herein will be strictly enforced. After such deadline the parties may not file such motions except with leave of court, good cause having been shown.

9. Pursuant to the Federal Rules of Civil Procedure, Rule 16(b)(3), discovery shall be completed by _____, 199___.

10. Pursuant to the Federal Rules of Civil Procedure, Rule 16(a), settlement conference shall be held on _____, 199___ at ___:___ __.m. before the Honorable _____, United States Magistrate Judge.

Each party shall deliver to the presiding Magistrate Judge a confidential settlement conference statement by _____, 199___.

11. This order shall continue in effect in this matter unless and until amended by subsequent order of the Court.

12. OTHER MATTERS:

_____

_____

_____

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, _____.

_____

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Plaintiff_,	CIVIL NO.
vs.	
Defendant_.	PROCEDURES FOR SETTLEMENT CONFERENCES BEFORE UNITED STATES MAGISTRATE JUDGES

PROCEDURES FOR SETTLEMENT CONFERENCES
BEFORE UNITED STATES MAGISTRATE JUDGES

I. CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

At least five 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:

1. A brief statement of the case.
2. 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.

3. A summary of the proceedings to date, including a statement as to the status of discovery.

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

5. A brief statement of present demands and offers and the history of past settlement discussions, offers and demands.

6. A brief statement of the party's position on settlement.

II. 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.

III. 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.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Plaintiff_,	CIVIL NO.
vs.	
Defendant_.	REPORT OF FINAL PRETRIAL CONFERENCE, MINUTES AND ORDER (BENCH TRIAL)

REPORT OF FINAL PRETRIAL CONFERENCE, MINUTES AND ORDER

A final pretrial conference was held in chambers on _____, before the Honorable _____, United States Magistrate Judge. Appearing at the conference were _____.

Pursuant to Federal Rules of Civil Procedure, Rule 16(e), the Court enters this final pretrial conference order:

1. Bench trial in this matter will commence before the Honorable _____, United States _____ Judge on _____.

The parties estimate that this trial will require _____ days of trial time inclusive of arguments.

2. Unless otherwise indicated, all actions required herein by

this order shall be completed on or before _____.

3. **WITNESSES:**

a. Each party shall serve and file a final comprehensive witness list indicating the identity of each witness that the party will call at trial and describing concisely the substance of the testimony to be given and the estimated time required for the testimony of the witness on direct examination.

b. The parties shall make arrangements to schedule the attendance of witnesses at trial so that the case can proceed with all due expedition and without any unnecessary delay.

c. The party presenting evidence shall give notice to the other party the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

4. **EXHIBITS:**

a. The parties shall meet and 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 using the following designations:

PARTY	EXHIBIT #	TO	EXHIBIT #
_____	___		___
_____	___		___

Upon request, a party shall make the exhibit or the underlying documents of any exhibit available for inspection and copying. The parties shall meet and confer regarding possible stipulations to

the authenticity and admissibility of proposed exhibits.

b. The parties shall jointly prepare a consolidated and comprehensive list of all exhibits to be offered at trial. That list shall concisely describe the particular exhibit, identify it by identification marking, indicate by which party each exhibit will be offered in evidence, indicate whether objection is anticipated by any party and provide a short statement of the basis of the objection.

c. The original set of exhibits (in individual folders), and one copy (in a binder) and the list of all exhibits shall be submitted to the court.

5. DEPOSITIONS, INTERROGATORIES AND ADMISSIONS:

The parties shall serve and file on or before _____, 199___, statements designating excerpts from depositions (specifying the witness and page and line referred to), from interrogatory answers and from responses to requests for admissions to be used at trial other than for impeachment or rebuttal. Objections to any such statements and any statements counter-designating other portions of depositions, interrogatory, answers or responses to requests for admission shall be served and filed.

6. TRIAL BRIEFS:

Each party shall serve and file a trial brief on all significant disputed issues of law, including foreseeable procedure and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities.

7. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Each party shall serve and file proposed findings of fact and conclusions of law.

8. MOTIONS IN LIMINE:

Motions in limine shall be served and filed on or before _____, 199___. Any opposition memorandum to a motion in limine shall be served and filed on or before _____, 199___.

