

SUNSHINE LAW MEETING



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

NOTICE OF MEETING OF THE HAWAII STATE ETHICS COMMISSION

Date: November 16, 2017

Time: 10:00 a.m.

Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

A G E N D A

CALL TO ORDER

- I. Consideration and Approval of the Minutes of the October 2, 2017, Meeting

- II. Executive Director's Report
 1. Education / Training Report
 2. Guidance and Assignment Statistics - September
 3. Guidance and Assignment Statistics - October
 4. Miscellaneous Office Projects / Updates
 - (a) Office Lease

- III. Proposed Budget for FY 2018-2019
 - Attachment 1: Proposed budget, FY 2018-2019

IV. Proposed Legislation for 2018 Legislative Session

Attachments 1-8: Proposed bills for 2018 legislative session

- (1) Bill to amend Hawaii Revised Statutes (HRS) section 28-8.3 to clarify that the State Ethics Commission may employ its own attorneys.
- (2) Bill to restore previous statutory language in HRS section 84-13 protecting legislators when carrying out a “legislative function”; and to clarify HRS sections 84-13 and 84-14 with respect to the financial disclosure and conflicts of interests requirements for task force members.
- (3) Bill to amend HRS section 97-7 by removing the requirement that violations of the Lobbyists Law, HRS Chapter 97, must be “wilfull” and clarifying that the resolution of charges upon agreement by the State Ethics Commission and alleged violators may include payment of administrative fines and restitution.
- (4) Bill to amend HRS section 84-43 to remove the requirement that the State Ethics Commission’s mandatory ethics training course be held in January of each year and that the course last at least two hours.
- (5) Bill to amend HRS section 84-31(b) by clarifying that the State Ethics Commission’s investigations shall be confidential but that the Commission may refer any matter to any other governmental law enforcement agency.
- (6) Bill to amend HRS section 84-17.5 by requiring the State Ethics Commission to maintain financial disclosure statements for a period of six years after filing rather than for a period of six years beyond the expiration of a state official’s term of office.
- (7) Bill to amend HRS section 84-39 to give the State Ethics Commission the authority to order payment of restitution after a contested case hearing.
- (8) Bill to amend HRS section 84-11.5 to clarify the requirements for filing a gifts disclosure statement.

V. Administrative Rules

Report from Permitted Interaction Group regarding staff's suggested amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6

Attachment 1: Proposed administrative rules, chapters 4-6

VI. Evaluation of Executive Director

Report from Permitted Interaction Group regarding evaluation of Executive Director Daniel Gluck

The Hawaii State Ethics Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

VII. Setting the 2018 Ethics Commission Meeting Calendar

Attachment 1: 2018 Meeting Calendar

VIII. Adjournment

If you require an accommodation because of a disability, please contact the Hawaii State Ethics Commission by telephone at (808) 587-0460, by facsimile at (808) 587-0470 (fax), or via email at ethics@hawaiiethics.org.

Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. An individual or representative wishing to testify may notify any staff member of the Commission prior to the meeting or, during the meeting itself, may inform a Commissioner or Commission staff of a desire to testify. Testimony must be related to an item that is on the agenda, and the testifier shall identify the agenda item to be addressed by the testimony.

SUNSHINE LAW MEETING
AGENDA ITEM I

MINUTES: CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
OCTOBER 2, 2017 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the October 2, 2017 Hawaii
State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Monday, October 2, 2017

Time: 10:00 a.m.

Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Reynaldo D. Graulty, Chair
David O’Neal, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
Melinda S. Wood, Commissioner

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee M. Campbell, Staff Attorney
Pat K. Mukai, Secretary
Patrick Lui, Computer Specialist

CALL TO ORDER

The meeting was called to order at 10:00 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the August 17, 2017, Meeting

Commissioner Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the August 17, 2017 Sunshine Law meeting. The motion carried unanimously (Graulty, DeGuzman, Tschumy, and Wood voting; O’Neal abstaining).

1 **Agenda Item No. II: Executive Director's Report**

2
3 Executive Director Gluck noted that the staff has been conducting many
4 trainings, including on the neighbor islands, and many more trainings are scheduled for
5 October. He referred to his report for guidance and assignment statistics. On financial
6 disclosures, he provided some updated figures on outstanding disclosures: 18 active
7 board/commission members; 6 initial board/commission members; and one initial
8 disclosure for an employee.
9

10 Executive Director Gluck referred to the Commission's financial audit report for
11 FY 2015-2016 and noted that staff had already addressed several minor items
12 highlighted by the auditors. In response to a question by Chair Gaulty, Executive
13 Director Gluck explained that the private firm that conducted the audit was retained by
14 the State Auditor.
15

16 Executive Director Gluck presented the Commission with an updated 2017-2018
17 Q1 financial report. He explained some of the Q1 expenses (including a charge for
18 Westlaw to upload all of the Commission's Advisory Opinions to its databases, allowing
19 anyone with a Westlaw account to search the Commission's past decisions easily).
20

21 The Commission paused its discussion of the Q1 financial report and turned to a
22 presentation on the Commission's electronic filing system for financial disclosures and
23 gifts disclosures. Computer Specialist Lui and Staff Attorney Chang demonstrated the
24 system, still under development but nearing completion, and answered the
25 Commissioners' questions regarding the system's capabilities.
26

27 The Commission resumed its discussion of the Q1 financial report. Executive
28 Director Gluck provided information on some of the expenditures and explained that the
29 Commission is on track with its budget for the rest of the fiscal year.
30

31 Executive Director Gluck stated that, in the November meeting, he anticipated
32 being prepared to discuss additional administrative rule provisions as well as possible
33 proposed legislation and the Commission's proposed budget for the 2018 legislative
34 session.
35

36 Executive Director Gluck further reported that, in addition to the day-to-day work
37 of the Commission, the staff was engaged in four large-scale projects: drafting
38 proposed administrative rules, developing and implementing an electronic filing system,
39 reviewing the Commission's paper files pursuant to a newly implemented records
40 retention system, and developing a web-based training system.
41

1 **Agenda Item No. III: Administrative Rules**

2
3 Executive Director Gluck suggested that the staff propose sections of draft rules
4 for the Commission’s consideration each month, with a final review after all the sections
5 have been completed, after which the Commission would submit the entire package to
6 the Department of the Attorney General for review. For today’s meeting, Executive
7 Director Gluck presented proposed edits to chapters 1, 2, and 3 for the Commission’s
8 consideration.
9

10 Chair Graulty asked the staff to explain the proposed definition of “good cause”
11 for waiver of a penalty for failing to file a financial disclosure by the relevant statutory
12 deadline. Executive Director Gluck explained that this phrase was not defined by the
13 legislature, such that the Commission has some discretion to better define the phrase
14 by administrative rule.
15

16 Commissioner DeGuzman suggested multiple revisions. The Commissioners
17 also discussed the procedure for reviewing these proposed rules.
18

19 At 11:00 a.m., Commissioner DeGuzman made and Vice Chair O’Neal seconded
20 a motion to recess the Sunshine Law meeting and move into the Adjudicatory meeting.
21 The motion carried unanimously (Graulty, O’Neal, De Guzman, Tschumy, and Wood
22 voting).
23

24 The Commission recessed the Adjudicatory meeting and reconvened the
25 Sunshine Law meeting at 11:20 a.m.
26

27 The Commission continued its discussion of proposed administrative rules.
28 Commissioner DeGuzman suggested additional revisions. The Commission again
29 discussed the procedure for reviewing the proposed rules. Chair Graulty suggested
30 forming a Permitted Interaction Group (PIG) to review and edit the proposed rules
31 drafted by staff. The revised draft will then be presented to the full Commission at a
32 duly convened Commission meeting for additional edits.
33

34 Commissioner DeGuzman made and Commissioner Wood seconded a motion to
35 form a PIG comprised of Chair Graulty and Commissioner DeGuzman. The motion
36 carried unanimously (Graulty, O’Neal, DeGuzman, Tschumy, and Wood voting).
37

38 Chair Graulty recognized Corrie Tanida, Executive Director of Common Cause,
39 who asked a question regarding proposed changes to the administrative rule
40 addressing the Commission’s review of financial disclosure statements. Executive
41 Director Gluck explained that the Commission would continue to review disclosure
42 statements for conflicts of interests, but that staff recommended amending the rules to
43 make clear that Commission staff did not need to review a financial disclosure
44 statement prior to accepting the document for filing.
45

1 **Agenda Item No. IV: Evaluation of Executive Director**

2
3 Chair Graulty stated that Executive Director Gluck was hired on August 1, 2016,
4 and the Commission conducted a 90-day performance review. Chair Graulty suggested
5 that the Commission conduct Executive Director Gluck's performance review at the next
6 Commission meeting.
7

