

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 1

STATE ETHICS COMMISSION

GENERAL PROVISIONS

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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

§21-1-1 Purpose. This chapter is intended to carry out the provisions of chapter 84, HRS, relating to standards of conduct for state legislators and employees, and to provide for the efficient administration thereof. [Eff. July 13, 1981] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31(a)(5))

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

"Advisory opinion" means an opinion rendered by the commission pursuant to a request by a legislator, employee, or former legislator or employee as to whether the facts and circumstances of a particular case violate or will violate the standards of conduct;

"Answer" means the written response to a charge filed with the commission by a person disputing the charge;

"Charge" means a notarized letter or a document signed by three or more commissioners, alleging basic facts constituting a violation of one or more provisions of chapter 84, HRS;

"Commission" means the state ethics commission of the State of Hawaii;

"Complainant" means a person who has filed a 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;

"Decision" means the written conclusions of the commission, rendered after a contested hearing on the charge;

"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;

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

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

"Purchasing agent" and "fiscal officer" means 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;

"Respondent" means the person 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31, 84-32, 84-35)

§21-1-3 Authentication of commission action. All decisions, informal advisory opinions, and formal advisory opinions of the commission shall be signed by three or more members of the commission. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-31, 92-15)

§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 that they deem themselves unable for any reason to participate with absolute impartiality in the pending hearing. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

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

§21-1-6 Right to appear. (a) Any person, or the person's authorized representative, having business with the commission may appear before it unless the commission determines by a vote of three or more members 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) 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.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-1-7 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.]
(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 deemed confidential by statute shall not be released or inspected except with the written authorization of the person involved. Disclosures of financial interests made available for public inspection by §84-17, HRS, are available pursuant to §21-3-2. [Eff.] (Auth: HRS §84-31) (Imp: HRS §§84-17, 84-31)

§21-1-9 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.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §§92-21, 92-51)

§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.]
(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 papers filed with the commission. 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, then the associate director shall conduct or prosecute the case without supervision by the executive director. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-1-12 Operations. (a) The offices of the commission are 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, 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.

(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. Except when considering matters made confidential by chapter 84, HRS, no matters considered in executive session, meetings are open to the public. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §83-31)

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 2

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

- 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 _____]

§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 filed with the commission in any proceeding shall be filed with the executive director. Such papers may be sent by mail to the post office box of the commission or mailed or hand-carried to the commission offices in Honolulu within the time limit, if any, for such filing. The date on which the papers are actually received by the commission shall be deemed to be the date of filing.

(b) All papers filed with the commission shall be plainly legible.

(c) All papers shall be signed in ink by the person signing the same or the person's duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; 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; 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 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, and telephone number of the person or persons who may be served with any documents filed in the proceeding. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

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

§21-2-3 Continuances or extensions of time. With the exception of the requirements of §84-17, HRS, and Chapter 3, 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 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§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 papers served by either the commission or any party shall be served upon all counsels 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 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 service of charge and further statement of charge of alleged violation shall be made personally upon the 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 by delivering a copy to an agent designated by that person or by law to receive service of such papers.

(e) 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. 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, filed with the commission.

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

§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 may be issued by any member of the commission.

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

(c) For production of documentary evidence or appearance of witnesses at a hearing, application for subpoenas shall be made at least three days prior to the hearing. If application for a subpoena 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.] (Auth: HRS §§84-31(a)(5), 92-16) (Imp: HRS §§84-31, 92-16)

§21-2-6 Witness fees. Witnesses summoned 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-31)

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

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 3

STATE ETHICS COMMISSION

DISCLOSURE REQUIREMENTS

- 21-3-1 Disclosure filing procedures
- 21-3-2 Public access to disclosure statements

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 _____]

§21-3-1 Filing procedures. (a) The persons holding those positions enumerated in §84-17(c), HRS, shall file annually with the commission a disclosure of financial interests.

(b) In addition to those financial interests required to be reported by §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. The disclosure shall be signed 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 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 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. [Eff.]
(Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

§21-3-2 Public access to disclosure statements.

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

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 4

STATE ETHICS COMMISSION

ADVISORY OPINIONS

- 21-4-1 Request for advisory opinions
- 21-4-2 Rendering of advisory opinions
- 21-4-3 Interim rulings
- 21-4-4 An opinion rendered by lapse of thirty days
- 21-4-5 Hearings

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 _____]

§21-4-1 Request for advisory opinion. (a) 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;
- (3) That person's position in the state agency;
- (4) The nature and duties of that person's state employment;
- (5) The date of request;
- (6) That person's business and home address;
- (7) That person's business and home telephone numbers;
- (8) A complete statement of the facts and circumstances upon which the commission can make a determination; and
- (9) The signature of the person requesting the opinion.

(b) 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 employee or legislator, the filing shall not be deemed completed until the 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 employee's or legislator's view of the factual circumstances. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

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

(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 will be placed at the end of the majority opinion or at the end of the concurring opinion, if any.

(c) An advisory opinion will be issued to the person requesting the opinion 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.

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

§21-4-3 Interim rulings. 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-4 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 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

§21-4-5 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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

TITLE 21 LEGISLATIVE AGENCIES

CHAPTER 5

STATE ETHICS COMMISSION

CHARGES

- 21-5-1 Charges instituted by a member of the public
- 21-5-2 Charges initiated by the commission
- 21-5-3 Informal hearing notice
- 21-5-4 Procedures for an informal hearing
- 21-5-5 Formal and contested hearings; notice
- 21-5-6 Formal and contested hearings; request for an open hearing
- 21-5-7 Formal and contested hearings; procedure
- 21-5-8 Pre-hearing conference
- 21-5-9 Decisions
- 21-5-10 Record of hearings
- 21-5-11 Complaint

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

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

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

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

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

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

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

(c) Upon filing of a charge by a member of the public or the commission, the commission shall notify the respondent of the charges in writing and afford the respondent an opportunity to explain the conduct alleged to be in violation of the chapter. [Eff.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

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

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

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

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

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

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

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

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

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

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

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

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

(c) Witnesses shall be examined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE 21 LEGISLATIVE AUDITOR

CHAPTER 6

STATE ETHICS COMMISSION

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

- 21-6-1 Who may petition
- 21-6-2 Form and content of petition
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declaratory order
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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 _____]

§21-6-1 Who may petition. 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. _____] (Auth: HRS §§84-31(a)(5)), 91-6) (Imp: HRS §91-6)

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

- (1) The petitioner's name, 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.]
- (Auth: HRS §§84-31(a)(5), 91-6) (Imp: HRS §91-6)

§21-6-3 Conformance of petition. The commission may reject any petition which does not conform to the requirements of this chapter. [Eff.]

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

§21-6-4 Processing of petition. 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.] (Auth: HRS §§84-31(a)(5), 91-6)

(Imp: HRS §91-6)

§21-6-5 Consideration and disposition of petition. Within 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.] (Auth: HRS §§84-31(a)(5), 91-6)

(Imp: HRS §91-6)

§21-6-6 Form and content of the petition for declaratory order. Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. The petition shall be submitted in duplicate and delivered to the office of the commission. The petition shall state the controversy or question, shall cite the statutory provision, rule, or order involved, and shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full

disclosure of the petitioner's interest, and shall be signed by the petitioner. The commission may reject any petition which does not conform to the requirements set forth above. [Eff.] (Auth: HRS §§84-31(a)(5), 91-8) (Imp: HRS §91-8)

§21-6-7 Processing of the petition for declaratory order; consideration and disposition. 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. [Eff.] (Auth: HRS §§84-31(a)(5), 91-8) (Imp: HRS §91-8)

§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.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §91-8)