9. STIPULATIONS:

Stipulations shall be filed with the Court.

10. FILING OF DOCUMENTS:

A copy of any and all documents filed with or submitted to the court shall be given to the trial judge's courtroom deputy.

11. OTHER MATTERS:

_____

_____

12. This order shall remain in effect until modified by the Court and shall be modified by the Court only to prevent manifest injustice.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, _____.

_____

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Plaintiff(s),	CIVIL NO.
vs.	
Defendant(s).	REPORT OF FINAL PRETRIAL CONFERENCE, MINUTES AND ORDER (JURY TRIAL)

REPORT OF FINAL PRETRIAL CONFERENCE, MINUTES AND ORDER

A final pretrial conference was held in chambers on _____, 199___, before the Honorable _____, United States Magistrate Judge. Appearing at the conference were _____.

Pursuant to Federal Rules of Civil Procedure, Rule 16(e), the Court enters this final pretrial conference order:

1. Jury trial in this matter will commence before the Honorable _____, United States _____ Judge on _____, 199___.

The parties estimate that this trial will require _____ days of trial time inclusive of jury selection and arguments.

2. Unless otherwise indicated, all actions required herein by this order shall be completed on or before _____, 199___.

3. JURY ISSUES:

a. The parties shall prepare in writing and submit to the court any special voir dire inquiries they wish the judge to ask the jury panel.

b. The parties shall confer in advance of trial and prepare an agreed upon special verdict form, if a special verdict form is to be requested. The agreed upon special verdict form shall be submitted to the court. In the event of disagreement, the parties shall submit all proposed special verdict forms to the court.

c. JURY INSTRUCTIONS:

i. Jury instructions shall be prepared and submitted in accordance with L.R. 235-11. The parties shall serve upon each other a set of proposed jury instructions on or before _____, 199___.

ii. The parties shall thereafter meet and confer for the purpose of preparing one complete set of agreed upon jury instructions. The jury instructions which are agreed upon shall be filed with the Court.

iii. Supplemental instructions which are not agreed upon and a concise argument supporting the appropriateness of the proposed instruction shall be filed with the Court.

iv. All objections to the non-agreed upon instructions shall be in writing and filed.

4. **WITNESSES:**

a. Each party shall serve and file a final comprehensive witness list indicating the identity of each witness that the party will call at trial and describing concisely the substance of the testimony to be given and the estimated time required for the testimony of the witness on direct examination.

b. The parties shall make arrangements to schedule the attendance of witnesses at trial so that the case can proceed with all due expedition and without any unnecessary delay.

c. The party presenting evidence shall give notice to the other party the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

5. **EXHIBITS:**

a. The parties shall meet and 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 using the following designations:

PARTY	EXHIBIT #	TO	EXHIBIT #
_____	___		___
_____	___		___

Upon request, a party shall make the exhibit or the underlying documents of any exhibit available for inspection and copying. The parties shall meet and confer regarding possible stipulations to

the authenticity and admissibility of proposed exhibits.

b. The parties shall jointly prepare a consolidated and comprehensive list of all exhibits to be offered at trial. That list shall concisely describe the particular exhibit, identify it by identification marking, indicate by which party each exhibit will be offered in evidence, indicate whether objection is anticipated by any party and provide a short statement of the basis of the objection.

c. The original set of exhibits (in individual folders), and one copy (in a binder) and the list of all exhibits shall be submitted to the court.

6. DEPOSITIONS, INTERROGATORIES AND ADMISSIONS:

The parties shall serve and file on or before __(10 DAYS)___, statements designating excerpts from depositions (specifying the witness and page and line referred to), from interrogatory answers and from responses to requests for admissions to be used at trial other than for impeachment or rebuttal. Objections to any such statements and any statements counter-designating other portions of depositions, interrogatory, answers or responses to requests for admission shall be served and filed.

7. TRIAL BRIEFS:

Each party shall serve and file a trial brief on all significant disputed issues of law, including foreseeable procedure and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities.