8 Chair Graulty suggested that the Commission establish a PIG to recommend an
9 evaluation procedure for the Commission. Commissioners Wood and Tschumy
10 volunteered to develop the procedure. Executive Director Gluck stated that, while the
11 procedure was entirely up to the Commission and the PIG, he recommended that the
12 Commission consult with staff in conducting the evaluation.
13

14 Chair Graulty deferred to the PIG to develop the procedure for conducting the
15 evaluation. Chair Graulty stated that he expected the PIG to solicit feedback from staff
16 and that the PIG would report back to the Commission at its November meeting.
17 Associate Director Yoza provided a brief overview of the process used to evaluate the
18 previous Executive Director. The Commissioners discussed the process used at the
19 90-day mark for Executive Director Gluck as well as the process used for the previous
20 Executive Director.
21

22 Vice Chair O'Neal made and Commissioner DeGuzman seconded a motion to
23 set up a PIG comprised of Commissioner Tschumy and Commissioner Wood to guide
24 the Commission through the process of the annual performance review of the Executive
25 Director. The motion carried unanimously (Graulty, O'Neal, DeGuzman, Tschumy, and
26 Wood voting).
27

28 Commissioner Wood stated that she and Commissioner Tschumy would develop
29 an evaluation process and report back to the Commission.
30
31

32 **ADJOURNMENT OF SUNSHINE LAW MEETING**

33
34 At 11:54 a.m., Vice Chair O'Neal made and Commissioner Wood seconded a
35 motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Graulty,
36 O'Neal, DeGuzman, Tschumy, and Wood voting).
37

38 The meeting was adjourned at 11:54 a.m.
39
40

41 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT

Attachment 1: Executive Director's Report

SUNSHINE MEETING
AGENDA ITEM II
EXECUTIVE DIRECTOR'S REPORT
November 16, 2017

1. Education / Training Report

a. Recently held trainings/presentations:

General Ethics Training
Office of Hawaiian Affairs – Maui Ola
October 17, 2017
2:00 p.m. – 3:30 p.m.
25 attendees

General Ethics Training
University of Hawaii Maui College
October 20, 2017
10:00 a.m. – 11:30 a.m.
41 attendees

General Ethics Training
Mission Memorial Auditorium
October 24, 2017
10:00 a.m. – 11:30 a.m.
193 attendees

General Ethics Training
Office of Hawaiian Affairs – Maui Ola
October 24, 2017
1:00 p.m. – 2:30 p.m.
22 attendees

General Ethics Training
Office of Hawaiian Affairs – Maui Ola
October 26, 2017
10:00 a.m. – 11:30 a.m.
24 attendees

General Ethics Training
Department of Taxation
Keelikolani Building
October 27, 2017
9:30 a.m. – 11:00 a.m.
105 attendees

General Ethics Training
Department of Taxation
Keelikolani Building
October 30, 2017
9:30 a.m. – 11:00 a.m.
120 attendees

Lobbyists Law Training
Head Start Association of Hawaii
Hilton Hawaiian Village
October 30, 2017
10:30 a.m. – 11:00 a.m.
15 attendees

General Ethics Training
Department of Taxation
Keelikolani Building
October 31, 2017
9:30 a.m. – 11:00 a.m.
100 attendees

General Ethics Training
Office of Hawaiian Affairs – Maui Ola
October 31, 2017
1:00 p.m. – 2:30 p.m.
55 attendees

b. Upcoming trainings/presentations:

Ethics Refresher Course
Hawaii State Capitol, Room 329
December 8, 2017
9:30 a.m. – 11:00 a.m.

Lobbyists Law Training
Hawaii State Capitol, Room 329
January 5, 2018
10:00 a.m. – 11:30 a.m.

Ethics Refresher Course
Hawaii State Capitol, Room 329
January 8, 2017
9:30 a.m. – 11:00 a.m.

2. Guidance and Assignment Statistics – September 2017

a. Attorney-of-the-Day Type Inquiries: 96

b. New Assignment Statistics

Advisory Opinion	2
Complaint	6
Gifts/Invitations/Travel	20
Guidance	5
Judicial Selection Comm'n	1
Training Request	2
Projects/Other	1
Total New Assignments	37

c. Closed Assignment Statistics

Complaint	1
Gifts/Invitations/Travel	13
Guidance	1
Judicial Selection Comm'n	2
Training Request	1
Record Request	1
Total Closed Assignments	19

3. Guidance and Assignment Statistics – October 2017

a. Attorney-of-the-Day Type Inquiries: 79

b. New Assignment Statistics

Advisory Opinion	2
Complaint	6
Gifts/Invitations/Travel	20
Guidance	5
Judicial Selection Comm'n	1
Training Request	2
Projects/Other	1
Total New Assignments	37

d. Closed Assignment Statistics

Complaint	1
Gifts/Invitations/Travel	13
Guidance	1
Judicial Selection Comm'n	2
Training Request	1
Record Request	1
Total Closed Assignments	19

4. Miscellaneous Office Projects / Updates

a. Office Lease – Update

SUNSHINE LAW MEETING
AGENDA ITEM III

PROPOSED BUDGET FOR FY 2018-2019

Attachment 1: Proposed budget, FY 2018-2019

Hawaii State Ethics Commission - Budget Projections for FY 2018-2019

	2017-2018 Approved Budget	2018-2019 Estimated Budget	Increases/ Decreases	% Increase/ Decrease
TOTAL BUDGET (excluding vacation payouts/transfers)	\$ 1,135,295	1,193,399	58,104	5.1%
<i>Total budget excluding cost adjustments-staff salaries & vacation payouts</i>	<i>1,110,493</i>	<i>1,141,002</i>	<i>30,509</i>	<i>2.7%</i>
A. PERSONAL SERVICES				
1. Staff Salaries Excluding Executive Director	775,048	790,048	15,000	1.9%
2. Cost Adjustments for staff salaries ¹	24,802	52,397		
3. Executive Director Salary ²	144,552	147,444		
4. Vacation Payouts/Transfer	16,553	TBD		
TOTAL PERSONAL SERVICES (excluding vacation payouts)	944,402	989,889	45,487	4.8%
B. MATERIALS AND SUPPLIES				
Office Expenses:				
1. Office Supplies	3,000	3,000	0	0.0%
2. Postage	2,000	1,500	-500	-25.0%
3. Telephone	7,500	7,500	0	0.0%
4. Internet Access	2,650	2,650	0	0.0%
5. Cable TV	-	0	0	
6. Car Mileage and Parking	800		-800	-100.0%
Subtotal:	15,950	14,650	-1,300	-8.2%
Intrastate Transportation and Travel				
1. Commissioners / Staff	8,500	8,500	0	0.0%
2. Car Mileage and Parking		750	750	
Subtotal:	8,500	9,250	750	0.0%
Out-of-State Travel³				
1. Airfare (6 @ \$1,000 ea.)	6,000	6,000	0	0.0%
2. Lodging and per diem for 5.5 days (6 @ \$145/day x 5.5 days)	4,800	4,800	0	0.0%
3. Excess Hotel and Increases in per diem/airfare	1,700	1,700	0	0.0%
4. Taxi/bus fare	160	160	0	0.0%
Subtotal:	12,660	12,660	0	0.0%
Equipment Rental and Maintenance				
1. Postage Meter	1,200	750	-450	-37.5%
2. Copier	4,500	3,600	-900	-20.0%
3. Typewriter	200	0	-200	-100.0%
4. ReporterDeck Recorder	200	200	0	0.0%
5. Computer Equipment Maintenance	4,685	5,100	415	8.9%
6. Misc. (time clock, projector, etc.)	200	200	0	0.0%
7. Software to expand/enhance on-line training	-	4,000	4,000	
Subtotal:	10,985	13,850	2,865	26.1%
Dues, Subscriptions, Training				
1. COGEL Membership	450	460	10	2.2%
2. COGEL Conference Registration	1,740	2,400	660	37.9%
3. SHRM Membership	-	0	0	--
4. Attorney Registration Fees	3,240	3,400	160	4.9%
5. Training	3,000	3,000	0	0.0%
6. Legal Reference Publications	4,670	4,800	130	2.8%
7. Newspapers Subscriptions, etc.	240	240	0	0.0%
8. Disruptive Behavior Training	800	800	0	0.0%
Subtotal:	14,140	15,100	960	6.8%

