

RULES AND REGULATIONS

**County of Hawai'i
Police Commission**

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RULES AND REGULATIONS COUNTY OF HAWAI'I POLICE COMMISSION

RULE 1. AUTHORITY

These rules and regulations are promulgated by the Police Commission as required in Chapters 52D and 91, Hawai'i Revised Statutes and by Article VII, Chapter 2, Hawai'i County Charter. All previous rules and regulations of the Hawai'i County Police Commission are hereby repealed.

RULE 2. MISSION STATEMENT

We advocate law enforcement based on due regard for the rights of all persons, promoting the highest degree of mutual respect between the police and public.

RULE 3. DEFINITIONS

Wherever used in these rules and regulations, the following terms shall be taken to have the following meaning:

- (a) "Charter" shall mean the County Charter of the County of Hawai'i, State of Hawai'i.
- (b) "Chief of Police" shall mean the Chief of Police of the Police Department of the County of Hawai'i, State of Hawai'i.
- (c) "Commission" shall mean the Police Commission of the County of Hawai'i, State of Hawai'i.
- (d) "Council" shall mean the County Council of the County of Hawai'i, State of Hawai'i.
- (e) "Department" shall mean the Police Department of the County of Hawai'i, State of Hawai'i.
- (f) "Employees" shall mean personnel employed by the Department, other than police officers as classified by the Department of Civil Service of the County of Hawai'i, State of Hawai'i.
- (g) "Mayor" shall mean the Mayor of the County of Hawai'i, State of Hawai'i.
- (h) "Members" shall mean all employees employed by the Police Department of the County of Hawai'i, State of Hawai'i, to include "Reserve Officers" and "Chaplains" while performing an authorized official function.

- (i) "Officers" shall mean regular police officers employed by the Department as classified by the Department of Civil Service of the County of Hawai'i, State of Hawai'i.
- (j) "Record" or "records" shall mean only those records originally generated by the Hawai'i County Police Commission, not to include any and all records of the Police Department of the County of Hawai'i, unless specifically so stated.

RULE 4. POWERS, DUTIES, FUNCTIONS, AND APPLICABILITY OF RULES

The commission shall:

- (a) Adopt such rules pursuant to the State Administrative Procedure Act, HRS Chapter 91, and the Charter Section 7-2.2(a) as it may consider necessary for the conduct of its business and the regulation of the matters committed to its charge and may review the rules and regulations of the department.
- (b) Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor. The chair of the commission's budget committee shall work closely with the department in the preparation of the commission's budget.
- (c) Submit an annual report to the mayor, managing director, and the council.
- (d) Receive, consider, and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police. A summary of the charges filed and their disposition shall be included in the annual report of the commission. There shall be budgeted sufficient funds in the annual budget of the police department for use by the commission to fulfill the intent of this section.
- (e) Advise the chief of police on police-community relations.
- (f) Hire personnel necessary to carry out its functions.
- (g) Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the police chief and the managing director.
- (h) Evaluate at least annually the performance of the police chief and submit a report to the mayor, managing director and the council.
- (i) Appoint or remove the chief of police at its sole discretion. Any motion for removal of the chief of police must contain a statement of reasons, and the commission shall not vote to remove the chief of police unless the chief of police has been given an opportunity to respond to the statement of reasons at a hearing before the commission.

- (j) Except for purposes of inquiry, or as otherwise provided in the charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department.

These rules and regulations shall apply to all matters within the jurisdiction of the commission as stated in the charter.

