

SUNSHINE LAW MEETING



HAWAII STATE ETHICS COMMISSION

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

NOTICE OF MEETING OF THE HAWAII STATE ETHICS COMMISSION

Date: September 19, 2019

Time: 10:00 a.m.

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

A G E N D A

CALL TO ORDER

- I. Consideration and Approval of the Minutes of the August 15, 2019 Meeting
- II. Executive Director's Report
 1. Education / Training Report
 2. Guidance and Assignment Statistics – August 2019
Attachment 2: 2019 Guidance and Assignment Statistics / Website Traffic
- III. Proposed Administrative Rules
 - a. Proposed hearing date: October 31, 2019, 10:30 a.m.
Attachment 3: Proposed draft rules, LRB edits (clean)
Attachment 4: Proposed draft rules, LRB edits (red-lined)

IV. *Akana v. Hawaii State Ethics Commission and Daniel Gluck*, Civil No. 18-1-1019-06 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

V. *Akana v. Hawaii State Ethics Commission and Daniel Gluck*, Civil No. 19-1-0379-03 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

VI. Adjournment

If you need an auxiliary aid/service or other accommodation due to 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. Requests made as early as possible will allow adequate time to fulfill your request.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

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

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
AUGUST 15, 2019 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the August 15, 2019 Hawaii
State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, August 15, 2019

Time: 10:00 a.m.

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

Present: State Ethics Commission Members

Reynard D. Gaulty, Chair
Ruth D. Tschumy, Vice Chair
Susan N. DeGuzman, Commissioner
Melinda S. Wood, Commissioner
Wesley F. Fong, 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

Excused: Kee M. Campbell, Staff Attorney

CALL TO ORDER

Chair Gaulty called the meeting to order at 10:04 a.m.

**Agenda Item No. I: Consideration and Approval of the Minutes of the
July 18, 2019 Meeting**

Commissioner DeGuzman suggested that the minutes be amended to reflect that Executive Director Gluck was excused from the July 18, 2019 meeting.

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the minutes of the July 18, 2019 Sunshine Law Meeting, as amended. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, Wood, and Fong voting).

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

2
3 *Education / Training Report*

4
5 Executive Director Gluck reported that he is expecting a record number of
6 training sessions and attendees this year. In the upcoming weeks, staff will conduct
7 training for employees of the Office of Hawaiian Affairs and the Legislature. In addition,
8 Executive Director Gluck and the Chief Counsel of the Office of Disciplinary Counsel will
9 conduct a continuing legal education course on ethics for government attorneys.

10
11 Executive Director Gluck also reported that staff is continuing to work on the
12 online training course. Later in the meeting, Commissioner Fong raised a question
13 about mandatory ethics training for employees. Executive Director Gluck said that once
14 the online training program is up and running, the Commission could ask the Legislature
15 to enact a law making it mandatory for employees to take the online training course.
16 Staff Attorney Chock also explained that the online course will allow employees to
17 obtain a certificate of completion after they have taken the course. Executive Director
18 Gluck said he hopes to have a method of tracking who takes the online course.

19
20 *Guidance and Assignment Statistics – July 2019*

21
22 Executive Director Gluck reported that the guidance and assignment statistics for
23 the office remain steady.

24
25 *Miscellaneous Office Projects / Updates*

- 26
27 a. Filing statistics for Financial Disclosure statements and lobbying
28 expenditure reports; late filing notices

29
30 Executive Director Gluck updated the Commission about the financial disclosure
31 filing statistics. He said filings have been received from 100% of the public employee
32 filers, close to 99% of the confidential employee filers, and close to 95% of the board
33 and commission filers. Approximately 57 filers have not yet submitted their forms.
34 Executive Director Gluck said that 98.6% of filers used the Commission's e-filing
35 system. He also said that staff will be doing compliance audits of some of the filings.

- 36
37 b. Ethics Conference – September 5, 2019

38
39 Executive Director Gluck provided an update on plans for the September 5 Ethics
40 Conference. The Kauai County Ethics Board has decided to participate in the
41 conference. Each neighbor island ethics board will send three to five participants to the
42 conference. Executive Director Gluck will distribute information to everyone before the
43 conference about each board's applicable laws and work. He also will compile and
44 distribute a list of attendees and contact information for them.

1 Executive Director Gluck asked for the Commissioners' input on the draft
2 conference program. Commissioner Fong said that he would like to hear about each
3 county board's "hot topics." Commissioner Wood suggested that participants be
4 allowed to submit advance questions for discussion at the conference. She was also
5 interested in hearing how the county boards believe they are perceived by the public.
6 Chair Graulty said that it would be helpful for staff and commission/board members to
7 meet separately to discuss their work. He felt that commission/board members should
8 have an opportunity to talk candidly among themselves about certain issues. He said
9 the county boards might be interested in discussing whether their appointment process
10 should be changed. Another topic might be the prohibition against political campaign
11 activities.

12
13 Chair Graulty said that Common Cause and the League of Women Voters should
14 be allowed to offer their impressions about the work of the ethics boards, but he did not
15 feel the conference was the right place for this discussion. Executive Director Gluck
16 said that coincidentally, Common Cause Hawaii has invited him to participate in a panel
17 discussion about ethics in Hawaii.

18
19 Sandy Ma, Executive Director of Common Cause Hawaii, asked to address the
20 Commission. She said that she understands the need for internal discussions by the
21 ethics boards about how to move their programs forward at the state and county levels.
22 She also said that she appreciated Chair Graulty's comments about providing an
23 opportunity for public input in the future.

24
25 Executive Director Gluck asked whether the Commissioners would like to
26 include the Campaign Spending Commission in the conference program. Chair Graulty
27 said he felt there was already enough on the program relating to ethics and he preferred
28 to hear about the Campaign Spending Commission's work at the COGEL Conference.

29
30 c. COGEL Conference – December 15-18, 2019

31
32 Executive Director Gluck reported that reservations for the COGEL Conference
33 have been made for Chair Graulty, Commissioner Wood, Commissioner Fong, Staff
34 Attorney Chang, and Staff Attorney Campbell.

35
36
37 **Agenda Item No. III: Proposed Administrative Rules**

38
39 a. Proposed hearing date: September 19, 2019, 10:30 a.m.

40
41 Executive Director Gluck reported that the Attorney General's office and the
42 Governor's office signed off on the proposed rules and the Commission can now
43 schedule a public hearing. The Legislative Reference Bureau ("LRB") has
44 recommended formatting edits and the removal of comments and examples from the
45 proposed rules. He said the comments and examples can be introduced as testimony
46 at the hearing and can be included as part of the record to provide context for the rules.

1 Executive Director Gluck referred to the proposed Notice of Public Hearing. The
2 notice will be posted on the Lieutenant Governor's website, the State calendar, and the
3 Commission's website. Executive Director Gluck also said that the Attorney General's
4 office suggested that the notice be published in the newspaper so staff will arrange for
5 an ad in the Honolulu Star-Advertiser. He said that he also plans to notify Civil Beat
6 about the public hearing.
7

8 Executive Director Gluck explained that the Commission also can choose to hold
9 public hearings on the neighbor islands or accept testimony from the neighbor islands
10 via videoconference. Chair Grauly said that videoconferencing will enable people from
11 the neighbor islands to participate in the public hearing without bearing the expense of
12 travelling to the hearing to testify in person. Executive Director Gluck explained that the
13 public can submit testimony via email, but that arrangements also can be made for the
14 Commission to accept testimony via videoconference. He said that he would just have
15 to find a date when the Commission can use the State Office Tower videoconference
16 facilities and then coordinate arrangements with neighbor island locations.
17

18 Chair Grauly acknowledged Ms. Ma from Common Cause Hawaii, who testified
19 that she agreed with allowing people from the neighbor islands to testify via
20 videoconference. She also suggested that information about the public hearing be sent
21 to Hawaii Public Radio.
22

23 Executive Director Gluck explained that if the Commission decides to accept
24 testimony via videoconference, the Notice of Public Hearing should state this. He also
25 said arrangements for videoconferencing can probably be made in time for a public
26 hearing to be scheduled in October. Staff Attorney Chang suggested that an alternative
27 would be to allow testifiers to call in and provide audio testimony.
28

29 A discussion followed as to the method of public testimony preferred by the
30 Commissioners. Chair Grauly, Vice Chair Tschumy, Commissioner Wood, and
31 Commissioner Fong said they preferred audio testimony because it would be less
32 burdensome than having to make videoconferencing arrangements. Commissioner
33 DeGuzman said she believed that written testimony was sufficient as she did not think
34 there would be a large number of people testifying on the rules.
35

36 Chair Grauly asked staff to arrange for public testimony via telephone (audio
37 testimony); if videoconferencing is not more expensive or burdensome, however, staff
38 can arrange for testimony via videoconference.
39

40 Commissioner Fong suggested that staff send the Notice of Public Hearing to the
41 neighbor island newspapers because they might publish information about the hearing
42 as a public service announcement.
43

44 Commissioner DeGuzman raised a question about what will happen if the
45 Commission amends the proposed rules after considering testimony at the public
46 hearing. She asked whether the Commission would be required to hold a second public

1 hearing on the amended rules. Executive Director Gluck said he did not believe a
2 second hearing was required, but he will consult with the Attorney General's office
3 about this. He said that there are additional amendments that were not included in the
4 proposed rules, and these additional amendments will be scheduled for rulemaking
5 proceedings in a couple of months.
6
7

8 **Agenda Item No. IV: Akana v. Hawaii State Ethics Commission and Daniel Gluck,**
9 **Civil No. 18-1-1019-06 (JHA)**

10
11 Executive Director Gluck reported that this case is still on hold and there have
12 been no developments.
13
14

15 **Agenda Item No. V: Akana v. Hawaii State Ethics Commission and Daniel Gluck,**
16 **Civil No. 19-1-0379-03 (JHA)**

17
18 Executive Director Gluck reported that oral arguments for Ms. Akana's appeal of
19 the Commission's decision will be on September 6, 2019, at 10:00 a.m. before Judge
20 Ashford. Executive Director Gluck briefly discussed possible outcomes from the appeal
21 and a time frame for the Judge's decision. He said Judge Ashford may give some
22 indication on September 6 as to how he will rule but given the length of the briefs
23 submitted by the parties, he may just take the matter under advisement.
24
25

26 **ADJOURNMENT OF SUNSHINE LAW MEETING**
27

28 At 10:54 a.m., Vice Chair Tschumy made and Commissioner Wood seconded a
29 motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Grauldy,
30 Tschumy, DeGuzman, Wood, and Fong voting)
31

32 The meeting was adjourned at 10:54 a.m.
33
34

35 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT

Attachment 1: Executive Director's Report

Attachment 2: 2019 Guidance and Assignments Statistics / Website Traffic

SUNSHINE MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT
September 19, 2019

1. Education / Training Report

a. Recently held trainings/presentations:

Ethics Training – University of Hawai'i
Tuesday, August 13, 2019
10:30 a.m. – 12:00 p.m.
41 attendees

Ethics Training – Office of Hawaiian Affairs
August 26, 27, 28 (3 trainings)
10:00 a.m. – 11:30 a.m.
131 attendees (total)

Ethics Training for Legislative Staff
September 4, 2019
10:00 a.m. – 11:30 a.m.
45 attendees

Ethics Training for Government Attorneys (Dep't of the Attorney General)
September 18, 2019
12:00 p.m. – 1:00 p.m.
40 attendees anticipated

b. Upcoming trainings/presentations:

Ethics Training – Hawai'i Tourism Authority
Hawaii Convention Center
1801 Kalakaua Avenue
September 26, 2019
9:30 a.m. – 10:30 a.m.
20 attendees anticipated

General Ethics Training
Kapi'olani Community College
Ohia Auditorium 118
September 27, 2019
10:00 a.m. – 11:30 a.m.
150 attendees anticipated

General Ethics Training
Kaua'i Community College
OCET 106 C&D
October 4, 2019
10:00 a.m. – 11:30 a.m.
50 attendees anticipated

Training for Department of Land & Natural Resources,
Division of Boating & Ocean Recreation
Kaua'i Community College
OCET 106 C&D
October 4, 2019
1:00 p.m. – 2:30 p.m.
15 attendees anticipated

Ethics Training – Office of Disciplinary Counsel
201 Merchant Street, 16th Floor
Honolulu, Hawai'i
October 10, 2019
10:00am – 11:30am

Ethics Training – DCCA PVL/Boards & Commissions
State Capitol, Auditorium
Honolulu, Hawai'i
October 11, 2019
9:30 a.m. – 10:30 a.m.

General Ethics Training
State Capitol, Auditorium
Honolulu, Hawai'i
October 22, 2019
10:00 a.m. – 11:30 a.m.

2. Guidance and Assignment Statistics – August 2019

Attachment 2: 2019 Guidance and Assignment Statistics / Website Traffic

2019	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of Trainings	7	1	6	4	5	8	1	6					38
# of People Trained	348	7	213	70	170	374	24	272					1478
Attorney of the Day													
	119	84	127	138	129	86	79	76					838
New assignments													
Advisory Opinion	1	1	0	0	1	0	3	0					6
Complaint	5	8	7	7	6	3	2	2					40
Gifts/Invitations/Travel	14	16	22	18	21	16	25	25					157
Guidance	2	5	0	5	1	1	3	3					20
Judicial Selection Comm'n	2	1	2	3	1	3	3	6					21
Training Request	0	0	0	3	2	1	1	0					7
Record Request	2	3	0	0	1	1	2	2					11
Project/Other	1	7	1	4	5	2	2	4					26
Total	27	41	32	40	38	27	41	42	0	0	0	0	288
Closed Assignments													
													0
Advisory Opinion	0	0	1	1	0	0	0	1					3
Complaint	3	5	3	39	7	7	2	2					68
Gifts/Invitations/Travel	9	28	20	20	24	16	27	22					166
Guidance	0	10	1	9	4	4	0	4					32
Judicial Selection Comm'n	0	10	5	4	0	4	2	7					32
Training Request	0	2	0	3	1	0	1	0					7
Record Request	2	3	0	0	1	0	3	1					10
Project/Other	0	6	2	4	4	3	1	3					23
Total	14	64	32	80	41	34	36	40	0	0	0	0	341

Dataset Views

Disclosures	113	105	87	86	182	102	97	63						835
Lobbyist Registrations	531	436	421	246	179	104	110	139						2,166
Organization Expenditures	203	119	225	150	82	53	46	18						896
Lobbyist Expenditures	159	79	145	98	46	28	22	31						608
Ethics Advice	94	92	106	89	93	83	93	64						714
Total	1100	831	984	669	582	370	368	315	0	0	0	0		5,219

SUNSHINE LAW MEETING
AGENDA ITEM III

PROPOSED ADMINISTRATIVE RULES

- Attachment 1: Staff Overview
- Attachment 2: Proposed draft rules, LRB edits (clean)
- Attachment 3: Proposed draft rules, LRB edits (red-lined)

SUNSHINE LAW MEETING
AGENDA ITEM III
PROPOSED ADMINISTRATIVE RULES

STAFF OVERVIEW

At the March 21, 2019 Commission meeting, the Commission approved a draft rules package to be sent to the Department of the Attorney General and the Office of the Governor for review and approval for public hearing.

After receiving approval from these offices, staff requested review of the proposed rules by the Legislative Reference Bureau (“LRB”). LRB has provided extensive edits, all of which are non-substantive (that is, they are edits for formatting and style, consistent with the Hawaii Administrative Rules Drafting Manual, Third Edition (available at <http://lrbhawaii.org/reports/rpts/lrb/2016/admindraft16.pdf>)). A “clean” copy of the most recent draft, incorporating LRB’s suggestions (and containing several comments for the Commission), is attached as Attachment 2. A red-lined version, should you wish to see what changes were made, is attached as Attachment 3.¹ The Department of the Attorney General and the Office of the Governor have indicated that they do not need to review these rules again if the only changes are stylistic/formatting as suggested by LRB.

At the July 18, 2019 Commission meeting, the Commission also approved draft administrative rules stemming from changes made to the Ethics Code during the 2019 Legislative Session (§§ 21-5-10 (transcripts), 21-7-10 (disclosure of potential conflicts of interests by legislators), and 21-8-4 (disclosure of potential conflicts of interests by task force members)). These proposals are not included in the current package, in large part because staff wanted to obtain feedback from the Legislature before moving ahead with § 21-7-10 (and because sending these revisions to the Department of the Attorney General and the Office of the Governor may cause further delays). Executive Director Gluck sent a letter to the Speaker of the House of Representatives and the Senate President on August 5, 2019, but has not yet received a response.

The staff requests that the Commission approve this rules package as the final set of rules for public hearing. The staff has proposed holding the public hearing (and the next Commission meeting) on Thursday, October 31, 2019.

Staff is also arranging for video-conferencing facilities on Maui, Kauai, and Hawaii Island. Although the Commission indicated it would be satisfied with conference call capabilities for the hearing, staff was concerned that it would be difficult to take separate testimony from potential testifiers if multiple people were connected via telephone at the same time. The Commission’s Office Manager and Computer Specialist have been working with other state agencies to find videoconference facilities

¹ Please note that the red-lined version contains nearly all the changes in the “clean” version; however, staff was able to identify other necessary formatting edits only after accepting all the red-line changes, such that the clean version contains a handful of formatting changes not reflected in the red-lined version.

on the neighbor islands (and, if necessary, separate meeting space for the Commission).

Recommendation

The staff recommends that the Commission approve this rules package for public hearing (Attachment 2). The staff has proposed holding the public hearing (and the next Commission meeting) on Thursday, October 31, 2019.

Recommended Motion:

Motion to approve the proposed draft administrative rules for public hearing on October 31, 2019.

DG/ny

§21-1

HAWAII STATE ETHICS COMMISSION

Amendment and Compilation of Chapters 21-1, 21-2, 21-3, 21-4, 21-5, and 21-6,
and Adoption of Chapters 21-7, 21-8, 21-9, and 21-10, Hawaii Administrative
Rules

October 31, 2019

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

"HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 1

STATE ETHICS COMMISSION

GENERAL PROVISIONS

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	Repealed
21-1-9.5	Adjudicatory functions
21-1-10	Chairperson and vice-chairperson
21-1-11	Staff
21-1-12	Operations
21-1-13	Guidance and information

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 10 are intended to ~~[carry out]~~ implement and administer the provisions of chapter 84, HRS, relating to standards of conduct for state legislators and employees, ~~[and to provide for the efficient administration thereof.]~~ and chapter 97, HRS, relating to lobbyists.