	2017-2018 Approved Budget	2018-2019 Estimated Budget	Increases/ Decreases	% Increase/ Decrease
Commission Meetings, Investigations and Hearings				
1. Subpoena Fees	900	900	0	0.0%
2. Court Reporter	5,000	5,000	0	0.0%
3. Witness Fees, Travel, Mileage	600	600	0	0.0%
4. Investigator	1,500		-1,500	-100.0%
5. Hearings Officer	-	1,500	1,500	
6. Lunches for Commission Mtgs.	1,400	1,100	-300	-21.4%
Subtotal:	9,400	9,100	-300	-3.2%
Consulting Services				
1. MD&A	2,000	0	-2,000	-100.0%
2. Computer Consulting ⁴	7,858	22,000	14,142	180.0%
3. Other Services (Interpreting, shredding)	400	400	0	0.0%
Subtotal:	10,258	22,400	12,142	118.4%
Office Rent:	98,000	102,500	4,500	4.6%
TOTAL MATERIALS AND SUPPLIES:	179,893	199,510	19,617	10.9%
C. CAPITAL OUTLAY				
Office Furn. & Equipment:	11,000	4,000	-7,000	-63.6%
TOTAL CAPITAL OUTLAY:	11,000	4,000	-7,000	-63.6%
GRAND TOTAL:	\$ 1,135,295	1,193,399	58,104	5.1%
Vacation Payouts/Transfer	16,553	TBD		

¹ Act 21 of 2017

² Per HRS 84-35 and DHRD Salary Commission

³ Interstate travel budget cut by 40% from 2016-2017 to 2017-2018

⁴ Additional funds requested to address any potential technical issues with implementation of new electronic filing system

SUNSHINE LAW MEETING
AGENDA ITEM IV

PROPOSED LEGISLATION FOR 2018 LEGISLATIVE SESSION

- Attachment 1: Bill to amend HRS section 28-8.3 to clarify that the State Ethics Commission may employ its own attorneys.
- Attachment 2: Bill to restore previous statutory language in HRS section 84-13 protecting legislators when carrying out a “legislative function”; and to clarify HRS sections 84-13 and 84-14 with respect to the financial disclosure and conflicts of interests requirements for task force members.
- Attachment 3: Bill to amend HRS section 97-7 by removing the requirement that violations of the Lobbyists Law, HRS Chapter 97, must be “wilful” and clarifying that the resolution of charges upon agreement by the State Ethics Commission and alleged violators may include payment of administrative fines and restitution.
- Attachment 4: Bill to amend HRS section 84-43 to remove the requirement that the State Ethics Commission’s mandatory ethics training course be held in January of each year and that the course last at least two hours.
- Attachment 5: Bill to amend HRS section 84-31(b) by clarifying that the State Ethics Commission’s investigations shall be confidential but that the Commission may refer any matter to any other governmental law enforcement agency.
- Attachment 6: Bill to amend HRS section 84-17.5 by requiring the State Ethics Commission to maintain financial disclosure statements for a period of six years after filing rather than for a period of six years beyond the expiration of a state official’s term of office.
- Attachment 7: Bill to amend HRS section 84-39 to give the State Ethics Commission the authority to order payment of restitution after a contested case hearing.
- Attachment 8: Bill to amend HRS section 84-11.5 to clarify the requirements for filing a gifts disclosure statement.

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The Legislature finds that the state ethics
2 commission was inadvertently left off the list of state agencies
3 specifically authorized by statute to hire its own attorneys. The
4 purpose of this Act is to memorialize long-standing practice of
5 having the state ethics commission employ attorneys.

6 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (a) to read:

9 “(a) No department of the State other than the attorney
10 general may employ or retain any attorney, by contract or
11 otherwise, for the purpose of representing the State or the
12 department in any litigation, rendering legal counsel to the
13 department, or drafting legal documents for the department;
14 provided that the foregoing provision shall not apply to the
15 employment or retention of attorneys:

- 1 (1) By the public utilities commission, the labor and
2 industrial relations appeals board, and the Hawaii
3 labor relations board;
- 4 (2) By any court or judicial or legislative office of
5 the State; provided that if the attorney general is
6 requested to provide representation to a court or
7 judicial office by the chief justice or the chief
8 justice's designee, or to a legislative office by
9 the speaker of the house of representatives and the
10 president of the senate jointly, and the attorney
11 general declines to provide [~~such~~] the
12 representation on the grounds of conflict of
13 interest, the attorney general shall retain an
14 attorney for the court, judicial, or legislative
15 office, subject to approval by the court, judicial,
16 or legislative office;
- 17 (3) By the legislative reference bureau;
- 18 (4) By any compilation commission that may be
19 constituted from time to time;
- 20 (5) By the real estate commission for any action
21 involving the real estate recovery fund;
- 22 (6) By the contractors license board for any action
23 involving the contractors recovery fund;

- 1 (7) By the office of Hawaiian affairs;
- 2 (8) By the department of commerce and consumer affairs
- 3 for the enforcement of violations of chapters 480
- 4 and 485A;
- 5 (9) As grand jury counsel;
- 6 (10) By the Hawaii health systems corporation, or its
- 7 regional system boards, or any of their facilities;
- 8 (11) By the auditor;
- 9 (12) By the office of ombudsman;
- 10 (13) By the insurance division;
- 11 (14) By the University of Hawaii;
- 12 (15) By the Kahoolawe island reserve commission;
- 13 (16) By the division of consumer advocacy;
- 14 (17) By the office of elections;
- 15 (18) By the campaign spending commission;
- 16 (19) By the Hawaii tourism authority, as provided in
- 17 section 201B-2.5;
- 18 (20) By the division of financial institutions;
- 19 (21) By the office of information practices; [~~or~~]
- 20 (22) By the state ethics commission; or
- 21 (23) By a department, if the attorney general, for
- 22 reasons deemed by the attorney general to be good and
- 23 sufficient, declines to employ or retain an attorney for

1 a department; provided that the governor thereupon
2 waives the provision of this section.

3 2. By amending subsection (c) to read:

4 "(c) Every attorney employed by any department on a
5 full-time basis, except an attorney employed by the public
6 utilities commission, the labor and industrial relations
7 appeals board, the Hawaii labor relations board, the office
8 of Hawaiian affairs, the Hawaii health systems corporation or
9 its regional system boards, the department of commerce and
10 consumer affairs in prosecution of consumer complaints,
11 insurance division, the division of consumer advocacy, the
12 University of Hawaii, the Hawaii tourism authority as
13 provided in section 201B-2.5, the office of information
14 practices, the state ethics commission, or as grand jury
15 counsel, shall be a deputy attorney general."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19
20 INTRODUCED BY: _____
21

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The Legislature finds that a 2012 statutory
2 change designed to clarify the application of the ethics code to
3 task force members had the unintended effect of changing the law
4 with respect to legislators as well. This Act restores
5 longstanding language that protects legislators when carrying out
6 a "legislative function."

7 The Legislature further finds that a related 2012 statutory
8 change created an ambiguity regarding whether task force members
9 must file financial disclosures. This Act makes clear that task
10 force members need not file the same financial disclosures as
11 state officials.

12 Accordingly, the purpose of this Act is to provide additional
13 clarity and consistency in the administration and enforcement of
14 the State's ethics laws, and to promote integrity in state
15 government, by:

16 (1) Restoring previous statutory language protecting legislators
17 when carrying out a "legislative function";

1 (2) Clarifying the fair treatment laws with respect to task force
2 members and legislators by restoring previous statutory
3 language regarding a legislator's "legislative function";

4 (3) Clarifying that task force members need not file the
5 financial disclosure forms required of other state officials;
6 and

7 (4) Clarifying the existing requirement that task force members
8 publicly disclose conflicts of interest by requiring the
9 ethics commission to adopt rules for this public disclosure.

10
11 SECTION 2. Section 84-13, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "(a) No legislator or employee shall use or attempt to use
14 the legislator's or employee's official position to secure or
15 grant unwarranted privileges, exemptions, advantages, contracts,
16 or treatment, for oneself or others; including but not limited to
17 the following:

18 (1) Seeking other employment or contract for services for
19 oneself by the use or attempted use of the legislator's
20 or employee's office or position.

21 (2) Accepting, receiving, or soliciting compensation or
22 other consideration for the performance of the

1 legislator's or employee's official duties or
2 responsibilities except as provided by law.

3 (3) Using state time, equipment or other facilities for
4 private business purposes.

5 (4) Soliciting, selling, or otherwise engaging in a
6 substantial financial transaction with a subordinate or
7 a person or business whom the legislator or employee
8 inspects or supervises in the legislator's or employee's
9 official capacity.