RULE 5. ORGANIZATION, MEETINGS, AND MATTERS OF POLICY

- (a) The commission shall be organized as follows:
 - (1) **COMPOSITION OF COMMISSION.** The commission shall consist of nine members, one from each council district, who shall be appointed by the mayor with the approval of the council.
 - (2) **ELECTION OF CHAIR AND VICE CHAIR.** The members of the commission shall elect annually, in December, a chair and vice chair to serve for the following calendar year. If for any reason the chair or the vice chair cannot hold the position for the term, a special election will be held. In the absence of the chair at any meeting, the vice chair shall preside. In the absence of both the chair and vice chair, the remaining members shall elect an acting chair.
 - (3) **TRANSACTION OF BUSINESS.** A majority of the commission shall constitute a quorum for the transaction of business. A concurring vote of the majority of the commission shall be necessary to take any action unless otherwise required by law.
 - (4) **COMMITTEES.** Committees shall be appointed by the chair, as listed below, with specified duties and functions to comply with these rules and regulations:
 - (A) **Budget & Finance.** Prepares the annual budget of the Police Commission, taking into account historical data as well as anticipated activities for the next year. Reviews the Police Department budget preparation and presents recommendations to the commission and to the Managing Director, as appropriate.
 - (B) **Office Management.** Reviews office management procedures and forms for clarity and effectiveness.
 - (C) **Rules & Policies.** Reviews Rules and Regulations of the Hawai'i Police Commission to see that they support effective civilian oversight to the Police Department. Makes recommendations to the commission as appropriate.

(D) Public Relations. Overall responsibility for overseeing scheduled external communications, including the development of the Police Commission Annual Report. Will assist Commission chair in all routine communication with other police commissions including conference and joint activities. Special projects as appropriate.

- (b) COMMISSION MEETINGS. The regular meeting of the commission shall be on the third Friday of each month at 9:00 a.m. in the County Council Room or other site accessible to the public as announced in the previous meeting.

The public will be given a reasonable opportunity to testify on agenda items. Any testimony may be limited to five (5) minutes in length. Repetitious or disruptive testimony will be curtailed by the chair. Any person who does not abide by these rules shall be ruled out of order. It is recommended that 10 copies of the testimony be submitted to the commission at any time prior to the meeting.

- (c) POLICY. The commission shall, as required, pass upon matters of policy affecting the department. Communications received by the department from any government agency concerning matters of policy shall be referred to the commission for its information and use.

RULE 6. OFFICIAL SEAL

The seal described below is hereby adopted and constitutes the official seal, which may be affixed to documents made or issued by the authority of the commission as evidence of its authenticity thereof.

The seal shall be circular in shape, two inches in diameter, and shall contain in the middle thereof the words, "OLA NA MOKU," beneath an outdoor scene depicting the ocean, the figure of a man in a boat, a palm-fringed shore, mountains, a volcano, and the setting sun. The circle shall be surrounded by the words, "POLICE COMMISSION, HAWAI'I COUNTY, HAWAI'I."

RULE 7. COMMISSION INQUIRIES

Inquiry into matters within the jurisdiction of the commission may be initiated by motion of its members at any time or submitted in writing by a member of the public and discussed by the commission in its next regular meeting. Such public request shall be received in the commission's office at least 10 days prior to the next regular meeting and shall include:

- (a) Name, address, and telephone number of petitioner.
- (b) Nature of the petitioner's interest and the reasons for requesting an inquiry.
- (c) A complete statement of the relevant facts relating to the petitioner's request.

- (d) Position or contention of the petitioner.

RULE 8. CHARGES BROUGHT BY THE PUBLIC

- (a) **FILING OF COMPLAINTS.** A charge, herein called a "complaint" against the conduct of the department or any of its officers or employees while on duty or acting under the color of authority shall be in writing, signed, and dated by the complainant under oath before a notary public. This notarized complaint must be received by the commission's office not more than 90 days from the date of the incident.

A complaint form or letter signed, dated, and notarized by the complainant's immediate family shall be accepted as a complaint if the victim is deceased.

- (b) **COMPLAINT CLASSIFICATION GUIDELINES.** Complaints shall be classified under the following standards of conduct:
 - (1) **Standard of Conduct -** Officers and employees shall conduct their lives in such a manner as to avoid bringing themselves or the department into disrepute.
 - (2) **Performance of Duty -** Officers and employees shall perform their duties as required or directed by law, departmental procedures, policies, or orders of a command or supervisory officer. All lawful duties shall be performed promptly notwithstanding the general assignment of duties and responsibilities.
 - (3) **Obedience to Laws, Written Orders, Policies -** Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai'i, and all orders, policies, directives, regulations, etc., of the department.
 - (4) **Commission of any Criminal Act -** Officers and employees shall not commit any criminal act. For the purpose of this section, it is not required that the officer or employee be convicted of a crime. Acceptance of immunity from criminal prosecution, deferred acceptance of guilty pleas, deferred prosecution, and other such dispositions shall be considered prima facie evidence that a criminal act was committed.
 - (A) **Damaging Private Property -** Officers and employees shall not maliciously destroy or damage someone's private property without just cause.
 - (B) **Theft of Private Property -** Officers and employees shall not take the private property of someone with the intent to permanently deprive the owner of said property.

- (C) Threatening - Officers and employees shall not threaten members of the public with bodily injury or threaten to arrest them without just cause.
- (5) Falsification of Records - Officers and employees shall not knowingly or intentionally falsify records or enter or cause to be entered any inaccurate, false, or improper information on any record or records of the department.
 - (6) Malicious Use of Physical Force - The malicious use of physical force by officers which results in bodily injury or that causes physical pain, illness, or any impairment of physical condition of another person is prohibited.
 - (7) Misuse of Position or Office - Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.
 - (8) Mistreatment of Person in Police Custody - Officers or employees shall not mistreat any person in police custody.
 - (9) Use of Intimidation in Legal Proceedings - Members shall not use their official positions as a means of forcing or intimidating persons as witnesses or complainants in any legal proceeding.
 - (10) Truthfulness - Officers and employees are required to be truthful at all times whether under oath or not.
 - (11) Firearms - Display and Discharge - Officers shall not display, draw, or discharge firearms except for official use in accordance with departmental policies.
 - (12) Impartial Attitude - Members of the department shall remain impartial to all persons coming to the attention of the department. They shall not exhibit partiality for or against any person.
 - (13) Excessive Use of Physical Force - Officers shall not use any more physical force than is necessary to accomplish the immediate police purpose.
 - (14) Overbearing Conduct - Overbearing or oppressive conduct shall not be practiced under color of police authority.
 - (15) Conduct Towards the Public - Officers and employees shall be courteous when dealing with the public. They shall avoid harsh, violent, profane, or insolent language. Upon request, they shall furnish their name and badge number in a courteous manner.

The Department's Standards of Conduct, General Order No. 300, may be used when the commission's rules are inadequate to cover the circumstances of the case.

- (c) **WITHDRAWAL OF COMPLAINTS.** A complaint may be withdrawn by a notice or letter of withdrawal, signed and dated by the complainant. In the event of death, the complaint will be considered automatically withdrawn unless otherwise refiled by an immediate family member within 30 days of death.

RULE 9. PROCESSING OF COMPLAINTS

- (a) **CONSIDERATION BY THE COMMISSION.** The commission shall consider each complaint for investigation. The complaint must involve an element of misconduct (malfeasance, misfeasance, or nonfeasance) by an officer or employee of the department. The commission shall not refer a complaint for investigation if:
 - (1) The complaint is filed after ninety (90) days of the incident in which the complaint is based upon. However, the commission may allow the filing of a complaint after the ninety-day period for the following reasons:
 - (A) Excusable neglect. Lack of knowledge of the existence of the commission or its complaint procedure shall not constitute excusable neglect in any case.
 - (B) Newly discovered evidence, which by reasonable diligence, could not have been discovered in time.
 - (C) Any other reason that the commission, in its sole discretion, deems acceptable.

Any reason for requesting relief from the ninety-day rule must be in writing and will be reviewed by the commission for extenuating circumstances.

- (2) The complaint is speculative or purely hypothetical and does not involve existing facts.
 - (3) The complaint does not involve an element of misconduct.
 - (4) The complaint is not within the jurisdiction of the commission.
- (b) **RECONSIDERATION BY THE COMMISSION.** Any action taken by the commission may be reconsidered only on the following conditions:
 - (1) The motion is made by a commissioner who voted on the prevailing side.

- (2) The motion is made at the same meeting or the meeting immediately following the action taken.
- (3) If the motion is made at the meeting following the action taken, no vote will be taken until the motion can be placed on the agenda and notice is given via mail to the parties involved in the complaint that a reconsideration motion will be address by the commission, the date and time when this will take place, and that they may appear and testify on the motion.
- (c) **OTHER MISCONDUCT NOTED.** The commission may further review incidents of misconduct, other than alleged by the complainant, arising from the investigation of a complaint.
- (d) **FINDINGS.** The commission shall give written notice of its findings to the chief of police, the complainant, and the person against whom the complaint is made.
- (e) **CLASSIFICATION OF CASE FINDINGS.**
 - (1) **SUFFICIENT EVIDENCE.** There is sufficient evidence to prove the complainant's allegations.
 - (2) **INSUFFICIENT EVIDENCE.** There is insufficient evidence to prove the complainant's allegations.
 - (3) **REFER TO CHIEF; FURTHER INVESTIGATION.** The case is referred to the Chief of Police for an investigation by Internal Affairs or other appropriate division.
 - (4) **REFER TO CHIEF; NO FURTHER INVESTIGATION.** The case is referred to the Police Chief for customer service, procedural, operational, administrative, or jurisdictional concerns.
- (f) **BURDEN OF PROOF.** The Commission shall investigate and evaluate complaints of misconduct applying a preponderance of the evidence standard. There is sufficient evidence to sustain a complaint if the total weight of evidence tending to prove misconduct outweighs any evidence tending to disprove the misconduct.

RULE 10. DECLARATORY RULINGS

- (a) Any interested person may petition the commission for a declaratory order as to the applicability of any rule or order of the commission.
- (b) The petition shall contain:
 - (1) The name, address, and telephone number of the petitioner.

- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition.
 - (3) A designation of the specific provision, rule, or order in question.
 - (4) A complete statement of the facts for which the petitioner feels the rule or order may be applicable.
 - (5) A statement of the position or contention of the petitioner regarding application of the rule or order.
 - (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.
- (c) Any petition that does not conform to the foregoing requirements may be rejected.
- (d) The commission may, for good cause, refuse to issue a declaratory ruling and shall so state in writing the reasons for its refusal. 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 fact or facts, which can reasonably be expected to exist in the near future.
 - (2) The issuance of the declaratory ruling may adversely affect the interests of the County of Hawai'i, the commission, the department, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise. Litigation is pending in which the county, the commission, the department, its employees or officers, and the petitioners are parties.
 - (3) The matter is not within the jurisdiction of the commission.
- (e) Where any question of law is involved, the commission may refer the matter to the corporation counsel. It may also obtain the assistance of other agencies where necessary or desirable.
- (f) Upon the disposition of the petition, the petitioner shall be informed in writing by the commission.
- (g) Orders disposing of petitions shall have the same status as other orders of the commission. Orders shall be applicable only to the facts of the situation alleged in the petition or set forth in the order.

RULE 11. SUBPOENA POWER.

The Commission shall have the authority to issue subpoenas for the attendance of any party or for the production of any document and thing necessary for the performance of its duties. The subpoena shall clearly state the date and time for its return, and include a statement of the rights and responsibilities of the recipient. This rule shall not apply to the Police Department, its officers, employees, and records.

RULE 12. APPOINTMENT OF THE CHIEF OF POLICE

- (a) Whenever there is a vacancy in the office of the chief of police, the commission shall give notice of such vacancy by publishing notice of such vacancy in a newspaper of general circulation within the County of Hawai'i once a week for three consecutive weeks. This notice shall state that there exists or will exist a vacancy in the office of the chief of police and shall state the means by which interested persons may obtain additional information concerning the application procedure and position qualifications.
- (b) The commission shall review all applications. The commission shall then select which applicants it wishes to interview, provided that no part of this rule shall be interpreted so as to limit the discretion of the commission in determining which person it shall appoint as chief of police.
- (c) The chief of police shall have had a minimum of five years of training and experience in law enforcement work, including at least three years in a responsible administrative capacity.

RULE 13. APPOINTMENT OF THE DEPUTY CHIEF OF POLICE

The deputy chief of police shall be appointed by the chief of police with the confirmation of the commission and may be removed by the chief of police with the approval of the commission without a cause being stated.

RULE 14. DISMISSAL OF THE CHIEF OF POLICE AND APPOINTMENT OF TEMPORARY CHIEF OF POLICE

- (a) The chief of police may be removed by the commission at its sole discretion. Any motion for removal of the chief of police must contain a statement of reasons, and the commission shall not vote to remove the chief of police unless the chief of police has been given an opportunity to respond to the statement of reasons at a hearing before the commission.
- (b) In the event of the resignation, retirement, permanent disability, death or dismissal of the chief of police, the commission shall name a temporary chief of police until such time as a permanent chief of police is appointed by the commission.

- (c) Until such time as a temporary chief of police is named by the commission, the acting chief of police, as determined by the department's administrative line of succession, shall perform all the duties of the chief of police.

RULE 15. METHODS WHEREBY THE PUBLIC CAN OBTAIN INFORMATION

The public may obtain information as to matters within the jurisdiction of the commission by inquiring at:

- (a) The Office of the Lieutenant Governor of the State of Hawai'i.
- (b) The Office of the Clerk of the County of Hawai'i.
- (c) The Office of the Police Commission of the County of Hawai'i. All rules, written statements of policy, orders or opinions of the commission shall be on file and available for public inspection in the commission's office.

Such inquiry may be made in person at said offices during business hours or by submitting a request for information in writing to the commission.

RULE 16. PERSONS REQUESTING INFORMATION

Persons requesting information requiring commission action or making submittals or requests of the commission shall do so in writing and shall submit it to the office of the commission at least ten days prior to the next scheduled regular meeting.

RULE 17. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

Any commissioner, by motion, or any interested person may petition the commission requesting the adoption, amendment, or repeal of any rules of the commission stating reasons therefore; provided that the adoption, amendment or repeal of any rule shall be subject to the approval of the mayor and the requirements of the Hawai'i Revised Statutes and Chapter 91.

Notwithstanding the foregoing, if the commission finds that an imminent peril to the health, safety, or morals requires the adoption, amendment, or repeal of any rule without the required notice, and states its reasons for such finding, it may proceed without prior notice or hearing, such emergency rule to be effective for a period not longer than one hundred twenty (120) days without renewal and further subject to all requirements of the charter.

RULE 18. SEVERABILITY

If any provision of these rules and regulations or its application to any person or circumstances is held to be unconstitutional or invalid, the remaining portion of these rules and regulations shall not be affected and to this end the various subjects are declared to be severable.

RULE 19. RULE, ORDER, OR OPINION AGAINST PERSON OR PROPERTY

No rule, order, or opinion of the commission shall be effective against any person or property until it has been published or made available for public inspection except where the person concerned has actual knowledge thereof.

RULE 20. PRIVACY

- (a) The commission shall make accessible to any person, personal records as defined in HRS 92F, that pertain to the person; provided that the limitations which pertain to the granting of access to personal records as set forth in HRS 92F shall be applicable to the commission.
- (b) Any person may make a request to the commission for access to a personal record that pertains to that person. The request shall be written and must clearly describe the personal record to which the person requests access and delivered to the commission's office.
- (c) The commission shall follow the procedure for granting or denying access to personal records as set forth in HRS 92F.
- (d) The commission shall not disclose or authorize the disclosure of any personal record, other than to the individual to whom it pertains, except as authorized by HRS 92F.

