

AJS Hawai'i Chapter Special Committee on Discovery Issues

In March 2009, the American College of Trial Lawyers Task Force for Discovery and the Institute for the Advancement of the American Legal System issued their joint, final report on the role of discovery in the civil justice system (the "Report"). The Report concluded, among other things, that (1) the civil justice system is in need of repair, (2) the existing rules structures often leads to a lack of focus in discovery, and (3) judges should have a more active role at the beginning of a case. The recommended courses of action in the Report include (1) production and disclosure of all reasonably available non-privileged, non-work product documents and witnesses that may be used to support that party's claims or defenses early in the litigation ("Initial Disclosures"), and (2) a mechanism to preserve and disclose electronically stored information ("E-discovery"). These issues are addressed, in part, in the current Federal Rules of Civil Procedure under Rules 26(a)(1) and 34, respectively.

Supreme Court Justice Mark E. Recktenwald, on behalf of the Supreme Court, has asked the Hawai'i Chapter of the American Judicature Society to review, comment on, and make recommendations to the Court, and determine in particular (1) whether it would be beneficial to assess the federal initial disclosure rule and the proposed modifications suggested by the Report, and determine whether those approaches (or some other variations) would be beneficial to adopt rules pertaining to Initial Disclosures in Hawai'i, and (2) whether it would be beneficial to assess any issues or challenges that may have arisen to date in Hawai'i courts regarding E-discovery, and determine whether the current rules should be amended, and if so, what approach to take.

The AJS Hawai'i Chapter has agreed to form a Special Committee to review the Report with respect to, in particular, Initial Disclosures and E-discovery issues, and consider whether the Hawai'i State Courts should consider adopting or modifying Rules 26(a)(1) and 34 of Federal Rules of Civil Procedure for Hawai'i State courts. The Committee will conduct its review and make recommendations to its Board, which will then act on the Report and submit it to our Supreme Court.