(b) General principles. The following general principles apply to every legislator and employee and may form the basis for the standards contained in these rules. 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 chapter 84 or 97, HRS, or these rules, 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 ethical standards.
- (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. [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, 84-37, 97-6)

§21-1-2 Definitions. As used in title 21, chapters 1 through [6] 10, unless the context clearly requires otherwise:

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

"Advisory opinion" means [an opinion] formal written guidance rendered by the commission pursuant to a request [by a legislator, employee, or former legislator or employee] by any individual as to whether the facts and circumstances of [a] that individual's particular case violate or will violate [the standards of conduct;] any provision of chapter 84, chapter 97, section 11-8, or section 11-316, HRS.

"Agency" has the same meaning as "state agency" in section 84-3, HRS[;].

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

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

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

“Complainant” means a person who has provided unsworn information of an alleged violation of chapter 84 or 97, HRS, or filed a charge alleging ~~[that an employee or legislator has violated chapter 84, HRS. The complainant is a party of record;]~~ a violation of chapter 84 or 97, HRS.

~~[“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 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” has the same meaning as in section 84-3, HRS.

“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 determinations 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.

~~[“Formal advisory opinion” means the same as advisory opinion;]~~

§21-1-2

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

“Lobbying” has the same meaning as in section 97-1, HRS, and includes direct lobbying and grassroots lobbying as defined in section 21-10-1, but excludes purely administrative tasks such as making copies and scheduling meetings.

“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 an action that is purely ministerial, in one’s official capacity as an employee or legislator.

“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.

“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;~~] the same as fiscal officer.

“Redacted” or “redaction” means the omission or deletion of facts to prevent disclosing the identity of persons.

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

[“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, 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 authorize commission staff to affix their signatures electronically. [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]~~ matter before the commission may make and file an affidavit or declaration that one or more of the commissioners before whom the ~~[hearing is being held]~~ matter is pending has a personal bias or prejudice. The commissioner against whom the affidavit or declaration is filed may answer the affidavit or declaration or may ~~[file a disqualifying certificate with the commission.]~~ recuse from the matter. If the commissioner chooses to answer the affidavit or declaration, the remaining commissioners shall decide whether ~~[or not]~~ that commissioner should be disqualified from proceeding therein. Every affidavit or declaration shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed ~~[at least]~~ as soon as practicable, but no later than ten days before ~~[the]~~ any contested case hearing, or good cause shall be shown for the failure to do so. ~~[Commissioners]~~ At any time, commissioners may disqualify themselves by [filing with the executive director a certificate] informing the other commissioners and/or the executive director that they deem themselves unable for any reason to participate with absolute impartiality in the pending [hearing-] matter. [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

§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]~~.

(b) ~~Any person who acts in a manner that prevents the orderly and peaceful conduct of business may be removed upon 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.] of the commission.~~ 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.]~~

(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. [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 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 ~~[statute]~~ law shall not be ~~[released or inspected]~~ made public except with the written authorization of the person involved~~[-]~~ or as otherwise provided by 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 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; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§92-21, 92-51)~~

Commented [DG1]: LRB advised that we repeal 21-1-9 and add a new 21-1-9.5, rather than amend 21-1-9 by removing all the old text and inserting new text.

§21-1-9.5 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. [Eff] (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

§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]~~ documents 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 ~~[in the Kamamalu Building, 250 South King Street,]~~ at 1001 Bishop Street, Suite 970, 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,] via electronic mail or other electronic means designated by the commission or its staff, or otherwise as 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. [Except when considering matters made confidential by chapter 84, HRS, or matters considered in executive session, meetings are open to the public.] Meetings are open to the public except when matters made

§21-1-13

confidential by chapter 84 or 97, HRS, or these rules, or otherwise made confidential by law, are considered in executive session. [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 Guidance and information. The commission may develop and publish general guidance and information about chapters 84 and 97, HRS, for the purpose of educating the public, legislators, employees, lobbyists and organizations that employ lobbyists regarding ethics and lobbying laws. General guidance issued for educational purposes shall not have the force and effect of law and shall not be dispositive in any particular matter.” [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: Preamble, HRS chapter 84; HRS §§84-31(a)(7), 84-42, 84-43)

2. Chapter 21-2, Hawaii Administrative Rules, entitled “Filing of Documents, Service, Witnesses, and Subpoenas”, is amended and compiled to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 2

STATE ETHICS COMMISSION

FILING OF DOCUMENTS, SERVICE, ~~[WITNESS]~~ WITNESSES, 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	Witness 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 filed with the commission in any proceeding]~~ documents for the commission’s consideration 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 hand-carried]~~ delivered via electronic mail or in hard copy to the commission offices in Honolulu within the time limit, if any, for such filing[-] unless the commission requires that documents be submitted

§21-2-1

electronically. The date on which the ~~[papers]~~ documents are actually received by the commission shall be deemed to be the date of filing~~[-]~~, except as otherwise provided by law.

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

(c) All ~~[papers]~~ documents shall be signed ~~[in ink]~~ by the person ~~[signing]~~ submitting 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~~[-]~~, 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]~~ not 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]~~ The commission may require that hard 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 ~~[a member of]~~ the executive director or the commission for an extension not to exceed fifteen days. Additional extensions or extensions exceeding fifteen days will be ~~[ordered]~~ allowed only upon ~~[motion and notice]~~ written request and may be granted by the commission chair or delegate 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 ~~[papers]~~ documents served by either the commission or any party shall be served upon all ~~[counsel]~~ counsel 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~~[-]~~ in writing.

(c) The final opinion, decision, or any other ~~[paper]~~ document 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]~~ Service of a charge, [and] further statement of [charge of] alleged violation, and notice of a contested hearing shall be made ~~[personally];~~

- (1) 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]~~
- (2) By delivering a copy to an agent designated by [that person] the respondent 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 respondent after reasonable and diligent inquiry, service may be effected as ordered by the circuit court pursuant to section 84-31(b) or 97-6(b), HRS, or as otherwise provided by statute.

§21-2-4

(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 in accordance with section 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 for the production of documentary evidence 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]~~ Requests for subpoenas for the production of documentary evidence, or for the appearance of witnesses at a hearing or at an investigatory interview, shall be made at least ~~[three]~~ fourteen 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

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] (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 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 the 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)

3. Chapter 21-3, Hawaii Administrative Rules, entitled "Financial Disclosure Requirements", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 3

STATE ETHICS COMMISSION

FINANCIAL DISCLOSURE STATEMENTS

21-3-1	<u>Repealed</u>
21-3-1.5	Definitions
21-3-2	Repealed
21-3-2.5	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
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 Filing procedures.] (a) The persons holding those positions enumerated in §84-17(e), HRS, shall file annually with the commission a disclosure of financial interests.

(b) 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. 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 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(e), 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 July 13, 1981; §21-3-1; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

Commented [DG2]: LRB advised us against renumbering sections. So instead of swapping 21-3-1 and 21-3-2 and editing them heavily, we're going to (1) repeal 21-3-1; (2) insert a new 21-3-1.5; and then (3) insert a new 21-3-2.5.

§21-3-1.5 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.

“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 ethics 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 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)

~~[§21-3-2 Public access to disclosure statements. (a) An exact copy of the financial disclosure statements of the persons holding those positions~~

Commented [DG3]: Per comment above, this is now repealed outright (rather than being renumbered and amended).

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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 whose 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.

(c) Any original disclosure statement filed with the commission and any copy which is made available by the commission pursuant to §21-3-2(a) for public inspection shall not be reproduced except by the commission staff for the benefit of the commission or for the person who was required to file the original disclosure.

(d) Persons located in the state on islands other than Oahu who wish to obtain information contained in any disclosure statement which is available for public inspection at the commission offices shall:

- (1) Call or write the commission offices and provide the information required by §21-3-2(b), including a telephone number at which the requester may be reached;
- (2) The executive director shall telephone the requester at the number provided and make every effort to confirm the requester's identity;
- (3) If the requester's identity is confirmed to the executive director's satisfaction, the executive director shall provide over the telephone any public information contained in a financial disclosure statement. Before providing such information, the executive

Commented [DG4]: This section of deleted text (from here to the end of this rule) was not included in the previous draft, but it was superseded by statute many years ago and hasn't appeared on our on-line version of rules in a long time.

director shall inform the requester that a record will be kept of any filled request and will be made available to the person who filed the disclosure pursuant to this rule;

- (4) The executive director shall complete a form setting forth the same information required by §21-3-2(b) in each instance where the executive director has filled a telephone inquiry. A copy of the form shall be made available to the person whose disclosure was the subject of the telephone inquiry.

(e) The copies of the disclosures of a person holding a position designated in §84-17(b), HRS, which are available for public inspection shall remain available for such inspection for twelve months following the person's termination from state service in all such designated positions. At the end of this twelve month period, the public copies shall be placed with the originals and shall be thereafter treated by the commission as confidential. [Eff July 13, 1981; §21-3-2; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

§21-3-2.5 Financial disclosure filing procedures. (a) All persons holding those positions enumerated in section 84-17(c), HRS, shall file annually with the commission a disclosure within the applicable time periods prescribed in section 84-17(b), HRS, and this chapter.

(b) Disclosures shall be filed electronically using the commission's electronic filing system or by any other method established by the commission.

(c) Disclosures shall be deemed filed as of the time and 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 shall contain:

- (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 electronic mail address, and work 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, civil union partner, and dependent children.

(e) The disclosure shall be signed, digitally or otherwise, by the filer. The filer's signature constitutes a certification that the filer has read the document and that to the best of the filer's knowledge, information, and belief every statement contained in the instrument is true and no such statements are

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misleading. Filers shall promptly notify the commission regarding any changes in their contact information provided pursuant to subsection (d)(1). [Eff
] (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 if the fund itself has been disclosed; and
 - (3) Trust assets that would be reportable by the filer if held outside a trust, provided that specific trust assets need not be reported if they are held within a blind trust or similarly outside the filer's control or knowledge.
- (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's 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; and
 - (5) Social Security or other government benefits.
- (c) Filers need not disclose consumer credit card debt or automobile

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

§21-3-4 Public access to disclosure statements. 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. [Eff
] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31, 84-31.5)

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

§21-3-6 Amended 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, whether on an interim, acting, or permanent basis. [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 from a position requiring the filing of a confidential disclosure to a position requiring the filing of a public disclosure shall file a new, public disclosure within thirty days of the first day in office, whether on an interim, acting, or permanent basis. Other filers who transfer positions need not file a new disclosure statement until the next filing deadline.

§21-3-8

(b) 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 electronic mail is sent. If notice is sent via first-class mail, the ten-day period shall begin two business days after mailing, unless the notice is mailed to an address outside the State, in which case the ten-day period shall begin four business days after mailing. [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) 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, 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 meet the applicable due date; and any documents or evidence in support of the filer's request for a waiver.

(c) The commission may waive any administrative fine for good cause shown. The filer has the burden to establish good cause. Good cause may be found if the 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 filer from 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 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 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, unless otherwise provided by law.

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

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

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 4

STATE ETHICS COMMISSION

ADVISORY OPINIONS

21-4-1	Request for guidance; request for advisory opinion
21-4-2	Rendering of advisory opinion
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. Any written guidance rendered by the executive director 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 the person requesting guidance. Nothing in this subsection shall prevent the executive director or the commission from investigating alleged violations of chapter 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 ~~[business and home address;]~~ mailing address and electronic mail address;
- (7) That person's ~~[business and home]~~ telephone ~~[numbers;]~~ number;
- (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 ~~[employee or legislator]~~ person as set forth in subsection (d), the filing shall not be deemed completed until ~~[the employee or legislator who will be the subject of the opinion]~~ that person has had a reasonable opportunity to review the facts submitted and to present that ~~[employee's or legislator's]~~ person'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 section 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. [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 ~~[will]~~ shall be in writing and signed by all commissioners subscribing to the opinion. It ~~[will]~~ shall be considered rendered when it is signed and placed in the ~~[mails,]~~ mail, 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 ~~[will]~~ shall 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 ~~[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.]~~ within thirty days of the request being filed with the commission pursuant to section 21-4-1(c). The person requesting the opinion may authorize the commission to publish the unredacted advisory opinion; however, the commission retains the discretion to redact the opinion prior to publication.

(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.]~~ 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 receipt 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.

~~[(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~~

§21-4-2

~~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 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 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 July 13, 1981; R] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

[§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 July 13, 1981; R] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

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

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 5

STATE ETHICS COMMISSION

INVESTIGATIONS, CHARGES, CONTESTED CASES, AND SETTLEMENT
AGREEMENTS

21-5-1	Repealed
21-5-2	Investigations; charges initiated by the commission
21-5-2.1	Charges initiated by a member of the public
21-5-2.2	Confidentiality in investigations
21-5-2.3	Cooperation with commission investigations
21-5-2.4	Investigatory interviews
21-5-2.5	Legal counsel
21-5-2.6	Individual representing party
21-5-2.7	Procedure upon issuance of charge; further statement of alleged violation
21-5-3	Repealed
21-5-3.5	Status conference
21-5-4	Repealed
21-5-5	Contested hearings; notice of hearing
21-5-6	Repealed
21-5-6.5	Motions
21-5-7	Contested hearings; procedures
21-5-7.1	Rules of evidence
21-5-8	Pre-hearing conference
21-5-9	Post-hearing procedures for hearing conducted by the commission
21-5-9.1	Post-hearing procedures for hearing conducted by hearing officer
21-5-10	Record of hearing

§21-5

21-5-11 Post-hearing complaint
21-5-12 Settlement

Historical Note: This chapter is based substantially upon rules 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 Charges instituted by a member of the public. 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 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 July 13, 1981, R.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)~~

Commented [DG5]: Like in the last chapter, LRB recommends that we not renumber rules. (We were planning to swap 21-5-1 and 21-5-2.) Instead, we will (1) repeal 21-5-1, (2) amend 21-5-2, (3) insert a new 21-5-2.1 (what was going to be 21-5-2), and (4) take what was going to be 21-5-2.1 through 21-5-2.6 and renumber 2.2 through 2.7

§21-5-2 [Charges] Investigations; 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.~~

~~(b)](a) Any individual may submit information to the executive director alleging a violation of chapter 84 or 97, HRS. Such information may be offered anonymously and need not be provided under oath.~~

~~(b) The executive director may investigate any matter upon the receipt of information indicating a possible violation of chapter 84 or 97, HRS. The executive director may also investigate any matter at the request of the commission or on the executive director's own initiative.~~

(c) The executive director may refer any complainant to another agency as appropriate.

(d) 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 subsection (e). At any time prior to requesting a resolution to investigate, the executive director may close any investigation.

(e) 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.

(f) 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.

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

~~[(e) 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; am and comp

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

§21-5-2.1 Charges initiated 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 of the respondent, and the name and contact information of the individual filing the charge. The charge shall be signed by the 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 knowledge. The executive director may investigate such charges pursuant to section 21-5-1.5.

(b) Where it appears that a document submitted to the commission is intended to be a charge, but the document subsection (a), the commission shall notify the filer of the insufficiency. The executive director may investigate the matter in accordance with section 21-5-1.5 but shall not treat the document as a charge until the insufficiency is corrected. [Eff _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.2 Confidentiality in investigations. (a) The executive director shall investigate all matters confidentially and shall not disclose non-public details of an investigation except as necessary to conduct the investigation, provided that the executive director may, on a confidential basis and at any time, disclose information or refer any matter to any governmental law enforcement agency and may likewise disclose information or refer any administrative matter to the relevant agency administrator for further action as warranted.

(b) The commission's records relating to a charge or investigation are otherwise confidential and are not open to inspection by any person except as specifically required by chapter 84 or 97, HRS, or these rules.

(c) The executive director may, during the pendency of an investigation, request legislators and employees to refrain from disclosing information regarding the investigation that the legislator or employee learns from the commission or its staff if the executive director determines that such request is necessary to maintain the integrity of the investigation or for another compelling reason. Such request shall be as limited in time and scope as is necessary and practicable under the circumstances. Nothing herein shall prevent any legislator or employee from discussing a matter with the legislator's or employee's attorney, lodging a complaint with any governmental entity as allowed by law, or exercising the constitutional right to free speech.

(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 chapter 84 or 97, HRS, or for other good cause.

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

§21-5-2.3 Cooperation with commission investigations. (a) Every department, division, board, bureau, commission, or other agency of the State shall cooperate and assist 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 are 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) If 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)

§21-5-2.4 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 and may record the interview.

(c) Any interview conducted by the commission or the executive director may, at the commission's or executive director's discretion, be conducted under oath, recorded, transcribed by a court reporter, or any combination thereof. [Eff] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.5

§21-5-2.5 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)

§21-5-2.6 Individual representing party. When an attorney or union representative, 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)

§21-5-2.7 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.

(e) Upon issuance of a further statement of alleged violation, the commission shall enter an order erecting a firewall between the commission and its counsel, on one side, and the executive director or delegate, as charge counsel, on the other. Neither charge counsel nor the respondent shall have ex parte communications with the commission or its counsel by discussing or sharing information about substantive matters pertaining to the case. The executive director or delegate shall independently supervise and direct how the case against the respondent will be presented, argued, and otherwise conducted. Legal staff designated as commission counsel shall not be subject to supervision or direction by the executive director or other charge counsel on matters relating to the case.

(f) The executive director or delegate shall prosecute each case, provided that when the party filing the charge is not the commission, that party may move to prosecute the case. Such motion shall be filed no later than five days following publication of the notice of hearing as set forth in section 21-5-5. In considering the motion, the commission shall consider whether the movant has the ability to prosecute the case, whether the further statement of alleged violation includes allegations beyond those included in the charge, and whether granting the motion is in the public interest.

(g) 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~~ ~~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 July 13, 1981; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

Commented [DG6]: Rather than re-writing this rule, we will delete 21-5-3 and replace with a new 21-5-3.5.