10 (b) Nothing [herein] in this section shall be construed to
11 prohibit a legislator from introducing bills and resolutions, [~~or~~
12 ~~to prevent a person from serving on a task force or~~] from serving
13 on a task force committee, or from making statements or taking
14 [~~official~~] action [~~as a legislator, or a task force member or a~~
15 ~~task force member's designee or representative.~~] in the exercise
16 of the legislator's legislative functions. Every legislator[~~, or~~
17 ~~task force member or designee or representative of a task force~~
18 ~~member~~] shall [~~file a full and complete public disclosure~~]
19 publicly disclose [~~of~~] the nature and extent of the interest or
20 transaction which the legislator [~~or task force member or task~~
21 ~~force member's designee or representative~~] believes may be
22 affected by [~~the legislator's or task force member's official~~

1 ~~action.]~~ legislative action. The state ethics commission shall
2 establish rules to provide for this public disclosure.

3 (c) Nothing in this section shall be construed to prevent a
4 person from serving on a task force or a task force committee, or
5 from making statements or taking official action as a task force
6 member or a task force member's designee or representative. Every
7 task force member or designee or representative of a task force
8 member shall publicly disclose the nature and extent of any
9 interest or transaction which the task force member or task force
10 member's designee or representative believes may be affected by
11 the task force member's official action. The state ethics
12 commission shall establish rules to provide for this public
13 disclosure."

14 SECTION 3. Section 84-14, Hawaii Revised Statutes, is
15 amended by amending subsection (f) as follows:

16 ~~(f) [Subsections (a), (b), and (d) shall not apply to a task~~
17 ~~force member or the designee or representative of that task force~~
18 ~~member whose service as a task force member would not otherwise~~
19 ~~cause that member, designee, or representative to be considered an~~
20 ~~employee, if the task force member or the designee or~~
21 ~~representative of that task force member complies with the~~
22 ~~disclosure requirements under section 84-17.]~~ Nothing in this
23 section shall be construed to prevent a person from serving on a

1 task force or a task force committee, or from making statements or
2 taking official action as a task force member or a task force
3 member's designee or representative. Every task force member or
4 designee or representative of a task force member shall publicly
5 disclose the nature and extent of any interest or transaction
6 which the task force member or task force member's designee or
7 representative believes may be affected by the task force member's
8 official action. The state ethics commission shall establish
9 rules to provide for this public disclosure."

10 SECTION 4. The state ethics commission may, in its
11 discretion, make any changes that it deems necessary to internal
12 procedures or forms to aid in the implementation of this Act.

13 SECTION 5. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 6. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.

22 SECTION 7. Statutory material to be repealed is bracketed
23 and stricken. New statutory material is underscored.

1 SECTION 8. This Act shall take effect upon its approval.

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3 INTRODUCED BY: _____

4

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO LOBBYISTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The legislature finds that the mens rea
2 requirement to prove a violation of the lobbyists law, section 97-
3 7, Hawaii Revised Statutes, is no longer appropriate, given that
4 the failure to file a statement or report with the ethics
5 commission is no longer a criminal offense. Accordingly, the
6 purpose of this Act is to remove statutory remnants from when
7 violations of the lobbyists law resulted in criminal penalties.
8 The purpose of this Act is also to clarify that the ethics
9 commission may assess an administrative fine pursuant to a
10 settlement agreement.

11 SECTION 2. Section 97-7, Hawaii Revised Statutes, is
12 amended as follows:

13 “(a) Any person who:

14 (1) [~~Wilfully fails~~] Fails to file any statement or report
15 required by this chapter;

- 1 (2) [~~Wilfully files~~] Files a statement or report containing
2 false information or material omission of any fact;
3 (3) Engages in activities prohibited by section 97-5; or
4 (4) Fails to provide information required by section 97-2
5 or 97-3;

6 shall be subject to an administrative fine imposed by the
7 commission that shall not exceed \$1,000 for each violation of
8 this chapter. All fines collected under this section shall be
9 deposited into the general fund.

10 (b) No fine shall be assessed unless:

11 (1) The commission convenes a hearing in accordance with
12 section 97-6(c) and chapter 91 and a decision has been
13 rendered by the commission; [and] or

14 (2) [~~A decision has been rendered by the commission~~] The
15 commission and the alleged violator agree to resolve any
16 charge of an alleged violation prior to completion of
17 the contested case process and the resolution includes
18 payment of an administrative find or restitution, or
19 both."

20 SECTION 3. This Act does not affect rights and duties
21 that matured, penalties that were incurred, and proceedings that
22 were begun before its effective date.

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4

5 INTRODUCED BY: _____

6

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The legislature finds that the state ethics
2 commission has a well-established training program for state
3 employees. The purpose of this Act is to give the commission
4 greater flexibility in implementing its training program.

5 SECTION 2. Section 84-43, Hawaii Revised Statutes, is
6 amended as follows:

7 “(a) The [~~state ethics~~] commission shall establish, design,
8 supervise, and conduct ethics training [~~designed specifically~~] for
9 the officers and employees to whom this part applies.

10 (b) The ethics training course shall include:

- 11 (1) Explanations and discussions of the ethics laws,
12 administrative rules, and relevant internal policies;
13 (2) Specific technical and legal requirements;
14 (3) The underlying purposes and principles of ethics laws;
15 (4) Examples of practical application of the laws and
16 principles; and

1 (5) A question-and-answer participatory segment
2 regarding common problems and situations.

3 The [~~state ethics~~] commission shall develop the methods
4 and prepare any materials necessary to implement the
5 course.

6 (c) The [~~state ethics~~] commission shall:

7 (1) Administer the ethics training course;

8 (2) Designate those of its legal staff who are to
9 conduct the ethics training course; and

10 (3) Notify each officer or employee enumerated in
11 section 84-41 that their attendance in this
12 course is mandatory.

13 [~~(d) The ethics training course shall be held in January of~~
14 ~~each year for those who have not attended the course previously.~~
15 ~~The course shall last at least two hours in length.~~]

16 [~~(e)~~](d) The [~~state ethics~~] commission may repeat the course
17 as necessary to accommodate all persons who are required to
18 attend.

19 [~~(f)~~](e) Each state agency shall provide to the [~~state~~
20 ~~ethics~~] commission the names of those required to take the course
21 in a timely manner and assist the commission by providing adequate
22 meeting facilities for the ethics training course."

1 SECTION 3. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The purpose of this Act is to memorialize
2 long-standing practices with respect to the state ethics
3 commission's confidential handling of investigations.

4 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
5 amended by amending subsection (b) as follows:

6 “(b) Charges concerning the violation of this chapter shall
7 be in writing, signed by the person making the charge under oath,
8 except that any charge initiated by the commission shall be signed
9 by three or more members of the commission. The commission shall
10 notify in writing every person against whom a charge is received
11 and afford the person an opportunity to explain the conduct
12 alleged to be in violation of the chapter. The commission may
13 investigate, after compliance with this section, such charges and
14 render an informal advisory opinion to the alleged violator. The
15 commission shall investigate all alleged violations and charges on
16 a confidential basis, having available all the powers herein

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1 provided, and proceedings at this stage shall not be public,
2 provided that the commission may refer any matter to another
3 governmental law enforcement agency. If the informal advisory
4 opinion indicates a probable violation, the person charged shall
5 request a formal opinion or within a reasonable time comply with
6 the informal advisory opinion. If the person charged fails to
7 comply with such informal advisory opinion or if a majority of the
8 members of the commission determine that there is probable cause
9 for belief that a violation of this chapter might have occurred, a
10 copy of the charge and a further statement of the alleged
11 violation shall be personally served upon the alleged violator.
12 Service shall be made by personal service upon the alleged
13 violator wherever found or by registered or certified mail with
14 request for a return receipt and marked deliver to addressee only.
15 If after due diligence service cannot be effected successfully in
16 accordance with the above, service may be made by publication if
17 so ordered by the circuit court of the circuit wherein the alleged
18 violator last resided. The [~~state ethics~~] commission shall submit
19 to the circuit court for its consideration in issuing its order to
20 allow service by publication an affidavit setting forth facts
21 based upon the personal knowledge of the affiant concerning the
22 methods, means, and attempts made to locate and effect service by
23 personal service or by registered or certified mail in accordance

1 with the above. Service by publication when ordered by the court
2 shall be made by publication once a week for four successive weeks
3 of a notice in a newspaper of general circulation in the circuit
4 of the alleged violator's last known state address. The alleged
5 violator shall have twenty days after service thereof to respond
6 in writing to the charge and statement."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

12

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO RETENTION OF FINANCIAL DISCLOSURE STATEMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The purpose of this Act is to require the
2 state ethics commission to maintain financial disclosure
3 statements for a total period of six years after filing, rather
4 than for a period of six years beyond the expiration of a state
5 official's term of office.

6 SECTION 2. Section 84-17.5, Hawaii Revised Statutes, is
7 amended by amending subsection (a) as follows:

8 “(a) All financial disclosure statements filed by a
9 legislator, employee, or delegate to a constitutional convention
10 shall be maintained by the [~~state ethics~~] commission [~~during the~~
11 ~~term of office of the legislator, employee, or delegate and~~] for a
12 period of six years thereafter. Upon the expiration of the six-
13 year period, the financial disclosure statement and all copies
14 thereof shall be destroyed.”

