

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 5

STATE ETHICS COMMISSION

CHARGES

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Historical Note: This chapter is based substantially upon rules five 5 and 9 of the State of Hawaii Ethics Commission Rules and Regulations. [Eff. 1/7/74 and 11/11/78; R _____]

§21-5-1 Charges instituted by a member of the public. (a) All charges shall contain a short and simple statement of the facts constituting the alleged violation, the name and public position of the alleged violator, and shall be signed by the person making the charge, under oath. The oath may be administered by a notary public of the State of Hawaii or any other person authorized by law in the State of Hawaii or any other person authorized by law in the State of Hawaii to administer oaths. Oaths administered in a foreign jurisdiction will be administered in accordance with the laws of that jurisdiction.

(b) Upon receipt of a document which does not comply with the requirement of §21-5-1(a) or which does

not in form or substance constitute a charge, the commission shall notify the person signing the document of the insufficiency. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-2 Charges initiated by the commission.

(a) Upon the receipt of anonymous information or other information not under oath, or information obtained at the initiative of the commission, the executive director or delegate shall verify such facts as may be verified through public documents or the assistance of department heads, legislators, or other appointed or elected officials or employees, including the respondent. Investigation may not extend to interviews of other persons unless the commission, in its discretion, initiates an investigation to determine whether a charge should be issued. This investigation will be carried out confidentially by the executive director or delegate. The nature and scope of the investigation shall be defined by a resolution supported by a vote of three or more members of the commission.

(b) If after preliminary investigation at least three commissioners decide that a charge should be initiated, the charge will be issued in writing and signed by at least three commissioners.

(c) Upon filing of a charge by a member of the public or the commission, the commission shall notify the respondent of the charges in writing and afford the respondent an opportunity to explain the conduct alleged to be in violation of the chapter. [Eff.

] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-3 Informal hearing notice. The commission shall notify the respondent in writing and afford the respondent an opportunity to explain the conduct alleged to be in violation of chapter 84, HRS. The commission may request the respondent's attendance at an informal hearing conducted for the purpose of obtaining further information from the respondent. The notice of informal hearing shall state the date, time, and place of hearing and shall be given to the respondent five days prior to the hearing. The hearing may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the

commission. [Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-4 Procedures for an informal hearing. (a) The chairperson or designate of the commission shall convene the hearing and shall read the charge. The chairperson or designate shall preside at the hearing and will recognize those who wish to speak. The hearing will be informal and conducted in an orderly manner so that all commissioners may have an opportunity to direct questions to the respondent and so that the respondent may be afforded an opportunity to explain the conduct alleged to be in violation of chapter 84, HRS. The respondent may attend the informal hearing with a counsel or agent.

(b) Within a reasonable time after the informal hearing, the commission may render an informal advisory opinion to the respondent. If a probable violation is indicated, the respondent shall either request a formal opinion or shall, within a reasonable time, comply with the informal advisory opinion.

(c) If the respondent fails to comply with the informal advisory opinion, if any is rendered, or if a majority of the commissioners determine that there is probable cause for belief that a violation of chapter 84, HRS, may have occurred, the commission shall personally serve the respondent with a copy of the charge and a further statement of alleged violation. The respondent shall have twenty days after service thereof to answer the charge and statement in writing. The answer shall specifically admit, deny, or explain the charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense.

(d) Failure to file an answer will constitute default, whereupon the commission shall notify the authority having power to discipline of the decision in default. [Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-5 Formal and contested hearings; notice of hearing. (a) The commission shall give at least five days notice to the respondent prior to the hearing, unless such notice is waived in writing by the respondent. The notice shall state the date, time, place, and nature of the hearing; the legal authority

under which the hearing is held; the particular sections of the statutes or rules involved; and the fact that the respondent may retain counsel if desired.