§21-5-3.5

§21-5-3.5 Status conference. At any time, the commission may request the respondent's attendance at a status conference to obtain further information from the respondent, discuss settlement with the respondent, or otherwise seek a fair and efficient resolution of any matter. [Eff]
(Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

~~**[§21-5-4 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 July 13, 1981; R] (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 ~~[five]~~ fifteen 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)

~~§21-5-6 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 July 13, 1981; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)

Commented [DG7]: LRB recommended that we delete 21-5-6 and insert a new 21-5-6.5, rather than re-writing the entire rule.

§21-5-6.5 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 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 a 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. [Eff] (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 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.

(b) The [chairperson] presiding officer shall convene and conduct the hearing [and shall read the charge].

~~[(b)]~~(c) Before presentation of the case, the parties shall have the opportunity to make opening statements~~[-]~~, provided that the presiding officer may order that opening statements be made in writing rather than orally at the hearing. The usual order of making opening statements shall be as follows:

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

~~[(e)]~~ (d) 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)]~~(e) After all the evidence has been presented, the ~~[commission]~~ presiding officer 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 or complainant;
- (2) Final argument by the respondent; and
- (3) Rebuttal argument by the executive director or 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]~~ presiding officer for the final arguments. Final arguments may be waived by either party. The presiding officer may order that final arguments be made in writing rather than orally at the hearing.

(f) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents 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.

(g) 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.

(h) Any procedure in a contested case may be modified or waived by stipulation of the parties.

~~[(e)]~~ (i) 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)]~~ (j) 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. Any oral or documentary evidence that is relevant and material to the charge may be admitted, provided that the commission's findings must be based upon competent and substantial evidence in accordance with section 84-31(c), HRS. Effect shall be given to the rules of privilege recognized by law. The presiding officer may take notice of judicially recognizable facts. [Eff] (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 pre-hearing conference is held by the presiding officer, except as and to the extent otherwise ordered ~~[by the commission]~~:

- (1) Each party shall ~~[disclose]~~ file a prehearing conference brief in which it discloses 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~~[;]~~.

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~~[(3) — Unless so disclosed, no] Undisclosed exhibits [required to be disclosed by §21-5-8(a)(2)] shall not be received in evidence at the hearing over objection unless the [commission] presiding officer finds that there was reasonable ground for failing to disclose such exhibits prior to hearing;~~

~~[(4)](3) All exhibits required to be disclosed by [§21-5-8(a)(2)], subsection (a)(2), and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification at least [one day] five days 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.]~~ presiding officer may issue a pre-hearing order setting forth any requirements or deadlines regarding the hearing, or may otherwise set a schedule for filing briefs, exhibits, or other pleadings. The presiding officer may strike any documents not timely filed. [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.

~~[(a)](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 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.]~~ or dissenting statement. [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 proposed findings of fact and conclusions of law. The hearing officer shall thereafter prepare proposed findings of fact, proposed conclusions of law, and a recommended order.

(b) The hearing officer shall cause a copy of the proposed findings of fact, proposed conclusions of law, and recommended order to be served upon all parties to the proceeding.

(c) Except as otherwise ordered by the commission, within fourteen calendar days after service of the proposed findings of fact, proposed conclusions of law, and recommended order by the hearing officer, a party may file with the commission exceptions to the proposed findings of fact, proposed conclusions of law, and recommended order together with a brief in support of such exceptions. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(d) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
- (2) Identify the proposed findings of fact, proposed conclusions of law, or portions of the recommended order to which objections are made; and
- (3) State all the grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived.

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

(f) The brief shall:

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- (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 proposed findings of fact, conclusions of law, and recommended order should be accepted.
- (g) The commission may direct oral argument on its own motion.
- (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, which 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;
 - (2) Render its decision after any oral argument ordered;
 - (3) Reopen the docket and take further evidence; or
 - (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 report of the hearing officer. [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 ~~hearings~~ hearing. The record of the hearing shall be compiled in conformance with [~~§91-9(e)~~] section 91-9, HRS. The commission [~~will~~] shall make provisions for an audio, video, or stenographic ~~record~~ recording of the testimony, or some combination thereof, but it [~~shall~~] need not be transcribed unless requested for purposes of rehearing or court review. [~~The complainant and the alleged violator~~] The parties to the hearing shall be entitled to a copy of the [~~record~~] recording 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 [~~Complaint~~] Post-hearing complaint. After the commission has [~~made a~~] issued a written decision, [~~the commission~~] it shall [~~issue the~~]

~~complaint and refer its decision to the appropriate legislative body or to the governor, as the case may be.] determine whether sufficient cause exists to issue a post-hearing complaint and, if so, shall issue such complaint pursuant to section 84-32, HRS within thirty days of issuance of such written decision. [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 alleged violator, subject to the commission's approval. At any time, the executive director may, with the consent of the alleged violator, present the matter to the commission to obtain its inclination regarding proposed terms of an agreement;
- (2) Upon request, the alleged violator 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 alleged violator and the chairperson, or another commissioner so authorized by a majority of the commission, shall sign the agreement; and
- (4) The commission may issue a resolution that serves as a final disposition of the matter.

(c) Force and effect of agreement:

- (1) The agreement resolves only those matters directly raised in the settlement agreement itself. The commission reserves the right to investigate and charge the alleged violator regarding matters not raised in the settlement agreement unless the agreement expressly provides otherwise;
- (2) The settlement agreement does not resolve any matter against any alleged violator not a party to the agreement; and
- (3) 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 after considering the following factors:

- (1) The nature of the violation;

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- (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)

6. Chapter 21-6, Hawaii Administrative Rules, entitled "Petitions for Adoption, Amendment or Repeal of Rules and for Declaratory Orders", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

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	Who may petition for declaratory order
21-6-6.1	Form and content of petition for declaratory order
21-6-6.2	Conformance of petition for declaratory order
21-6-7	Processing of petition for declaratory order
21-6-8	Consideration and disposition of petition for declaratory order

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. ~~[Am] Any~~ Any 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)

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§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; and
- (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 [~~thirty~~] ninety 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 [Form and content of the petition] Who may petition for declaratory order. Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. ~~[The petition shall be submitted in duplicate and delivered to the office of the commission. The petition shall state the controversy or question, shall cite the statutory provision, rule, or order involved, and shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest, and shall be signed by the petitioner. The commission may reject any petition which does not conform to the requirements set forth above.]~~ [Eff July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-6.1 Form and content of petition for declaratory order. The petition shall be submitted in writing to 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. [Eff] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-6.2 Conformance of petition for declaratory order. The commission may reject any petition that does not conform to the requirements set forth herein. [Eff] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-7 Processing of [the] petition for declaratory order[; consideration and disposition]. ~~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. Within a reasonable time after the receipt of the petition, the commission shall render its order in writing. [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)

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~~§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; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §91-8)

Commented [DG8]: Commissioners: again, rather than re-writing the existing rule, we'll repeal 21-6-8 and include a new 21-6-8.5.

§21-6-8.5 Consideration and disposition of petition for declaratory order. (a) 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 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;
- (3) The matter is not within the jurisdiction of the commission; or
- (4) Any other good cause exists.
- (b) The commission may, in its discretion, hold a hearing on the

petition." [Eff] (Auth: HRS §§84-31(a)(5), 91-8, 97-6(a)(5)) (Imp: HRS §§84-31, 91-8, 97-6)

7. Chapter 21-7, Hawaii Administrative Rules, entitled “Gifts and Fair Treatment”, is adopted to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 7

HAWAII STATE ETHICS COMMISSION

GIFTS AND FAIR TREATMENT

21-7-1	Definitions
21-7-2	Prohibited gifts
21-7-3	Acceptable items
21-7-4	Offers of travel
21-7-5	Valuation of gifts
21-7-6	Imputing gifts to others
21-7-7	Submission of gifts disclosure statement
21-7-8	Public information
21-7-9	Fair Treatment

§21-7-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Charitable organization” means an entity organized under section 501(c)(3) of the Internal Revenue Code.

“Gift” means anything of value and includes, but is not limited to, money, gift cards, food, services, loans, travel, lodging, training, entertainment, hospitality, things, gratuities, favors, or discounts.

“State purpose” means reasonably related to conducting one’s official state duties.

“State resources” means state time, equipment, facilities, money, electronic mail, letterhead, and other assets and resources, including state

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personnel. [Eff] (Auth: HRS §84-31(a)(5))
(Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-2 Prohibited gifts. (a) An employee or legislator shall not solicit, accept, or receive any gift, directly or indirectly, if a reasonable person may conclude that the gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties.

(b) In determining whether a gift is prohibited, the commission shall examine the circumstances surrounding the offer of the gift and consider:

- (1) The donor's relationship to the recipient. Except as specifically provided in this chapter, a gift is generally prohibited where the recipient is in a position to take official action specifically affecting the donor, such as where the donor is a party to a contested case hearing before the recipient, regulated by the recipient, involved in procurement with the recipient, or a lobbyist seeking legislative or administrative action from the recipient;
- (2) The value of the gift. Generally, the higher the value of the gift, the more likely the gift is prohibited; and
- (3) Whether the gift supports a state purpose. Generally, cash, gift cards, and complimentary admission to events or venues that are primarily intended as entertainment, such as concerts, movies, sporting events, or golf tournaments, do not serve any state purpose and are more likely to be prohibited.

[Eff] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-3 Acceptable items. (a) The following items generally may be accepted and need not be reported on a gifts disclosure statement:

- (1) A lei, other than a money lei, offered in connection with a celebration, commemoration, or event;
- (2) Discounts, services, or other benefits offered to the public at large. This may include discounts, services, or other benefits offered to government employees as a group, provided that the same discounts, services, or other benefits are offered on similar terms to other large groups of employees;
- (3) Bona fide competitively awarded grants or scholarships;

- (4) Promotional items having no resale value, such as branded pens, calendars, hats, or tote bags;
 - (5) Rewards or prizes given to competitors in contests or events, including random drawings, offered to the public or a segment thereof, where the legislator or employee receiving the reward or prize does not attend the contest or event in an official capacity, unless a reasonable person would conclude that the reward or prize was offered to the legislator or employee because of the legislator's or employee's state position;
 - (6) A gift provided by any other state, a political subdivision of any other state, or the United States, provided that the gift serves a bona fide state purpose and that tangible and durable items of more than nominal value, such as artwork or jewelry, shall belong to the State rather than the individual recipient;
 - (7) Modestly priced awards, plaques, and other ceremonial items of the type customarily bestowed in connection with bona fide ceremonies and otherwise reasonable under the circumstances;
 - (8) Gifts received by a spouse or dependent child of the legislator or employee solely because of the spouse's or child's own employment, volunteer activities, or personal relationships, where a reasonable person would not believe that the gift was intended to influence or reward the legislator or employee;
 - (9) An unsolicited gift of nominal value given as a token of appreciation to a teacher, medical professional, or similar kind of service provider, such as a holiday gift given to a teacher by a student or guardian, where the gift is offered by an individual in the individual's personal capacity, and the gift is given under circumstances in which no reasonable person would conclude that the gift was given to influence the recipient's state duties with respect to the offeror; and
 - (10) Gifts given under circumstances in which no reasonable person would conclude that the gift was being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties.
- (b) An individual who represents the State for protocol purposes, such as the governor, lieutenant governor, legislator, president of the University of Hawaii, department director, or deputy director, may generally accept an unsolicited offer of complimentary attendance to attend an event organized with

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the principal objective of raising money for or awareness of a charitable organization, provided that:

- (1) The recipient's attendance at the event is paid for by the charitable organization itself;
 - (2) The non-tax-deductible value of attendance is less than \$75, unless the commission finds that the recipient has demonstrated a special need to exceed this limit;
 - (3) The recipient does not accept more than \$300 in cumulative non-tax-deductible value in any calendar year, unless the commission finds that the recipient has demonstrated a special need to exceed this limit; and
 - (4) The recipient's attendance at the event serves a state purpose.
- (c) The commission shall revise the dollar amounts in subsection (b) in January of each even-numbered year to reflect changes in the Consumer Price Index and shall publicize these values on its website.
- (d) For purposes of subsection (b), if the value of the gift meets the reporting requirements of section 84-11.5, HRS, the gift shall be reported and the recipient shall separately report both the non-tax-deductible value of attendance and the tax-deductible portion of the attendance fee on the recipient's annual gifts disclosure statement. [Eff _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-4 Offers of travel. (a) The following economy-class travel expenses, including modest meals and lodging, generally may be accepted and need not be reported on a gifts disclosure statement:

- (1) Travel expenses paid for by the United States, any of its states or territories, or any political subdivision thereof;
- (2) Travel expenses provided pursuant to a grant to or a contractual agreement with the State, provided the benefit supports a bona fide state purpose;
- (3) Travel expenses provided to individuals to serve as chaperones to groups of public school students on student educational tours, where the tours are paid for by students or their guardians and are approved by the Hawaii Department of Education, and where the travel expenses are paid for by the organizing tour company or with a portion of fees collected from other travelers.

§21-7-6

(b) An offer of economy-class travel expenses, modest food and non-alcoholic beverages, and educational programming in connection with a bona fide professional development program, conference, or business meeting, generally may be accepted if receipt thereof is consistent with section 21-7-2, provided that the recipient shall report the travel pursuant to section 84-11.5, HRS. In determining whether an offer of travel is acceptable, the commission shall consider:

- (1) The donor's relationship to the recipient. Generally, an offer of travel may not be accepted where the donor lobbies, seeks business with, or is regulated by the recipient's agency;
- (2) The value of the trip, including all travel costs sponsored by the donor; and
- (3) Whether the travel supports a state purpose. Generally, offers of travel to events that lack significant educational content may not be accepted. Likewise, offers to attend entertainment events, such as golf, cruises, sporting events, or luxury meals, generally may not be accepted, even if they occur as part of an otherwise acceptable event. [Eff _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-5 Valuation of gifts. (a) The value of a gift is its fair market value, which is the cost that a member of the public would reasonably expect to incur to purchase the gift, including any tax-deductible portion.

(b) If the gift is a seat at a table for an event, the value of the gift is the cost of the table sponsorship divided by the number of seats at the table. [Eff _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

§21-7-6 Imputing gifts to others. (a) Where an offeror of a gift does not specify a recipient within an office, and the legislator or supervisor of the receiving office knows or reasonably should know of the gift, the gift is presumed to be a gift to the legislator or supervisor.

(b) A gift to a family member of a legislator or employee is presumed to be a gift to a legislator or employee where:

- (1) The gift is offered because of the family member's relationship to the legislator or employee; and

§21-7-6

- (2) The legislator or employee knows or reasonably should know of the gift. [Eff] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-11)

§21-7-7 Submission of gifts disclosure statement. Gifts disclosure statements shall be filed using forms and methods prescribed by the commission. The commission may require that gifts disclosure statements be filed using an electronic filing system. [Eff] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

§21-7-8 Public information. Gifts disclosure statements are public records and the contents of a gifts disclosure statement are public information, except as otherwise provided by law. [Eff] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

§21-7-9 Fair treatment. (a) Subject to article III, section 7 of the Hawai‘i State Constitution and section 84-13, HRS, legislators and employees shall not use or attempt to use their official positions to solicit, request, accept, receive, or grant unwarranted privileges, exemptions, advantages, contracts, treatment, or benefits, for themselves or others, or to subject others to unwarranted treatment, whether favorable or unfavorable. Among other things, legislators and employees shall not:

- (1) Take unwarranted action or withhold warranted action against an individual, or threaten to do so, for lodging a complaint with the commission, where a reasonable person would conclude that the action or lack of action, or threat thereof, was intended as retaliation for lodging a complaint or cooperating with a commission investigation;
- (2) Use or attempt to use their official position to seek or secure private employment or contracts for services for themselves or others, provided that legislators and employees may offer professional references for their current and former employees;

- (3) Accept, receive, or solicit compensation, honoraria, other consideration, or gifts for the performance of their official duties or responsibilities except as provided by law;
 - (4) Use state resources for private business purposes, including, but not limited to, the use of state resources for:
 - (A) Political campaign activities;
 - (B) Advertising or publicizing the sale of goods or services;
 - (C) Taking or responding to sales orders or inquiries;
 - (D) Preparing or sending invoices;
 - (E) Collecting payments;
 - (F) Producing or delivering goods or services;
 - (G) Arranging or conducting private business meetings;
 - (H) Requesting or directing other state personnel to assist with private business activities; or
 - (I) Otherwise furthering a private business interest, except where the State has made a state facility or resource available for rent, purchase, or use by private organizations or individuals on generally equal terms and such use serves a state purpose;
 - (5) Use state resources for fundraising, except:
 - (A) As approved by the Governor, the Speaker of the House and President of the Senate, the Chief Justice, or the President of the University of Hawaii; or
 - (B) In conjunction with a nonprofit organization that exists for the sole purpose of assisting and supporting a state facility or program, including but not limited to a state charter school;
 - (6) Solicit or engage in a substantial financial transaction with a subordinate or a person or business the legislator or employee inspects or supervises in an official capacity; or
 - (7) Abuse their position within state government to sexually harass another individual.
- (b) In all but the most extraordinary circumstances, acceptance of a gift in compliance with section 84-11, HRS, and sections 21-7-1 to 21-7-6 will comport with the fair treatment law; however, solicitation or acceptance of a substantial number of individual gifts may raise fair treatment concerns even if each individual gift is acceptable.” [Eff _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-13)

8. Chapter 21-8, Hawaii Administrative Rules, entitled “Conflicts of Interests”, is adopted to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 8

STATE ETHICS COMMISSION

CONFLICTS OF INTERESTS

- 21-8-1 Conflicts of interests, director or officer of private organization in employee’s state capacity
- 21-8-2 Acquiring new conflicts of interests; reason to believe
- 21-8-3 Assist or represent – exception for personal service contracts

§21-8-1 Conflicts of interests, director or officer of private organization in employee’s state capacity. (a) An employee who serves as a director or officer of a private organization in the employee’s official capacity is not prohibited from taking official action affecting that organization, provided that action does not affect the personal financial interest of the employee, the employee’s spouse or civil union partner, or the employee’s dependent children.

(b) Any discretionary action taken by the employee as a director or officer as set forth in subsection (a) shall be considered official action for purposes of chapter 84, HRS. [Eff] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-3, 84-14, 84-31)

§21-8-2 Acquiring financial interest in a business or other undertaking; reason to believe. For purposes of section 84-14(b), HRS, an employee has “reason to believe” that the employee “may be directly involved in official action to be taken by the employee” where there is a reasonable likelihood the employee may take official action affecting the business or undertaking. [Eff

§21-8-3

] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

§21-8-3 Assist or represent – exception for personal service contracts.