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

1 SECTION 4. This Act shall take effect upon its approval.

2

3 INTRODUCED BY: _____

4

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. The legislature finds that, while the state
2 ethics commission has the authority to negotiate the payment of
3 restitution in a settlement agreement with an alleged violator, it
4 lacks statutory authority to impose restitution following a
5 contested case hearing. The purpose of this Act is to give the
6 state ethics commission authority to order payment of restitution
7 after a contested case hearing.

8 SECTION 2. Section 84-39, Hawaii Revised Statutes, is
9 amended as follows:

10 **"84-39 Administrative fines and restitution.** (a) Where an
11 administrative fine has not been established for a violation of
12 this chapter, any person, including a legislator or employee, who
13 violates this chapter shall be subject to an administrative fine
14 imposed by the [~~state ethics~~] commission that shall not exceed
15 \$1,000 for each violation. All fines collected under this section
16 shall be deposited in the general fund.

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1 (b) The commission may require any person who
2 violates this chapter to pay restitution in addition to any
3 administrative fine.

4 (c) No fine shall be assessed nor shall restitution
5 be imposed under this section unless:

6 (1) The [~~state ethics~~] commission convenes a hearing
7 in accordance with section 84-31(c) and chapter
8 91 and a decision has been rendered by the
9 commission; or

10 (2) The [~~state ethics~~] commission and respondent
11 agree to resolve any charge of an alleged
12 violation prior to completion of the contested
13 case process and the resolution includes payment
14 of an administrative fine or restitution, or
15 both."

16 SECTION 3. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.

1 SECTION 4. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

THE HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

____.B. NO.

A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
HAWAII:**

1 SECTION 1. Section 84-11.5, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 “(a) Every legislator and employee shall file a gifts
5 disclosure statement with the state ethics commission [~~on~~] no
6 later than June 30 of each year if all the following conditions
7 are met:

8 (1) The legislator or employee, or spouse or dependent child
9 of a legislator or employee, received directly or
10 indirectly from one source any gift or gifts valued
11 singly or in the aggregate in excess of \$200, whether
12 the gift is in the form of money, service, goods, or in
13 any other form;

14 (2) The source of the gift or gifts have interests that may
15 be affected by official action or lack of action by the
16 legislator or employee; and

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1 (3) The gift is not exempted by subsection (d) from
2 reporting requirements under this subsection."

3 2. By amending subsection (b) to read:

4 "(b) The report shall cover the period from June 1 of the
5 preceding calendar year through [June 1] May 31 of the year of the
6 report."

7 3. By inserting a new subsection (g) to read:

8 "(g) For purposes of this section only, "legislator or
9 employee" includes any individual who was a legislator or employee
10 for any portion of the period from June 1 of the preceding
11 calendar year through May 31 of the year of the report."

12 SECTION 2. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 3. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.

21 SECTION 4. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

23 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

SUNSHINE LAW MEETING
AGENDA ITEM V

ADMINISTRATIVE RULES

Report from Permitted Interaction Group regarding staff's suggested amendments to
Hawaii Administrative Rules, Title 21, Chapters 4-6

Attachment 1: Proposed administrative rules, chapters 4-6

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Amendment and Compilation of Chapter 21-4
Hawaii Administrative Rules

Month, Day, 2017

SUMMARY

1. §21-4-1 Hawaii Administrative Rules, is renamed and amended.
2. §21-4-2, Hawaii Administrative Rules, is amended.
3. §§21-4-3 through 21-4-5, Hawaii Administrative Rules, are repealed.
4. Chapter 4 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 4

ADVISORY OPINIONS

Chapter 21-4, Hawaii Administrative Rules, entitled “Advisory Opinions”, is amended and compiled to read as follows:

21-4-1	Request for guidance; request for advisory opinion
21-4-2	Rendering of advisory opinions
21-4-3	Repealed
21-4-4	Repealed
21-4-5	Repealed

Historical Note: This chapter is based substantially upon rule 4 of the State of Hawaii Ethics Commission Rules and Regulations. [Eff. 1/7/74 and 11/11/78; R July 13, 1981; am and comp]

§21-4-1 Request for guidance; request for advisory opinion. (a) The executive director may provide confidential guidance to any individual as to whether the facts and circumstances of a particular case constitute or would constitute a violation of chapter 84, chapter 97, section 11-8, or section 11-316, HRS, provided that nothing herein shall establish an attorney-client relationship between the person seeking advice and the commission or its staff. Any written guidance rendered by commission staff advising that certain conduct is or was permissible shall, until amended or revoked, be binding upon the commission in any subsequent enforcement proceeding concerning the individual who sought the guidance and acted in reliance on it in good faith, unless material facts were

omitted or misstated by such persons in the request for guidance. Nothing in this subsection shall prevent the commission or its staff from investigating alleged violations of chapters 84 or 97, HRS.

(b) Any individual seeking formal written guidance from the commission itself may request an advisory opinion. All requests for advisory opinions made to the commission shall be in writing and shall contain:

- (1) The name of the person requesting the opinion;
- (2) The state agency for which the person works, if applicable;
- (3) That person's position in the state agency, if applicable;
- (4) The nature and duties of that person's state employment, if applicable;
- (5) The date of the request;
- (6) That person's mailing address and electronic mail address [~~business and home address~~];
- (7) That person's [~~business and home~~] telephone number[s];
- (8) A complete statement of the facts and circumstances upon which the commission can make a determination; and
- (9) The signature, digital or otherwise, of the person requesting the opinion.

~~[(b)]~~ (c) A request for an advisory opinion is considered filed when the commission has received [~~in writing or the executive director has obtained through an interview process~~] all [~~the~~] information deemed necessary by the commission. When the opinion is requested [~~by an employee or legislator~~] regarding a situation involving another person [~~employee or legislator~~] as set forth in subsection (d), the filing shall not be deemed completed until the person [~~employee or legislator who will be the subject of the opinion~~] has had a reasonable opportunity to review the facts submitted and to present that person's [~~employee's or legislator's~~] view of the factual circumstances.

(d) Except as provided by sections 11-8 and 11-316, HRS, or otherwise provided by law, a person may only request an advisory opinion regarding the person's own conduct, provided that:

- (1) a supervisor may request an advisory opinion as to whether the supervisor should act to prevent a subordinate from violating the code of ethics;
- (2) an agency may request an advisory opinion as to whether it is permitted to enter into a contract pursuant to §§84-15 or 84-18, HRS; and
- (3) a person may request an advisory opinion as to whether anyone acting on behalf of or in connection with that person is in compliance with chapter 97, HRS.

(e) The person who is the subject of a request for an advisory opinion may appear before the commission pursuant to §21-1-6.

(f) Consideration of the request for an advisory opinion is an adjudicatory function of the commission. The commission need not provide public notice of or public access to a meeting to consider a request for an advisory opinion. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 92-3, 92-6, 97-6)

§21-4-2 Rendering of advisory opinion. (a) An advisory opinion shall ~~[will]~~ be in writing and signed by all commissioners subscribing to the opinion. It shall ~~[will]~~ be considered rendered when it is signed and placed in the mails, postage prepaid and addressed to the person requesting the opinion at the address furnished by the person, ~~[or]~~ upon personal delivery, or upon delivery via electronic mail.

(b) Any commissioner who agrees with the commission's opinion but for different reasons than as stated may file a written concurring opinion; any member of the commission who disagrees with the commission's opinion may file a written dissenting opinion, which shall ~~[will]~~ be placed at the end of the majority opinion or at the end of the concurring opinion, if any.

(c) An unredacted advisory opinion ~~[will]~~ shall be issued to the person requesting the opinion within thirty days of the request being filed with the commission pursuant to §21-4-1(c) ~~[except that when the request for an advisory opinion involves a legislator or employee other than the person requesting the opinion, then a copy of the advisory opinion, without the name of the person requesting the opinion or facts identifying such person, if any, will be sent to the legislator or employee concerned].~~ The person requesting the opinion may authorize the commission to publish the unredacted advisory opinion, in which case the commission need not prepare a redacted opinion.

(d) The commission shall provide the person requesting the opinion with a draft redacted opinion via electronic mail or first-class mail within forty-five days of rendering the unredacted opinion. The person requesting the opinion shall have fifteen days from service of the redacted opinion in which to provide comments to the commission. The commission shall have thirty days from the expiration of the fifteen-day period or receipt of comments, whichever comes first, in which to publish the redacted opinion. The commission may extend these deadlines by request or on its own motion for good cause shown.

