

HAWAII

LR88.1 Mediation.

(a) Purposes and Scope. Pursuant to the findings and directives of Congress in the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651, et seq., use of alternative dispute resolution (hereinafter “ADR”) is hereby authorized for all civil actions pending before the United States District Court for the District of Hawaii. This rule implements court-sponsored mediation in accordance with the ADR Act. This rule does not preclude (1) parties from agreeing to private ADR, or (2) the court from ordering non-binding ADR other than as provided in this rule.

(b) Duty To Consider ADR. The parties shall consider mediation and/or other ADR processes in accordance with LR16.2 and 26.1.

(c) Program Administration.

(1) Mediation Judge.

(A) Appointment. A magistrate judge shall be appointed to serve as mediation judge and ADR Administrator. When necessary, the chief district judge shall appoint another judge to temporarily perform the duties of the mediation judge.

(B) Duties. The mediation judge shall serve as the primary liaison between the court and the mediation committee on matters of policy, program design and evaluation, education, training, and administration.

(2) Mediation Committee. The court shall establish a Mediation Committee that shall be responsible for:

(A) Making recommendations to the mediation judge for implementing, administering, overseeing, and evaluating the mediation program, mediator performance, and procedures covered by this rule;

(B) Educating litigants, lawyers, judges, and court staff about the mediation program and rules; and

(C) Making recommendations for recruiting, screening, and training mediators, as well as for evaluating mediator performance.

(d) Submission To Mediation Under This Rule.

(1) By Stipulation. Parties may stipulate to submit a civil action to mediation. The parties may stipulate to the appointment of a mediator from the panel of mediators provided in this rule, subject to the consent of the selected mediator. If the parties have stipulated to mediation but are unable to agree on a mediator, the court may appoint a mediator from the panel.

(2) By Court Order. Notwithstanding the provision of Subsection (d)(1) above, at any time before the entry of final judgment, the court may, on its own motion or at the request of any party after affording the parties an opportunity to express their views, order the parties to participate in mediation and/or any other non-binding ADR process. However, when the court orders the appointment of a compensated mediator, the parties shall have the right to select the mediator by agreement, provided they do so within the time frame set by the court. If no agreement is reached, the court may select the mediator.

(e) Mediator Panel. The clerk shall publish and maintain a list of mediators who have been recommended by the mediation judge and approved by the court. The mediator's role is to facilitate the voluntary resolution of cases.

(f) Mediation Procedure. Upon the submission of an action to mediation and the appointment of a mediator as provided in this rule, the plaintiff shall provide a copy of the stipulation or order, as the case may be, to the mediator together with a list of the names, addresses, and telephone and facsimile numbers of counsel for all appearing parties and/or *pro se* parties. Thereafter, all procedures within the mediation, including, but not limited to, deadlines and the form and content of any written submissions, shall be determined by the mediator. Parties shall meaningfully participate in any mediation submitted under this rule.

(g) Attendance At Mediation. Lead counsel and clients, representatives, or third persons with full settlement authority shall attend, in person, all mediation conferences scheduled by the mediator, unless excused by the mediator. A governmental entity satisfies the attendance requirement if its lead counsel is in attendance and has been delegated full settlement authority, or has reasonable access to the person who has full settlement authority. In the event that the mediator determines it appropriate, the mediator shall have reasonable access to the person who has full settlement authority with appropriate accommodation given to the person's competing public duties.

(h) Mediator's Report Upon Completion. Within seven (7) days of the completion of a mediation conducted under this rule, the mediator shall file and serve a report addressing the date of completion and the following items:

- (1) Whether or not a settlement has been reached;
- (2) If a complete settlement has been reached, the date by which the parties have agreed to complete documentation of the settlement, including the full execution and lodging of any stipulation for dismissal; and
- (3) If less than a complete settlement is reached, a brief statement of whether or not the mediator recommends further mediation or other ADR efforts.

(i) Compensation Of Mediators. Unless otherwise stipulated by the parties and/or ordered by the court, each party will be responsible for a pro-rata share of the mediator's fees and

expenses. Any dispute regarding the mediator's fees or expenses may be submitted to the mediation judge for disposition.

(j) Immunity Of Mediators. All persons serving as mediators under this rule shall be deemed to be performing quasi-judicial functions and shall be entitled to all of the privileges, immunities, and protections that the applicable law accords to persons serving in such capacity.

(k) Confidentiality. Except as otherwise provided by this rule and/or applicable law, all communications made in connection with any mediation under this rule shall be subject to Fed. R.Evid. 408. Mediators and parties shall not communicate with the court about the substance of any position, offer, or other matter related to mediation without the consent of all parties, unless such disclosure is required to enforce a settlement agreement, to adjudicate a dispute over mediator fees, or to provide evidence in an attorney disciplinary proceeding, but only to the extent required to accomplish that purpose.

(l) Disclosure By Mediator. Before commencing a mediation, an individual who is requested to serve as a mediator shall make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation. The mediator shall disclose any such fact known or learned by the mediator to the parties as soon as is practical.

(m) Objections For Cause. Within seven (7) days after learning the identity of a mediator selected by the court, a party who objects to the selection of that mediator must file an objection that specifies the reason for the objection. Promptly after the close of the period for submitting objections, the court shall determine whether the proposed mediator or another mediator will be selected.

(n) Protection Against Unfair Financial Burdens. The court shall ensure that no referral to mediation results in imposition on any party of an unfair or unreasonable economic burden. A party who cannot afford to pay any fee charged under this rule may file a motion to be excused from paying or to pay at an appropriately reduced amount or rate.