A legislator or employee may be permitted to provide the legislator's or employee's own personal services to the legislator's or employee's agency where there is an overriding state purpose that outweighs any appearance of a conflict of interest. The commission may evaluate the following factors in determining whether a personal services contract is permissible:

- (1) Whether there is an appearance that the legislator or employee is receiving unwarranted or preferential treatment from the legislator's or employee's agency;
- (2) Whether the legislator or employee is using confidential information to obtain the personal services contract;
- (3) Whether there is a substantial public need for the legislator's or employee's expertise;
- (4) Whether the legislator or employee possesses expertise in a particular area;
- (5) Whether the agency is having difficulty obtaining services of this specialized expertise from other sources; and
- (6) Whether the personal services contract is otherwise consistent with chapter 84, HRS, and other applicable law." [Eff

] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

9. Chapter 21-9, Hawaii Administrative Rules, entitled “Post-Employment Restrictions and Contracts”, is adopted to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 9

STATE ETHICS COMMISSION

POST-EMPLOYMENT RESTRICTIONS AND CONTRACTS

- 21-9-1 Agency or subdivision thereof
21-9-2 Responsibility to enforce contracts rules

§21-9-1 Agency or subdivision thereof. For purposes of section 84-18(c), HRS, in determining what constitutes the former employee’s agency or subdivision thereof, the commission may consider the size of the agency; the likelihood that the former employee would have any unfair advantage in representing a person or business before that agency; the former employee’s position within the agency; whether the former employee will communicate with former colleagues within the agency; whether the former employee has confidential information that may provide an unfair advantage; and any other factors that could reasonably give the appearance of impropriety. [Eff
] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-18)

§21-9-2 Responsibility to enforce contracts rules. (a) An agency’s director or acting director shall be responsible for ensuring that all agency contracts comply with section 84-15, HRS.

(b) Any violations of section 84-15, HRS shall be assessed against the director or acting director of the agency at the time the violation occurred.” [Eff
] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-15, 84-31)

10. Chapter 21-10, Hawaii Administrative Rules, entitled "Lobbying", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 10

STATE ETHICS COMMISSION

LOBBYING

21-10-1 Definitions

Registration of Lobbyists

21-10-2 Registration and termination
21-10-3 Exclusions from registration requirement
21-10-4 Background work in support of lobbying

Reporting of Lobbying Contributions and Expenditures

21-10-5 Statement of contributions and expenditures
21-10-6 Contributions for the purposes of lobbying
21-10-7 Reporting of expenditures
21-10-8 Expenditures for the purpose of lobbying
21-10-9 Accounting issues in statements of contributions and expenditures statements
21-10-10 Submission of registration forms and statements of contributions and expenditures

§21-10-1

§21-10-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Client” means the individual or entity that employs, contracts with, or retains another person for pay or other consideration to lobby on behalf of that individual or entity.

“Direct lobbying” means any oral or written communication with a legislator, or an employee, intern, or volunteer of the legislature or an agency, that would appear to a reasonable person to be an attempt to influence legislation or rulemaking. Direct lobbying includes but is not limited to drafting or submitting testimony; discussing existing or potential legislation or administrative rules; and advocating for the passage or defeat of any legislation or administrative rule.

“Employing organization” means an entity that employs or contracts with a lobbyist to act on behalf of a client.

“For pay or other consideration” includes a wage, salary, fee, or other compensation provided to an owner, director, employee, or contractor of an organization who lobbies on behalf of the organization.

“Grassroots lobbying” means any oral or written communication directed at any member of the public that both expresses an opinion about existing or potential legislation, administrative rule, or ballot issue and includes an explicit or implied call to action.

“Lobbying” has the same meaning as in section 21-1-2.

“Lobbyist” has the same meaning as in section 21-1-2.

“Person” has the same meaning as in section 97-1, HRS. [Eff

] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

Registration of Lobbyists

§21-10-2 Registration and termination. (a) Every individual who meets the threshold requirements to be deemed a lobbyist, as described in section 97-1, HRS, shall register as a lobbyist with the commission within five days of meeting those requirements

(b) For purposes of determining whether an individual has met the threshold requirements to register as a lobbyist, all time spent lobbying shall be included. Time spent lobbying includes, but is not limited to:

(1) Drafting and providing testimony;

- (2) Discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
- (3) Waiting to testify at a hearing, when the individual who is waiting:
 - (A) Is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;
 - (B) Spends that time preparing, reviewing, or strategizing on the testimony; or
 - (C) Spends that time otherwise lobbying.
- (c) Time spent on the following activities need not be counted for purposes of registration:
 - (1) Performing work relating to service on a task force created by the legislature or an agency; and
 - (2) Research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period.
- (d) Every lobbyist shall renew the lobbyist's registration biennially by filing a registration and authorization form with the commission within ten days of the opening of every odd-numbered legislative session.
- (e) If a lobbyist does not renew the lobbyist's registration as required by subsection (d), the lobbyist's registration is deemed to have expired on December 31 of the preceding even-numbered year, provided that the lobbyist shall remain subject to the requirements of chapter 97, HRS, and these rules for the period during which the registration was effective.
- (f) Lobbyists' registrations shall be terminated as set forth in section 97-2, HRS. [Eff _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

§21-10-3 Exclusions from registration requirement. (a) The following individuals need not register as lobbyists:

- (1) Any individual who represents oneself and not any other person before the legislature or administrative agency, provided that these individuals may be required to submit statements of contributions and expenditures as provided in section 97-3, HRS, and these rules. For purposes of this subsection, "any other person" includes a sole proprietorship or other business owned or operated by the individual;

§21-10-3

- (2) Any federal, state, or county official or employee acting in the official's or employee's official capacity, provided that if the federal, state, or county official or employee contracts for the services of a lobbyist, the lobbyist is subject to the registration and reporting requirements of chapter 97, HRS, and these rules, and the director of the agency employing the lobbyist shall be responsible for submitting statements of contributions and expenditures as required by section 97-3, HRS, and these rules;
 - (3) Any person engaged in the business of publishing or broadcasting news or comment on the news, while engaged in the gathering or dissemination of news and comment on the news and in the ordinary course of business;
 - (4) An attorney advising a client on the construction or effect of proposed legislative or administrative action; and
 - (5) Any person who possesses special skills and knowledge relevant to certain areas of legislation or rulemaking, whose skills and knowledge may be helpful to the legislative and executive branches of state government and who makes an occasional appearance at the written request of the legislature, an administrative agency, or the lobbyist, even though the person receives reimbursement or other payment from the legislature, administrative agency, or the lobbyist for the appearance. A copy of the written request for an appearance made by the legislature, administrative agency, or lobbyist shall be provided to the commission within five business days of the commission's request.
- (b) Lobbying activities that exceed the scope of subsection (a) shall be reported as provided by chapter 97, HRS, and these rules. [Eff
] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

§21-10-4 Background work in support of lobbying. An individual who, under the direction of a registered lobbyist, is paid to draft testimony, research legislative issues, conduct public opinion polls, or perform administrative work in support of lobbying activities, is not required to register as a lobbyist if:

- (1) The individual does not meet with or communicate directly with any official in the legislative or executive branch regarding the subject matter of any existing or potential legislation or rule; and
- (2) The expenditures for that individual's activities are reported pursuant to section 21-10-5. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Reporting of Lobbying Contributions and Expenditures

§21-10-5 Statement of contributions and expenditures. (a) Each client, its lobbyists, and the lobbyists' employing organization, if any, shall file a joint statement of contributions and expenditures that includes all expenditures made for the purposes of lobbying on behalf of that client.

- (b) A joint statement of contributions and expenditures shall include:
 - (1) The names of all registered lobbyists engaged in lobbying on behalf of the client;
 - (2) All contributions for the purpose of lobbying received by the lobbyists, the employing organization, and the client, as set forth in section 97-3, HRS, and these rules;
 - (3) All expenditures made by or in support of the lobbying interests or activities of the client, including out-of-pocket expenditures made by individual lobbyists, as set forth in section 97-3, HRS, and these rules;
 - (4) The signature, digital or otherwise, by each registered lobbyist lobbying on behalf of the client, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures; and
 - (5) The signature of any person making expenditures of \$1,000 or more of the person's or any other person's money for the purpose of lobbying, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures.
- (c) If a lobbyist expends funds or receives contributions for the purpose of lobbying that are not captured on any client's statement of contributions and expenditures, or if any person expends more than \$1,000 of the person's or any other person's money during a reported period and those expenditures are not captured on any client's statement of contributions and expenditures, the lobbyist or person expending such funds shall submit a separate statement reporting these contributions and expenditures.

§21-10-5

(d) Each client, each of its lobbyists, and each lobbyists' employing organization, if any, shall be responsible for filing of timely, accurate, and complete statements of contributions and expenditures to the commission. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

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§21-10-6 Contributions for the purpose of lobbying. (a) Contributions for the purposes of lobbying shall be reported as set forth in section 97-3, HRS, except where a contributor's identity may be withheld pursuant to law.

(b) Contributions shall be reported where the contributor knows or reasonably should know that the primary purpose of the contribution is to support lobbying.

(c) Where a contribution is used in part for lobbying and in part for other expenses, the reporting entity need report only the amount used for lobbying. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

§21-10-7 Reporting of expenditures. (a) Expenditures shall be reported as provided by section 97-3, HRS, and these rules, using forms and methods prescribed by the commission.

(b) Each statement of expenditures shall include:

(1) The total sum expended for the purpose of lobbying by or on behalf of the person filing the statement during the relevant reporting period, regardless of whether the expenditure was made by a registered lobbyist, along with an itemization of how that sum was expended among the following categories:

(A) Preparation and distribution of lobbying materials;

(B) Media advertising;

(C) Compensation paid to lobbyists, as follows:

(i) Where a client pays an employing organization such as a law firm, which in turn employs a lobbyist, the client shall report the amount paid to the employing organization for the purpose of lobbying during the relevant reporting period;

(ii) Where a client's employee serves as a lobbyist, the client shall report the pro rata portion of the

lobbyist's salary that is attributable to the lobbyist's lobbying activities during the relevant reporting period;

provided that a client shall indicate whether the lobbyist is a salaried employee, is paid on an hourly basis, or is paid a lump sum, whether annually, monthly, or otherwise;

- (D) Fees paid to consultants for services, including the name of each individual consultant or entity and the nature of the services provided;
- (E) Entertainment and events;
- (F) Receptions, meals, food, and beverages;
- (G) Gifts;
- (H) Loans;
- (I) Interstate transportation, including incidental meals and lodging; and
- (J) Other disbursements;

(2) The name and address of each legislator or employee who received benefits valued at \$25 or more on any day from the filer; and

(3) The name and address of each legislator or employee who received benefits valued at \$150 or more in a reporting period from the filer.

(c) The sum of the expenditures on each category set forth in subsection (b)(1) shall equal the total sum expended for the purpose of lobbying in any reporting period, or the filer shall provide an explanation for any discrepancy. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

§21-10-8 Expenditures for the purposes of lobbying. (a) Expenditures made "for the purpose of lobbying" means all those expenditures in support of and in preparation for direct lobbying or grassroots lobbying. Such expenditures include, but are not limited to:

- (1) Drafting and providing testimony;
- (2) Discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
- (3) Discussing lobbying strategy;
- (4) Research or polling when the primary purpose of the research or polling is to use in lobbying activities;

§21-10-8

- (5) Advertising;
- (6) Monitoring the status of proposed legislation or proposed administrative rules, when the primary purpose of the monitoring is to engage in lobbying;
- (7) An event organized for the purpose of providing interaction between members of the legislature or an agency and an individual or organization that is engaged in lobbying, or intends to engage in lobbying, where the topics of the lobbying effort are discussed;
- (8) Time spent waiting to testify at a hearing, when the individual who is waiting:
 - (A) Is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;
 - (B) Spends that time preparing, reviewing, or strategizing on the testimony; or
 - (C) Spends that time otherwise lobbying.
- (b) Expenditures on the following activities are not considered expenditures for the purpose of lobbying:
 - (1) Performing work relating to service on a task force created by the legislature or an agency; and
 - (2) Research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

§21-10-9 Accounting issues in statements of contributions and expenditures. (a) Statements of contributions and expenditures required by section 97-3, HRS, and these rules shall report expenditures during the relevant reporting period on an accrual basis.

(b) Where an entity pays a flat fee on a periodic basis for the purpose of lobbying the state legislature, the entity may report regular-session lobbying activities either by:

- (1) Reporting forty per cent of the total expected annual expenditures as having been spent in the January-February period, forty per cent of the total expected annual expenditures as having been spent in the March-April period, and twenty per cent of the total expected annual expenditures as having been spent in the May-December period; or

- (2) Calculating the amount of work performed in the relevant reporting period in proportion to the entire amount of work expected to be performed on an annual basis and reporting that proportion of the annual expenditure on the relevant reporting statement.
- (c) Where an entity makes a lump sum expenditure for both lobbying and non-lobbying activities, the entity shall report either the entire lump sum expenditure or the pro rata share expended for the purposes of lobbying. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

§21-10-10 Submission of registration forms and statements of contributions and expenditures. Registration forms and statements of contributions and expenditures shall be filed using forms and methods prescribed by the commission. The commission may require that forms and statements be filed using an electronic filing system. [Eff] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

- 11. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.
 - 12. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.
 - 13. These amendments to and compilations of chapters 21-1, 21-2, 21-3, 21-4, 21-5, and 21-6, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.
 - 14. The adoption of chapters 21-7, 21-8, 21-9, and 21-10, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.
- I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, ___, 2019, and filed with the Office of the Lieutenant Governor.

REYNARD D. GRAULTY, Chair
Hawaii State Ethics Commission

APPROVED AS TO FORM:

Robyn Chun
Deputy Attorney General

10-10

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~AMENDMENT AND COMPILATION OF CHAPTER 21-1
HAWAII ADMINISTRATIVE RULES~~

~~MONTH, DAY, 2019~~

~~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. A new §21-1-13, Hawaii Administrative Rules, is added.~~
- ~~5. Chapter 1 is compiled.~~

HAWAII ADMINISTRATIVE RULES

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TITLE 21

HAWAII STATE ETHICS COMMISSION

Amendment and Compilation of Chapters 21-1, 21-2, 21-3, 21-4, 21-5, and 21-6,
and Adoption of Chapters 21-7, 21-8, 21-9, and 21-10, CHAPTER 1Hawaii
Administrative Rules

October 31, 2019

GENERAL PROVISIONS

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

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"HAWAII ADMINISTRATIVE RULES

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TITLE 21

LEGISLATIVE AGENCIES

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CHAPTER 1

STATE ETHICS COMMISSION

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GENERAL PROVISIONS

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- 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 Repealed~~
21-1-9.5 ————Adjudicatory functions
21-1-10 Chairperson and vice-chairperson
21-1-11 Staff
21-1-12 Operations
21-1-13 Guidance and information

| 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 10 are intended to ~~[carry out]~~ implement 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]~~ and chapter 97, HRS, relating to lobbyists.

(b) General principles. The following general principles apply to every legislator and employee and may form the basis for the standards contained in these rules. 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 chapters 84 or 97, HRS, or these rules, 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 ethical standards.
- (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. [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, 84-37, 97-6)

§21-1-2 Definitions. As used in title 21, chapters 1 through ~~40~~10, unless the context clearly requires otherwise:

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

"Advisory opinion" means [an opinion] formal written guidance [an opinion] rendered by the commission pursuant to a request [by a legislator, employee, or former legislator or employee] 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 [the standards of conduct;] any provision of chapter 84, chapter 97, section 11-8, or section 11-316, HRS. [the standards of conduct];

Commented [DG1]: LRB advises that deletions precede additions, so there will be many red-lines throughout this draft that make this change without making any substantive edit.

Ordinarily, edits appear in red, except when text is simply moved from one place to another, in which case edits appear in green. For some reason, however, "moved" text only appears in green *sometimes*, rather than all the time. Therefore, some of the red-lined text is just text that's been moved from another location.

Commented [DG2]: LRB advises that definitions end with periods, not semicolons, so you will see this change made throughout.

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“Agency” has the same meaning as “state agency” in section 84-3, HRS.~~;~~

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

“Charge” means a ~~[notarized letter]~~ 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 chapter 84 or 97, HRS.~~;~~

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

“Complainant” means a person who has provided unsworn information of an alleged violation of chapter 84 or 97, HRS, or filed a charge alleging ~~[that an employee or legislator has violated chapter 84, HRS. The complainant is a party of record];~~ a violation of chapter 84 or 97, HRS. ~~[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 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” has the same meaning as in section 84-3, HRS.~~;~~

“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

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contracts and make written determinations 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.

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

"Legislative action" has the same meaning as in section 97-1, HRS.

"Lobbying" has the same meaning as in section 97-1, HRS, and includes direct lobbying and grassroots lobbying as defined in section 21-10-1, but excludes purely administrative tasks such as making copies and scheduling meetings.

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"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 an action that is purely ministerial, in one's official capacity as an employee or legislator.

"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.

["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; the same as fiscal officer.

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"Redacted" or "redaction" means the omission or deletion of facts to prevent disclosing the identity of persons; and

"Respondent" means the person [allegedly violating chapter 84, HRS:] who is a subject of a charge. [allegedly violating chapter 84, HRS;]

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["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, 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 authorize commission staff to affix their signatures electronically. [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)

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§21-1-4 Disqualification of commissioners; bias or prejudice. Any party to a [hearing] matter before the commission ~~[hearing]~~ may make and file an affidavit or declaration that one or more of the commissioners before whom the [hearing is being held] matter is pending ~~[hearing is being held]~~ has a personal bias or prejudice. The commissioner against whom the affidavit or declaration is filed may answer the affidavit or declaration or may [file a disqualifying certificate with the commission.] ~~[recuse from the matter.]~~ ~~[file a disqualifying certificate with the commission.]~~ If the commissioner chooses to answer the affidavit or declaration, the remaining commissioners shall decide whether ~~[or not]~~ that commissioner should be disqualified from proceeding therein. Every affidavit or declaration shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed [at least] as soon as practicable, but no later than ~~[at least]~~ ten days before ~~[the]~~ any contested case ~~[the]~~ hearing, or good cause shall be shown for the failure to do so. At any time, [Commissioners] At any time, commissioners may disqualify themselves by [filing with the executive director a certificate] informing the other commissioners and/or the executive director that they deem themselves unable for any reason to participate with absolute impartiality in the pending [hearing.] matter. [hearing]. [Eff: July 13, 1981; am and comp _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

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§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 ~~unless the commission determines by~~.