8. MOTIONS IN LIMINE:

Motions in limine shall be served and filed on or before _____, 199___. Any opposition memorandum to a motion in limine shall be served and filed on or before _____, 199___.

9. STIPULATIONS:

Stipulations shall be filed with the Court.

10. FILING OF DOCUMENTS:

A copy of any and all documents filed with or submitted to the court shall be given to the trial judge's courtroom deputy.

11. OTHER MATTERS:

_____

_____

_____

12. This order shall remain in effect until modified by the Court and shall be modified by the Court only to prevent manifest injustice.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, .

_____

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

)	CIVIL NO.
)	
)	
Plaintiff_,)	
)	
vs.)	
)	
)	EXPEDITED HEARINGS ON DISCOVERY
)	MOTIONS BEFORE UNITED STATES
)	MAGISTRATE JUDGES
Defendant_.)	
)	

EXPEDITED HEARINGS ON DISCOVERY MOTIONS BEFORE UNITED STATES MAGISTRATE JUDGES

Expedited hearings before United States Magistrate Judges in the United States District Court for the District of Hawaii are available primarily for the resolution of discovery disputes. The court intends the expedited procedures to afford a swift but full hearing following abbreviated and simultaneous briefing by the parties.

Parties choosing the expedited procedure must first telephone the courtroom deputy clerk to calendar a hearing, which will be set approximately 5-10 days from the date of the request, depending upon the schedule of the court and the parties. Following the calendaring, the party requesting the hearing must notify the opposing party by telephone, and then confirm by letter to the court and opposing counsel the date and time of the hearing and the deadline for filing letter briefs.

Letter briefs of five pages or less shall be filed by all parties simultaneously no later than one day prior to the expedited hearing, with conformed copies delivered to chambers. The letter brief shall contain all relevant information, including: dates of discovery cut-off, and trial; a discussion of the dispute; and a description of the efforts already made to resolve the dispute. 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.

If appropriate, essential documents at issue in the discovery dispute should be attached to the party's letter brief. In the context of expedited hearings, however, the court views voluminous attachments with disfavor. Disputes necessitating review of extensive document attachments do not qualify for expedited hearing and should be noticed for a motion hearing in accordance with Local Rule 220.

The expedited hearing may be conducted via telephone conference call to the court. Arrangements for the conference call must be made outside of the Court's phone lines by the moving party. Personal appearances are allowed or may be ordered by the court as appropriate.

Even though this alternative procedure is expedited, the court will give full attention to the matter and will issue orders that may fully resolve the dispute or that set, as necessary, tailored schedules for further briefing.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In re)
)
Trial Readiness Procedure)
)
)
)

TEMPORARY ORDER REGARDING
TRIAL SETTING AND READINESS CALENDAR

PREAMBLE

Due to the demands of the criminal caseload and the requirements of the Civil Justice Reform Act it is necessary that this court adopt a procedure to insure maximum utilization of available court resources. To this end the court has adopted the following trial setting and readiness procedure in an effort to increase the number of civil and criminal cases available to be tried in the event cases set for the primary trial week are settled, continued, or are otherwise unavailable for trial.

TRIAL SETTING AND READINESS PROCEDURE

All civil and criminal trials set to commence on or after the week of January 4, 1993, shall be considered placed on a two-week readiness calendar. The week in which a case is set for trial shall be considered that case's primary week. The week prior to the week a case is set for trial shall be considered that case's standby week. As the calendar moves forward cases will rotate from standby to primary week status with the succeeding weeks cases moving into standby status. Cases not tried during their primary week shall be reset for trial in accordance with present court practice.

The court will consider all cases set on either the primary or standby calendar to be ready for trial and any such case may be called for trial on one day's notice without further order of the court. Failure of a party to be ready to proceed to trial on any case set on the two-week readiness calendar may subject that party to sanctions as provided in L.R. 100-3 which sanctions may include entry of adverse judgment or dismissal.

Cases not called to trial during their primary week shall be reset for trial at the earliest available date in accordance with court procedures.

This order shall remain in force until further order of the court.

IT IS SO ORDERED:

DATED: Honolulu, Hawaii, NOV 5 1992.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE