

SUNSHINE LAW MEETING



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

NOTICE OF MEETING OF THE HAWAII STATE ETHICS COMMISSION

Date: March 29, 2018
Time: 9:30 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 February 22, 2018, Meeting
- II. Consideration and Approval of the Executive Session Minutes of the February 22, 2018, Meeting (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.

- III. Executive Director's Report

1. Education / Training Report
2. Guidance and Assignment Statistics – February 2018
Attachment 2: 2018 Guidance and Assignment Statistics
3. Miscellaneous Office Projects / Updates
 - (a) Electronic filing system
 - (b) 50th Anniversary Events

Attachment 3: Payroll Announcement, Feb. 20, 2018

IV. Legislative update

1. Ethics Commission bills (supporting all):

- (a) [HB 1853](#) / [SB 2144](#) Housekeeping measure (gifts, financial disclosure retention)
- (b) [HB1854](#) / [SB 2142](#) Removing “wilfully” from Lobbyists Law enforcement statute and making language consistent with that of Ethics Code
- (c) [HB1855](#) / [SB 2141](#) Allowing imposition of restitution in contested case hearing
- (d) [HB 1740](#) / [SB 2143](#) Clarifies “legislative function” and requirements for task force members

2. Budget bill (support): [HB 2600](#)

3. Other bills

- (a) [HB 71](#) Emoluments (support intent)
- (b) [HB 2192](#) Removing dollar amounts from financial disclosure statements for some volunteer board/commission members (oppose)
- (c) [HB 2193](#) / [SB 2610](#) Re-defining “employee” to include interns (support intent)
- (d) [HB 2420](#) Hatch Act (support intent)
- (e) [SB 2231](#) Capping fees for late financial disclosures for volunteer board/ commission members (comments)
- (f) [SB 2391](#) Requiring ethics training for charter school Members (support training requirement)
- (g) [SB 2597](#) Cataloging protocol gifts (support)
- (h) [SB 2648](#) Financial disclosure statements for Public Utilities Commission staff (comments)

- (i) [SB2735](#) Changing structure of appointment and salary of Office of Information Practices Executive Director (support additional resources for OIP)
- (j) [SB2996](#) Establishing an airport corporation (comments to clarify that members will be bound by Ethics Code)

V. Administrative Rules

1. Revised proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 1-3
2. Discussion of Report from Permitted Interaction Group regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6

VI. Summary of Staff 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. 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
FEBRUARY 22, 2018 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the February 22, 2018 Hawaii
State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, February 22, 2018

Time: 10:03 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. Gaulty, Chair
Ruth D. Tschumy, Vice Chair
Susan N. DeGuzman, Commissioner
David O'Neal, 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

CALL TO ORDER

The meeting was called to order at 10:03 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the January 18, 2018, Meeting

Vice Chair Tschumy made and Commissioner DeGuzman seconded a motion to approve the minutes of the January 18, 2018, Sunshine Law Meeting. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, O'Neal, and Wood voting).

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

2
3 *Education / Training Report*

4
5 Executive Director Gluck reported that the staff have received numerous
6 requests for training and would be scheduling trainings over the next few months,
7 including several trainings on the neighbor islands.

8
9 *Guidance and Assignment Statistics – January 2018*

10
11 *Attachment – 2018 guidance and assignment statistics*

12
13 Executive Director Gluck referred to the attachment and noted a heavier than
14 average influx of attorney-of-the-day calls in January.

15
16 *Financial Report – 2018 October-December (Second Quarter)*

17
18 *Attachment – 2017 Q2 Financial Report*

19
20 Executive Director Gluck reported that the Commission was well under budget.
21 He further reported that, pursuant to the terms of the recently renegotiated office lease,
22 the Commission had funds available for office improvements and that staff were
23 researching possible projects.

24
25 *Miscellaneous Office Projects / Updates*

26
27 *a. Electronic Filing System*

28 Executive Director Gluck reported that the e-filing system was up and running for
29 financial disclosure statements and that nearly all legislators used the new system to file
30 their disclosures. He reported that the rollout has gone very well and that staff has done
31 an excellent job fielding calls from state officials with questions on how to file. He also
32 stated that the staff would be issuing notices for other employees and
33 board/commission members. He and Staff Attorney Chang reported that both the
34 candidate disclosure filing system and the gifts disclosure system were also available
35 now.

36
37 Commissioner DeGuzman asked what happens if someone files a paper
38 disclosure statement; Executive Director Gluck answered that, for now, we are
39 accepting those filings and there will be two different systems where the public can view
40 reports for the time being (the old system and the new system). After this transition
41 period, we should be able to move to a practice where everyone files using the new
42 e-filing system. Commissioner DeGuzman then asked whether we would phase out the
43 paper filing system; Executive Director Gluck responded that one of the proposals in the
44 draft administrative rules would allow the Commission to require electronic filing of
45 financial disclosure forms. He added that he expected some period of transition but

1 after completing the filing process once, it should be easier for filers to complete the
2 process with fewer questions in the future.

3
4 Commissioner Wood asked about the uptick in training, and whether that could
5 be attributed to news stories regarding the Commission's work. Executive Director
6 Gluck said that he could not answer as to the reasons for the requests; both
7 Commissioner Wood and Executive Director Gluck said they were pleased with the
8 numbers of requests for training.

9
10 *b. 50th Anniversary Events*

11
12 Executive Director Gluck outlined the tentative plan to have the Commission
13 meet at 9:30 a.m. on March 29 (subject to a vote later in this meeting's agenda),
14 followed by a floor presentation by the Hawaii State Senate at 11:30 a.m. There was a
15 discussion regarding inviting former Commissioners and staff. There was then a
16 discussion of having a light reception at the Capitol following the floor presentation; all
17 five Commissioners volunteered to contribute some funds to help cover the cost of the
18 food.

19
20
21 **Agenda Item No. III: Legislative Update**

22
23 Executive Director Gluck gave an update on the status of the Commission's
24 proposed legislation and other bills as listed on the agenda. Among other things, he
25 reported that the budget bill has already been approved by the Governor, and that it
26 includes some extra funds for computer software and computer consulting. Executive
27 Director Gluck also noted that he submitted testimony on behalf of the Commission
28 supporting SB 2735, which provides additional resources for the Office of Information
29 Practices.

30
31
32 **Agenda Item No. IV: Administrative Rules**

- 33
34 1. Revised proposed amendments to Hawaii Administrative Rules, Title 21,
35 Chapters 1-3

36
37 Chair Gaulty explained that this was not included as part of the Report of the
38 Permitted Interaction Group (PIG), but that these rules – with some additional proposed
39 amendments – were being provided for the Commission's reference as it considers the
40 PIG's report on Chapters 4-6. Associate Director Yoza explained that the staff planned
41 to finish drafting all the chapters and after the PIG has reviewed everything and
42 reported back to the Commission, there can be a full discussion of all the rules by the
43 Commission.

1 Executive Director Gluck explained that the staff would be providing the PIG with
2 chapters 7-9 for review shortly, and that after the PIG had an opportunity to review and
3 report on chapters 7-10 (the final chapters), the Commission would have an opportunity
4 to review the entire set (chapters 1-10).

- 5
6 2. Report from Permitted Interaction Group regarding staff's proposed amendments to
7 Hawaii Administrative Rules, Title 21, Chapters 4-6
8

9 The PIG presented its report on Chapters 4-6 to the full Commission. Vice Chair
10 Tschumy made and Commissioner Wood seconded a motion to accept the PIG report
11 for Chapters 4-6. The motion carried unanimously (Grauly, Tschumy, DeGuzman,
12 O'Neal, and Wood voting).
13
14

15 **Agenda Item No V: Evaluation of Executive Director Daniel Gluck**
16

17 **RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE**
18 **SESSION**
19

20 At 10:36 a.m., Vice Chair Tschumy made and Commissioner O'Neal seconded a
21 motion to convene an Executive Session pursuant to HRS § 92-5(a)(2) to discuss
22 matters relating to the evaluation of an employee; § 92-5(a)(4) to consult with
23 Commission's attorneys on questions and issues pertaining to the Commission's
24 powers, duties, privileges, immunities, and liabilities; § 92-5(a)(8) and § 84-31(f) to
25 deliberate or make a decision upon a matter that requires the consideration of
26 information that must be kept confidential pursuant to a state or federal law, or a court
27 order. The motion carried unanimously (Grauly, Tschumy, DeGuzman, O'Neal, and
28 Wood voting).
29

30 Commissioner O'Neal asked Executive Director Gluck whether he wished to
31 proceed in Executive Session or in open session, and Executive Director Gluck stated
32 that he wished to proceed in Executive Session. Chair Grauly asked whether
33 Executive Director Gluck had an opinion as to whether the other attorneys would remain
34 for Executive Session; he stated he would leave that decision to the Commission's
35 discretion, and Chair Grauly suggested that the rest of the staff leave during the
36 discussion.
37
38

39 Staff left the meeting at approximately 10:36 a.m.
40

41 The Commission met with Executive Director Gluck in Executive Session
42
43

1 **ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW**
2 **MEETING**

3
4 At 11:14 a.m., Commissioner Wood made and Commissioner O'Neal seconded a
5 motion to adjourn the Executive Session and return to the Sunshine Law meeting. The
6 motion carried unanimously (Graulity, Tschumy, DeGuzman, O'Neal, and Wood voting).
7

8
9 **Agenda Item No. VI: Re-scheduling of March 22, 2018 Commission Meeting**

10
11 Commissioner O'Neal made and Commissioner Wood seconded a motion to re-
12 schedule the March 22, 2018 Commission Meeting to March 29, 2018 at 9:30 a.m. The
13 motion carried unanimously (Graulity, Tschumy, DeGuzman, O'Neal, and Wood voting).
14

15
16 **ADJOURNMENT OF SUNSHINE LAW MEETING**

17
18 At 11:16 a.m., Commissioner DeGuzman made and Commissioner O'Neal
19 seconded a motion to adjourn the Sunshine Law meeting. The motion carried
20 unanimously (Graulity, Tschumy, DeGuzman, O'Neal, and Wood voting).
21

22 The meeting was adjourned at 11:16 a.m.

23
24
25 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM III

EXECUTIVE DIRECTOR'S REPORT

- Attachment 1: Executive Director's Report
- Attachment 2: 2018 Guidance and Assignment Statistics
- Attachment 3: Payroll Announcement, Feb. 20, 2018

SUNSHINE MEETING
AGENDA ITEM II
EXECUTIVE DIRECTOR'S REPORT
March 29, 2018

1. Education / Training Report

a. Recently held trainings/presentations:

Training for Senior DOE Officials
Puuhale Elementary School
March 14, 2018
1:00 – 2:30 p.m.
15 attendees

General Ethics Training
Charter School Commission
Kalanimoku State Building
March 15, 2018
9:30 a.m. – 11:00 a.m.
17 attendees

General Ethics Training
Mission Memorial Auditorium
March 20, 2018
9:30 a.m. – 11:00 a.m.
150 attendees

General Ethics Training
Department of Health
Statewide Health Coordinating Council
State Office Tower, Room 204
March 23, 2018
1:00 p.m. – 2:30 p.m.
15 attendees

b. Upcoming trainings/presentations:

General Ethics Training – Kapolei
Thursday, May 3, 2018
10:00 a.m. – 11:30 a.m.
Leeward Community College
ED 201 A/B Lecture Hall
96-045 Ala Ike
Pearl City, Hawaii

General Ethics Training - Hilo
Monday, May 14, 2018
10:00 a.m. – 11:30 a.m.
University of Hawaii at Hilo, UCB 100
200 W. Kāwili Street
Hilo, Hawaii

General Ethics Training – Maui
Tuesday, May 22, 2018
10:00 a.m. – 11:30 a.m.
University of Hawaii Maui College
Ka'a'ike Building, Room 105BCD
Kahului, Hawaii

with video conference:

Molokai Ed Center
UH Maui College
375 Kamehameha V Highway
Kaunakakai, Hawaii

Lanai Ed Center
UH Maui College
329 7th Street
Lanai City, Hawaii

General Ethics Training – Kauai
Friday, May 25, 2018
10:00 a.m. – 11:30 a.m.
Kauai Community College
Cafeteria
3-1901 Kaumuali'i Highway
Lihue, Hawaii

2. Guidance and Assignment Statistics – February 2018

Attachment 2: 2018 guidance and assignment statistics

3. Miscellaneous Office Projects / Updates

- a. Electronic filing system
- b. 50th anniversary: Senate Presentation (11:30 a.m., following Commission meeting)

Attachment 3: Payroll Announcement, Feb. 20, 2018

2018	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of Trainings	3	1	4										8
# of People Trained	75	6	197										278
Attorney of the Day													
	128	61											189
New assignments													
Advisory Opinion	1	0											1
Complaint	5	10											15
Gifts/Invitations/Travel	13	13											26
Guidance	11	7											18
Judicial Selection Comm'n	3	5											8
Training Request	0	4											4
Record Request	1	2											3
Project/Other	4	2											6
Total	38	43	0	0	0	0	0	0	0	0	0	0	81
Closed Assignments													
Advisory Opinion	0	1											1
Complaint	4	2											6
Gifts/Invitations/Travel	16	7											23
Guidance	5	5											10
Judicial Selection Comm'n	0	0											0
Training Request	0	0											0
Record Request	0	2											2
Project/Other	6	2											8
Total	31	19	0	0	0	0	0	0	0	0	0	0	50

GROSS EARNINGS-TYPE CODES					
DIF-PAY E/W-PAY F/F-PAY HAZ-PAY HOL-O/T N/S-DIF ORD-O/T O/S-DIF REG-PAY	ALL OTHER DIFFERENTIALS EMERGENCY WORK PAY FIREFIGHTING PAY HAZARDOUS DUTY PAY HOLIDAY OVERTIME PAY NIGHT SHIFT DIFFERENTIAL ORDINARY OVERTIME PAY OVERSEAS CONTRACT DIFFERENTIAL REGULAR PAY	RETRO SAB-PAY SCK-PAY SOT-DIF STIPEND S/B-PAY S/S-DIF S/S-O/T T/A-PAY	RETROACTIVE ADJUSTMENT SABBATICAL LEAVE PAY SICK LEAVE PAY (WHILE ON W/C PAY) FIREFIGHTER'S SOT DIFFERENTIAL STIPEND STAND-BY DUTY PAY SPLIT SHIFT DIFFERENTIAL SPLIT SHIFT OVERTIME PAY TEMPORARY ASSIGNMENT PAY	24-PSP VAC-PAY WRK-CMP	24 HOUR PSYCHIATRIC SERVICES PAY VACATION PAY: -FOR EXCESS VACATION CREDITS; -WHILE ON W/C LEAVE; OR -UPON TERMINATION WORKERS' COMPENSATION BENEFIT

DEDUCTIONS/REDUCTIONS-TYPE CODES					
AF AP AR CR CS CU DC DD DR DT EI EO FA	ANNUITY PLAN ADMINISTRATION FEE ANNUITY PLAN PREMIUM ADDITIONAL RETIREMENT & RETROACTIVE FICA COTTAGE RENTAL HI529 COLLEGE SAVINGS PLAN CREDIT UNION DEFERRED COMPENSATION ADULT DENTAL PLAN ADULT DENTAL PREMIUM CONV. PLAN DELINQUENT TAX ASSESSMENT EARNED INCOME CREDIT EMPLOYEE ORGANIZATION FLEX SPENDING ADMIN FEE	FD FM GA HH LF MD MR MV OP OS PD PE PK PP PR	DEPENDENT CARE FSA MEDICAL FSA LAWFULLY ORDERED PAYMENT HAWAIIAN HOME LANDS LICENSING/OTHER FEES STATE MEDICAL PLAN MEDICAL PREMIUM CONV. PLAN MOTOR VEHICLE INSURANCE SALARY OVERPAYMENT RECOVERY COURT-ORDERED SUPPORT (VOLUNTARY) PRESCRIPTION DRUG PLAN PRE-EMPLOYMENT EXAM PARKING FEE PRIORITY PAYROLL ADVANCE PRESCRIPTION DRUG PREMIUM CONV. PLAN	PS SB SD TB UD UF UH UM UP US UV VC VR WR	PUBLIC SCHOOLS/STATE LIBRARY FOUNDATIONS U.S. SAVINGS BONDS STATUTORY DUES TRANSPORTATION BENEFIT UNION ADULT DENTAL PREMIUM CONV. PLAN COMMUNITY FUND DONATION U. OF H. FOUNDATION DONATION UNION MEDICAL PREMIUM CONV. PLAN UNION PRESCRIPTION DRUG PREMIUM CONV. PLAN CIVIL SERVICE RELATED DEDUCTIONS UNION VISION CARE PREMIUM CONV. PLAN VISION CARE PLAN VISION CARE PREMIUM CONV. PLAN WORKERS' COMPENSATION RETIREMENT

THE HAWAII STATE ETHICS COMMISSION CELEBRATES ITS 50TH ANNIVERSARY IN 2018! THE COMMISSION WAS ESTABLISHED IN 1968 AS THE FIRST STATE ETHICS COMMISSION IN THE NATION. THIS YEAR THE COMMISSION'S 50TH ANNIVERSARY HIGHLIGHTS OUR STATE'S COMMITMENT TO THE PRINCIPLE THAT PUBLIC OFFICERS AND EMPLOYEES MUST DEMONSTRATE THE HIGHEST STANDARDS OF ETHICAL CONDUCT IN ORDER TO PRESERVE PUBLIC CONFIDENCE IN PUBLIC SERVANTS.

LEARN MORE ABOUT HOW YOU CAN HELP PROMOTE INTEGRITY IN STATE GOVERNMENT BY VISITING THE COMMISSION'S WEBSITE AT [HTTP://ETHICS.HAWAII.GOV](http://ethics.hawaii.gov) OR FOLLOWING THE COMMISSION ON TWITTER @HAWAIIETHICS. TO REQUEST ADVICE ABOUT AN ISSUE OR TO LODGE AN ETHICS COMPLAINT, CALL THE COMMISSION'S OFFICE AT (808)587-0460 OR EMAIL ETHICS@HAWAIIETHICS.ORG.

FEBRUARY 20,2018

SUNSHINE LAW MEETING
AGENDA ITEM IV

LEGISLATIVE UPDATE

No attachments

SUNSHINE LAW MEETING
AGENDA ITEM V.1

ADMINISTRATIVE RULES

Revised proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 1-3

Attachment 1: Staff Overview

Attachment 2: Proposed amendments to Hawaii Administrative Rules, Title 21,
Chapters 1-3

ADMINISTRATIVE RULES

Revised Proposed Amendments to Hawaii Administrative Rules, Title 21, Chapters 1-3

STAFF OVERVIEW

I. Discussion

Attached for the Commission's review and approval are the proposed amendments to Chapters 1-3 of the Commission's administrative rules, Hawaii Administrative Rules ("HAR") Title 21. Chapters 1-3 address the following subjects:

Chapter 1: General Provisions

Chapter 2: State Ethics Commission Filing of Documents, Service, Witness and Subpoenas

Chapter 3: Disclosure Requirements

The proposed amendments to Chapters 1-3 were first presented to the Commission at its public meeting on October 2, 2017. The attached draft incorporates revisions discussed at that meeting and additional revisions later made by staff. The revisions to the proposed amendments are redlined on the attached draft.

At the Commission's meeting on March 29, 2018, the Commission is asked to discuss and approve the proposed amendments to Chapters 1-3.

All proposed amendments to the Commission's rules are subject to statutory procedures for the adoption, amendment, and repeal of administrative rules by state agencies. Those procedures are summarized below.

II. Rulemaking Procedures Required by HRS Chapter 91

The Commission is required to follow the procedures for rulemaking that are set forth in HRS chapter 91, the Hawaii Administrative Procedure Act.¹ These procedures require the Commission to (1) post information about proposed rulemaking actions and

¹ HRS § 84-31(a)(5) establishes the Commission's rulemaking authority:

It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof The rules, when adopted as provided in chapter 91, shall have the force and effect of law[.]

the text of proposed rules on the Lieutenant Governor's website;² (2) provide notice of a public hearing on the proposed rules;³ (3) hold a public hearing and afford interested persons an opportunity to submit data, views, or arguments orally or in writing;⁴ (4) obtain the Governor's approval of the rules adopted by the Commission;⁵ and (5) upon approval by the Governor, file a certified copy of the rules with the Lieutenant Governor.⁶ The adopted rules will take effect ten days after filing with the Lieutenant Governor (unless a later effective date is required by statute or specified in the rules).⁷

III. Recommendation

Discuss and approve proposed amendments to HAR Title 21, Chapters 1-3.

SDY/lis

² HRS § 91-2.6

³ HRS § 91-3(a)(1)

⁴ HRS § 91-3(a)(2)

⁵ HRS § 91-3(c)

⁶ HRS § 91-4(a).

⁷ HRS § 91-4(b).

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

AMENDMENT AND COMPILATION OF CHAPTER 21-1
HAWAII ADMINISTRATIVE RULES

MONTH, DAY, 2018

SUMMARY

1. §§21-1-1 to 21-1-6, Hawaii Administrative Rules, are amended
2. §21-1-7, Hawaii Administrative Rules, is repealed.
3. §§21-1-8 to 21-1-12, Hawaii Administrative Rules, are amended.
- ~~4. New §§21-1-13 to 21-1-14 are added.~~
- ~~6.4.~~Chapter 1 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 1

GENERAL PROVISIONS

Chapter 21-1, Hawaii Administrative Rules, entitled “General Provisions”, is amended and compiled to read as follows:

21-1-1	Purpose
21-1-2	Definitions
21-1-3	Authentication of commission action
21-1-4	Disqualification of commissioners; bias or prejudice
21-1-5	Consolidations
21-1-6	Right to appear
21-1-7	Repealed
21-1-8	Confidential records
21-1-9	Adjudicatory functions
21-1-10	Chairperson and vice-chairperson
21-1-11	Staff
21-1-12	Operations
21-1-13	Stricter rules allowed
21-1-14	Removal of persons from proceedings

Historical Note: This chapter is based substantially upon rules 1, 2, 6, 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]

§21-1-1 Purpose. ~~[This chapter is]~~ (a) Chapters 1 through 20 are intended to carry out and administer the provisions of chapter 84, HRS, relating to standards of conduct for state legislators and employees, and chapter 97, HRS, relating to lobbyists, ~~[and to provide for the efficient administration thereof.].~~

(b) General principles. The following general principles apply to every legislator and employee and may form the basis for the standards contained in this part. The prohibitions set forth in these chapters are not intended to create a comprehensive list of unlawful conduct. Where a situation is not covered by the standards set forth in this part, legislators and employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring legislators and employees to place loyalty to the Constitution, laws, and ethical principles above private gain.

(2) To preserve the public's confidence in the integrity of state government, legislators and employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.

(3) Legislators and employees shall not advance their financial interests at the expense of the conscientious performance of duty; and shall not use public office for private gain.

(c) Any agency may adopt or implement stricter ethical standards of conduct than those set forth in chapters 84 or 97, HRS, or these rules.

~~(3)~~

[Eff. July 13, 1981; am and comp] (Auth: Haw. Const. art. XIV; HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: Haw. Const. art. XIV; HRS §§84-1, 84-31(a)(5), 84-37, 97-6(a)(5)))

§21-1-2 Definitions. As used in title 21, chapters 1 through 20[6], unless the context clearly requires otherwise:

"Administrative action" has the same meaning as in section 97-1, HRS;

"Advisory opinion" means formal written guidance [an opinion] rendered by the commission pursuant to a request by any individual [by a legislator, employee, or former legislator or employee] as to whether the facts and circumstances of [a] that individual's particular case violate or will violate any provision of chapter 84, chapter 97, sections 11-8, or §11-192.5, HRS [the standards of conduct];

"Agency" includes the State; the legislature and its committees; all executive departments; all State boards, commissions, committees, bureaus, and offices; the University of Hawaii; the Office of Hawaiian Affairs; the Judiciary.

excluding all judges, justices, and all activities relating to the adjudication of cases; and all independent commissions and other establishments of the state government;

“Answer” means the written response to a charge filed with or issued by the commission by a respondent ~~[person disputing the charge];~~

“Charge” means a document signed under oath before a notary, [notarized letter] or a document signed by three or more commissioners, alleging basic facts constituting a violation of one or more provisions of chapters 84 or 97, HRS;

“Commission” means the state ethics commission of the State of Hawaii;

“Complainant” means a person who has filed a charge ~~[charge alleging that an employee or legislator has violated chapter 84, HRS]~~. The complainant is a party of record;

~~[“Complaint” means the statement of facts of a violation issued to the legislature or to the governor by the commission after due hearing and determination;]~~

“Contested case” or “contested hearing” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a hearing consistent with chapter 91, HRS;

~~[“Decision” means the written conclusions of the commission, rendered after a contested hearing on the charge;]~~

“Declaratory order” means an order ~~a written decision~~ issued after a petition by any interested person as to the applicability of any statutory provision over which the commission has jurisdiction or of any rule or order of the commission;

~~[“Deleted opinion or decision” means a summary of a decision, advisory opinion, or informal advisory opinion from which facts disclosing the identity of persons have been omitted;]~~

~~[“Disclosure period” means the period from January 1 of the preceding calendar year to the time of filing the disclosure by the person required to file;]~~

“Dependent child” means any person who is or could be claimed as a dependent for federal or state income tax purposes, or any child under 19 years old related to the filer for whom the filer is or could be legally obligated to provide financial support;

“Employee” means any nominated, appointed, or elected officer of the State, including members of boards, commissions, and committees; any employee of the State; and employees ~~any employee~~ under contract to the State or of the constitutional convention. “Employee” excludes legislators, delegates to the constitutional convention, justices, and judges;

“Executive director” means the chief staff member or delegate of the commission;

“Fiscal officer” means, for the purposes of section 84-17(c)(2), HRS, an employee who exercises significant authority over purchasing or fiscal matters or both, including any person with delegated authority to enter into and administer contracts and make written determination with respect thereto. An employee who takes ministerial action will not be considered a fiscal officer and will not be required to file a disclosure of financial interests pursuant to section 84-17, HRS;

“Legislative action” has the same meaning as in section 97-1, HRS;

“Lobbying” has the same meaning as in section 97-1, HRS;

“Lobbyist” means any individual as defined by section 97-1, HRS, and includes all agents acting on behalf of the lobbyist; “Participate” means, for the purpose of §§sections 84-14, 84-15, and 84-18, HRS, to take any action, other than a-an action that is purely ministerial-action, in one’s official capacity as an employee or legislator;

["Formal advisory opinion" means the same as advisory opinion;]

“Purchasing agent” [and “fiscal officer”] means, the same as fiscal officer], for the purposes of §84-17(c)(2), HRS, an employee who exercises significant authority over purchasing or fiscal matters or both. An employee who takes ministerial action will not be considered a purchasing agent or fiscal officer and will not be required to file a disclosure of financial interests pursuant to §84-17, HRS;];

“Redacted” or “redaction” means the omission or deletion of facts disclosingto prevent the identity of persons; and

“Respondent” means the person who is a subject of a charge, [allegedly violating chapter 84, HRS;]

["Ruling” means a summary advisory opinion which may be followed by a full advisory opinion within the original thirty-day period, rendered due to the requestor's need for an immediate advisory opinion; and]

["Solely advisory” means a board or commission that can take no significant action to influence the administration of state programs or the exercise of state powers. The description of a board or commission as being advisory does not mean that the board or commission will be considered to be solely advisory.]

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-3, 84-14, 84-15, 84-17, 84-18, 84-31, 84-32, 84-35, 91-1, 97-6)

§21-1-3 Authentication of commission action. All decisions[;] rendered after a contested case hearing, declaratory orders, informal advisory opinions, and [formal] advisory opinions of the commission shall be signed by three or more

members of the commission. Commissioners may affix their signatures by authorizing commission staff to affix their electronic signatures.

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 92-15, 97-6)

§21-1-4 Disqualification of commissioners; bias or prejudice. Any party to a hearing may make and file an affidavit that one or more of the commissioners before whom the hearing is being held has a personal bias or prejudice. The commissioner against whom the affidavit is filed may answer the affidavit or may file a disqualifying certificate with the commission. If the commissioner chooses to answer the affidavit, the remaining commissioners shall decide whether or not that commissioner should be disqualified from proceeding therein. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least ten days before the hearing, or good cause shall be shown for the failure to do so. Commissioners may disqualify themselves by filing with the executive director a certificate, or by informing the other commissioners, that they deem themselves unable for any reason to participate with absolute impartiality in the pending hearing. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-1-5 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-1-6 Right to appear. (a) Any person, or the person's authorized representative, having business with the commission may appear before it.

(b) Any person who acts in a manner that prevents the orderly and peaceful conduct of business may be removed upon ~~unless the commission determines by~~ a vote of three or more members of the commission ~~[that the~~

person or the person's representative is acting in a manner which prevents the orderly and peaceful conduct of business]. The right to appear before the commission may be reinstated upon the commission's acceptance of a written statement that the person will abide by the commission's rules and will not disrupt the orderly and peaceful conduct of its proceedings.

~~(b)(c)~~ (c) To ensure the reasonable and orderly administration of oral testimony during a commission meeting, the commission may place reasonable time limits for members of the public to present oral testimony. ~~[Charges initiated by the commission shall be prosecuted by the executive director or delegate. When serving as the prosecutor, the associate director shall prosecute without the supervision of the executive director. When the complainant is not the commission, the complainant may request that the executive director or delegate represent the complainant in the matter if the commission joins as co-complainant. This request shall be made in writing within twenty days following personal service of the charge and further statement of alleged violation to the respondent.]~~

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

§21-1-7 Repealed. [Rules of evidence. ~~The commission shall not be bound by the strict rules of evidence. 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.]~~ [Eff. July 13, 1981; R] (Auth: HRS §§84-31, 91-10) (Imp: HRS §§84-31, 91-10)

§21-1-8 Confidential records. ~~[Disclosures of financial interests which are made confidential by §84-17, HRS, and other matters]~~ Records deemed confidential by law [statute] shall not be ~~[released or inspected]~~ made public except with the written authorization of the person involved or otherwise pursuant to law. ~~[Disclosures of financial interests made available for public inspection by §84-17, HRS, are available pursuant to §21-3-2.]~~ [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31, 97-6(a)(5)) (Imp: HRS §§84-17, 84-31, 97-6)

§21-1-9 Adjudicatory functions. Pursuant to ~~§section~~ 92-6, HRS, the exercise by the commission of its adjudicatory functions is not a meeting within the meaning of ~~§section~~ 92-2, HRS, and these rules. ~~[Availability of commission documents.~~

~~(a) The public may obtain information on matters relating to chapter 84, HRS, by inquiring during regular business hours at the offices of the commission or by submitting a written request to the commission. A member of the public wishing to obtain information about the contents of a disclosure of financial interests filed with the commission shall follow the procedure outlined in §21-3-2.~~

~~(b) The rules of the commission are available for public inspection during regular business hours at the commission offices or the office of the lieutenant governor, state capitol, Honolulu, Hawaii.~~

~~(c) The minutes of commission meetings shall be deleted to prevent disclosure of the identity of persons involved in confidential matters under chapter 84, HRS, and shall be available for public inspection at the commission offices during regular business hours.~~

~~(d) Deleted advisory opinions and decisions of the commission shall be available for public inspection at the commission offices during regular business hours.~~

~~(e) Copies of public records will be furnished to any person upon request and upon payment of a fee set in accordance with chapter 92, HRS. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 92-6) (Imp: HRS §§92-2, 92-6)~~

§21-1-10 Chairperson and vice-chairperson. (a) A chairperson shall be elected ~~[by secret ballot vote]~~ by a majority of all the members to which the commission is entitled, who shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year.

(b) A vice-chairperson, who shall call and chair meetings in the incapacity or absence of the chairperson, shall be elected ~~[by secret ballot vote]~~ by a majority of all the members to which the commission is entitled, and shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year. [Eff. July 13, 1981; am and comp]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §84-21)

§21-1-11 Staff. (a) The executive director shall have charge of the commission's official records and shall be responsible for the maintenance and

custody of the files and records of the commission, including the papers, transcripts of testimony and exhibits filed in proceedings, the minutes of all actions taken by the commission, and all its rulings, advisory opinions, decisions, rules, and approved forms. The executive director ~~[or delegate]~~ shall receive all documents required to be filed with the commission and shall promptly stamp the time and date upon documents ~~[papers]~~ filed with the commission, provided that the time and date may be recorded electronically for documents submitted via any electronic filing system. The executive director is responsible for the administration of the office.

(b) The associate director assists the executive director in administrative matters. The associate director shall conduct investigations and prosecute cases as delegated by the executive director. In cases where the executive director serves as counsel to the commission or is recused, then the associate director or the associate director's delegate shall conduct or prosecute the case without supervision by the executive director.

(c) The commission may delegate to the executive director any duties as appropriate to conduct its operations. The executive director may delegate to commission staff any duties set forth herein. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-1-12 Operations. (a) The offices of the commission are at 1001 Bishop Street, Suite 970,~~[in the Kamamalu Building, 250 South King Street],~~ Honolulu, Hawaii, or such other address where the commission may be located from time to time. All communications shall be addressed to the state ethics commission at its offices, via electronic mail or other electronic means designated by the commission or its staff, or otherwise as directed ~~[unless otherwise specifically directed].~~

(b) The offices of the commission shall be open from 7:45 a.m. to 4:30 p.m. Monday through Friday, except for state holidays, unless otherwise directed by the commission or the executive director.

(c) The commission meets and exercises its powers in any part of the State of Hawaii. Meetings may be called by the chairperson or by two or more commissioners upon notice to the staff and other commissioners, consistent with chapter 92, HRS. Meetings are open to the public except ~~[Except]~~ when matters under consideration are considered in executive session, ~~[considering matters]~~ made confidential by chapter 84, HRS, matters or otherwise made confidential by law, ~~[or matters considered in executive session, meetings are open to the public.]~~ [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

~~§21-1-13 Stricter rules allowed.~~ Any agency may adopt or implement stricter ethical standards of conduct than those set forth in chapters 84 or 97, HRS, or these rules. [Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: Haw. Const. art. XIV; HRS §§84-1, 84-31, 84-37, 97-6)

END OF CHAPTER 1

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

AMENDMENT AND COMPILATION OF CHAPTER 21-2
HAWAII ADMINISTRATIVE RULES

MONTH, DAY, 2018

SUMMARY

1. §21-2-1, Hawaii Administrative Rules, is amended.
2. §§21-2-3 to 21-2-6, Hawaii Administrative Rules, are amended.
3. Chapter 2 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 2

STATE ETHICS COMMISSION FILING OF DOCUMENTS, SERVICE, WITNESS AND SUBPOENAS

Chapter 21-2, Hawaii Administrative Rules, entitled “General Provisions”, is amended and compiled to read as follows:

21-2-1	Filing of documents
21-2-2	Computation of time
21-2-3	Continuances or extensions of time
21-2-4	Service of process
21-2-5	Subpoenas
21-2-6	Witnesses and fees
21-2-7	Retention of documents by the commission

Historical Note: This chapter is based substantially upon rule 2 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]

§21-2-1 Filing of Documents. (a) All disclosures, charges, requests for opinions, pleadings, submittals, reports, petitions, briefs, memoranda, and other ~~[papers required to be]~~ documents ~~[filed with]~~ for the commission's consideration ~~[in any proceeding]~~ shall be filed with the executive director. ~~[Such papers]~~ Documents may be ~~[sent by mail to the post office box of the commission or mailed or]~~ delivered via electronic mail or in hard copy ~~[or hand-carried]~~ to the

commission offices in Honolulu within the time limit, if any, for such filing unless the commission requires that documents be submitted electronically. The date on which the documents ~~[papers]~~ are actually received by the commission shall be deemed to be the date of filing, except as otherwise provided by law.

(b) All documents ~~[papers]~~ filed or lodged with the commission shall be plainly legible.

(c) All documents ~~[papers]~~ shall be signed ~~[in ink]~~ by the person submitting ~~[signing]~~ the same or the person's duly authorized agent or attorney. The commission may establish an electronic filing system that allows for digital signature of documents. The signature of the person signing the document constitutes a certification that the person has read the document; ~~[i.e., and that, to the best of the person's knowledge, information, and belief, every statement contained in the instrument is true-~~ not ~~and no such statements are]~~ misleading; ~~[i.e., and that it is]~~ not interposed for delay.

(d) ~~[Only an original of all papers shall be filed with the commission, except that an original and six copies of all]~~ The commission may require that paper copies of pleadings and memoranda submitted for hearing purposes ~~[shall]~~ be filed with the commission.

(e) The initial document filed by any person in any proceeding shall state on the first page thereof the name, mailing address, electronic mail address, and telephone number of the person or persons who may be served with any documents filed in the proceeding. [Eff. July 13, 1981; am and comp

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

§21-2-2 Computation of time. In computing any period of time prescribed or allowed either by these rules or by order of the commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday. [Eff. July 13, 1981; comp

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

§21-2-3 Continuances or extensions of time. ~~[With the exception of the requirements of §84-17, HRS, and Chapter 3, whenever]~~ Whenever a person or agency has a right or is required to take action within the period prescribed or

allowed by these rules, or by order of the commission, the person or agency may apply to the executive director or [a member of] the commission for an extension ~~[not to exceed fifteen days. Additional extensions or extensions exceeding fifteen days will be ordered only upon motion and notice for good cause shown. The commission will not accept late documents, nor will it recognize action not performed within the prescribed time without good cause shown].~~ [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§1-29, 84-31, 97-6)

§21-2-4 Service of process. (a) The commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Pleadings and memoranda relating to charges or hearings shall be served by the party filing them.

(b) All documents [papers] served by either the commission or any party shall be served upon all counselscounsel[s] of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceedings shall notify all parties of that fact.

(c) The final opinion, decision, or any other document [paper] required to be served by the commission upon a party shall be served upon the party's counsel of record, if any, or the party or an agent designated by the party or by law to receive service of such papers.

(d) ~~[The services]~~Service of a charge, ~~[and]~~ further statement of a charge of alleged violation, and notice of a contested hearing shall be made:

- (1) personally upon the alleged violator [respondent:]; ~~[or, in case the respondent cannot be found, by leaving copies thereof at the respondent's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or]~~
- (2) by delivering a copy to an agent designated by the alleged violator ~~[that person]~~ or by law to receive service of such papers~~[-:]~~;
- (3) by registered or certified mail, return receipt requested; or
- (4) by any method agreed to by the parties.

If service by one of the above means is not made because of the refusal to accept service or the commission and its agents have been unable to ascertain the address of the ~~party~~alleged violator after reasonable and diligent inquiry, service may be effected as ordered by the circuit court pursuant to section 84-31(b), HRS, or as otherwise provided by statute.

(e) Service of a notice of the failure to file a disclosure of financial interests as required by section 84-17, HRS, shall be made by in-person service, electronic mail to the person's state electronic mail address, or first class mail in accordance with §21-3-9.

(f) Service of all other papers required to be served shall be made by delivering a copy to counsel of record, if any, or to the person or an agent designated by the person or by law to receive service of such papers, ~~[or]~~ by mailing a copy to the person's last known address, or by other means agreed to by the parties. Delivery of a copy within this subsection means handing it to the person's attorney or to the person directly or leaving it at the person's office, with the person's secretary, clerk, or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by personal delivery or mailing shall be indicated by a certification of time and place of delivery or mailing, filed with the commission. [Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-17, 84-31, 97-6)

§21-2-5 Subpoenas. (a) Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing, or at any designated place of an investigatory interview by the executive director, may be issued by any member of the commission.

(b) ~~Application~~ Requests for subpoenas shall be made in writing to the commission. ~~[The application]~~ Requests for subpoenas shall be reasonable in scope and specify as clearly as possible documents or data desired, and show their general relevancy.

(c) Requests for subpoenas for the production of documentary evidence, or for the appearance of witnesses at a hearing or at an investigatory interview, ~~[For production of documentary evidence or appearance of witnesses at a hearing or at an investigatory interview, [, application] requests for subpoenas]~~ shall be made at least three days prior to the hearing or interview. If application for a subpoena for a hearing is made at a later time, the commission may, in its discretion, continue the hearing or any part thereof.

(d) Enforcement of obedience to subpoenas issued by the commission and served pursuant to this chapter will be effected by written application of any commissioner to any circuit judge. [Eff. July 13, 1981; am and comp

] (Auth: HRS §§84-31(a)(5), 92-16, 97-6(a)(5)) (Imp: HRS §§84-31, 92-16, 97-6)

§21-2-6 Witness fees. Witnesses summoned for contested ~~case~~ ~~hearings~~cases shall be paid the same fees and mileage as are paid to witnesses in courts of the State of Hawaii and shall be paid by the party at whose instance witnesses appear. [Eff. July 13, 1981; am and comp]
(Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

§21-2-7 Retention of documents by the commission. All documents filed with or presented to the commission may be retained by the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents. [Eff. July 13, 1981; comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§84-17, 84-31, 97-6)

END OF CHAPTER 2

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

AMENDMENT AND COMPILATION OF CHAPTER 21-3
HAWAII ADMINISTRATIVE RULES

MONTH, DAY, 2018

SUMMARY

1. §21-3-1, Hawaii Administrative Rules, is re-numbered to §21-3-2 and is amended. A new §21-3-1 is added.
2. §21-3-2, Hawaii Administrative Rules, is re-numbered to §21-3-4 and is amended.
3. A new §21-3-3 is added.
4. New §§ 21-~~13~~-5 through 21-3-11, Hawaii Administrative Rules, are added.
5. Chapter 3 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 3

FINANCIAL DISCLOSURE REQUIREMENTS

Chapter 21-3, Hawaii Administrative Rules, renamed “Financial Disclosure Requirements”, is amended and compiled to read as follows:

- 21-3-1 Definitions
- 21-3-2 Financial disclosure filing procedures
- 21-3-3 Financial interests
- 21-3-4 Public access to disclosure statements
- 21-3-5 Disclosure period
- 21-3-6 Amended ~~Disclosures~~disclosures
- 21-3-7 Newly elected or appointed officials; interim or acting officials.
- 21-3-8 Changes in position; exit disclosure
- 21-3-9 Administrative fine for failure to file
- 21-3-10 Payment of fine or request for waiver; good cause
- 21-3-11 Disposition of financial disclosures

Historical Note: This chapter is based substantially upon rule 3 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]

§21-3-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Deputy director” means any individual who is subordinate only to the head of an agency and who exercises supervisory authority over subordinate employees;

“Disclosure” means, for purposes of this chapter, a disclosure of financial interests that is required to be filed pursuant to §section 84-17, HRS;

“Division chief” means, for those agencies that have divisions, the head of a division who exercises supervisory authority over subordinates;

“Executive director” and “executive secretary” means the highest-ranking staff member of an agency, and includes wardens of correctional centers;

“Filer” or “filers” means all persons who are required to file a disclosure pursuant to §section 84-17(c), HRS;

“Financial interests” means information that is required to be reported pursuant to §section 84-17(f), HRS, and these rules;

~~“Fiscal officer” and “purchasing agent” means any person with delegated authority to enter into and administer contracts and make written determination with respect thereto;~~

“Solely advisory” means a board or commission that can take no significant action to influence the administration of state programs or the exercise of state powers. In determining whether a board or commission is solely advisory, the commission may consider whether the board or commission exercises adjudicatory powers; adopts and implements state programs; develops and monitors program standards; and has authority to hire and fire employees, enter into contracts, issue permits or licenses, promulgate rules, receive gifts, or spend state funds. The agency’s description of a board or commission as being advisory is not dispositive as to whether the board or commission will be considered ~~to be~~ solely advisory;

“State position” means one of the positions enumerated in §section 84-17(c), HRS, for which a disclosure is required to be filed with the commission.

In determining whether an individual is a deputy director, division chief, executive director, or executive secretary, the commission may consider the individual’s responsibility to hire, fire, and supervise personnel; the individual’s responsibility for fiscal and budgetary matters; and the individual’s responsibility for programmatic matters. The agency’s title for an individual is not dispositive as to whether the individual will be required to submit a disclosure.

[Eff.

] (Auth: HRS §84-31(a)(5)) (Imp: HRS

§§84-17, 84-17.5, 84-31)

[§21-3-1] §21-3-2 Financial disclosure filing [Filing] procedures.

(a) ~~[The]~~ All persons holding those positions enumerated in ~~§section~~ 84-17(c), HRS, shall file annually with the commission a disclosure ~~[of financial interests]~~ within the applicable time periods ~~set forth~~prescribed in ~~§section~~ 84-17(b), HRS, and this chapter, using a form or filing system so designated by the commission.

(b) Disclosures shall be filed:

- (1) electronically using the commission's electronic filing system;
- (2) in person at the commission's office during regular business hours;
- (3) by ~~e-electronic~~ mail, mail, or fax; or
- (4) by any other process established by the commission.

(c) Disclosures that are filed electronically through the commission's electronic filing system or by ~~email~~electronic mail shall be deemed filed as of the time and date when the documents are electronically received by the commission. Disclosures that are submitted in person, or via mail, fax, or other process shall be deemed filed as of the date when the documents are received by the commission.

(d) In addition to those financial interests required to be reported by §section 84-17(f), HRS, the disclosure [statement filed with the commission] shall contain [the full name of the person filing the disclosure, the state agency which the person serves and the person's position with the agency, the names of the person's spouse and dependent children, and the date of the person's disclosure]:

- (1) the filer's full name and personal contact information, including the filer's residential address, work address, personal telephone number, work telephone number, personal ~~e-electronic~~ mail address, and work ~~e-electronic~~ mail address;
- (2) the filer's state position and the name of the agency, board, or commission the filer serves; and
- (3) the names of the filer's spouse or civil union partner, and dependent children.

(e) The disclosure shall be signed, digitally or otherwise, by the person required to file the disclosure. This signature constitutes a certification that the person has read the document and that to the best of the person's knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading. [For commission records only, the commission requires that the person filing the disclosure provide the person's business and residence addresses and business and home telephone numbers.

The commission shall provide a form for full financial disclosure and a short form of disclosure for subsequent annual filing in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(c) ~~The disclosure of financial interests required by §84-17, HRS, shall be filed between January 1 and April 30 of each year or within thirty days of the election or appointment of a person to a position enumerated in §84-17(c), HRS.~~

(d) ~~A person who is required by §84-17, HRS, to file a financial disclosure shall file such disclosure with the commission pursuant to §21-2-1.~~

(e) ~~A person who is required to file a disclosure of financial interests may be granted an extension of fifteen days by the commission for good cause shown. The request for an extension shall be directed to a commissioner and shall be received at the commission's offices before the filing deadline for the person's disclosure.]~~

(f) Upon receipt of a disclosure, the executive director of the commission shall indicate thereon the date and time of receipt. ~~[The disclosure will be reviewed by the commission for conflicts of interest. If no conflict exists, the commission will acknowledge receipt of the disclosure and file it without further action. If a conflict is found, the commission will acknowledge the receipt of this disclosure and] advise the person of the conflict and the person's obligations and responsibilities to avoid violation of the state ethics law. Where the situation has precedential value, the commission will proceed as though the disclosure were a request for an advisory opinion.]~~

(g) Filers shall promptly notify the commission regarding any changes in their contact information: provided pursuant to section 21-3-2(d)(1).

[Eff. July 13, 1981; §21-3-1; am, ren §21-3-2, and comp]

(Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

§ 21-3-3 Financial interests. (a) As provided by §section 84-17(f), HRS, financial interests to be disclosed include, but are not limited to:

- (1) rental income;
- (2) stocks, exchange traded funds, and other similar financial instruments, which shall be individually disclosed as ownership interests in a business, provided that filers need not disclose the contents of mutual funds;
- (3) trust assets, including a description of the specific assets contained within the trust, unless the filer's control over the trust or ability to benefit from the trust is such that there is an insignificant risk that those assets may give rise to a conflict of interest pursuant to §section 84-14, HRS.

