

MAY 18, 2020 GUIDANCE REGARDING CIVIL CASE
MANAGEMENT DURING THE COVID-19 EMERGENCY

In light of the ongoing COVID-19 pandemic and public health emergency, including the anticipated long term need to maintain certain social distancing and other measures intended to protect the public, court employees, and counsel from being exposed to the COVID-19 virus, while at the same time regulating civil matters in a manner consistent with equity and fairness, the United States District Court for the District of Hawaii provides the following guidance for civil matters.

I. Case Scheduling and Management

- The court intends to fulfill the mandate set forth in Fed. R. Civ. P. 1 to “secure the just, speedy, and inexpensive determination of every action and proceeding[,]” and, as a general matter, will therefore continue to set trial and pretrial deadlines in the normal course. Counsel are reminded of their obligations under LR16.1 to “proceed with diligence to take all steps necessary to bring an action to readiness for trial.”
- For any motion or stipulation to continue a trial or deadlines, the court may modify a schedule “only for good cause” under Fed. R. Civ. P. 16(b)(4). Counsel should furnish the court with specific information so that it can make the necessary good cause findings.
- With that said, the court fully understands that COVID-19 will present individual challenges to parties and counsel, and if deadlines cannot reasonably be met in spite of due diligence, counsel should promptly meet and confer and, if necessary, bring the matter to the court’s attention.
- Counsel have an ongoing obligation to meet and confer under a variety of circumstances. *See e.g., LR7.8, LR26.1, LR37.1(a), LR51.1(e), LR54.1(c), LR54.2(d)*. Where in-person conferences are not practical due to COVID-19, counsel are encouraged to use telephonic or video means to achieve a good faith effort to limit disputed issues.

II. Discovery

- It is more essential than ever for attorneys to develop competency with technology in their practice, including teleconference, videoconference and electronic discovery. Alternatively, attorneys should associate with individuals competent in these areas.
- The court encourages parties to utilize electronic discovery to the greatest extent possible. Reducing hard copy scanning and production is in everyone's best interest. The court has issued electronic discovery guidelines, a Rule 26(f) checklist and a model protective order to assist counsel with electronic discovery. These are available on the court's website.
- COVID-19 creates an immediate and perhaps long term need to conduct depositions remotely. The court encourages remote depositions, and absent good cause, will order depositions to occur remotely until social distancing guidelines permit traditional, in-person depositions. A court order is not needed to conduct a remote deposition. Fed. R. Civ. P. 30(b)(4).
- For avoidance of doubt, the court will deem a deposition to have been conducted 'before' an officer so long as that officer attends the deposition via the same remote means (e.g., telephone conference call or video conference) used to connect all other remote participants, and so long as all participants (including the officer) can clearly hear and be heard by all other participants.
- Participating in remote depositions requires attorneys to adequately prepare and educate themselves to avoid inadvertently engaging in conduct that would violate their ethical obligations. Unique issues that may arise in this context include reviewing deposition exhibits with a witness prior to the deposition, communicating with a witness during the depositions, or communicating with a witness on a break. Counsel are

encouraged to agree to protocols for remote depositions that can apply to both sides in the case.

- When discovery disputes arise – including during a remote deposition or related protocols – counsel should consider expedited discovery assistance as provided for in LR37.1.

III. Hearings

- Each presiding judge retains the discretion to decide all matters, including motions, petitions, and appeals, without a hearing. *See* LR7.1(c). If a movant has a position on whether a hearing should or should not be held, including whether the movant requests teleconference or videoconference, the party shall so state in its motion. *Id.* The opposing party shall state its position in its opposition memorandum. *Id.*
- All hearings will remain open to the public absent good cause for sealing.
- The court will soon begin employing Zoom technology for all videoconference hearings. Links to instructions and training will be made available on the court's website.

IV. Trials

- The United States Constitution and the Speedy Trial Act require that criminal defendants be given a speedy trial. Accordingly, when the court resumes trials, district judges' criminal trials will generally take precedence over their civil trials.
- Magistrate judges are not assigned felony criminal trials, and they may therefore be more readily available to try civil cases by agreement of the parties. Instructions for consenting to a magistrate judge are available on the court's website.

- Convening jury trials will be challenging due to social distancing guidelines. The parties should consider whether to waive their right to a jury trial pursuant to Fed. R. Civ. P. 39.

V. Settlement Conferences

- Magistrate judges continue to convene settlement conferences and engage parties in related discussions. In the midst of the challenges and restrictions related to COVID-19, the court encourages parties to strongly consider the benefits of pursuing possible settlement. Given the public health, societal and economic impacts now facing many litigants and their counsel, settlement offers a measure of comfort, justice, efficiency and certainty in these difficult times. Parties interested in exploring settlement may contact the assigned magistrate judge for assistance.