

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

Plaintiff, )  
vs. ) ORDER APPOINTING DISCOVERY MASTER  
Defendant. )  
Time:  
Judge:  
)  
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)  
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)  
\_\_\_\_\_)

ORDER APPOINTING DISCOVERY MASTER

Pursuant to Rule 53 of the Hawai'i Rules of Civil Procedure and the agreement of the parties and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that \_\_\_\_\_, shall be and hereby is appointed as Discovery Master (hereinafter "Master") in accordance with the following terms.

1. Except as otherwise expressly stated herein, the Master shall hear and resolve in the first instance any and all discovery issues and disputes that may be referred to him for resolution, including but not limited to the imposition of sanctions.

a. Pursuant to the provisions of the Hawai'i Code of Judicial Conduct (hereinafter the "Code"), the Master is a judge within the meaning of the Code and shall comply with the Code. The parties shall not engage in ex parte communication with the Master with regard to any matter that relates, directly or indirectly, to any matter that is or may be pending before the Master.

b. The Master shall not have the authority to entertain or dispose of any non-discovery, substantive, or dispositive motions.

2. The parties shall bring all discovery disputes and motions first to the Master.

3. Except as otherwise provided in paragraph 4, *infra*, or as may be prescribed by the Master or agreed to by the parties, the parties shall adhere to the Hawai'i Rules of Civil Procedure with respect to the form, content, and timing of all motions, memoranda, affidavits or declarations, and exhibits and with respect to the submission and resolution of orders to the Master. All motions, memoranda, exhibits, affidavits or declarations prepared pursuant to this paragraph shall be served on all parties and the Master at the same time and by the same method of service. The party initiating the motion shall call the master to obtain a hearing date, and shall indicate the hearing date in its motion to be served on all parties.

4. Any party may submit to the Master an informal letter motion. The informal letter motion shall be served by the same method of service. The Master shall notify the parties of any hearing date and of the schedule for submitting responsive letter pleadings.

5. The parties may contact the Master by telephone during a deposition to resolve discovery issues and the Master may attend all or portions of any deposition.

6. Motions may be heard during or after the normal close of business, Hawaiian Standard Time, depending upon the availability of the Master and the parties' counsel, and be heard by telephone conference call or in person at

the office of the Master (or other location designated by the Master). Any party or parties may request and arrange for the presence of a court reporter, whose fees shall be borne solely by the party or parties requesting the court reporter's services.

7. Decisions made by the Master (other than in-deposition decisions) shall be in writing, shall include the reasons for his decision, and shall be filed with the Court.

8. Any party may seek reconsideration by the Court of any decision rendered by the Master, with or without having first sought reconsideration by the Master; provided that, no new argument or evidence may be presented for the first time to the Court. All argument and evidence relating to any discovery dispute must first be presented to the Master for consideration and disposition before the Court will entertain any such argument or evidence. Any motion for reconsideration of a Master's decision shall be filed with the Court and served upon the Master and all parties within five (5) business days of the date the Master's decision is issued. The filing of a motion for reconsideration of a Master's decision relating to a matter which, a party contends in good faith, is either privileged or which will not lead to the discovery of admissible evidence shall automatically stay the appealed order until such time as the Court rules on the motion; however, this provision shall not stay any other orders including, but not limited to, orders pertaining to depositions or scheduling matters. The Master and any party may respond to the motion by filing and serving a response within five (5) business days after receipt (not service) of the motion. The Master's response shall include his reasons for the decision, his recommendations to the Court on the motion for

reconsideration, and his recommendations for sanctions and/or allocation of attorneys' and Master's fees and costs incurred as a result of the motion for reconsideration. The Court shall decide the motion for reconsideration without a hearing, and may impose sanctions on any party, including the fees and costs of the Master incurred in opposing the motion.

9. The Master may, in his sole discretion, communicate the status of discovery matters to the Court. The Master shall advise the parties' counsel of the substance of such communication with the Court.

10. The Master shall be compensated for his time on an hourly basis, at an hourly rate of \$ \_\_\_\_\_, and shall be reimbursed for all reasonable costs and expenses. The Master's fees and expenses shall be split equally between the parties.

11. The Master shall retain copies of all papers submitted to him during his service as Master until the final conclusion of the above-entitled action, including all appeals.

12. The Master and the parties may reach further agreements from time to time concerning specific procedures to be followed in the handling of disputes submitted to the Master, which agreements shall be filed with the Court but need not be approved by the Court; provided that such further agreements are not inconsistent with the foregoing.

DATED: Honolulu, Hawai'i:\_\_\_\_\_.

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JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

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Attorney for Plaintiff

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Attorney for Defendant