

# 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

June 18, 2020

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# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 1

#### STATE ETHICS COMMISSION

#### GENERAL PROVISIONS

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Historical Note: This chapter is based substantially upon rules 1, 2, 6, and 9 of the State of Hawaii Ethics Commission Rules and Regulations. [Eff 1/7/74 and 11/11/78; R July 13, 1981; am and comp **NOV 28 2020** ]

**§21-1-1 Purpose.** (a) Chapters 1 through 10 are intended to 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.

(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 **NOV 28 2020**] (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 10, unless the context clearly requires otherwise:

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

“Advisory opinion” means formal written guidance rendered by the commission pursuant to a request by any individual as to whether the facts and circumstances of that individual's particular case violate or will violate 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.

“Charge” means a document signed under oath, 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 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.

“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.

“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.

“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 designee 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 only ministerial action will not be considered a fiscal officer and will not be required to file a disclosure of financial interests pursuant to section 84-17, HRS.

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

“Lobbying” has the same meaning as in section 97-1, HRS, 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” means 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 who is a subject of a charge.

[Eff July 13, 1981; am and comp **NOV 28 2020**] (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 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 **NOV 28 2020** ]  
(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.** (a) Any party to a matter before the commission may make and file an affidavit or declaration that one or more of the commissioners before whom the matter is pending has a personal bias or prejudice. Every affidavit or declaration shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed as soon as practicable, but no later than ten days before any contested case hearing, or good cause shall be shown for the failure to do so.

(b) The commissioner against whom the affidavit or declaration is filed may answer the affidavit or declaration or may recuse from the matter. If the commissioner chooses to answer the affidavit or declaration, the remaining commissioners shall decide whether that commissioner should be disqualified from proceeding therein.

(c) At any time, commissioners may disqualify themselves by 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 matter. [Eff July 13, 1981; am and comp **NOV 28 2020** ]  
(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 **NOV 28 2020** ]  
(Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

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

(b) Any person who acts in a manner that prevents the orderly and peaceful conduct of business may be removed upon a vote of three or more



members 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.

(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 **NOV 28 2020**] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

**§21-1-7 Repealed** [R **NOV 28 2020** ]

**§21-1-8 Confidential records.** Records deemed confidential by law shall not be made public except with the written authorization of the person involved or as otherwise provided by law. [Eff July 13, 1981; am and comp **NOV 28 2020**] (Auth: HRS §§84-31, 97-6(a)(5)) (Imp: HRS §§84-17, 84-31, 97-6)

**§21-1-9 Repealed** [R **NOV 28 2020** ]

**§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 **NOV 28 2020** ] (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 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 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 **NOV 28 2020** ] (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 shall receive all documents required to be filed with the commission and shall promptly stamp the time and date upon 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 designee 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. [Eff July 13, 1981; am and comp **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

**§21-1-12 Operations.** (a) The offices of the commission are at 1001 Bishop Street, Suite 970, Honolulu, Hawaii, or such other address where the commission may be located from time to time. All communications shall be addressed to the commission at its offices, 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. Meetings are open to the public except when matters made confidential by chapter 84 or 97, HRS, or otherwise made confidential by law, are considered in executive session. [Eff July 13, 1981; am and comp

**NOV 28 2020** ] (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

**NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: Preamble, HRS chapter 84; HRS §§84-31(a)(7), 84-42, 84-43)

# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 2

#### STATE ETHICS COMMISSION

#### FILING OF DOCUMENTS, SERVICE, WITNESSES, AND SUBPOENAS

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<a href="#">§21-2-2</a>	<a href="#">Computation of time</a>
<a href="#">§21-2-3</a>	<a href="#">Continuances or extensions of time</a>
<a href="#">§21-2-4</a>	<a href="#">Service of process</a>
<a href="#">§21-2-5</a>	<a href="#">Subpoenas</a>
<a href="#">§21-2-6</a>	<a href="#">Witness fees</a>
<a href="#">§21-2-7</a>	<a href="#">Retention of documents by the commission</a>

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 **NOV 28 2020** ]

**§21-2-1 Filing of documents.** (a) All disclosures, charges, requests for opinions, pleadings, submittals, reports, petitions, briefs, memoranda, and other documents for the commission's consideration shall be filed with the executive director. Documents may be 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 electronically. The date on which the documents are actually received by the commission shall be deemed to be the date of filing, except as otherwise provided by law.