~~[Requests for copies of the opinion will be referred by the commission to the person to whom the opinion was issued, unless the person has indicated in writing that the commission may release copies of the opinion upon request.~~

~~(e) Within forty five days after an opinion has been rendered, the commission shall submit a deleted opinion to the person affected by the opinion who shall have ten days to submit comments or request for recommendations for~~

amendment. The commission may in its discretion consider the comments of the person prior to filing of the deleted opinion, which shall be completed no later than ninety days after the opinion has been rendered. The deleted opinion shall be a matter of public record. The executive director shall provide copies of deleted opinions upon request without charge. At the end of each calendar year, the opinions issued during the calendar year shall be printed, along with an index, and copies shall be available upon request.] [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-4-3 Repealed. [Interim rulings. (a) In a case where a person requesting an opinion indicates that due to circumstances, that person must make an immediate decision, the commission may, in its discretion, issue a ruling signed by three or more commissioners, which ruling briefly states the commission's opinion and which may be followed within the original thirty day period by a full advisory opinion.] [Eff. July 13, 1981; R] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-4-4 Repealed. [An opinion rendered by lapse of thirty days. Upon the receipt of a request for an advisory opinion, the executive director [or delegate] may determine whether or not the situation is in violation of the ethics law or lobbyists law based upon a prior opinion of the commission. Such a determination, if approved in writing by a commissioner, will become the opinion of the commission by lapse of thirty days from the date of the receipt of the request. The executive director shall notify person requesting the opinion of the determination and approval. An opinion issued in this manner will not be published.] [Eff. July 13, 1981; R] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-4-5 Repealed. [Hearings. Generally, an opinion will be rendered only upon facts submitted in writing. The employee or legislator subject to an opinion, however, may request a hearing in writing, stating the reason for making the request, and may request that other persons attend. The commission may limit the time allowed for the hearing and the number of persons attending the hearing. The commission, at any time, with notice to the person requesting the opinion, may interview persons who may have information desired by the commission in the consideration of a request for an advisory opinion.] [Eff. July 13, 1981; R

97-6)] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31,

END OF CHAPTER 4

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Amendment and Compilation of Chapter 21-5
Hawaii Administrative Rules

Month, Day, 2017

SUMMARY

1. §21-5-1, Hawaii Administrative Rules, is renumbered to §21-5-2, renamed, and amended.
2. §21-5-2, Hawaii Administrative Rules, is renumbered to §21-5-1, renamed, and amended.
3. New §§21-5-2.1, 21-5-2.2, 21-5-2.3, 21-5-2.4, 21-5-2.5, and 21-5-2.6, Hawaii Administrative Rules, are added.
4. §21-5-3, Hawaii Administrative Rules, is renamed and amended.
5. §21-5-4, Hawaii Administrative Rules, is repealed.
6. §21-5-5, Hawaii Administrative Rules, is renamed and amended.
7. A new §21-5-5.1, Hawaii Administrative Rules, is added.
8. §21-5-6, Hawaii Administrative Rules, is renamed and amended.
9. A new §21-5-6.1, Hawaii Administrative Rules, is added.
10. §21-5-7, Hawaii Administrative Rules, is renamed and amended.
11. §21-1-7, Hawaii Administrative Rules, is re-numbered to §21-5-7.1 and amended.
12. §§21-5-8 to 21-5-9, Hawaii Administrative Rules, are amended.

13. A new §21-5-9.1, Hawaii Administrative Rules, is added
14. §§21-5-10 to 21-5-11, Hawaii Administrative Rules, are renamed and amended.
15. A new §21-5-12, Hawaii Administrative Rules, is added.
16. Chapter 5 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 5

CHARGES, CONTESTED CASES, AND SETTLEMENT AGREEMENTS

Chapter 21-5, Hawaii Administrative Rules, renamed “Charges, Contested Cases, and Settlement Agreements”, is amended and compiled to read as follows:

- 21-5-1 Complaints; charges initiated by the commission
- 21-5-2 Charges initiated by a member of the public
- 21-5-2.1 Confidentiality in investigations
- 21-5-2.2 Cooperation with commission investigations
- 21-5-2.3 Investigatory interviews
- 21-5-2.4 Legal counsel
- 21-5-2.5 Individual representing party
- 21-5-2.6 Procedure upon issuance of charge; further statement of alleged violation
- 21-5-3 Status conference
- 21-5-4 Repealed
- 21-5-5 Contested hearings; notice of hearing
- 21-5-5.1 Presiding officer
- 21-5-6 Motions
- 21-5-7 Contested hearings; procedure
- 21-5-7.1 Rules of evidence
- 21-5-8 Pre-hearing conference
- 21-5-9 Decisions
- 21-5-9.1 Post-hearing procedures for hearing conducted by hearing officer
- 21-5-10 Record of hearing
- 21-5-11 Post-hearing complaint
- 21-5-12 Settlement

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 July 13, 1981; am and comp]

§21-5-1 [~~§21-5-2~~] Complaints; charges [~~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, 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.~~] Any individual may submit information to the executive director alleging a violation of chapters 84 or 97, HRS. Such complaints may be made anonymously and need not be made under oath. The executive director may investigate any matter upon the receipt of such a complaint, at the request of the commission, or on the executive director's own initiative.

(b) The executive director shall determine whether and how to investigate a matter and whether to request from the commission a resolution to investigate the matter pursuant to §21-5-1(c). At any time prior to requesting a resolution to investigate, the executive director may close any investigation.

(c) In investigating any matter prior to obtaining a resolution to investigate from the commission, the executive director may review publicly available documents or documents maintained by the State; the executive director may also interview legislators, employees, other appointed or elected officials, or the alleged violator. Investigations shall not extend to interviews of other persons unless the commission, in its discretion, issues a resolution to investigate.

(d) A resolution to investigate issued by the commission shall define the nature and scope of the investigation and be supported by a vote of three or more members of the commission.

~~[(b)]~~ (e) If after [~~preliminary~~] investigation at least three commissioners decide that a charge should be initiated, the charge shall [~~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. July 13, 1981; §21-5-2; am, ren. §21-5-1, and comp

] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-1 **§21-5-2** **Charges initiated ~~instituted~~ by a member of the public.** (a) Any individual may file a charge with the commission. 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 the name and contact information of the individual filing the charge. The charge ~~and~~ shall be signed by the filer ~~[person making the charge,]~~ under oath, declaring under penalty of perjury that the allegations are true and correct to the best of the filer's knowledge. 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 to administer oaths. Oaths administered in a foreign jurisdiction will be administered in accordance with the laws of that jurisdiction. The executive director may investigate such charges pursuant to §21-5-1.

(b) Where it appears that a document submitted to the commission is intended to be a charge, but the document ~~[Upon receipt of a document which]~~ does not comply with ~~[the requirement of §21-5-1(a)]~~ §21-5-2(a) ~~[or which does not in form or substance constitute a charge]~~, the commission shall notify the filer ~~[person signing the document]~~ of the insufficiency. The executive director shall treat the document as a complaint submitted pursuant to §21-5-1 until the insufficiency is corrected.

[Eff. July 13, 1981; §21-5-1; am, ren §21-5-2, and comp

] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.1 Confidentiality in investigations. (a) The executive director shall investigate complaints and charges confidentially and shall not disclose non-public details of an investigation except as necessary to conduct the investigation, provided that the executive director may disclose information to any governmental law enforcement agency as warranted.

(b) Records relating to a complaint, charge, or any investigation are confidential and are not open to inspection by any complainant, respondent, or member of the public except as specifically required by chapters 84 or 97, HRS, or these rules.

(c) The executive director may direct legislators and employees to refrain from disclosing information regarding the investigation if the executive director determines that such direction is necessary to maintain the integrity of the

investigation or for other good cause. Failure to comply with such a directive shall be a violation of section 84-12, HRS.

(d) At the conclusion of an investigation, the executive director may notify the complainant and the respondent that the investigation has been closed. The executive director may reveal additional information regarding the resolution of an investigation if necessary to prevent retaliation against the complainant or witnesses, to prevent other violations of chapters 84 or 97, HRS, or for other good cause.

(e) Nothing in these rules shall require the commission to reveal the source of a complaint. [Eff. _____] (Auth: HRS §§84-31(a)(5), 91-2, 91-8.5, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-8.5, 97-6)

§21-5-2.2 Cooperation with commission investigations. (a) Every department, division, board, bureau, commission, or other agency of the state shall provide cooperation and assistance to the commission in the performance of the commission's duties.