RULE 21. COUNSEL FOR POLICE OFFICERS

- (a) Whenever an officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer's duty as a police officer, and state law directs it, then the officer shall be represented and defended:
 - (1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and
 - (2) In civil cases by the corporation counsel or county attorney of the county in which the police officer is serving.
- (b) The determination of whether an act, for which the police officer is being prosecuted or sued, was done in the performance of the police officer's duty, so as to entitle the police officer to be represented by counsel provided by the county, shall be made by the police commission of the county. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto if the county attorney or corporation counsel so desires. The determination of the police commission shall be conclusive for this purpose.

- (c) Any police officer that wishes to be represented by a county paid attorney or corporation counsel in a criminal proceeding or civil case may file a request with the police commission.
 - (1) The request shall state the nature and circumstances of the prosecution or suit and whether or not the officer wishes the commission's consideration of the request to be made in open or closed session.
 - (2) The commission shall notify the officer and the chief of police of the date, time, and place of the meeting at which the officer's request will be considered. The officer and the chief of police may attend and give further information.
 - (3) The commission may assign a non-police investigator to verify all facts and circumstances of the case.
 - (4) If the commission determines that the officer acted in the performance of duty, it will submit its determination to the corporation counsel for further action.

RULE 22. CONTESTED CASE PROCEDURE

This contested case procedure is adopted only for matters relating to the granting or denial of representation by legal counsel for police officers pursuant to Chapter 52D, Hawai'i Revised Statutes. Any party may request a contested case hearing in accordance with these rules.

(a) PRESIDING OFFICER.

- (1) Person Presiding - In all hearings before the commission, the chair of the commission, or one of its members, or a hearing officer duly appointed and designated by the commission, shall preside at the hearing.
- (2) Powers - The presiding officer controls the course of hearings, administers oaths, receives and rules on questions of evidence, holds appropriate conferences before or during hearings, rules upon all objections or motions which do not involve a final determination of the proceeding, receives offers of proof, fixes the time for the filing of briefs, disposes of any other matter that normally and properly arises in the course of a hearing, and takes all other actions authorized by law that are deemed necessary for the orderly and just conduct of a hearing.
- (3) Continuance - The presiding officer may, in the presiding officer's discretion, postpone or continue any hearing.

- (b) NOTICE OF HEARING. Unless otherwise provided by law, the notice of hearing will be served on all parties and persons on the mailing list for this

- (c) **PREHEARING CONFERENCE.** The presiding officer may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and any other matters that may expedite the orderly conduct and disposition of the proceeding.
- (d) **LIMITING TESTIMONY.** To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.
- (e) **REMOVAL FROM PROCEEDINGS.** Any person who willfully disrupts a hearing to prevent or compromise the conduct of the hearing shall be removed from the hearing room.
- (f) **ORDER OF PROCEDURE.** In hearings on appeals, the appellant or officer shall open and close. Intervenor shall be heard in such order as the presiding officer directs.
- (g) **CO-COUNSEL.** Where a party is represented by more than one counsel or representative, only one of the counsels shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.
- (h) **CROSS-EXAMINATION.** Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence. The commission may also examine and question all witnesses.
- (i) **REQUESTS FOR SUBPOENAS.**
 - (1) **Subpoena of a Witness -** Any request for the issuance of a subpoena, requiring the attendance of a witness for the purpose of taking oral testimony before the commission, shall be in writing and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only a party or a member of the commission may request the issuance of a subpoena.
 - (2) **Subpoena of Documents -** Any request for the issuance of a subpoena for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