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

(c) All documents shall be signed by the person 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 document is true, not misleading, and not interposed for delay.

(d) The commission may require that hard copies of pleadings and memoranda submitted for hearing purposes 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

NOV 28 2020 ] (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

NOV 28 2020 ] (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.** Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, or by order of the commission, the person or agency may apply to the executive director or the commission for an extension not to exceed fifteen days. Additional extensions or extensions exceeding fifteen days will be allowed only upon written request and may be granted by the commission chair or designee for good cause shown. [Eff July 13, 1981; am and comp

NOV 28 2020 ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§1-29, 84-31, 97-6)

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

(b) All documents served by either the commission or any party shall be served upon all 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 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) Service of a charge, further statement of alleged violation, and notice of a contested hearing shall be made:

- (1) Personally upon the respondent;
- (2) By delivering a copy to an agent designated by 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.

(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, 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

NOV 28 2020 ] (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 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) Requests for subpoenas shall be made in writing to the commission. 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) 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 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

NOV 28 2020 ] (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 NOV 28 2020 ] (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 NOV 28 2020 ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-17, 84-31, 97-6)

## HAWAII ADMINISTRATIVE RULES

### TITLE 21

#### LEGISLATIVE AGENCIES

#### CHAPTER 3

#### STATE ETHICS COMMISSION

#### FINANCIAL DISCLOSURE STATEMENTS

<a href="#"><u>§21-3-1</u></a>	<a href="#"><u>Repealed</u></a>
<a href="#"><u>§21-3-1.5</u></a>	<a href="#"><u>Definitions</u></a>
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<a href="#"><u>§21-3-8</u></a>	<a href="#"><u>Changes in position; exit disclosure</u></a>
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<a href="#"><u>§21-3-10</u></a>	<a href="#"><u>Payment of fine or request for waiver; good cause</u></a>
<a href="#"><u>§21-3-11</u></a>	<a href="#"><u>Disposal of financial disclosures</u></a>

**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 **NOV 28 2020** ]



**§21-3-1 Repealed** [R NOV 28 2020 ]

**§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.

“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.

[Eff NOV 28 2020 ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5, 84-31)

**§21-3-1.6 State positions; advisory boards and commissions.** (a) 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.

(b) As provided by section 84-17(c)(9), HRS, “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. [Eff  
NOV 28 2020 ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-31)

**§21-3-2 Repealed** [R NOV 28 2020 ]

**§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 document is true and no such statements are misleading. Filers shall promptly notify the commission regarding any changes in their contact information provided pursuant to subsection (d)(1). [Eff

NOV 28 2020 ] (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 **NOV 28 2020** ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-14, 84-17, 84-31)

**§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 within a reasonable time after filing, 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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (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  
NOV 28 2020 ] (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 NOV 28 2020 ]  
(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 filing, 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  
NOV 28 2020 ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-17, 84-17.5,  
84-31, 84-31.5)

# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 4

#### STATE ETHICS COMMISSION

#### ADVISORY OPINIONS

<a href="#">§21-4-1</a>	<a href="#">Request for guidance; request for advisory opinion</a>
<a href="#">§21-4-2</a>	<a href="#">Rendering of advisory opinion</a>
<a href="#">§21-4-3</a>	<a href="#">Repealed</a>
<a href="#">§21-4-4</a>	<a href="#">Repealed</a>
<a href="#">§21-4-5</a>	<a href="#">Repealed</a>

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 **NOV 28 2020** ]

**§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 requester;
  - (2) The state agency for which the requester works, if applicable;
  - (3) The requester's position in the state agency, if applicable;
  - (4) The nature and duties of the requester's state employment, if applicable;
  - (5) The date of the request;
  - (6) The requester's mailing address and electronic mail address;
  - (7) The requester's telephone 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 requester.
- (c) A request for an advisory opinion is considered filed when the commission has received all information deemed necessary by the commission. When the opinion is requested regarding a situation involving another person as set forth in subsection (d), the filing shall not be deemed completed until that person has had a reasonable opportunity to review the facts submitted and to present that person's view of the factual circumstances.
- (d) A person may only request an advisory opinion regarding the person's own conduct, except as follows:
- (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;
  - (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; and
  - (4) As provided by sections 11-8 and 11-316, HRS, or otherwise provided by law.
- (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  
**NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 92-3, 92-6, 97-6)

**§21-4-2 Rendering of advisory opinion.** (a) An advisory opinion shall be in writing and signed by all commissioners subscribing to the opinion. It shall

be considered rendered when it is signed and delivered, personally or via electronic mail or first-class 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 be placed at the end of the majority opinion or at the end of the concurring opinion, if any.