(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 ~~that the person or the person's representative is acting in a manner which prevents the orderly and peaceful conduct of business~~ 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) 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.]~~

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(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~~

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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 [statute] law ~~[statute]~~ shall not be ~~[released or inspected]~~ made public except with the written authorization of the person involved~~[,]~~ or as otherwise provided by 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)

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~~**§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.~~

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~~**§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.~~

Commented [DG3]: LRB advised that we repeal 21-1-9 and add a new 21-1-9.5, rather than amend 21-1-9 by removing all the old text and inserting new text.

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~~(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 R~~] (Auth: HRS §§84-31(a)(5); ~~92-6~~) (Imp: HRS §§92-21, 92-651)

§21-1-9.5 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. [Eff 1 (Auth: HRS §§84-31(a)(5), 92-6) (Imp: HRS §§92-2, 92-6)]

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§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 ~~[papers]~~ 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.

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(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 in the Kamamalu Building, 250 South King Street, 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, [unless otherwise specifically directed.] 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. ~~[Except when considering matters made confidential by chapter 84, HRS, or matters considered in executive session, meetings are open to the public.]~~ Meetings are open to the public except when matters made confidential by chapters 84 or 97, HRS, or these rules, or otherwise made confidential by law, are considered in executive session. [Eff: July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

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§21-1-13 Guidance and information. The commission may develop and publish general guidance and information about chapters 84 and 97, HRS, for the purpose of educating the public, legislators, employees, lobbyists and organizations that employ lobbyists regarding ethics and lobbying laws. General guidance issued for educational purposes shall not have the force and effect of law and shall not be dispositive in any particular matter." [Eff:] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: Preamble, HRS chapter 84; HRS §§84-31(a)(7), 84-42, 84-43)

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~~END OF CHAPTER 1~~

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~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~AMENDMENT AND COMPILATION OF CHAPTER 21-2
HAWAII ADMINISTRATIVE RULES~~

~~MONTH, DAY, 2019~~

~~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, WITNESSES, AND SUBPOENAS~~

2. Chapter 21-2, Hawaii Administrative Rules, ~~renamed~~ entitled
“Filing of Documents, Service, Witnesses, and Subpoenas”, is amended and
compiled to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 2

STATE ETHICS COMMISSION

FILING OF DOCUMENTS, SERVICE, ~~[WITNESS]~~ WITNESSES, 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 es and fees

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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 filed with the] documents [filed with] for the commission's consideration [in any proceeding]~~ documents for the commission's consideration 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 hand-carried]~~ 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 ~~[papers]~~ 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 ~~[papers]~~ documents ~~[papers]~~ filed or lodged with the commission shall be plainly legible.

(c) All ~~[papers]~~ documents ~~[papers]~~ shall be signed ~~[in ink]~~ by the person ~~[signing]~~ 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~~[;]~~ 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]~~, ~~not~~ 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]~~ The commission may require that hard 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)

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§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 ~~[a member of]~~ 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]~~ allowed ~~[ordered]~~ only upon ~~[motion and notice]~~ written request and may be granted by the commission chair or delegate ~~[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 ~~[papers]~~ documents ~~[papers]~~ served by either the commission or any party shall be served upon all ~~[counsels]~~ counsel[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 ~~[i]~~ in writing.

(c) The final opinion, decision, or any other ~~[paper]~~ 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.

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

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- (1) ~~personally~~ 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]~~
- (2) ~~by~~ By delivering a copy to an agent designated by ~~[that person]~~ the respondent ~~[that person]~~ or by law to receive service of such papers[-];
- (3) ~~by~~ By registered or certified mail, return receipt requested; or
- (4) ~~by~~ By any method agreed to by the parties.

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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 respondent after reasonable and diligent inquiry, service may be effected as ordered by the circuit court pursuant to section 84-31(b) or 97-6(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 in accordance with section 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

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] (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 ~~[or]~~

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 for the production of documentary evidence 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]~~ 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, application for subpoenas]~~ shall be made at least ~~[three]~~ fourteen ~~[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 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 the 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

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~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~AMENDMENT AND COMPILATION OF CHAPTER 21-3
HAWAII ADMINISTRATIVE RULES~~

~~MONTH, DAY, 2019~~

~~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 §§ 21-3-5 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~~

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

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 3

STATE ETHICS COMMISSION

FINANCIAL DISCLOSURE STATEMENTS

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21-3-1 ~~Definitions~~ ~~Repealed~~

21-3-1.5 Definitions

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21-3-2 ~~Repealed~~ ~~Financial disclosure filing procedures~~

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21-3-2.5 Financial disclosure filing procedures

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21-3-3 Financial interests

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21-3-4 Public access to disclosure statements

21-3-5	Disclosure period
21-3-6	Amended 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 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 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. 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 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 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 July 13, 1981; §21-3-1; R] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

Commented [DG4]: LRB advised us against renumbering sections. So instead of swapping 21-3-1 and 21-3-2 and editing them heavily, we're going to (1) repeal 21-3-1; (2) insert a new 21-3-1.5; and then (3) insert a new 21-3-2.5.

§21-3-1.5 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.⚭

“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 ethics 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 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)

~~§21-3-2 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 whose 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.~~

~~(c) Any original disclosure statement filed with the commission and any copy which is made available by the commission pursuant to §21-3-2(a) for public inspection shall not be reproduced except by the commission staff for the benefit of the commission or for the person who was required to file the original disclosure.~~

~~(d) Persons located in the state on islands other than Oahu who wish to obtain information contained in any disclosure statement which is available for public inspection at the commission offices shall:~~

- ~~(1) Call or write the commission offices and provide the information required by §21-3-2(b), including a telephone number at which the requester may be reached;~~
- ~~(2) The executive director shall telephone the requester at the number provided and make every effort to confirm the requester's identity;~~
- ~~(3) If the requester's identity is confirmed to the executive director's satisfaction, the executive director shall provide over the telephone~~

Commented [DG5]: Per comment above, this is now repealed outright (rather than being renumbered and amended).

Commented [DG6]: This section of deleted text (from here to the end of this rule) was not included in the previous draft, but it was superseded by statute many years ago and hasn't appeared on our on-line version of rules in a long time.

~~any public information contained in a financial disclosure statement. Before providing such information, the executive director shall inform the requester that a record will be kept of any filled request and will be made available to the person who filed the disclosure pursuant to this rule;~~

(4) ~~The executive director shall complete a form setting forth the same information required by §21-3-2(b) in each instance where the executive director has filled a telephone inquiry. A copy of the form shall be made available to the person whose disclosure was the subject of the telephone inquiry.~~

(e) ~~The copies of the disclosures of a person holding a position designated in §84-17(b), HRS, which are available for public inspection shall remain available for such inspection for twelve months following the person's termination from state service in all such designated positions. At the end of this twelve-month period, the public copies shall be placed with the originals and shall be thereafter treated by the commission as confidential.] [Eff: July 13, 1981; §21-3-2; R~~

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

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~~§21-3-1~~ **§21-3-2.5 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 prescribed in section 84-17(b), HRS, and this chapter.

(b) Disclosures shall be filed electronically using the commission's electronic filing system or by any other method established by the commission.

(c) Disclosures shall be deemed filed as of the time and 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~~ The filer's full name and personal contact information, including the filer's residential address, work address, personal telephone number, work telephone number, personal electronic mail address, and work electronic mail address;

(2) ~~the~~ The filer's state position and the name of the agency, board, or commission the filer serves; and

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(3) ~~the~~ The names of the filer's spouse, civil union partner, and dependent children.

~~(b)~~ ~~(c)~~ The disclosure shall be signed, digitally or otherwise, by the filer ~~[person required to file the disclosure]~~. The filer's ~~[This]~~ signature constitutes a certification that the filer ~~[person]~~ has read the document and that to the best of the filer's ~~[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 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.]~~ Filers shall promptly notify the commission regarding any changes in their contact information provided pursuant to subsection 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)

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§ 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~~-Rental income;
- (2) ~~stocks~~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 if the fund itself has been disclosed; and
- (3) ~~trust~~Trust assets that would be reportable by the filer if held outside a trust, provided that specific trust assets need not be reported if they are held within a blind trust or similarly outside the filer's control or knowledge.

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

- (1) ~~money~~-Money market funds, savings and checking accounts, and certificates of deposit;
 - (2) ~~tax~~-Tax deferred retirement accounts such as the State's deferred compensation plan, Individual Retirement Accounts, and 401k plans;
 - (3) ~~tax~~-Tax deferred qualified tuition plans such as 529 college savings plans;
 - (4) ~~tax~~-Tax deferred health savings accounts; and
 - (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.** 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~~

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~~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 whose 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, 84-31.5)

§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. 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. ~~July 13, 1981; am and comp~~] (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, whether on an interim, acting, or permanent basis. [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 from a position requiring the filing of a confidential disclosure to a position requiring the filing of a public disclosure shall file a new, public disclosure within thirty days of the first day in office, whether on an interim, acting, or permanent basis. Other filers who transfer positions need not file a new disclosure statement until the next filing deadline.

(b) 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 electronic mail is sent. If notice is sent via first-class mail, the ten-day period shall begin two business days after mailing, unless the notice is mailed to an address outside the State, in which case the ten-day period shall begin four business days after mailing. [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) 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, 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 meet the applicable due date; and any documents or evidence in support of the filer's request for a waiver.

(c) The commission may waive any administrative fine for good cause shown. The filer has the burden to establish good cause. Good cause may be found if the 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 filer from 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 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 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, unless otherwise provided by law.

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

END OF CHAPTER 3

|

3-13

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~Amendment and Compilation of Chapter 21-4
Hawaii Administrative Rules~~

~~Month, Day, 2019~~

~~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~~

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

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“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 4

STATE ETHICS COMMISSION

ADVISORY OPINIONS

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|--------|--|
| 21-4-1 | Request for guidance; request for advisory opinion |
| 21-4-2 | Rendering of advisory opinion s |
| 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. Any written guidance rendered by the executive director 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 the person requesting guidance. Nothing in this subsection shall prevent the executive director or the commission from investigating alleged violations of chapters 84 or 97, HRS.

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(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:

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- (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 ~~[business and home address:]~~ mailing address and electronic mail address; ~~[business and home address:]~~;
- (7) That person's ~~[business and home]~~ telephone ~~[numbers:]~~ ~~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.

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~~(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 ~~[employee or legislator]~~ person ~~[employee or legislator]~~ as set forth in subsection (d), the filing shall not be deemed completed until ~~that [] person [the employee or legislator who will be the subject of the opinion] that person~~ has had a reasonable opportunity to review the facts submitted and to present that ~~[employee's or legislator's]~~ person's ~~[employee's or legislator's]~~ view of the factual circumstances.

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(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~~ 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~~ 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~~ 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. [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)

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§21-4-2. Rendering of advisory opinion. (a) An advisory opinion ~~[will]~~ shall ~~[will]~~ be in writing and signed by all commissioners subscribing to the opinion. It ~~[will]~~ shall ~~[will]~~ be considered rendered when it is signed and placed in the ~~[mails,]~~ mail¹, postage prepaid and addressed to the person requesting the opinion at the address furnished by the person, ~~[or]~~ upon personal delivery², 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]~~ shall 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 ~~[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.]~~ 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~~

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~~sent to the legislator or employee concerned].~~ The person requesting the opinion may authorize the commission to publish the unredacted advisory opinion; however, the commission retains the discretion to redact the opinion prior to publication.

(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.]~~ 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 receipt 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)

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~~§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)

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~~§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)

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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, 2019~~

~~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. §21-5-6, Hawaii Administrative Rules, is renamed and amended.~~
- ~~8. A new §21-5-6.1, Hawaii Administrative Rules, is added.~~
- ~~9. §21-5-7, Hawaii Administrative Rules, is renamed and amended.~~
- ~~10. §21-1-7, Hawaii Administrative Rules, is re-numbered to §21-5-7.1 and
amended.~~
- ~~11. §§21-5-8 to 21-5-9, Hawaii Administrative Rules, are amended.~~
- ~~12. A new §21-5-9.1, Hawaii Administrative Rules, is added~~

~~13. §§21-5-10 to 21-5-11, Hawaii Administrative Rules, are renamed and amended.~~

~~14. A new §21-5-12, Hawaii Administrative Rules, is added.~~

~~15. Chapter 5 is compiled.~~

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~CHAPTER 5~~

~~INVESTIGATIONS, CHARGES, CONTESTED CASES, AND SETTLEMENT AGREEMENTS~~

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

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HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

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CHAPTER 5

STATE ETHICS COMMISSION

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INVESTIGATIONS, CHARGES, CONTESTED CASES, AND SETTLEMENT AGREEMENTS

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- 21-5-1 Repealed
21-5-2 Investigations; charges initiated by the commission
~~21-5-2~~ 21-5-2.1 Charges initiated by a member of the public
21-5-2.42 Confidentiality in investigations
21-5-2.23 Cooperation with commission investigations
21-5-2.34 Investigatory interviews
21-5-2.45 Legal counsel

21-5-2. 56	Individual representing party
21-5-2. 6-7	Procedure upon issuance of charge; further statement of alleged violation
21-5-3	Repealed
21-5-3.5	Status conference
21-5-4	Repealed
21-5-5	Contested hearings; notice of hearing
21-5-6	Repealed
21-5-6.5	Motions
21-5-7	Contested hearings; procedures
21-5-7.1	Rules of evidence
21-5-8	Pre-hearing conference
21-5-9	Post-hearing procedures for hearing conducted by the commission
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 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 Charges instituted by a member of the public. 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 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 July 13, 1981, R.] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-31)~~

Commented [DG8]: Like in the last chapter, LRB recommends that we not renumber rules. (We were planning to swap 21-5-1 and 21-5-2.) Instead, we will (1) repeal 21-5-1, (2) amend 21-5-2, (3) insert a new 21-5-2.1 (what was going to be 21-5-2), and (4) take what was going to be 21-5-2.1 through 21-5-2.6 and renumber 2.2 through 2.7

~~§21-5-1-2 [§21-5-2] [Charges] Investigations; charges [Charges] initiated by the commission. (a) [a] Upon the receipt of anonymous information or other information not under oath, or information obtained at the~~

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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.

~~b)~~ (a) Any individual may submit information to the executive director alleging a violation of chapters 84 or 97, HRS. Such information may be offered anonymously and need not be provided under oath.

(b) The executive director may investigate any matter upon the receipt of information indicating a possible violation of chapter 84 or 97, HRS. The executive director may also investigate any matter at the request of the commission or on the executive director's own initiative.

(c) The executive director may refer any complainant to another agency as appropriate.

(d) 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 subsection 21-5-4(e). At any time prior to requesting a resolution to investigate, the executive director may close any investigation.

(e) 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.

(f) 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)~~ (g) If after [preliminary] investigation at least three commissioners decide that a charge should be initiated, the charge [will] shall [will] be issued in writing and signed by at least three commissioners.

(e) 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; and ~~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~~ **§21-5-2.1 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 respondent ~~[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 under oath, declaring under penalty of perjury that the allegations are true and correct to the best of the person's knowledge. ~~[The oath may be administered by a notary public of the State or any other person authorized by law in the State 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 21-5-1.5.

(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)]-subsection 21-5-2(a) for 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 may investigate the matter in accordance with section 21-5-1.5 but shall not treat the document as a charge until the insufficiency is corrected. [Eff. ~~July 13, 1981; §21-5-1; am, ren §21-5-2, and comp~~] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.12 Confidentiality in investigations. (a) The executive director shall investigate all matters confidentially and shall not disclose non-public details of an investigation except as necessary to conduct the investigation, provided that the executive director may, on a confidential basis and at any time, disclose information or refer any matter to any governmental law enforcement agency and may likewise disclose information or refer any administrative matter to the relevant agency administrator for further action as warranted.

(b) The commission's records relating to a charge or investigation are otherwise confidential and are not open to inspection by any person except as specifically required by chapters 84 or 97, HRS, or these rules.

(c) The executive director may, during the pendency of an investigation, request legislators and employees to refrain from disclosing information regarding the investigation that the legislator or employee learns from the commission or its staff if the executive director determines that such request is

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necessary to maintain the integrity of the investigation or for another compelling reason. Such request shall be as limited in time and scope as is necessary and practicable under the circumstances. Nothing herein shall prevent any legislator or employee from discussing a matter with the legislator's or employee's attorney, lodging a complaint with any governmental entity as allowed by law, or exercising the constitutional right to free speech.

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

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

§21-5-2.23 Cooperation with commission investigations. (a) Every department, division, board, bureau, commission, or other agency of the ~~s~~State shall cooperate and assist 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~~ 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 are 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~~ State shall be responsible for ensuring such cooperation and assistance.

~~(b)~~ (e) If 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~~ Draw a negative inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) ~~consider~~ Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) ~~exclude~~ Exclude other evidence offered by the party failing to produce the requested information or witness; or

(4) ~~take~~ 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)

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§21-5-2.34 Investigatory interviews. (a) The commission, by subpoena, may compel the attendance of witnesses or respondents at investigatory interviews with the executive director.

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

(c) Any interview conducted by the commission or the executive director may, at the commission's or executive director's discretion, be conducted under oath, recorded, and/or transcribed by a court reporter, or any combination thereof. [Eff: _____] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

§21-5-2.45 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)

§21-5-2.56 Individual representing party. When an attorney or union representative, 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)

§21-5-2.67 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.

(e) Upon issuance of a further statement of alleged violation, the commission shall enter an order erecting a firewall between the commission and its counsel, on one side, and the executive director or delegate, as charge counsel, on the other. Neither charge counsel nor the respondent shall have ex parte communications with the commission or its counsel by discussing or sharing information about substantive matters pertaining to the case. The executive director or delegate shall independently supervise and direct how the case against the respondent will be presented, argued, and otherwise conducted. Legal staff

designated as commission counsel shall not be subject to supervision or direction by the executive director or other charge counsel on matters relating to the case.