(b) Filers need not disclose ownership of or income from the following:

- (1) money market funds, savings and checking accounts, and certificates of deposit;
- (2) tax deferred retirement accounts such as the State deferred compensation plan, Individual Retirement Accounts, and 401k plans;
- (3) tax deferred qualified tuition plans such as 529 college savings plans;
- (4) tax deferred health savings accounts;
- (5) Social Security or other government benefits.
- (c) Filers need not disclose consumer credit card debt or automobile lease agreements.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-14, 84-17, 84-31)

[§21-3-2] §21-3-4 Public access to disclosure statements. Information regarding the filer's residential address and telephone number, business address and phone number, email address, as well as the names of the filer's spouse or civil union partner and dependent children, shall not be publicly disclosed. Disclosures that are designated as confidential pursuant to §section 84-17(e), HRS, shall not be made available for public inspection or duplication, except with written authorization of the filer. Disclosures that are designated as public pursuant to section 84-17(d), HRS, shall be posted on the commission's website, provided that the filer's business or residential address, telephone number, or electronic mail address shall not be publicly disclosed, nor shall the names of the filer's spouse, civil union partner, or dependent children be publicly disclosed.

(a) An exact copy of the financial disclosure statements of the persons holding those positions designated in §84-17(b), HRS, shall be available for public inspection at the commission offices during regular business hours within two working days following the receipt and review of the disclosure by the commission. For purposes of public inspection, a financial disclosure statement shall not include the business and home addresses and telephone numbers of the person disclosing, although they will appear on the original form. The disclosures of those persons who are required by §84-17, HRS, to file but who do not hold positions designated in §84-17(d), HRS, are confidential, and the commission shall not release the contents of the disclosures except as permitted by chapter 84, HRS, and §21-1-8.

~~(b) Any person wishing to inspect a disclosure statement which is available for public inspection pursuant to §84-17, HRS, shall complete and file a form listing:~~

~~(1) The name of the person requesting the inspection and the person's business or residence address;~~

~~(2) The name and address of any person or organization for whom the person requesting the inspection is acting;~~

~~(3) The name of the person whose statement is to be inspected;~~

~~(4) The date of the inspection.~~

~~A copy of the form shall be kept in the file of the person who disclosure was inspected. The form shall be available for inspection by the person whose disclosure statement was inspected, the commission, and the commission staff. A statement indicating this procedure shall appear plainly on all request forms provided by the commission.]~~

~~[Eff. July 13, 1981; §21-3-2; am, ren §21-3-4, and comp~~

~~(Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)~~

§21-3-5 Disclosure period. Filers shall disclose all financial interests held during the applicable disclosure period. For initial disclosures and disclosures submitted by candidates for state elective offices, including candidates for election to the constitutional convention, the disclosure period includes January 1 of the preceding calendar year to the date of filing. All disclosures filed thereafter include the date of the previous filing to the date of filing, excluding amended filings, except that income reported shall be for the previous calendar year. [Eff. July 13, 1981; am and comp] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

§21-3-6 Amended ~~Disclosures~~disclosures. If a filer files a disclosure that contains inaccurate information or omits information regarding the filer's financial interests, the filer shall promptly file an amended disclosure with the commission. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

§21-3-7 Newly elected or appointed officials; interim or acting officials. Newly elected or appointed officials required to submit a disclosure

pursuant to §section 84-17(b), HRS, and persons serving in an interim or acting capacity in positions that require filing a disclosure, shall file a disclosure within thirty days of the first day in office or the first day in which the person takes any official action, whichever comes first, unless otherwise ordered by the commission.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31, 84-31.5)

§21-3-8 Changes in position; exit disclosure. (a) Filers transferring to a position requiring the filing of a confidential disclosure are not required to file a new confidential disclosure if a timely annual filing has been submitted for the previously held position.

(b) Filers transferring to a position requiring the filing of a public disclosure are not required to file a new public disclosure if a timely annual filing has been submitted for the previously held position.

(c) Filers transferring from a position requiring the filing of a confidential disclosure to a position requiring the filing of a public disclosure shall file a public disclosure within thirty days of the first day in office or the first day in which the person takes any official action, whichever comes first;

(d) Filers shall file a disclosure within thirty days of any filer's final date in state office or employment, unless the filer filed a disclosure within 180 days of the final date of state office or employment.

[Eff. _____ - _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31, 84-31.5)

§21-3-9 Administrative fine for failure to file. (a) The commission shall notify filers of the failure to timely file a disclosure and the applicable administrative fine. The commission may notify such individuals by electronic mail to the person's state electronic mail address, first-class mail, or personal service.

(b) If notice is sent via electronic mail, the ten-day period described in §section 84-17(i), HRS, shall run from the date the e-electronic mail is sent. If notice is sent via first-class mail, the ten-day period shall begin two business days after the notice is mailedmailing, unless the notice is mailed to an address outside the State, in which case the ten-day period shall begin four business days after the notice is mailedmailing.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31, 84-31.5)

§21-3-10 Payment of fine or request for waiver; good cause. (a) An individual who receives a notice of administrative fine and subsequently files a disclosure shall, within ten days of filing the disclosure, pay the assessed administrative fine or request a waiver from the commission.

~~(b) — Payment of the administrative fine is deemed made when received by the commission.~~

~~(e (b))~~ Any individual requesting a waiver of administrative fine shall submit a written request to the commission. The request shall contain the filer's name, address, ~~e-electronic~~ mail address, telephone number, and state position; a clear and concise statement regarding the factual basis for the filer's request for a waiver, including the reasons or circumstances why the filer was unable to ~~file~~ ~~bymeet~~ the applicable due date; and any documents or evidence in support of the filer's request for a waiver.

~~(dc)~~ The commission may waive any administrative ~~fines~~fine for good cause shown. The filer has the burden to establish good cause. Good cause may be found if the ~~requester~~filer faced an unexpected crisis such as a serious medical issue, a death in the family, or a theft or destruction of financial documents that prevented the ~~individual~~filer from ~~filing the disclosure by~~meeting the relevant deadline. Good cause generally may not be found by inadvertence or oversight.

~~(d) — Payment of the administrative fine is deemed made when received by the commission.~~

~~(e)~~ The commission may issue a charge against any ~~individual~~filer who fails to file a disclosure by the relevant deadline.

[Eff. —] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31, 84-31.5)

§21-3-11 ~~Disposition~~Disposal of financial disclosures. (a) Disclosures shall be destroyed six years after the filer leaves state office or employment, regardless of whether the filer later returns to state office or employment, unless otherwise provided by statute.

(b) A disclosure filed by a candidate for state elective office shall be destroyed upon the expiration of six years after an election for which the candidate filed the disclosure.

(c) In destroying disclosures, all paper copies shall be shredded, all electronic copies shall be deleted from the commission's record-keeping system, and all public disclosures shall be removed from the commission's website. ~~Eff.~~ [Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31, 84-31.5)

END OF CHAPTER 3

SUNSHINE LAW MEETING
AGENDA ITEM V.2

ADMINISTRATIVE RULES

Discussion of Report from Permitted Interaction Group regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6

Attachment 1: Staff Overview

Attachment 2: Permitted Interaction Group Recommendations: Hawaii Administrative Rules, Title 21, Chapters 4-6

ADMINISTRATIVE RULES

Discussion of Report from Permitted Interaction Group regarding Proposed
Amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6

STAFF OVERVIEW

I. Discussion

At its last public meeting on February 22, 2018, the Commission received recommendations from the permitted interaction group (“PIG”) that was formed to review proposed amendments to the Commission’s rules, Hawaii Administrative Rules (“HAR”) Title 21. The PIG¹ submitted its comments and recommendations for Chapters 4-6 of the rules. Chapters 4-6 address the following subjects:

Chapter 4: Advisory Opinions

Chapter 5: Charges, Contested Cases, and Settlement Agreements

Chapter 6: Petitions for Adoption, Amendment or Repeal of Rules and for Declaratory Orders.

At the Commission’s meeting on March 29, 2018, the Commission is asked to discuss the PIG’s recommendations and approve the proposed amendments to Chapters 4-6. As previously explained, the proposed amendments are subject to the rulemaking procedures required by HRS chapter 91, which include holding a public hearing on the proposed rules.

II. Recommendation

Discuss and approve proposed amendments to HAR Title 21, Chapters 4-6.