- (3) Who May Issue A Subpoena - A subpoena may be issued by the chair of the commission or the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with these rules and gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. The subpoena shall show at whose instance the subpoena is issued.
- (4) Fees and Mileage - Any witness summoned shall be paid the same fees and mileage as are paid to witnesses in the circuit court of the State of Hawai'i, and such fees and mileage shall be paid by the party at whose request the witness appears.
- (5) Oath - Each witness shall be placed under oath or affirmation prior to testifying.
- (j) CONSOLIDATION. The commission, upon its own initiative 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 the commission finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.
- (k) SUBSTITUTION OF PARTIES. Upon motion and for good cause shown, the commission may order the substitution of a party, except that in the case of death of a party, substitution may be ordered without the filing of a motion.
- (l) MOTIONS.
 - (1) Timing - Motions may be made before, during, or after a hearing.
 - (2) Form and Contents - Any motion, other than one made during a hearing, shall be made in writing to the commission and shall state the relief sought and shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which the motion is based.
 - (3) Service of Motions - The moving party shall serve a copy of all motion papers on all other parties and shall file with the commission the original with proof of service.
 - (4) Memorandum In Opposition - A memorandum in opposition or counter affidavit shall be served on all parties and the original and proof of service shall be filed with the commission within seven days after being served with the motion. The chair of the commission may order the memorandum in opposition to be filed earlier than the seven-day period.

- (5) Waiver - Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the chair and opposing counsel or party promptly.

(m) EVIDENCE.

- (1) Form and Admissibility - The commission shall not be bound by the rules relating to the admission or rejection of evidence, but may exercise its own discretion in such matter with a view to doing substantial justice.
- (2) Ruling - The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the commission in determining the matter of the merits.
- (3) Objections and Exceptions - When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.
- (4) Offer of Proof - An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.
- (5) Prepared Testimony - With the approval of the presiding officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the commission fifteen days before the hearing or such prior service is waived to permit proper cross examination of the witness on matters contained in the prepared testimony.
- (6) Documentary Evidence - If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded an opportunity to examine the document and to offer in evidence other portions thereof believed material and relevant.
- (7) Exhibits.

- (A) Form and Size - Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2" x 11" in size or bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
- (B) Copies - When exhibits are offered in evidence, the original and ten copies shall be furnished to the presiding officer with a copy to each party to the proceeding other than the commission, unless such copies have been previously furnished, or the presiding officer directs otherwise.
- (8) Commission Records - If any matter contained in a document on file as a public record with the commission is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant, and material. If testimony in any proceeding, other than the one being heard, is offered in evidence, a copy of the testimony shall be presented as an exhibit, unless otherwise ordered by the presiding officer.
- (9) Official Notice of Facts - Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.
- (10) Additional Evidence – At the hearing, the presiding officer may require the production of further evidence upon any issue.

Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number therefore.

- (n) BRIEFS. The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the commission in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the commission.
- (o) ORAL ARGUMENTS. The commission or the presiding officer may direct or permit the presentation of oral argument with appellant or officer opening and concluding the argument. Not more than one-half hour on each side of the proceeding will be allowed for argument without special leave of the commission. If more than one party is participating on a side of the proceeding, the parties so concerned shall divide the hour for that side.

- (p) **CLOSE OF HEARING.** At the end of the presentation of the evidence, submission of briefs and oral arguments, if any, the commission or the hearing officer shall close the hearing.
- (q) **TIME LIMIT FOR COMMISSION'S DECISION.** The commission shall render its decision, order, or ruling within a period of not more than ninety days after the close of the hearing, unless a longer period of time is agreed upon by all parties.
- (r) **ISSUANCE OF DECISIONS AND ORDERS.** A proceeding shall stand submitted for decision by the commission after the taking of evidence, and the filing of such briefs or the presentation of such oral argument as may have been prescribed by the presiding officer or hearing officer. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. The proposed decision and order and findings of fact shall be served on each party to the proceeding, and each party shall have fifteen days from date of service thereof to submit written comments or objections to the commission. The commission shall render a written decision and order in every contested case, which shall include separate findings of fact and conclusions of law.
- (s) **SERVICE OF DECISIONS AND ORDERS.** Decisions and orders shall be served by mailing certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to a proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party.
- (t) **RECONSIDERATION OF DECISION AND ORDER.** The commission shall not reconsider its action in any contested case hearing after the effective date of the commission's decision.
- (u) **APPEAL FROM THE COMMISSION'S DECISION.** Any party may obtain judicial review of the commission's final decision in the manner set forth in Section 91-14, Hawai'i Revised Statutes.
- (v) **CONFIDENTIALITY.** Where personal matters affecting the privacy of an individual are to be considered, the commission may, at the request of the individual involved, consider such matter in executive session with all parties present.