(f) The executive director or delegate shall prosecute each case, provided that when the party filing the charge is not the commission, that party may move to prosecute the case. Such motion shall be filed no later than five days following publication of the notice of hearing as set forth in section 21-5-5. In considering the motion, the commission shall consider whether the movant has the ability to prosecute the case, whether the further statement of alleged violation includes allegations beyond those included in the charge, and whether granting the motion is in the public interest.

(g) 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 attendance at a status conference to obtain further information from the respondent, discuss settlement with the respondent, 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 R~~

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

§21-5-3.5 Status conference. At any time, the commission may request the respondent's attendance at a status conference to obtain further information from the respondent, discuss settlement with the respondent, or otherwise seek a fair and efficient resolution of any matter. [Eff
(Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-

Commented [DG9]: Rather than re-writing this rule, we will delete 21-5-3 and replace with a new 21-5-3.5.

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31, 91-2, 91-9, 97-6)

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

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~~(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; R _____] (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 ~~[five]~~ 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)

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~~§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.] 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 motions are based. The presiding officer shall set the time for filing all motions and opposing memoranda, if any.~~

Commented [DG10]: LRB recommended that we delete 21-5-6 and insert a new 21-5-6.5, rather than re-writing the entire rule.

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~~(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 a certificate of service.~~

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~~(c) Failure to serve or file an affidavit, declaration, or memorandum in opposition to a motion or failure to appear at the hearing on the motion, if held, shall be deemed a waiver of objection to the granting or denial of the motion unless otherwise ordered by the commission. [Formal and contested hearings; request for an open hearing. Any respondent who wants an open hearing shall file a written request at least two days prior to the hearing. If a request is made for an open hearing at a later time, the commission shall hold an open hearing, but it may, in its discretion, change the date, time, and place of the hearing.] [Eff: July 13, 1981; am and comp R] (Auth: HRS §84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-7, 97-6)~~

§21-5-6.5 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 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 a 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. [Eff (Auth: HRS §84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-7, 97-6)]

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§21-5-7 [Formal and contested] Contested hearings; procedures. (a) 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.

(b) The ~~chairperson~~ presiding officer ~~chairperson~~ shall convene and conduct the hearing ~~and shall read the charge~~.

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~~(b)~~(c) Before presentation of the case, the parties shall have the opportunity to make opening statements~~[c]~~, provided that the presiding officer may order that opening statements be made in writing rather than orally at the hearing. The usual order of making opening statements shall be as follows:

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

~~(c)~~(d) Witnesses shall be examined as follows:

- (1) Direct examination by the party calling the witness;
- (2) Cross examination by the other party~~[c]~~, limited to the issues raised on direct examination;
- (3) Redirect examination by the party calling the witness~~[c]~~, limited to the issues raised on cross examination;
- (4) Recross examination by the other party~~[c]~~, limited to the issues raised on redirect examination; and
- (5) Examination of the witness by the commission or hearing officer at any time.

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

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

- (3) Rebuttal argument by the executive director or complainant.
Rebuttal arguments shall be limited to countering whatever may be said by the other party during that party's final argument.

(4) Reasonable time limits may be imposed by the ~~commission~~ presiding officer ~~commission~~ for the final arguments. Final arguments may be waived by either party. The presiding officer may order that final arguments be made in writing rather than orally at the hearing.

(f) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents 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.

(g) 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.

(h) Any procedure in a contested case may be modified or waived by stipulation of the parties.

~~(e)~~(i) 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)~~(j) 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. Any oral or documentary evidence that is relevant and material to the charge may be admitted, provided that the commission's findings must be based upon competent and substantial evidence in accordance with section 84-31(c), HRS. 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

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

- (1) Each party shall ~~[disclose]~~ file a prehearing conference brief in which it discloses 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~~[s]~~.

~~[(3) Unless so disclosed, no]~~ Undisclosed exhibits ~~[required to be disclosed by §21-5-8(a)(2)]~~ shall not be received in evidence at the hearing over objection unless the ~~[commission]~~ presiding officer ~~[commission]~~ finds that there was reasonable ground for failing to disclose such exhibits prior to hearing;

~~[(3)]~~ ~~[(4)]~~ (3) All exhibits required to be disclosed by ~~[(§21-5-8(a)(2))]~~ subsection ~~H21-5-8(a)(2)~~, and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification at least ~~[one day]~~ five days ~~[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.]~~ presiding officer may issue a pre-hearing order setting forth any requirements or deadlines regarding the hearing, or may otherwise set a schedule for filing briefs, exhibits, or other pleadings. The presiding officer may strike any documents not timely filed. ~~[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.

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~~[(a)]~~(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.]~~

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~~[(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.]~~ or dissenting 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 proposed findings of fact and conclusions of law. The hearing officer shall thereafter prepare proposed findings of fact, proposed conclusions of law, and a recommended order.

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(b) The hearing officer shall cause a copy of the proposed findings of fact, proposed conclusions of law, and recommended order to be served upon all parties to the proceedings.

(c) Except as otherwise ordered by the commission, within fourteen calendar days after service of the proposed findings of fact, proposed conclusions of law, and recommended order by the hearing officer, a party may file with the commission exceptions to the proposed findings of fact, proposed conclusions of

law, and recommended order together with a brief in support of such exceptions. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(d) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
- (2) Identify the proposed findings of fact, proposed conclusions of law, ~~and~~ or portions of the recommended order to which objections are made; and
- (3) State all the grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived.

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

(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 proposed findings of fact, conclusions of law, and recommended order should be accepted.
- (g) The commission may direct oral argument on its own motion.

(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, which 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;
- (2) Render its decision after any oral argument ordered;
- (3) Reopen the docket and take further evidence; or
- (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 report of the hearing officer. [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 ~~hearings~~ hearing[s]. The record of the hearing shall be compiled in conformance with ~~§91-9(e)~~ section 91-9-~~§191-9(e)~~. HRS. The commission ~~will~~ shall ~~will~~ make provisions for an audio, video, ~~and/or~~ stenographic ~~record~~ recording of the testimony, ~~or some combination thereof~~, but it ~~shall~~ need not be transcribed unless requested for purposes of rehearing or court review. ~~The complainant and the alleged violator~~ The parties to the hearing ~~The complainant and the alleged violator~~ shall be entitled to a copy of the ~~record~~ recording ~~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)

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§21-5-11 ~~Complaint~~ Post-hearing complaint. ~~Complaint~~. After the commission has ~~made a~~ issued a written ~~made a~~ decision, ~~the commission~~ it ~~the commission~~ shall ~~issue the complaint and refer its decision to the appropriate legislative body or to the governor, as the case may be~~ determine whether sufficient cause exists to issue a post-hearing complaint and, if so, shall issue such complaint pursuant to section 84-32, HRS within thirty days of issuance of such written decision. ~~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 alleged violator, subject to the commission's approval. At any time, the executive director may, with the consent of the alleged violator, present the matter to the commission to obtain its inclination regarding proposed terms of an agreement;
- (2) Upon request, the alleged violator 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 alleged violator and the chairperson, or another commissioner so authorized by a majority of the commission, shall sign the agreement--; and
- (4) The commission may issue a resolution that serves as a final disposition of the matter.
- (c) Force and effect of agreement;
- (1) The agreement resolves only those matters directly raised in the settlement agreement itself. The commission reserves the right to investigate and charge the alleged violator regarding matters not raised in the settlement agreement unless the agreement expressly provides otherwise;
- (2) The settlement agreement does not resolve any matter against any alleged violator not a party to the agreement; and
- (3) 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 after considering the following factors:
- (1) ~~the~~ The nature of the violation;
- (2) ~~the~~ The alleged violator's position and duties;
- (3) ~~whether~~ Whether the alleged violator has been involved with prior commission proceedings;
- (4) ~~the~~ The manner in which the matter was brought to the commission's attention;
- (5) ~~the~~ The alleged violator's level of cooperation with the commission's investigation;
- (6) ~~the~~ The alleged violator's acknowledgement of wrongdoing and commitment to avoid future violations; and
- (7) ~~any~~ 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)

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~~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, 2018~~

~~SUMMARY~~

- ~~1. §§21-6-1 to 21-6-2, Hawaii Administrative Rules, are renamed and amended~~
- ~~2. §21-6-3, Hawaii Administrative Rules, is renamed.~~
- ~~3. §21-6-4, Hawaii Administrative Rules, is renamed and amended.~~
- ~~4. §§21-6-5 and 21-6-6, Hawaii Administrative Rules, are renamed and amended.~~
- ~~5. New §§21-6-6.1 and 21-6-6.2, Hawaii Administrative Rules, are added.~~
- ~~6. §§21-6-7 to 21-6-8, Hawaii Administrative Rules, are renamed and amended.~~
- ~~7. Chapter 6 is compiled.~~

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~CHAPTER 6~~

6. Chapter 21-6, Hawaii Administrative Rules, entitled “Petitions for Adoption, Amendment or Repeal of Rules and for Declaratory Orders”, is amended and compiled to read as follows:

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~~TITLE 21~~

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~~LEGISLATIVE AGENCIES~~

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~~CHAPTER 6~~

~~STATE ETHICS COMMISSION~~

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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 Who may petition for declaratory order
- 21-6-6.1 Form and content of petition for declaratory order
- 21-6-6.2 Conformance of petition for declaratory order
- 21-6-7 Processing of petition for declaratory order
- 21-6-8 Consideration and disposition of petition for declaratory order

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. ~~Any~~ 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)

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§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; and
- (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)

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§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;

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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 thirty ~~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)

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§21-6-6 Form and content of the petition Who may petition Form and content of the petition for for declaratory order. Any interested person may petition the commission for a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. ~~The petition shall be submitted in duplicate and delivered to the office of the commission. The petition shall state the controversy or question, shall cite the statutory provision, rule, or order involved, and shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest, and shall be signed by the petitioner. The commission may reject any petition which does not conform to the requirements set forth above.~~ [Eff: July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

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§21-6-6.1 Form and content of petition for declaratory order. The petition shall be submitted in writing to 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. [Eff:] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

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§21-6-6.2 Conformance of petition for declaratory order. The commission may reject any petition that does not conform to the requirements set forth herein. [Eff:] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

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§21-6-7 Processing of [the] petition for declaratory order[; consideration and disposition]. ~~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. Within a reasonable time after the receipt of the petition, the commission shall render its order in writing. [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)

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~~**§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.]~~ **Consideration and disposition of petition for declaratory order.** (a) ~~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:~~

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~~(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;~~

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~~(2) 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;~~

~~(3) The matter is not within the jurisdiction of the commission; or~~

~~(4) Any other good cause exists.~~

~~(b) The commission may, in its discretion, hold a hearing on the petition.~~ [Eff: July 13, 1981; am and compR] (Auth: HRS §§84-31(a)(5), 91-8, 97-6(a)(5)) (Imp: HRS §§84-31, 91-8, 97-6)

§21-6-8.5 Consideration and disposition of petition for declaratory order. (a) 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;

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(2) 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;
(3) The matter is not within the jurisdiction of the commission; or
(4) Any other good cause exists.
(b) The commission may, in its discretion, hold a hearing on the petition.” [Eff _____] (Auth: HRS §§84-31(a)(5), 91-8, 97-6(a)(5)) (Imp: HRS §§84-31, 91-8, 97-6)

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END OF CHAPTER 6

6-1

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~Adoption of Chapter 21-7
Hawaii Administrative Rules~~

~~Month, Day, 2019~~

~~SUMMARY~~

~~4- 7.~~ Chapter 21-7, Hawaii Administrative Rules, entitled "Gifts and Fair Treatment", is adopted to read as follows:-

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~~"HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~ LEGISLATIVE AGENCIES

~~CHAPTER 7~~

~~STATE ETHICS COMMISSION~~

~~GIFTS AND FAIR TREATMENT~~

7-1

21-7-1	Definitions
21-7-2	Prohibited gifts
21-7-3	Acceptable items
21-7-4	Offers of travel
21-7-5	Valuation of gifts
21-7-6	Imputing gifts to others
21-7-7	Submission of gifts disclosure statement
21-7-8	Public information
21-7-9	Fair Treatment

§21-7-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Charitable organization” means an entity organized under section 501(c)(3) of the Internal Revenue Code.

“Gift” means anything of value and includes, but is not limited to, money, gift cards, food, services, loans, travel, lodging, training, entertainment, hospitality, things, gratuities, favors, or discounts.

“State purpose” means reasonably related to conducting one’s official state duties.

“State resources” means state time, equipment, facilities, money, electronic mail, letterhead, and other assets and resources, including state personnel. [Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

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§21-7-2 Prohibited gifts. (a) An employee or legislator shall not solicit, accept, or receive any gift, directly or indirectly, if a reasonable person may conclude that the gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient’s state duties.

(b) In determining whether a gift is prohibited, the commission shall examine the circumstances surrounding the offer of the gift and consider:

- (1) ~~the~~ The donor’s relationship to the recipient. Except as specifically provided in this chapter, a gift is generally prohibited where the recipient is in a position to take official action specifically affecting the donor, such as where the donor is a party to a contested case hearing before the recipient, regulated by the recipient, involved in procurement with the recipient, or a lobbyist seeking legislative or administrative action from the recipient;
- (2) ~~the~~ The value of the gift. Generally, the higher the value of the gift, the more likely the gift is prohibited; and
- (3) ~~whether~~ Whether the gift supports a state purpose. Generally, cash, gift cards, and complimentary admission to events or venues that are primarily intended as entertainment, such as concerts, movies, sporting events, or golf tournaments, do not serve any state purpose and are more likely to be prohibited.

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[Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-3 Acceptable items. (a) The following items generally may be accepted and need not be reported on a gifts disclosure statement:

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- (1) A lei, other than a money lei, offered in connection with a celebration, commemoration, or event;
- (2) Discounts, services, or other benefits offered to the public at large. This may include discounts, services, or other benefits offered to government employees as a group, provided that the same discounts, services, or other benefits are offered on similar terms to other large groups of employees;
- (3) Bona fide competitively awarded grants or scholarships;
- (4) Promotional items having no resale value, such as branded pens, calendars, hats, or tote bags;
- (5) Rewards or prizes given to competitors in contests or events, including random drawings, offered to the public or a segment thereof, where the legislator or employee receiving the reward or prize does not attend the contest or event in an official capacity, unless a reasonable person would conclude that the reward or prize was offered to the legislator or employee because of the legislator's or employee's state position;
- (6) A gift provided by any other state, a political subdivision of any other state, or the United States, provided that the gift serves a bona fide state purpose and that tangible and durable items of more than nominal value, such as artwork or jewelry, shall belong to the State rather than the individual recipient;
- (7) Modestly priced awards, plaques, and other ceremonial items of the type customarily bestowed in connection with bona fide ceremonies and otherwise reasonable under the circumstances;
- (8) Gifts received by a spouse or dependent child of the legislator or employee solely because of the spouse's or child's own employment, volunteer activities, or personal relationships, where a reasonable person would not believe that the gift was intended to influence or reward the legislator or employee;
- (9) An unsolicited gift of nominal value given as a token of appreciation to a teacher, medical professional, or similar kind of service provider, such as a holiday gift given to a teacher by a student or guardian, where the gift is offered by an individual in the individual's personal capacity, and the gift is given under circumstances in which no reasonable person would conclude that

the gift was given to influence the recipient's state duties with respect to the offeror; and

(10) Gifts given under circumstances in which no reasonable person would conclude that the gift was being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties.

(b) An individual who represents the State for protocol purposes, such as the governor, lieutenant governor, legislator, president of the University of Hawaii, department director, or deputy director, may generally accept an unsolicited offer of complimentary attendance to attend an event organized with the principal objective of raising money for or awareness of a charitable organization, provided that:

(1) ~~the~~ The recipient's attendance at the event is paid for by the charitable organization itself;

(2) ~~the~~ The non-tax-deductible value of attendance is less than \$75, unless the commission finds that the recipient has demonstrated a special need to exceed this limit;

(3) ~~the~~ The recipient does not accept more than \$300 in cumulative non-tax-deductible value in any calendar year, unless the commission finds that the recipient has demonstrated a special need to exceed this limit; and

(4) ~~the~~ The recipient's attendance at the event serves a state purpose;

~~(4) —(c) The~~ provided that the commission shall revise the dollar amounts in this subsection ~~(b) part~~ in January of each even-numbered year to reflect changes in the Consumer Price Index and shall publicize these values on its website.

~~(ed)~~ For purposes of subsection (b), if the value of the gift meets the reporting requirements of section 84-11.5, HRS, the gift shall be reported and the recipient shall separately report both the non-tax-deductible value of attendance and the tax-deductible portion of the attendance fee on the recipient's annual gifts disclosure statement. [Eff-] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

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Comments:

~~— Gifts received by spouses or dependent children: If the spouse of a legislator or employee receives two tickets to an event, solely because of the spouse's employment or community work, the legislator or employee may attend the event with the spouse unless it appears as though the gift was offered with the intention of influencing the legislator or employee.~~

~~The same is true for gifts received by dependent children of legislators or employees.~~

- ~~— Gifts from family members or personal friends: Gifts generally may be accepted where the gift is based upon a familial or personal relationship and no reasonable person would conclude that a gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties. However, where such a relationship exists, the recipient may consider voluntarily recusing her or himself from taking official action involving (directly or indirectly) the individual offering the gift to avoid any appearance of impropriety.~~
- ~~— Reporting events: Where a legislator accepts the offer of a ticket to an annual dinner held by a charitable organization in the legislator's district, and the ticket costs \$250 with a tax deductible amount of \$200, the legislator must report having received a \$250 gift, with a meal valued at \$50 and the tax deductible portion of the ticket of \$200.~~
- ~~— The items listed in §21-7-3(a) need not be reported on a gifts disclosure statement either because (1) they are not gifts for which there could be a reasonable inference of influence on the legislator or employee, or (2) they would never approach the gifts reporting threshold of more than \$200. Items that exceed \$200 generally would not fit the criteria for acceptance under subsections (a)(1), (a)(4), (a)(7), or (a)(9).~~

§21-7-4 Offers of travel. (a) The following economy-class travel expenses, including modest meals and lodging, generally may be accepted and need not be reported on a gifts disclosure statement:

- (1) Travel expenses paid for by the United States, any of its states or territories, or any political subdivision thereof;
- (2) Travel expenses provided pursuant to a grant to or a contractual agreement with the State, provided the benefit supports a bona fide state purpose;
- (3) Travel expenses provided to individuals to serve as chaperones to groups of public school students on student educational tours, where the tours are paid for by students or their guardians and are approved by the Hawaii Department of Education, and where the

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travel expenses are paid for by the organizing tour company or with a portion of fees collected from other travelers.