(c) An unredacted advisory opinion shall be issued to the person requesting the opinion within thirty days of the request being filed with the commission pursuant to section 21-4-1(c). 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) 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. [Eff July 13, 1981; am and comp **NOV 28 2020**] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 97-6)

**§21-4-3 Repealed** [R **NOV 28 2020** ]

**§21-4-4 Repealed** [R **NOV 28 2020** ]

**§21-4-5 Repealed** [R **NOV 28 2020** ]



## HAWAII ADMINISTRATIVE RULES

### TITLE 21

#### LEGISLATIVE AGENCIES

#### CHAPTER 5

#### STATE ETHICS COMMISSION

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

<a href="#"><u>§21-5-1</u></a>	<a href="#"><u>Repealed</u></a>
<a href="#"><u>§21-5-2</u></a>	<a href="#"><u>Investigations; charges initiated by the commission</u></a>
<a href="#"><u>§21-5-2.1</u></a>	<a href="#"><u>Charges initiated by a member of the public</u></a>
<a href="#"><u>§21-5-2.2</u></a>	<a href="#"><u>Confidentiality in investigations</u></a>
<a href="#"><u>§21-5-2.3</u></a>	<a href="#"><u>Cooperation with commission investigations</u></a>
<a href="#"><u>§21-5-2.4</u></a>	<a href="#"><u>Investigatory interviews</u></a>
<a href="#"><u>§21-5-2.5</u></a>	<a href="#"><u>Legal counsel</u></a>
<a href="#"><u>§21-5-2.6</u></a>	<a href="#"><u>Individual representing party</u></a>
<a href="#"><u>§21-5-2.7</u></a>	<a href="#"><u>Procedure upon issuance of charge; further statement of alleged violation</u></a>
<a href="#"><u>§21-5-3</u></a>	<a href="#"><u>Repealed</u></a>
<a href="#"><u>§21-5-3.5</u></a>	<a href="#"><u>Status conference</u></a>
<a href="#"><u>§21-5-4</u></a>	<a href="#"><u>Repealed</u></a>
<a href="#"><u>§21-5-5</u></a>	<a href="#"><u>Contested hearings; notice of hearing</u></a>
<a href="#"><u>§21-5-6</u></a>	<a href="#"><u>Repealed</u></a>
<a href="#"><u>§21-5-6.5</u></a>	<a href="#"><u>Motions</u></a>
<a href="#"><u>§21-5-7</u></a>	<a href="#"><u>Contested hearings; procedures</u></a>
<a href="#"><u>§21-5-7.1</u></a>	<a href="#"><u>Rules of evidence</u></a>
<a href="#"><u>§21-5-8</u></a>	<a href="#"><u>Pre-hearing conference</u></a>
<a href="#"><u>§21-5-9</u></a>	<a href="#"><u>Post-hearing procedures for hearing conducted by the commission</u></a>
<a href="#"><u>§21-5-9.1</u></a>	<a href="#"><u>Post-hearing procedures for hearing conducted by hearing officer</u></a>
<a href="#"><u>§21-5-10</u></a>	<a href="#"><u>Record of hearing</u></a>
<a href="#"><u>§21-5-11</u></a>	<a href="#"><u>Post-hearing complaint</u></a>
<a href="#"><u>§21-5-12</u></a>	<a href="#"><u>Settlement</u></a>

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 NOV 28 2020 ]

**§21-5-1 Repealed** [R NOV 28 2020 ]

**§21-5-2 Investigations; charges initiated by the commission.** (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 investigation at least three commissioners decide that a charge should be initiated, the charge shall be issued in writing and signed by at least three commissioners. [Eff July 13, 1981; am and comp

NOV 28 2020 ] (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 does not comply with subsection (a), the commission shall notify the filer of the insufficiency. The executive director may investigate the matter in accordance with section 21-5-2 but shall not treat the document as a charge until the insufficiency is corrected. [Eff

NOV 28 2020 ] (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 alleged violator or 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 provide guidance on or to prevent other violations of chapter 84 or 97, HRS, or for other good cause as directed by the commission.