(b) The hearing may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at a hearing by the commission [Eff.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-6 Formal and contested hearings; request for an open hearing. Any respondent who wants an open hearing shall file a written request at least two days prior to the hearing. If a request is made for an open hearing at a later time, the commission shall hold an open hearing, but it may, in its discretion, change the date, time, and place of the hearing. [Eff.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-7 Formal and contested hearings; procedures. (a) The chairperson shall convene the hearing and shall read the charge.
(b) Before presentation of the case, the parties shall have the opportunity to make opening statements. The usual order of making open statements shall be as follows:

- (1) Opening statement by the complainant; and
- (2) Opening statement by the respondent. The respondent may reserve the opportunity to make the opening statement until after the complainant has presented the complainant's case. Opening statements may be waived by a party.

(c) Witnesses shall be examined as follows:

- (1) Direct examination by the party calling the witness;
- (2) Cross examination by the other party;
- (3) Redirect examination by the party calling the witness;
- (4) Recross examination by the other party; and
- (5) Examination of the witness by the commission at any time.

(d) After all the evidence has been presented, the commission shall give the parties the opportunity to summarize. The usual order of final arguments shall be as follows:

- (1) Final argument by the complainant;
- (2) Final argument by the respondent; and

(3) Rebuttal argument by the complainant. Rebuttal arguments shall be limited to countering whatever may be said by the other party during that party's final argument. Reasonable time limits may be imposed by the commission for the final arguments. Final arguments may be waived by either party.

(e) Within a reasonable time after final arguments have been completed and all requested memoranda submitted, the commission shall render an order, decision, or ruling.

(f) Within ten days after entry of an order, decision, or ruling, the commission may entertain a written petition to reconsider or rehear its final order, decision, or ruling. The petition shall be granted or denied with reasonable expedition. Denial of such petition shall be in writing. [Eff.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-8 Pre-hearing conference. (a) When a pre-hearing conference is held, except as and to the extent otherwise ordered by the commission:

- (1) Each party shall disclose the theory of that party's case, including the basic facts each party intends to prove and the names and addresses of all witnesses which each party intends to call;
- (2) Each party shall disclose to all others and permit examination of all exhibits which are in that party's possession or under that party's control and which that party intends to offer in evidence at the hearing;
- (3) Unless so disclosed, no exhibits required to be disclosed by §21-5-8(a)(2) shall be received in evidence at the hearing over objection unless the commission finds that there was reasonable ground for failing to disclose such exhibits prior to hearing;
- (4) All exhibits required to be disclosed by §21-5-8(a)(2), and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification at least one day prior to the hearing and shall be listed in any pre-hearing order.

(b) The pre-hearing order shall supersede the pleadings where there is any conflict and shall supplement the pleadings in all other respects. [Eff.]

] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-9 Decisions. (a) Every decision of the commission rendered after hearing shall be in writing and shall be accompanied by separate findings of fact and conclusions of law. Within forty-five days after a decision has been rendered, the commission shall file a deleted decision which shall be a matter of public record. The executive director shall provide copies upon request without charge. At the end of each calendar year, the decisions issued during that calendar year shall be printed, along with an index, and copies shall be available upon request.

(b) The commission may direct the prevailing party to submit proposed findings of fact and conclusions of law. The party required to prepare the proposed findings of fact and conclusions of law shall do so within the time set by the commission, shall secure the approval as to form thereon of the opposing counsel or party, and shall deliver the original and copies to the commission; or, if not so approved, serve a copy upon each party who has appeared in the action and deliver the original and six copies to the commission. If the form of the proposed findings of fact and conclusions of law has not been approved, a party served with the proposed findings and conclusions may within five days thereafter serve and deliver to the commission objections and a copy of that party's proposed findings and conclusions. The commission shall determine the findings of fact and conclusions of law to be entered.

(c) Any commissioner who agrees with the decision but for different reasons may file a written concurring decision. Any commissioner may file a written dissenting decision. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-10 Record of hearings. The record of the hearing shall be compiled in conformance with §91-9(e), HRS. The commission will make provisions for stenographic record of the testimony, but it shall not be transcribed unless requested for purposes of rehearing or court review. The complainant and the alleged violator shall be entitled to a copy of the record of the hearing or any part thereof upon application to the commission and upon payment of the

costs thereof. [Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-5-11 Complaint. After the commission has made a decision, the commission shall issue the complaint and refer its decision to the appropriate legislative body or to the governor, as the case may be. [Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-32)