(b) In response to a request for documents by the commission, every department, division, board, bureau, commission, or other agency of the state shall provide such documents within ten business days unless extenuating circumstances exist. Extenuating circumstances exist when:

- (1) The request requires extensive efforts to search, review, or segregate the records, or otherwise prepare the records for copying and transmittal to the commission;
- (2) The agency requires additional time to respond to the request to avoid an unreasonable interference with its other statutory duties or functions; or
- (3) A natural disaster or other situation beyond the agency's control prevents the agency from responding to the request within ten business days.

(c) When extenuating circumstances are present or the requested records of voluminous, the responding agency may, in good faith, elect to make the records available in increments and shall disclose each increment within ten business days of the prior incremental disclosure.

(d) The head of each department, division, board, bureau, commission, or other agency of the state shall be responsible for ensuring such cooperation and assistance. [Eff. _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)) (Imp: HRS §§84-31, 84-36, 91-2, 97-6)

§21-5-2.3 Investigatory interviews. (a) The commission, by subpoena, may compel the attendance of witnesses or respondents at investigative interviews with the executive director.

(b) The interviewee may be accompanied by the interviewee's counsel or union representative.

(c) Any interview conducted by the commission, the executive director, or delegate may be conducted under oath. [Eff.]
(Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.4 Legal counsel. (a) A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearing officer.

(b) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the commission or hearing officer and shall be subject to the guidelines of the Hawaii rules of professional conduct and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff.] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

§21-5-2.5 Individual representing party. When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the commission or hearing officer, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized and qualified to so act. The individual at any time, however, may be required by the commission or hearing officer to furnish proof of authorization and qualification to act in that capacity. [Eff.

] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

§21-5-2.6 Procedure upon issuance of charge; further statement of alleged violation. (a) Upon issuance of a charge by the commission or a member of the public, the commission shall notify the respondent of the charge in writing in accordance with §21-2-4.

(b) The respondent shall have twenty days after service thereof to answer the charge in writing. The executive director may extend the time to answer for good cause shown.

(c) 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) After reviewing the answer and conducting any further investigation as warranted, the commission may close the matter, settle the matter on any terms it deems fair and in the public interest, issue an informal advisory opinion, or issue a further statement of alleged violation. The respondent shall have twenty days after service of the further statement of alleged violation to answer 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.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-9.5, 97-6)

§21-5-3 Status conference [~~Informal hearing notice~~]. At any time, the commission may request the alleged violator's attendance at a status conference hearing to obtain further information from the alleged violator, discuss settlement with the alleged violator, or otherwise seek a fair and efficient resolution of any matter. [~~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. July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

§21-5-4 Repealed. [~~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. July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)~~

§21-5-5 [Formal and contested] Contested hearings; notice of hearing.

(a) The commission shall give at least fifteen [~~five~~] days' notice to the respondent prior to ~~the~~ a contested 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. July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-9.5, 97-6)

§21-5-5.1 Presiding officer. In any contested case, the presiding officer shall be the chairperson of the commission, or another commissioner as selected by the commission. The commission may conduct the hearing or, in its discretion, may delegate the conduct of the contested hearing to a hearing officer, in which case the commission shall select such hearing officer. When the conduct

of the hearing has been delegated to a hearing officer, the hearing officer shall be the presiding officer.

[Eff. _____] (Auth: HRS §84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 92-16, 97-6)

§21-5-6 Motions. (a) All motions other than those made during a hearing shall be made in writing, shall state the relief sought, and shall be accompanied by an affidavit, or declaration, or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for filing all motions and opposing memoranda, if any.

(b) Copies of all motions, affidavits, declarations, and memoranda shall be served on all other parties to the hearing within the time set by the presiding officer. The original shall be filed with the commission with certificate of service.

(c) Failure to serve or file an affidavit, declaration, or memorandum in opposition to a motion or failure to appear at the hearing on the motion, if held, shall be deemed a waiver of objection to the granting or denial of the motion unless otherwise ordered by the commission. ~~[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. July 13, 1981; am and comp _____] (Auth: HRS §84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-7, 97-6)

§21-5-7 [Formal and contested] Contested hearings; procedures. (a) The presiding officer [chairperson] shall convene and conduct 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 executive director [~~e~~omplainant]; and
 - (2) Opening statement by the respondent. The respondent may reserve the opportunity to make the opening statement until after the [~~e~~omplainant] executive director has presented the [~~e~~omplainant'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, limited to the issues raised on direct examination;

- (3) Redirect examination by the party calling the witness, limited to the issues raised on cross examination;
- (4) Recross examination by the other party, limited to the issues raised on redirect examination; and
- (5) Examination of the witness by the commission or hearing officer at any time.
- (d) After all the evidence has been presented, the presiding officer [~~commission~~] shall give the parties the opportunity to summarize. The usual order of final arguments shall be as follows:
 - (1) Final argument by the executive director [~~complainant~~];
 - (2) Final argument by the respondent; and
 - (3) Rebuttal argument by the executive director [~~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) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents, briefs, ensure the orderly conduct of any proceeding, and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing. If the hearing is conducted by the commission, the commissioners may examine and cross-examine witnesses.
- (f) To avoid unnecessary or repetitive evidence, the presiding officer may limit the number of witnesses, the extent of direct examination, cross examination, redirect examination, or recross examination, or the time for testimony upon a particular issue.
- (g) Any procedure in a contested case may be modified or waived by stipulation of the parties.
- (h) 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~~) (i) 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. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 91-10, 92-16, 97-6)

§21-5-7.1 Rules of evidence. In accordance with §91-10, HRS, the [The] commission shall not be bound by the [strict] rules of evidence, provided that the commission's findings must be based upon competent and substantial evidence or as otherwise provided by law. Any oral or documentary evidence which is relevant and material to the charge may be admitted. Effect shall be given to the rules of privilege recognized by law. The presiding officer may take notice of judicially recognizable facts.

[Eff. July 13, 1981; §21-1-7; am, ren §21-5-7.1, and comp] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 91-10, 97-6)

§21-5-8 Pre-hearing conference. (a) When a prehearing conference is held by the presiding officer, 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 such exhibits [~~required to be disclosed by §21-5-8(a)(2)~~] shall be received in evidence at the hearing over objection unless the presiding officer [~~commission~~] finds that there was reasonable ground for failing to disclose such exhibits prior to hearing;
- (3) [(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 five days [~~one day~~] prior to the hearing and shall be listed in any pre-hearing order.
- (4) The presiding officer may set a schedule for filing briefs, exhibits, or other pleadings, and may strike any documents not timely filed.

(b) The presiding officer may issue a pre-hearing order setting forth any requirements or deadlines regarding the hearing. [~~pre hearing order shall supersede the pleadings where there is any conflict and shall supplement the pleadings in all other respects.~~] [Eff. July 13, 1981; am and comp

] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-10, 97-6)

§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 one or both parties ~~[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 or dissenting opinion. ~~[decision. Any commissioner may file a written dissenting decision.]~~ [Eff. June 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-11, 91-12, 97-6)

§21-5-9.1 Post-hearing procedures for hearing conducted by hearing officer. (a) Upon completion of taking of evidence, the hearing officer may ask the parties to submit, and to serve upon all parties, proposed findings of fact and conclusions of law. The hearing officer shall thereafter prepare a report setting forth proposed findings of fact, conclusions of law, and the reasons therefore, and a recommended order, and shall present the report of the proceeding to the commission.

(b) The record shall include the charge, further statement of alleged violation, answers, notice of hearing, motions, rulings, orders, the transcript or other record of the hearing, stipulations, documentary evidence, proposed

findings, exhibits and other documents submitted by the parties, objections to the conduct of the hearing, the report of the hearing officer, and all other matters placed in evidence.

(c) The hearing officer shall cause a copy of the report to be served upon all parties to the proceedings.

(d) Except as otherwise ordered by the commission, within fourteen calendar days after service of the report and recommendations by the hearing officer, a party may file with the commission exceptions to the report together with a brief in support of such exceptions. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(e) The exceptions shall:

(1) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;

(2) Identify that part of the hearing officer's report and recommended order to which objections are made; and

(3) State all the grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived.

(f) Except as otherwise ordered by the chairperson, within ten days after service of the exceptions to the hearing officer's report, any party may file with the commission a brief in response to the exceptions. Such party shall serve copies of the brief upon each party to the proceeding.

(g) The brief shall:

(1) Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken; and

(2) State the facts and reasons why the report and recommendation should be affirmed.

(h) The commission may direct oral argument on its own motion.

(i) In the event no statement of exceptions is filed, the commission may proceed to reverse, modify, or adopt the recommendations of the hearing officer.