(b) An offer of economy-class travel expenses, modest food and non-alcoholic beverages, and educational programming in connection with a bona fide professional development program, conference, or business meeting, generally may be accepted if receipt thereof is consistent with section 21-7-2, provided that the recipient shall report the travel pursuant to section 84-11.5, HRS. In determining whether an offer of travel is acceptable, the commission shall consider:

- (1) ~~the~~ The donor's relationship to the recipient. Generally, an offer of travel may not be accepted where the donor lobbies, seeks business with, or is regulated by the recipient's agency;
- (2) ~~the~~ The value of the trip, including all travel costs sponsored by the donor; and
- (3) ~~whether~~ Whether the travel supports a state purpose. Generally, offers of travel to events that lack significant educational content may not be accepted. Likewise, offers to attend entertainment events, such as golf, cruises, sporting events, or luxury meals, generally may not be accepted, even if they occur as part of an otherwise acceptable event.

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[Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

Comments:

~~— Gifts of travel are often acceptable because of their benefit to the State. For example, if the National Association of Attorneys General wishes to pay for two Deputy Attorneys General to attend a training on effective litigation techniques, and the recipients will travel in economy class and stay at a modestly priced hotel, the gift of travel may be accepted. If, however, an organization wishes to pay for a Deputy Attorney General to fly first class to a ski resort and stay at a five-star hotel, the trip generally may not be accepted. Recipients are advised to contact the Commission for guidance prior to acceptance.~~

§21-7-5. Valuation of gifts. (a) The value of a gift is its fair market value, which is the cost that a member of the public would reasonably expect to incur to purchase the gift, including any tax-deductible portion.

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(b) If the gift is a seat at a table for an event, the value of the gift is the cost of the table sponsorship divided by the number of seats at the table. [Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

Comments:

— If the face value of a ticket to an event is \$100, but at the time the ticket is offered as a gift the event is sold out and tickets on the secondary market are \$500, the value of the ticket is \$500.

§21-7-6. Imputing gifts to others. (a) Where an offeror of a gift does not specify a recipient within an office, and the legislator or supervisor of the receiving office knows or reasonably should know of the gift, the gift is presumed to be a gift to the legislator or supervisor.

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(b) A gift to a family member of a legislator or employee is presumed to be a gift to a legislator or employee where:

- (1) ~~¶~~The gift is offered because of the family member's relationship to the legislator or employee; and
- (2) ~~the~~The legislator or employee knows or reasonably should know of the gift.

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[Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-11)

Example:

— When a donor provides a gift of food to a legislative office, the legislator is presumed to be the recipient of the gift.

§21-7-7. Submission of gifts disclosure statement. Gifts disclosure statements shall be filed using forms and methods prescribed by the commission. The commission may require that gifts disclosure statements be filed using an electronic filing system. [Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

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§21-7-8 Public information. Gifts disclosure statements are public records and the contents of a gifts disclosure statement are public information, except as otherwise provided by law. [Eff:] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

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§21-7-9 Fair treatment. (a) Subject to article III, section 7 of the Hawai'i State Constitution and section 84-13, HRS, legislators and employees shall not use or attempt to use their official positions to solicit, request, accept, receive, or grant unwarranted privileges, exemptions, advantages, contracts, treatment, or benefits, for themselves or others, or to subject others to unwarranted treatment, whether favorable or unfavorable. Among other things, legislators and employees shall not:

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- (1) Take unwarranted action or withhold warranted action against an individual, or threaten to do so, for lodging a complaint with the commission, where a reasonable person would conclude that the action or lack of action, or threat thereof, was intended as retaliation for lodging a complaint or cooperating with a commission investigation;
- (2) Use or attempt to use their official position to seek or secure private employment or contracts for services for themselves or others, provided that legislators and employees may offer professional references for their current and former employees;
- (3) Accept, receive, or solicit compensation, honoraria, other consideration, or gifts for the performance of their official duties or responsibilities except as provided by law;
- (4) Use state resources for private business purposes, including, but not limited to, the use of state resources for:
 - (A) ~~political~~ Political campaign activities;
 - (B) ~~advertising~~ Advertising or publicizing the sale of goods or services;
 - (C) ~~taking~~ Taking or responding to sales orders or inquiries;
 - (D) ~~preparing~~ Preparing or sending invoices;
 - (E) ~~collecting~~ Collecting payments;
 - (F) ~~producing~~ Producing or delivering goods or services;
 - (G) ~~arranging~~ Arranging or conducting private business meetings;
 - (H) ~~requesting~~ Requesting or directing other state personnel to assist with private business activities; or

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- (I) ~~otherwise~~ Otherwise furthering a private business interest, except where the State has made a state facility or resource available for rent, purchase, or use by private organizations or individuals on generally equal terms and such use serves a state purpose;
- (5) Use state resources for fundraising, except:
- (A) ~~as~~ As approved by the Governor, the Speaker of the House and President of the Senate, the Chief Justice, or the President of the University of Hawaii; ~~or~~
- (B) ~~in~~ In conjunction with a nonprofit organization that exists for the sole purpose of assisting and supporting a state facility or program, including but not limited to a state charter school;
- (6) Solicit or engage in a substantial financial transaction with a subordinate or a person or business the legislator or employee inspects or supervises in an official capacity; or
- (7) Abuse their position within state government to sexually harass another individual.
- (b) In all but the most extraordinary circumstances, acceptance of a gift in compliance with section 84-11, HRS, and sections 21-7-1 to 21-7-6 will comport with the fair treatment law; however, solicitation or acceptance of a substantial number of individual gifts may raise fair treatment concerns even if each individual gift is acceptable.” [Eff: ____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-13)

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Comments

- ~~—Door prizes: One who attends an event in his or her official capacity is prohibited from accepting a door prize or complimentary item of more than nominal value that is won or offered at the event. Acceptance may be permissible, however, if the item is accepted on behalf of the State and becomes property of the State. For example, an employee who wins a laptop computer at a conference the employee attends in the employee’s official capacity may turn the item over to the employee’s state agency to become part of the agency’s inventory.~~
- ~~—Honoraria: One who gives a speech as part of his or her official duties may not accept an honorarium from a non-state source for giving the speech, because he or she is already compensated by the State to perform such a duty.~~

- ~~— Political campaign activities: The use of state resources for political campaign activities is prohibited. These include, but are not limited to, soliciting support for political candidates for office, organizing or publicizing political fundraisers, and organizing activities such as sign waving to support political candidates for office.~~
- ~~— Fundraising: State resources may be used for fundraising activities in limited situations, including:
 1. Non-coercive fundraising to support a charity or purpose officially sponsored and endorsed by the State.
 2. Non-coercive fundraising for humanitarian causes officially endorsed by the State, e.g., to support victims of a natural disaster.~~
- ~~— Volunteer activities: A state employee may serve as an uncompensated officer, director, or volunteer of a nonprofit organization affiliated with the employee's state agency and whose sole purpose is to assist and support the state agency. So long as the employee receives no compensation from the nonprofit organization, and the employee is authorized by the director of the employee's agency or other relevant authority, the employee may use state resources, including state time, to benefit the organization.~~
- ~~— Travel: Except in very limited circumstances, state officials may travel only in economy class. If possible, mileage credit accrued on state travel shall be used for state travel. If such credit cannot be used for state travel, it may be applied to personal travel subject to approval by the Comptroller or other relevant authority. Similarly, travel upgrades or other benefits earned while on state travel that cannot be applied to state travel may be applied to personal travel subject to approval by the Comptroller or other relevant authority.~~
- ~~— Use of state resources for private business purposes: the State may rent public facilities (such as school cafeterias), sell advertising space at public facilities, and/or otherwise engage in transactions with private entities, so long as state facilities are generally offered on equal terms to all would-be purchasers.~~

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END OF CHAPTER 7

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~Adoption of Chapter 21-8
Hawaii Administrative Rules~~

~~Month, Day, 2019~~

~~SUMMARY~~

8. Chapter 21-8, Hawaii Administrative Rules, entitled “Conflicts of Interests”, is adopted to read as follows:-

“HAWAII ADMINISTRATIVE RULES

TITLE 21

~~HAWAII STATE ETHICS COMMISSION~~ LEGISLATIVE AGENCIES

CHAPTER 8

STATE ETHICS COMMISSION

CONFLICTS OF INTERESTS

- 21-8-1 Conflicts of ~~Interests~~interests, ~~director or officer~~Officer or Director of ~~Private~~private ~~Organization~~organization in ~~Employee's~~employee's State-state Capacitycapacity
- 21-8-2 Acquiring ~~New-new~~Conflictsconflicts of ~~Interests~~interests; ~~Reason~~reason to ~~Believe~~believe
- 21-8-3 Assist or ~~Represent~~represent – ~~Exception~~exception for ~~Personal~~personal ~~Service~~service ~~Contracts~~contracts

§21-8-1 Conflicts of ~~Interests~~interests, ~~Director-director~~ or ~~Officer-officer~~ of ~~Private-private~~ Organization-organization in Employee's employee's State-state Capacity-capacity. (a) An employee who serves as a director or officer of a private organization in the employee's official capacity is not prohibited from taking official action affecting that organization, provided that action does not affect the personal financial interest of the employee, the employee's spouse or civil union partner, or the employee's dependent children.

(b) Any discretionary action taken by the employee as a director or officer as set forth in subsection (a) shall be considered official action for purposes of chapter 84, HRS. [Eff-] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-3, 84-14, 84-31)

Examples:

- (1) ~~An employee of a state agency sits as a director of a non-profit organization by virtue of the employee's state position. The employee is not prohibited from taking official action, in the employee's capacity as a state employee, affecting that non-profit organization.~~
- (2) ~~An employee of a state agency sits as a director of a non-profit organization by virtue of the employee's state position. The employee's spouse is employed by the non-profit organization. The employee is prohibited from taking official action, in the employee's capacity as a state employee, affecting that non-profit organization.~~

§21-8-2 Acquiring ~~Financial-financial~~ Interest-interest in a ~~Business-business~~ or ~~Other-other~~ Undertaking-undertaking; ~~Reason-reason~~ to Believe-believe. For purposes of section 84-14(b), HRS, an employee has "reason to believe" that the employee "may be directly involved in official action to be taken by the employee" where there is a reasonable likelihood the employee may take official action affecting the business or undertaking. [Eff-] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

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§21-8-3 Assist or Represent – Exception for Personal Service Contracts. A legislator or employee may be permitted to provide the legislator's or employee's own personal services to the legislator's or employee's agency where there is an overriding state purpose that outweighs any appearance of a conflict of interest. The commission may evaluate the following factors in determining whether a personal services contract is permissible:

- (1) ~~whether~~ **Whether** there is an appearance that the legislator or employee is receiving unwarranted or preferential treatment from the legislator's or employee's agency;
- (2) ~~whether~~ **Whether** the legislator or employee is using confidential information to obtain the personal services contract;
- (3) ~~Whether~~ **Whether** there is a substantial public need for the legislator's or employee's expertise;
- (4) ~~Whether~~ **Whether** the legislator or employee possesses expertise in a particular area;
- (5) ~~whether~~ **Whether** the agency is having difficulty obtaining services of this specialized expertise from other sources; and
- (6) ~~whether~~ **Whether** the personal services contract is otherwise consistent with chapter 84, HRS, and other applicable law." [Eff:] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

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END OF CHAPTER 8

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~Adoption of Chapter 21-9
Hawaii Administrative Rules~~

~~Month, Day, 2019~~

~~SUMMARY~~

9. Chapter 21-9, Hawaii Administrative Rules, entitled "Post-Employment Restrictions and Contracts", is adopted to read as follows:-

"HAWAII ADMINISTRATIVE RULES

TITLE 21

~~HAWAII STATE ETHICS COMMISSION~~LEGISLATIVE AGENCIES

CHAPTER 9

STATE ETHICS COMMISSION

POST-EMPLOYMENT RESTRICTIONS AND CONTRACTS

9-1

21-9-1 Agency or subdivision thereof
21-9-2 Responsibility to enforce contracts rules

§21-9-1 Agency or subdivision thereof. For purposes of section 84-18(c), HRS, in determining what constitutes the former employee's agency or subdivision thereof, the commission may consider the size of the agency; the likelihood that the former employee would have any unfair advantage in representing a person or business before that agency; the former employee's position within the agency; whether the former employee will communicate with former colleagues within the agency; whether the former employee has confidential information that may provide an unfair advantage; and any other factors that could reasonably give the appearance of impropriety. [Eff: _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §84-18)

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Comments:

~~— Role in former agency: the former director of an agency would likely be prohibited from representing another person before any section of that agency; in contrast, an individual who worked for a subsection of a large agency and had minimal contact with other subsections of the agency may not be prohibited from representing another person before a different subsection.~~

§21-9-2 Responsibility to enforce contracts rules. (a) An agency's director or acting director shall be responsible for ensuring that all agency contracts comply with section 84-15, HRS.
(b) Any violations of section 84-15, HRS shall be assessed against the director or acting director of the agency at the time the violation occurred." [Eff: _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-15, 84-31)

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END OF CHAPTER 9

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~

~~Adoption of Chapter 21-10
Hawaii Administrative Rules~~

~~Month, Day, 2018~~

~~SUMMARY~~

10. Chapter 21-10, Hawaii Administrative Rules, entitled “Lobbying”,
is adopted to read as follows:-

~~“HAWAII ADMINISTRATIVE RULES~~

~~TITLE 21~~

~~HAWAII STATE ETHICS COMMISSION~~ LEGISLATIVE AGENCIES

~~CHAPTER 10~~

~~STATE ETHICS COMMISSION~~

~~LOBBYING~~

21-10-1 Definitions

10-1

Registration of Lobbyists

- 21-10-2 Registration and termination
- 21-10-3 Exclusions from registration requirement
- 21-10-4 Background work in support of lobbying

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Reporting of Lobbying Contributions and Expenditures

- 21-10-5 Statement of contributions and expenditures
- 21-10-6 Contributions for the purposes of lobbying
- 21-10-7 Reporting of expenditures
- 21-10-8 Expenditures for the purpose of lobbying
- 21-10-9 Accounting issues in statements of contributions and expenditures statements
- 21-10-10 Submission of registration forms and statements of contributions and expenditures

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§21-10-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Client” means the individual or entity that employs, contracts with, or retains another person for pay or other consideration to lobby on behalf of that individual or entity.

“Direct lobbying” means any oral or written communication with a legislator, or an employee, intern, or volunteer of the legislature or an agency, that would appear to a reasonable person to be an attempt to influence legislation or rulemaking. Direct lobbying includes but is not limited to drafting or submitting testimony; discussing existing or potential legislation or administrative rules; and advocating for the passage or defeat of any legislation or administrative rule.

“Employing organization” means an entity that employs or contracts with a lobbyist to act on behalf of a client.

“For pay or other consideration” includes a wage, salary, fee, or other compensation provided to an owner, director, employee, or contractor of an organization who lobbies on behalf of the organization.

“Grassroots lobbying” means any oral or written communication directed at any member of the public that both expresses an opinion about existing or potential legislation, administrative rule, or ballot issue and includes an explicit or implied call to action.

“Lobbying” has the same meaning as in section 21-1-2.

“Lobbyist” has the same meaning as in section 21-1-2.

“Person” has the same meaning as in section 97-1, HRS. [Eff: _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

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~~Comments and Examples:~~

~~— The Commission may consider any guidance provided by the Internal Revenue Service in determining whether an activity constitutes “lobbying.”~~

~~— Example 1: A lobbyist for a bank attends a political fundraiser and speaks with a state representative. The two discuss the bank’s current profits and financial outlook, but do not discuss any potential legislation or regulatory issues that might affect the bank. Such discussion is not considered lobbying.~~

~~— Example 2: A lobbyist for a non-profit organization that focuses on environmental issues attends a social event and speaks with a state senator.~~

~~The two discuss, in general terms, the need to pass stronger legislation on the state level to protect coral reefs. Such discussion is considered lobbying.~~

- ~~— Example 3: Several staff members of a non-profit organization research and write a paper on whether a policy proposal from another state would be feasible here in Hawaii. The organization does not engage in lobbying and does not intend to use the paper in support of any lobbying efforts. After spending many hours on the project, the organization determines the proposal would not be feasible in Hawaii and the project is shelved. The work on this project is not considered lobbying.~~
- ~~— Example 4: Same facts as in #3, except that the organization initially plans to use the paper in lobbying; after researching the issue, however, the organization abandons the issue and does not use the paper for any lobbying efforts. The work on this project is not considered lobbying.~~
- ~~— Example 5: Same facts as in #3, except after concluding the research, the organization decides that it will ask the legislature to pass legislation on the issue and uses its research paper to support its position. The work on this project is considered lobbying.~~
- ~~— Example 6: A business pays for a public opinion poll to see whether the public would support a legislative initiative. The poll does not attempt to influence the individuals being polled, but merely asks for their opinions on the issue. The results are not shared publicly and the business never pursues the issue. Expenditures on this public opinion poll are not considered expenditures for the purpose of lobbying.~~
- ~~— Example 7: Same facts as in #6, but the results are made public (to influence legislators' willingness to consider the legislation) and/or cited in the business's testimony. Expenditures on the public opinion poll are considered expenditures for the purpose of lobbying.~~

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Registration of Lobbyists

§21-10-2 Registration and termination. (a) Every individual who meets the threshold requirements to be deemed a lobbyist, as described in section 97-1, HRS, shall register as a lobbyist with the commission within five days of meeting those requirements

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(b) For purposes of determining whether an individual has met the threshold requirements to register as a lobbyist, all time spent lobbying shall be included. Time spent lobbying includes, but is not limited to:

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- (1) ~~drafting~~ Drafting and providing testimony;
- (2) ~~discussing~~ Discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
- (3) ~~waiting~~ Waiting to testify at a hearing, when the individual who is waiting:
 - (A) ~~is~~ Is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;
 - (B) ~~spends~~ Spends that time preparing, reviewing, or strategizing on the testimony; or
 - (C) ~~spends~~ Spends that time otherwise lobbying.