(e) Nothing in these rules shall require the commission to reveal the source of any matter under investigation. [Eff **NOV 28 2020**] (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 **NOV 28 2020**]

NOV 28 2020 ] (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, alleged violators, 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 NOV 28 2020 ] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

**§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 contested case hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff NOV 28 2020 ] (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 NOV 28 2020 ]

**§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. Requests to extend the time to answer shall be made pursuant to section 21-2-3.

(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, 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 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 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 NOV 28 2020

NOV 28 2020 ] (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 Repealed** [R NOV 28 2020 ]

**§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 NOV 28 2020 ] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

**§21-5-4 Repealed** [R NOV 28 2020 ]

**§21-5-5 Contested hearings; notice of hearing.** (a) The commission shall give at least fifteen days' notice to the respondent prior to 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.

(c) The commission shall publish the notice of hearing, along with the charge, further statement of alleged violation, and any responses thereto, on its website within a reasonable period of time after issuance of the notice of hearing. [Eff July 13, 1981; am and comp NOV 28 2020 ] (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 Repealed** [R NOV 28 2020 ]

**§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 denying of the motion unless otherwise ordered by the commission. [Eff **NOV 28 2020** ]  
(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 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 presiding officer shall convene and conduct the hearing.

(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. Reasonable time limits may be imposed by the presiding officer for the opening statements. 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 its case. Opening statements may be waived by a party.
- (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.



(e) After all the evidence has been presented, the 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 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.

(i) Within a reasonable time after final arguments have been completed and all requested memoranda submitted, including the proposed findings of fact, proposed conclusions of law, and recommended order of the hearing officer, if applicable, the commission shall render an order, decision, or ruling.

(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 **NOV 28 2020** ] (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 **NOV 28 2020**] (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:

- (1) Each party shall 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. Undisclosed exhibits shall not be received in evidence at the hearing over objection unless the presiding officer finds that there was reasonable ground for failing to disclose such exhibits prior to hearing;
- (3) All exhibits required to be disclosed by subsection (a)(2), and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification at least five days prior to the hearing.

(b) The 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

**NOV 28 2020**] (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 Post-hearing procedures for hearing conducted by the commission.** (a) The commission may direct one or both parties to submit proposed findings of fact and conclusions of law. The commission shall determine the findings of fact and conclusions of law to be entered.

(b) Every decision of the commission rendered after hearing shall be in writing and shall be accompanied by separate findings of fact and conclusions of law.

(c) Any commissioner may file a written concurring or dissenting statement. [Eff June 13, 1981; am and comp **NOV 28 2020** ]  
(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 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 proposed findings of fact, proposed conclusions of law, and recommended order, 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 proposed findings of fact, proposed conclusions of law, and recommended order 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 proposed findings of fact, proposed conclusions of law, and recommended order. [Eff **NOV 28 2020** ]  
 (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 91-11, 91-12, 97-6)

**§21-5-10 Record of hearing.** (a) The record of the hearing shall be compiled in conformance with section 91-9, HRS. The commission shall make provisions for an audio, video, or stenographic recording of the testimony, or some combination thereof, but it need not be transcribed unless requested for purposes of rehearing or court review.

(b) Any person, prior to any request for judicial review, may request that the commission cause a transcript of the testimony to be prepared, provided that the requesting person shall be responsible for the cost of preparing the transcript.

(c) If judicial review is requested, the commission shall cause a transcript of the hearing to be prepared as part of the record on appeal. Any person seeking a copy of that transcript may request one from the commission pursuant to chapter 92F, HRS. [Eff July 13, 1981; am and comp ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 97-6)

**§21-5-11 Post-hearing complaint.** After the commission has issued a written decision, it shall determine whether sufficient cause exists to issue a post-hearing complaint and, if so, shall issue such complaint pursuant to section 84-32, HRS within thirty days of issuance of such written decision. [Eff July 13, 1981; am and comp **NOV 28 2020** ] (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;
- (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  
NOV 28 2020 ] (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)

# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 6

#### STATE ETHICS COMMISSION

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

<a href="#">§21-6-1</a>	<a href="#">Who may petition for rulemaking</a>
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<a href="#">§21-6-6.1</a>	<a href="#">Form and content of petition for declaratory order</a>
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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 **NOV 28 2020** ]