(j) Upon the filing of the exceptions and briefs together with the briefs in support, the commission may:

(1) Render its decision upon the record;

(2) If oral argument has been held, the commission may render its decision after oral argument;

(3) Reopen the docket and take further evidence; or

(4) Make such other disposition of the case that is necessary under the circumstances.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-11, 91-12, 97-6)

§21-5-10 Record of hearing[s]. The record of the hearing shall be compiled in conformance with §91-9[~~(e)~~], HRS. The commission shall [~~will~~] make provisions for audio or video [~~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. July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 97-6)

§21-5-11 Post-hearing complaint [~~Complaint~~]. After the commission has issued a written [~~made a~~] decision, it [~~the commission~~] shall determine whether sufficient cause exists to issue a post-hearing complaint and, if so, shall issue such complaint pursuant to §84-32 [~~issue the complaint and refer its decision to the appropriate legislative body or to the governor, as the case may be~~]. [Eff. July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-32, 84-38, 97-6)

§21-5-12 Settlement. (a) The commission may resolve a matter at any time pursuant to a settlement agreement deemed to be fair and in the public interest.

- (b) Settlement procedure:
 - (1) The executive director may negotiate a tentative settlement agreement with any respondent, subject to the commission's approval. At any time, the executive director may, with the consent of the respondent, present the matter to the commission to obtain its inclination regarding proposed terms of an agreement;
 - (2) Upon request, the respondent shall be provided an opportunity to address the commission as to the proposed terms of an agreement.
 - (3) The respondent and each commissioner approving the agreement shall sign the agreement.
 - (4) The commission shall issue a resolution that serves as a final disposition of the matter. Any commissioner may file a written concurring or dissenting statement to the resolution.
- (c) Force and effect of agreement:

- (1) The agreement resolves only those matters directly raised in the settlement agreement itself and only against the alleged violator. The commission reserves the right to investigate and charge the alleged violator regarding matters not raised in the settlement agreement. The settlement agreement does not resolve any matter against any alleged violator not a party to the agreement.
- (2) By entering into a settlement agreement, the alleged violator waives any right to appeal any action taken by the commission in connection with the matter.
- (d) Settlement agreements and resolutions are presumptively public, but the commission may enter a confidential settlement agreement only after considering the following factors:
 - (1) the nature of the violation;
 - (2) the alleged violator's position and duties;
 - (3) whether the alleged violator has been involved with prior commission proceedings;
 - (4) the manner in which the matter was brought to the commission's attention;
 - (5) the alleged violator's level of cooperation with the commission's investigation;
 - (6) the alleged violator's acknowledgement of wrongdoing and commitment to avoid future violations; and
 - (7) any other mitigating or aggravating factors.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5))
(Imp: HRS §§84-32, 91-2, 91-8.5, 91-9, 97-6)

END OF CHAPTER 5

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Amendment and Compilation of Chapter 21-6
Hawaii Administrative Rules

Month, Day, 2017

SUMMARY

1. §§21-6-1 to 21-6-2, Hawaii Administrative Rules, are renamed and amended
2. §§21-6-3 to 21-6-4, Hawaii Administrative Rules, are renamed.
3. §21-6-5, Hawaii Administrative Rules, is renamed and amended.
4. §21-6-6, Hawaii Administrative Rules, is renamed.
5. §§21-6-7 to 21-6-8, Hawaii Administrative Rules, are amended.
6. Chapter 6 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 6

STATE ETHICS COMMISSION

PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES
AND FOR DECLARATORY ORDERS

- 21-6-1 Who may petition for rulemaking
- 21-6-2 Form and content of petition for rulemaking
- 21-6-3 Conformance of petition for rulemaking
- 21-6-4 Processing of petition for rulemaking
- 21-6-5 Consideration and disposition of petition for rulemaking
- 21-6-6 Form and content of the petition for
declaratory order
- 21-6-7 Processing of the petition for declaratory
order, consideration and disposition
- 21-6-8 Declaratory order on commission's own motion

Historical Note: This chapter is based substantially upon rules 7 and 8 of the State of Hawaii Ethics Commission Rules and Regulations. [Eff. 1/7/74 and 11/11/78; R July 13, 1981; am and comp]

§21-6-1 Who may petition for rulemaking. An interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. [~~The petition shall be submitted in duplicate to the commission.~~] [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

§21-6-2 Form and content of petition for rulemaking. The petition need not be in any special form, but it shall contain:

- (1) The petitioner's name, address, electronic mail address, and telephone number, if any;
- (2) A statement of the nature of the petitioner's interest;
- (3) A draft or statement of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed, or both;
- (4) A statement of the reasons in support of the proposed rule, amendment, or repeal;
- (5) Any other information relevant to the petition;
- (6) The petitioner's signature. [Eff. July 13, 1981; am and comp
] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp:
HRS §§84-31, 91-6, 97-6)

§21-6-3 Conformance of petition for rulemaking. The commission may reject any petition which does not conform to the requirements of this chapter. [Eff. July 13, 1981; am and comp
] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

§21-6-4 Processing of petition for rulemaking. The petition shall be dated upon receipt. The commission shall notify the petitioner of the date, time, and place where the commission shall consider the petition, the petitioner's privilege of personal appearance with or without counsel, and the privilege of presenting evidence and argument in support of the petition. [Eff. July 13, 1981; am and comp
] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

§21-6-5 Consideration and disposition of petition for rulemaking. Within ninety [~~thirty~~] days after the receipt thereof, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate proceedings in accordance with law for adoption, amendment, or repeal of the rule, as the case may be. [Eff. July 13, 1981; am and comp
] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

§21-6-6 Who may petition for declaratory order; form ~~[Form]~~ and content of the petition; conformance of the petition ~~[for declaratory order]~~.

Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. The petition shall be submitted in duplicate and delivered to the office of the commission. The petition shall state the controversy or question, shall cite the statutory provision, rule, or order involved, and shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest, and shall be signed by the petitioner. The commission may reject any petition which does not conform to the requirements set forth above.

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-7 Processing of the petition for declaratory order; consideration and disposition.

(a) The commission shall notify the petitioner of the date, time, and place where the commission shall consider the petition, the petitioner's privilege of personal appearance with or without counsel, and the privilege of presenting evidence and argument in support of the petition. Within a reasonable time after the receipt of the petition, the commission shall render its order in writing.

(b) The commission may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future;
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may adversely affect the interests of the commission or any of its officers or employees in litigation which is pending or may reasonably be expected to arise;
or

(4) The matter is not within the jurisdiction of the commission.

(c) The commission may, in its discretion, hold a hearing on the petition.

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-8 Declaratory order on commission's own motion.

Notwithstanding the other provisions of this rule, the commission on its own motion [~~or upon receipt but without notice or hearing~~] may issue a declaratory order to resolve a controversy or answer a question.

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-8, 97-6(a)(5)) (Imp: HRS §§84-31, 91-8, 97-6)

END OF CHAPTER 6

SUNSHINE LAW MEETING
AGENDA ITEM VI

EVALUATION OF EXECUTIVE DIRECTOR

Report from Permitted Interaction Group regarding evaluation of Executive Director
Daniel Gluck

No attachments

SUNSHINE LAW MEETING
AGENDA ITEM VII

SETTING THE 2018 ETHICS COMMISSION MEETING CALENDAR

Attachment 1: 2018 Meeting Calendar

2018 Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	MTG FLDR	13
14	15	16	17	MTG	19	20
21	22	23	24	25	26	27
28	29	30	31			

February						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	MTG FLDR	10
11	12	13	14	MTG	16	17
18	19	20	21	22	23	24
25	26	27	28			

March						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	MTG FLDR	10
11	12	13	14	MTG	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	MTG FLDR	14
15	16	17	18	MTG	20	21
22	23	24	25	26	27	28
29	30					

May						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	MTG FLDR	12
13	14	15	16	MTG	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	MTG FLDR	16
17	18	19	20	MTG	22	23
24	25	26	27	28	29	30

July						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	MTG FLDR	14
15	16	17	18	MTG	20	21
22	23	24	25	26	27	28
29	30	31				

August						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	MTG FLDR	11
12	13	14	15	MTG	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	MTG FLDR	15
16	17	18	19	MTG	21	22
23	24	25	26	27	28	29
30						

October						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	MTG FLDR	13
14	15	16	17	MTG	19	20
21	22	23	24	25	26	27
28	29	30	31			

November						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	MTG FLDR	10
11	12	13	14	MTG	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	MTG FLDR	15
16	17	18	19	MTG	21	22
23	24	25	26	27	28	29
30	31					

Federal Holidays 2018

Jan 1	New Year's Day	Jul 4	Independence Day	Nov 12	Veterans Day (observed)
Jan 15	Martin Luther King Day	Sep 3	Labor Day	Nov 22	Thanksgiving Day
Feb 19	Presidents' Day	Oct 8	Columbus Day	Dec 25	Christmas Day
May 28	Memorial Day	Nov 11	Veterans Day		