SDY/lis

¹ The PIG was formed on January 18, 2018, and is comprised of Chair Gaulty and Commissioner O’Neal.

**Permitted Interaction Group Recommendations:
Proposed Amendments to Hawaii Administrative Rules Title 21
Chapters 4 – 6**

(Submitted by Chair Reynaldo Gaulty and Commissioner David O’Neal)

February 22, 2018

On January 18, 2018, the State Ethics Commission (“Commission”) formed a permitted interaction group (“PIG”) to review proposed amendments to the Commission’s administrative rules. Chair Gaulty and Commissioner O’Neal were appointed to serve as members of the PIG.

The PIG has completed its review of Chapters 4 – 6 of the draft rules.¹ The PIG’s comments and recommended revisions to these chapters are shown on the attached redline draft of the rules. The Commission’s staff has also included some of its notes (identified as staff notes) on the attached draft to provide further explanation or information to the Commission.

¹ Chapter 4 (Advisory Opinions); Chapter 5 (Charges); and Chapter 6 (Petitions for Adoption, Amendment or Repeal of Rules and for Declaratory Orders).

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 executive director. ~~commission or its staff.~~ Any written guidance rendered by ~~the executive director 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

Commented [SY1]: PIG noted that “section” was used in some places and the symbol “§” was used in other places.

Staff note: This has been corrected by staff.

such persons in the request for guidance. Nothing in this subsection shall prevent ~~the executive director or 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 that [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 ~~sections §§~~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 ~~section §~~21-1-6 of these rules.

(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 mail[s], 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 section §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 subject to redaction, if any, by the commission.~~

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

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.

Commented [DG2]: This isn't a typo. It was from chapter 1.

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

COMPLAINTS, CHARGES, CONTESTED CASES, AND SETTLEMENT AGREEMENTS

Chapter 21-5, Hawaii Administrative Rules, renamed “Complaints, 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 ~~section §~~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.~~

Commented [SY3]: PIG suggested that a definition of "State" be added ("State" means State of Hawaii.) to the rules.

Staff note: The Hawaii Administrative Rules (HAR) Drafting Manual contains protocols for the use of "State" and "State of Hawaii" in administrative rules. Staff will revise the draft rules to conform to this.

~~[(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 ~~person making the charge filer [person making the charge,]~~ under oath, declaring under penalty of perjury that the allegations are true and correct to the best of the ~~person's 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 ~~section §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)] section §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 section §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)~~

Commented [SY4]: Staff note: Staff will follow HAR Drafting Manual for use of "State" and "State of Hawaii." .

§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 directive~~ion~~ 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)

Commented [SY5]: Question by PIG as to whether this should also reference the source of a charge.

§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.

(e) In the event that the Commission requests cooperation with an investigation or seeks to conduct an investigatory interview, and such cooperation is not forthcoming from any agency or individual, the Commission may, but need not:

- (1) draw a negative inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;
 - (2) consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
 - (3) exclude other evidence offered by the party failing to produce the requested information or witness; or
 - (4) take such other action as it deems appropriate. [Eff. _____]
- (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)) (Imp: HRS §§84-31, 84-36, 91-2, 97-6)

Commented [SY6]: Staff note: This new language was added by staff (when drafting other sections of the rules) and was not part of original draft rules reviewed by the FIG.

§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, or 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 section §21-2-4(d).

(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.

~~(d)~~(e) 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 ~~respondent's alleged violator's~~ attendance at a status conference hearing to obtain further information from the ~~respondent, alleged violator,~~ discuss settlement with the ~~respondent, 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)

Commented [SY7]: Question by PIG as to whether this should be "respondent" or "alleged violator." Use of these terms to be consistent throughout rules.

§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 ~~the~~ the motions 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;~~

Commented [SY8]: Discussion by PIG as to whether there should be a definition of this term and whether references to "presiding officer" should be changed to, "presiding officer or hearing officer." See comments below where the term, "presiding officer" appears.

Staff note: New definition of "presiding officer" can be added to HAR sec. 21-1-2: "Presiding officer" means the chairperson of the commission, or another commissioner or hearing officer as selected by the commission to conduct a contested case hearing. To further clarify that the "presiding officer" means a commissioner or hearing officer, sec. 21-5-5.1 can be replaced by a new section to be added to sec. 21-5-7 below.

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

(c) Witnesses shall be examined as follows:

- (1) Direct examination by the party calling the witness;
- (2) Cross examination by the other party, 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.

~~(3)~~ (4) 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

Commented [SY9]: PIG: "presiding officer or hearing officer"

Staff note: To clarify that "presiding officer" means a commissioner or hearing officer, a new subsection (a) can be added here: "In any contested case, the presiding officer shall be the chairperson of the commission or another commissioner as selected by the commission. When the conduct of the hearing has been delegated to a hearing officer, the hearing officer shall be the presiding officer." With this clarification, the term, "presiding officer" can be used alone without having to state, "presiding officer or hearing officer."

Commented [SY10]: PIG asks whether this is duplicative of subsection (e) below. See comment for subsection (e).

Commented [SY11]: PIG: "presiding officer or hearing officer"

Commented [SY12]: PIG: "presiding officer or hearing officer"

Commented [SY13]: PIG: "presiding officer or hearing officer"

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, ~~and~~ 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, including the report and recommended order of the hearing officer, if applicable, 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 section §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]~~:

Commented [SY14]: PIG asks whether this is duplicative of subsection (c)(5) above and therefore should be deleted.

Commented [SY15]: PIG: "presiding officer or hearing officer"

Commented [SY16]: See following comment regarding use of the term, "report and recommended order."

- (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)~~]. Undisclosed [Unless so disclosed, no such] exhibits [required to be disclosed by §21-5-8(a)(2)] shall not 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 section [§]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]~~Post-hearing procedures for hearing conducted by the commission. (a) The commission may direct one or both parties to submit proposed findings of fact and conclusions of law. The commission shall determine the findings of fact and conclusions of law to be entered.

(b) 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~~ statement. [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 the 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.~~

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

~~(d)(c)~~ 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)(d)~~ 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

Commented [SY17]: PIG recommends that references to the hearing officer's report be changed to, "report and recommended order." See comments below where the term, "report" appears.

Staff note: To clarify that the hearing officer's report includes a recommended order, this sentence can be amended to read: "The hearing officer shall thereafter prepare a report containing setting forth proposed findings of fact, proposed conclusions of law, and a recommended order." With this clarification, the term "report" can be used alone without having to state, "report and recommended order."

Commented [SY18]: PIG recommends reorganizing this section: this paragraph moved to (h) below.

Commented [SY19]: PIG: "report and recommended order"

Commented [SY20]: PIG: "report and recommended order"

Commented [SY21]: PIG: "report and recommended order"

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

~~(f)(e)~~ Except as otherwise ordered by the chairperson, within ten days after service of the exceptions to the hearings 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.

Commented [SY22]: PIG: "report and recommended order"

~~(g)(f)~~ 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 affirmaccepted.

~~(h)(g)~~ 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.

Commented [SY23]: This paragraph moved to (i) below.

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

- (1) Render its decision upon the record;

~~(A)~~ 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.

~~(1)(2)~~ If oral argument has been held, the commission may render its decision after oral argument;

~~(2)(3)~~ Reopen the docket and take further evidence; or

~~(3)(4)~~ Make such other disposition of the case that is necessary under the circumstances.

~~(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.

~~(4)~~

[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 section [§] 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 parties to the hearing [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 section §84-32, HRS [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) Upon approval of the settlement agreement, 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

Commented [SY24]: This language suggested by PIG.

Staff note: As an alternative (discussed by staff with Chair Gaulty), the Commission may wish to consider: "Upon approval of the settlement agreement, the respondent and the chairperson or delegate of the commission shall sign the agreement."

- 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 writing ~~[(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)

Commented [SY25]: PIG asked whether it is necessary to require that a petition be submitted in duplicate.

Staff note: Staff believes this is not necessary and recommends deleting this requirement.

§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

SUMMARY OF STAFF 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.

[NOTE: THE ATTACHED INFORMATION IS FOR COMMISSIONERS ONLY.]

Attachment 1: Summary of Staff Evaluation of Executive Director Dan Gluck