**§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. [Eff July 13, 1981; am and comp **NOV 28 2020** ]  
(Auth: HRS §§84-31(a)(5)), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

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

- (1) The petitioner's name, address, electronic mail address, and telephone number, if any;
- (2) A statement of the nature of the petitioner's interest;
- (3) A draft or statement of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed, or both;
- (4) A statement of the reasons in support of the proposed rule, amendment, or repeal;
- (5) Any other information relevant to the petition; and
- (6) The petitioner's signature. [Eff July 13, 1981; am and comp **NOV 28 2020** ] (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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)

**§21-6-5 Consideration and disposition of petition for rulemaking.** Within ninety 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 **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 91-6, 97-6(a)(5)) (Imp: HRS §§84-31, 91-6, 97-6)



**§21-6-6 Who may petition for declaratory order.** 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. [Eff July 13, 1981; am and comp **NOV 28 2020** ] (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, cite the statutory provision, rule, or order involved, 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 be signed by the petitioner. [Eff **NOV 28 2020** ] (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 **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

**§21-6-7 Processing of petition for declaratory order.** 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 **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 91-8, 97-6) (Imp: HRS §§84-31, 91-8, 97-6)

**§21-6-8 Repealed** [R **NOV 28 2020** ]

**§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 **NOV 28 2020**] (Auth: HRS §§84-31(a)(5), 91-8, 97-6(a)(5)) (Imp: HRS §§84-31, 91-8, 97-6)

# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 7

### HAWAII STATE ETHICS COMMISSION

#### GIFTS AND FAIR TREATMENT

<a href="#">§21-7-1</a>	<a href="#">Definitions</a>
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<a href="#">§21-7-5</a>	<a href="#">Offers of travel</a>
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<a href="#">§21-7-7</a>	<a href="#">Imputing gifts to others</a>
<a href="#">§21-7-8</a>	<a href="#">Submission of gifts disclosure statement</a>
<a href="#">§21-7-9</a>	<a href="#">Public information</a>
<a href="#">§21-7-10</a>	<a href="#">Fair treatment</a>

**§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 **NOV 28 2020** ] (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 or the recipient's agency, involved in procurement with the recipient or the recipient's agency, or a lobbyist seeking legislative or administrative action from the recipient or the recipient's agency;
- (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

NOV 28 2020 ] (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; and
  - (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.
- (b) 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 may generally be accepted, but may be reportable pursuant to section 84-11.5, HRS. [Eff NOV 28 2020 ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

**§21-7-4 Invitations to events; protocol purposes.** (a) 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, or trustee or administrator of the Office of Hawaiian Affairs, 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 recipient's attendance at the event is paid for solely 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 \$200 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;
- (4) The recipient's attendance at the event serves a state purpose;
- (5) The event is open to the general public and has been publicized to the general public for at least four weeks in advance of the event; and
- (6) No reasonable person would conclude that the principal purpose of the event is to influence the state officials in attendance.

(b) The commission shall revise the dollar amounts in subsection (a) in January of each even-numbered year to reflect changes in the Consumer Price Index and shall publicize these values on its website.

(c) For purposes of subsection (a), if the total 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 **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

**§21-7-5 Offers of travel.** (a) 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 subsections (b) and (c) and section 21-7-2, provided that the recipient shall report the travel pursuant to section 84-11.5, HRS.

(b) 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 State of 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, provided that the tours are otherwise consistent with the December 2016 Settlement Agreement in *HSTA v. Hawaii State Ethics Commission*.
- (c) 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 **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

**§21-7-6 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 **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

**§21-7-7 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
- (2) The legislator or employee knows or reasonably should know of the gift. [Eff **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-11)

**§21-7-8 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 **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

**§21-7-9 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 **NOV 28 2020**] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

**§21-7-10 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, the Board of Directors of the Office of Hawaiian Affairs, or the President of the University of Hawaii, where such fundraising serves a significant state purpose; 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 **NOV 28 2020** ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-13)

# HAWAII ADMINISTRATIVE RULES

## TITLE 21

### LEGISLATIVE AGENCIES

#### CHAPTER 8

#### STATE ETHICS COMMISSION

#### CONFLICTS OF INTERESTS

<a href="#"><u>§21-8-1</u></a>	<a href="#"><u>Conflicts of interests, director or officer of private organization in employee's state capacity</u></a>
<a href="#"><u>§21-8-2</u></a>	<a href="#"><u>Acquiring financial interest in a business or other undertaking; reason to believe</u></a>
<a href="#"><u>§21-8-3</u></a>	<a href="#"><u>Assist or represent, exception for personal service contracts</u></a>
<a href="#"><u>§21-8-4</u></a>	<a href="#"><u>Public disclosure of interests or transactions affected by task force members' official action</u></a>