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(c) Time spent on the following activities need not be counted for purposes of registration:

- (1) ~~performing~~ Performing work relating to service on a task force created by the legislature or an agency; and

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- ~~(7)~~ (2) ~~research~~ Research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period.

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(d) Every lobbyist shall renew the lobbyist's registration biennially by filing a registration and authorization form with the commission within ten days of the opening of every odd-numbered legislative session.

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(e) If a lobbyist does not renew the lobbyist's registration as required by subsection (d), the lobbyist's registration is deemed to have expired on December 31 of the preceding even-numbered year, provided that the lobbyist shall remain subject to the requirements of chapter 97, HRS, and these rules for the period during which the registration was effective.

(f) Lobbyists' registrations shall be terminated as set forth in section 97-2, HRS. [Eff: _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

§21-10-3 Exclusions from registration requirement. (a) The following individuals need not register as lobbyists:

- (1) ~~any~~ Any individual who represents oneself and not any other person before the legislature or administrative agency, provided that these individuals may be required to submit statements of contributions and expenditures as provided in section 97-3, HRS, and these rules. For purposes of this subsection, “any other person” includes a sole proprietorship or other business owned or operated by the individual;
 - (2) ~~any~~ Any federal, state, or county official or employee acting in the official’s or employee’s official capacity, provided that if the federal, state, or county official or employee contracts for the services of a lobbyist, the lobbyist is subject to the registration and reporting requirements of chapter 97, HRS, and these rules, and the director of the agency employing the lobbyist shall be responsible for submitting statements of contributions and expenditures as required by section 97-3, HRS, and these rules;
 - (3) ~~any~~ Any person engaged in the business of publishing or broadcasting news or comment on the news, while engaged in the gathering or dissemination of news and comment on the news and in the ordinary course of business;
 - (4) ~~an~~ An attorney advising a client on the construction or effect of proposed legislative or administrative action; and
 - (5) ~~any~~ Any person who possesses special skills and knowledge relevant to certain areas of legislation or rulemaking, whose skills and knowledge may be helpful to the legislative and executive branches of state government and who makes an occasional appearance at the written request of the legislature, an administrative agency, or the lobbyist, even though the person receives reimbursement or other payment from the legislature, administrative agency, or the lobbyist for the appearance. A copy of the written request for an appearance made by the legislature, administrative agency, or lobbyist shall be provided to the commission within five business days of the commission’s request.
- (b) Lobbying activities that exceed the scope of subsection (a) shall be reported as provided by chapter 97, HRS, and these rules. [Eff-

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] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

~~Comments and Examples, subsection (2):-~~

- ~~— Example 1: The director of a state agency testifies on a bill affecting one of her agency's programs. The director is not required to register as a lobbyist, nor is the agency required to submit a statement of contributions and expenditures.~~
- ~~— Example 2: A state agency hires a private sector individual to lobby on behalf of the agency. The lobbyist is subject to the registration and reporting requirements, and the director of the state agency is responsible for submitting statements of contributions and expenditures.~~

~~Comments and Examples, subsection (4):-~~

- ~~— Example 3: A client seeks an attorney's advice about the application of a proposed new law. The attorney provides the advice and does not engage in any other lobbying activities. The attorney does not need to register as a lobbyist or file a statement of contributions and expenditures, and the client need not report the attorneys' fees as a lobbying expense.~~
- ~~— Example 4: A client asks for an attorney's help in amending a law. The attorney drafts testimony, meets with legislators, and testifies on the proposed amendment. This is lobbying, and the attorney must register and file a statement of contributions and expenditures if the activities meet the threshold for registration and reporting as set forth in HRS § 97-2.~~

~~Comments and Examples, subsection (5):-~~

- ~~— Example 5: A Senate committee is scheduled to hear a bill amending the tax code. The committee chair emails an economist and asks her to testify and provide her expert opinion on the bill. The economist is not subject to either the registration or reporting requirements for this testimony. If the economist engages in other lobbying, however—that is, lobbying other than at the direct request of the Senator—she must register as a lobbyist and submit expenditure reports if she meets the threshold requirements for registration/reporting.~~

- ~~Example 6: A House committee is scheduled to hear a bill that will affect the hotel industry. A Representative knows of an executive at a hotel who is interested in the bill and telephones the executive to tell him the bill has been scheduled. The executive testifies on the bill. The executive shall register as a lobbyist and submit statements of contributions and expenditures if the executive meets the threshold requirements for registration/reporting.~~

§21-10-4 Background work in support of lobbying. An individual who, under the direction of a registered lobbyist, is paid to draft testimony, research legislative issues, conduct public opinion polls, or perform administrative work in support of lobbying activities, is not required to register as a lobbyist if:

(1) ~~the~~ The individual does not meet with or communicate directly with any official in the legislative or executive branch regarding the subject matter of any existing or potential legislation or rule; and

(2) ~~the~~ The expenditures for that individual's activities are reported pursuant to section 21-10-5. ~~[Eff-~~]
(Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments:

~~—This Rule is intended to allow individuals to “ghost write” testimony and to perform background research and administrative work without having to register as a lobbyist, provided several strict conditions are met. A registered lobbyist must supervise the work; the work must be reported on the joint statement of contributions and expenditures or on a registered lobbyist's statement as provided by §21-10-5(c); and the individuals performing background work may not directly communicate with legislators or agency employees regarding the subject matter of the legislation.~~

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Reporting of Lobbying Contributions and Expenditures

§21-10-5 Statement of contributions and expenditures. (a) Each client, its lobbyists, and the lobbyists' employing organization, if any, shall file a joint statement of contributions and expenditures that includes all expenditures made for the purposes of lobbying on behalf of that client.

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(b) A joint statement of contributions and expenditures shall include:

(1) ~~the~~ The names of all registered lobbyists engaged in lobbying on behalf of the client;

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(2) ~~all~~ All contributions for the purpose of lobbying received by the lobbyists, the employing organization, and the client, as set forth in section 97-3, HRS, and these rules;

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(3) ~~all~~ All expenditures made by or in support of the lobbying interests or activities of the client, including out-of-pocket expenditures made by individual lobbyists, as set forth in section 97-3, HRS, and these rules;

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(4) ~~the~~ The signature, digital or otherwise, by each registered lobbyist lobbying on behalf of the client, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures; and

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(5) The signature of any person making expenditures of \$1,000 or more of the person's or any other person's money for the purpose of lobbying, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures.

(c) If a lobbyist expends funds or receives contributions for the purpose of lobbying that are not captured on any client's statement of contributions and expenditures, or if any person expends more than \$1,000 of the person's or any other person's money during a reported period and those expenditures are not captured on any client's statement of contributions and expenditures, the lobbyist or person expending such funds shall submit a separate statement reporting these contributions and expenditures.

(d) Each client, each of its lobbyists, and each lobbyists' employing organization, if any, shall be responsible for filing of timely, accurate, and complete statements of contributions and expenditures to the commission. [Eff-

] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

~~Comments:~~

~~—This rule addresses the statutory requirement that statements of contributions and expenditures be filed by up to three different entities (the client, the~~

~~employing organization, and the lobbyist; or, in the case of lobbyists employed in-house by the client, by the client/employing organization and the lobbyist), even though the statements refer to the same lobbying activity. This rule creates a single, client-based report, rather than requiring separate reports from the client, the employing organization, and the lobbyist. This single, client-based reporting method avoids double (or triple) reporting, and also avoids the current practice of having lobbyists submit expenditure reports listing "zero" expenditures (because all expenditures were covered by the client and/or the employing organization). This method will also provide better information to the public, insofar as the public can see in one place, on one report all sums expended to benefit a particular client.~~

- ~~If a lobbyist represents multiple clients, the lobbyist must sign each client's statement of contributions and expenditures.~~

§21-10-6. Contributions for the purpose of lobbying. (a) Contributions for the purposes of lobbying shall be reported as set forth in section 97-3, HRS, except where a contributor's identity may be withheld pursuant to law.

(b) Contributions shall be reported where the contributor knows or reasonably should know that the primary purpose of the contribution is to support lobbying.

(c) Where a contribution is used in part for lobbying and in part for other expenses, the reporting entity need report only the amount used for lobbying. [Eff:] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

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Comments and Examples:

~~—Reporting contributions: The identity of a contributor need not be reported where the United States Constitution, Hawaii Constitution, or other law permits the contributor's identity to be withheld. Contributions need not be explicitly earmarked for lobbying to be reportable; if the contributor reasonably should know that the contribution will be used primarily to support lobbying then it is reportable. For example, if the primary purpose of an organization is legislative advocacy, then a contributor should reasonably know that a donation will be used for lobbying.~~

~~—Example 1: A trade organization made up of several different companies is formed to promote the industry, offer education to its members, and engage in legislative advocacy. Each member company pays annual dues. The trade~~

~~organization must report that portion of the dues that is attributable to the lobbying effort.~~

§21-10-7 Reporting of expenditures. (a) Expenditures shall be reported as provided by section 97-3, HRS, and these rules, using forms and methods prescribed by the commission.

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- (b) Each statement of expenditures shall include:
 - (1) The total sum expended for the purpose of lobbying by or on behalf of the person filing the statement during the relevant reporting period, regardless of whether the expenditure was made by a registered lobbyist, along with an itemization of how that sum was expended among the following categories:
 - (A) Preparation and distribution of lobbying materials;
 - (B) Media advertising;
 - (C) Compensation paid to lobbyists, as follows:
 - (i) Where a client pays an employing organization such as a law firm, which in turn employs a lobbyist, the client shall report the amount paid to the employing organization for the purpose of lobbying during the relevant reporting period;
 - (ii) Where a client's employee serves as a lobbyist, the client shall report the pro rata portion of the lobbyist's salary that is attributable to the lobbyist's lobbying activities during the relevant reporting period;
- provided that a client shall indicate whether the lobbyist is a salaried employee, is paid on an hourly basis, or is paid a lump sum, whether annually, monthly, or otherwise.
- (D) Fees paid to consultants for services, including the name of each individual consultant or entity and the nature of the services provided;
 - (E) Entertainment and events;
 - (F) Receptions, meals, food, and beverages;
 - (G) Gifts;
 - (H) Loans;
 - (I) Interstate transportation, including incidental meals and lodging; and
 - (J) Other disbursements;

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- (2) The name and address of each legislator or employee who received benefits valued at \$25 or more on any day from the filer; and
- (3) The name and address of each legislator or employee who received benefits valued at \$150 or more in a reporting period from the filer.
- (c) The sum of the expenditures on each category set forth in subsection (b)(1) shall equal the total sum expended for the purpose of lobbying in any reporting period, or the filer shall provide an explanation for any discrepancy. [Eff:] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments:

—Lobbyists should be aware of the State Ethics Code's restrictions on certain gifts and benefits. See HRS §§ 84-11, 84-11.5, 84-13; HAR chapter 21-7.

§21-10-8. Expenditures for the purposes of lobbying. (a) Expenditures made “for the purpose of lobbying” means all those expenditures in support of and in preparation for direct lobbying or grassroots lobbying. Such expenditures include, but are not limited to:

- (1) ~~drafting~~ Drafting and providing testimony;
- (2) ~~discussing~~ Discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
- (3) ~~discussing~~ Discussing lobbying strategy;
- (4) ~~research~~ Research or polling when the primary purpose of the research or polling is to use in lobbying activities;
- (5) ~~advertising~~ Advertising;
- (6) ~~monitoring~~ Monitoring the status of proposed legislation or proposed administrative rules, when the primary purpose of the monitoring is to engage in lobbying;
- (7) ~~an~~ An event organized for the purpose of providing interaction between members of the legislature or an agency and an individual or organization that is engaged in lobbying, or intends to engage in lobbying, where the topics of the lobbying effort are discussed;
- (8) ~~time~~ Time spent waiting to testify at a hearing, when the individual who is waiting:
 - (A) ~~is~~ Is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;

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- (B) ~~spends~~ Spends that time preparing, reviewing, or strategizing on the testimony; or
- (C) ~~spends~~ Spends that time otherwise lobbying.
- (b) Expenditures on the following activities are not considered expenditures for the purpose of lobbying:
- (1) ~~performing~~ Performing work relating to service on a task force created by the legislature or an agency; and
- (2) ~~research~~ Research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period. [Eff:] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

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Comments and examples:

~~— Example 1: Paid staff of a non-profit organization dedicated to serving the needs of the elderly meet to discuss the current state of elder affairs and what issues they currently face. Without more, expenditures relating to this meeting are not reportable lobbying expenditures. However, if the group discusses proposed legislation or how the organization should respond to bills, then expenditures relating to this meeting are reportable lobbying expenditures. If the group spends a portion of the meeting discussing lobbying efforts and a portion discussing non-lobbying work, then expenditures for the pro rata share of the meeting devoted to lobbying should be reported.~~

~~— Example 2: A non-profit organization that lobbies on health care puts on a brunch and invites members of the legislature to discuss both the mission of the organization and legislation that the organization would like introduced. Expenditures relating to the brunch are reportable.~~

§21-10-9 Accounting issues in statements of contributions and expenditures. (a) Statements of contributions and expenditures required by section 97-3, HRS, and these rules shall report expenditures during the relevant reporting period on an accrual basis.

(b) Where an entity pays a flat fee on a periodic basis for the purpose of lobbying the state legislature, the entity may report regular-session lobbying activities either by:

- (1) ~~reporting~~ Reporting forty per cent, 40% of the total expected annual expenditures as having been spent in the January-February period, 40% forty per cent of the total expected annual expenditures as having been spent in the March-April period, and ~~20%~~ twenty per cent of the total expected annual expenditures as having been spent in the May-December period; or
- (2) ~~calculating~~ Calculating the amount of work performed in the relevant reporting period in proportion to the entire amount of work expected to be performed on an annual basis and reporting that proportion of the annual expenditure on the relevant reporting statement.

(c) Where an entity makes a lump sum expenditure for both lobbying and non-lobbying activities, the entity shall report either the entire lump sum expenditure or the pro rata share expended for the purposes of lobbying. [Eff:] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

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Comments:

~~— Clients often pay lobbyists a set monthly or yearly sum, where the lobbyist may perform both lobbying and non-lobbying work for the client. In such situations, the client has two options:~~

~~○ Option #1: Report the entire sum as a lobbying expense. This is a clear and straightforward way to report expenditures, as neither the client nor the lobbyist must track the hours spent lobbying nor determine whether a particular activity constitutes “lobbying.” This method may result in over-reporting, however, as some work performed by a lobbyist may not constitute “lobbying.”~~

~~○ Option #2: Track the lobbyist’s hours on lobbying and non-lobbying activities, and report the pro rata share of the lobbying~~

~~expense (taking into account the “lump sum” rules discussed above). The Commission will presume that a lobbyist’s hourly rate is the same for both lobbying and non-lobbying activities; a client that contends it pays a lobbyist \$100 an hour for lobbying but \$2,000 an hour for non-lobbying activities will likely face an enforcement action for violating the reporting requirements of HRS § 97-3 and these rules.~~

Examples:

- ~~— Example 1: A client hires a consultant to run radio ads during the January/February reporting period. The consultant does not bill the client until March. The expenditure is reported on the January/February contributions and expenditures statement.~~
- ~~— Example 2: A client pays a lobbyist a flat fee of \$24,000 a year to lobby. This fee is divided into monthly installments of \$2,000; however, the lobbyist and client do not know when filing the January-February report whether the lobbyist will be lobbying more or less in March-April (or May-December) than in January-February, and thus do not know how to apportion the \$24,000. Reporting only \$4,000 for the January-February period, however, generally understates the amount of lobbying done by the client during that period, whereas reporting \$16,000 for the May-December period generally overstates the amount of lobbying done by the client during that period. The Ethics Commission’s experience is that, where a lobbyist focuses exclusively on the state legislature, the split is generally 40% for January-February, 40% for March-April, and 20% for May-December. A client and lobbyist with this type of lump-sum (or lump-sum-in-installments) arrangement may use the 40/40/20 model unless the lobbyist has a good faith belief that expenditures for lobbying will deviate substantially from this model; this 40/40/20 reporting is intended as a “safe harbor” for clients and lobbyists who receive flat fee payments on a periodic basis (excluding special sessions of the legislature). Rather than using this estimate, however, clients and lobbyists may calculate the actual expenditures by first calculating the lobbyist’s effective hourly rate (that is, the number of hours the lobbyist is expected to work over the course of the year divided by the total expenditure for the year), multiplying that hourly rate by the actual number of hours lobbied, and then reporting that amount as the expenditure during the relevant reporting period.~~

~~Any client who pays a lobbyist on an hourly basis, however, should use report actual expenditures (rather than estimates) using an accrual basis.~~

§21-10-10 Submission of registration forms and statements of contributions and expenditures. Registration forms and statements of contributions and expenditures shall be filed using forms and methods prescribed by the commission. The commission may require that forms and statements be filed using an electronic filing system. [Eff:]
(Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

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11. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

12. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

13. These amendments to and compilation of chapters 21-1, 21-2, 21-3, 21-4, 21-5, and 21-6, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

14. The adoption of chapters 21-7, 21-8, 21-9, and 21-10, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, _____, 2019, and filed with the Office of the Lieutenant Governor.

REYNARD D. GRAULTY, Chair
Hawaii State Ethics Commission

APPROVED AS TO FORM:

Robyn Chun
Deputy Attorney General

END OF CHAPTER 10

~~These amendments to and compilations of Title 21, Chapters 1-10, Hawaii
Administrative Rules, shall take effect ten days after filing with the Office of the
Lieutenant Governor.~~

~~Department of the Attorney General
Approved as to form:~~

[NAME] _____ [DATE]

~~Office of the Governor
Approved for public hearing:~~

SUNSHINE LAW MEETING
AGENDA ITEM IV

AKANA V. HAWAII STATE ETHICS COMMISSION AND DANIEL GLUCK,
CIVIL NO. 18-1-1019-06 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM V

AKANA V. HAWAII STATE ETHICS COMMISSION AND DANIEL GLUCK,
CIVIL NO. 19-1-0379-03 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.