**§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 **NOV 28 2020** ] (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 **NOV 28 2020** ] (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

NOV 28 2020 ] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

**§21-8-4 Public disclosure of interests or transactions affected by task force members' official action.** Section 84-14, HRS, does not prohibit a person from serving on a task force, or making statements or taking official action as a task force member or a task force member's designee or representative, provided that the task force member, designee, or representative shall publicly disclose the nature and extent of any interest or transaction that they believe may be affected by their official action. This disclosure shall be made verbally at the first available meeting of the task force and shall be memorialized in any task force report. If no meeting is to occur before the task force member, designee, or representative takes official action affecting their interests, the disclosure shall be made in writing to all other task force members, and then subsequently in any task force report. [Eff NOV 28 2020 ] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-13, 84-14, 84-31)

# 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.** In determining what constitutes the former employee's agency or subdivision thereof for purposes of section 84-18(c), HRS, the commission may consider:

- (a) the size of the agency;
- (b) the likelihood that the former employee would have any unfair advantage in representing a person or business before that agency;
- (c) the former employee's position within the agency;
- (d) whether the former employee will communicate with former colleagues within the agency;
- (e) whether the former employee has confidential information that may provide an unfair advantage; and
- (f) any other factors that could reasonably give the appearance of impropriety. [Eff **NOV 28 2020** ] (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 **NOV 28 2020** ] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-15, 84-31)

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 purpose 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](#)  
[§21-10-10](#)      [Submission of registration forms and statements of contributions and expenditures](#)

**§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.

“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  
NOV 28 2020 ] (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 **NOV 28 2020** ] (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;
- (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 NOV 28 2020]  
] (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 is paid to draft testimony, discuss or research legislative issues, conduct public opinion polls, or perform administrative work in support of lobbying activities, and who either works under the direction of a registered lobbyist or who is a client or employer of a registered lobbyist, 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 **NOV 28 2020** ]  
(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 purpose 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; and
  - (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.

(c) If a lobbyist expends funds or receives contributions for the purpose of lobbying that are not reported 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 reporting period and those expenditures are not reported 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 **NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

**§21-10-6 Contributions for the purpose of lobbying.** (a) Contributions for the purpose 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 **NOV 28 2020** ] (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) Total compensation paid to lobbyists, as follows:

(i) The client shall report the amount paid to each registered lobbyist 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.

(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 in the total sum of \$25 or more on any day from the filer; and
- (3) The name and address of each legislator or employee who received benefits valued in the aggregate of \$150 or more in a reporting period from the filer. [Eff **NOV 28 2020** ]  
(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 purpose 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;
- (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)

NOV 28 2020

**§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 purpose of lobbying. [Eff

NOV 28 2020 ] (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.** (a) 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.

(b) Every registration, statement, or form submitted pursuant to this chapter shall include a certification by an authorized representative or agent of the


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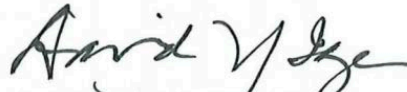
registered lobbyist, employing organization, or client that the information contained in the document is complete, true, and accurate. [Eff

**NOV 28 2020** ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

Amendments to and compilation of chapters 21-1, 21-2, 21-3, 21-4, 21-5, and 21-6, Hawaii Administrative Rules, and adoption of chapters 21-7, 21-8, 21-9, and 21-10, Hawaii Administrative Rules, on the Summary Page dated June 18, 2020, were adopted on June 18, 2020, following a public hearing held on May 7, 2020, after public notice was given in the Honolulu Star Advertiser on April 1, 2020.

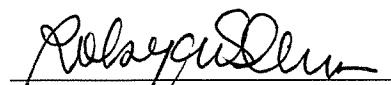
They shall take effect ten days after filing with the Office of Lieutenant Governor.

  
REYNARD D. GRAULTY, Chair  
Hawaii State Ethics Commission

  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated: 11/17/2020

APPROVED AS TO FORM:

  
Robyn Chun  
Deputy Attorney General

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