RULE 23. POST HEARING PROCEDURES FOR HEARINGS CONDUCTED BY HEARING OFFICER

- (a) **RECOMMENDATIONS OF HEARING OFFICER.**

- (1) Submission of Recommendations - Upon completion of taking of the evidence, the hearing officer shall prepare a report, setting forth findings of fact, conclusions of law, and the reasons therefore, and a recommended order and submit the report of the case to the commission.
- (2) Contents of Record - The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the hearing officer and all other matters placed in evidence.
- (3) Service of Hearing Officer's Report - The hearing officer shall cause a copy of the report to be served upon all parties to the proceedings.

(b) EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATIONS.

- (1) File, Form, Copies, Time, and Service - Within fifteen days after service of the report and recommendations by the hearing officer, a party may file with the commission any exceptions to the report and a brief or statement in support thereof with the commission. A copy of the exceptions and brief or statement shall be served upon each party to the proceeding.
- (2) Contents of Exceptions - The exceptions shall include:
 - (A) The specific questions of procedure, fact, law, or policy to which exceptions are taken.
 - (B) That part of the hearing officer's report and recommended order to which objections are made.
 - (C) All the grounds for exceptions to a ruling, finding, conclusion or recommendation.
- (3) Waiver of Exceptions - Any exceptions not specifically raised in writing by a party are waived.

(c) SUPPORT OF HEARING OFFICER'S REPORT AND RECOMMENDATIONS.

- (1) File, Form, Copies, Time, and Service - Within seven days after service of the exceptions taken to the hearing officer's report, a party may file with the commission a brief or statement in support of the hearing officer's recommendations. A copy of the brief or statement in support shall be served upon each party to the proceeding.
- (2) Contents of Support Brief or Statement - The supporting brief or statement shall include:

(A) The specific points of procedure, fact, law, or policy to which exceptions were taken.

(B) The facts and reasons why report and recommendations must be affirmed.

(d) ORAL ARGUMENT BEFORE THE COMMISSION.

(1) Party's Request - If a party desires to argue orally before the commission, a written request with reasons therefore shall accompany the exceptions or the support brief or statement filed, and the commission may grant such request.

(2) Commission Direction - The commission may direct oral argument on its own motion.

(e) COMMISSION ACTION.

(1) No Exceptions Filed - In the event no statement of exceptions is filed with the commission, the commission may proceed to reverse, modify, or adopt the recommendations of the hearing officer.

(2) Exceptions and Support Statements Filed - Upon the filing of the exceptions and briefs or statements, the commission may render its decision forthwith upon the record; or if oral argument has been allowed, after oral argument; or may reopen the docket and take further evidence or may make such other disposition of the case that is necessary under the circumstances.

RULE 24. CONFIDENTIAL INFORMATION

No commissioner or member of its staff shall disclose information which by law or practice is not available to the public and which the commissioner or staff member acquires in the course of the commissioner or staff member's official duties, or use the information for the commissioner or staff member's personal gain or for the benefit of anyone.

RULE 25. COST OF RULES

Copies of these rules and regulations shall be made available to the public upon request at the commission's office. The cost shall not exceed the reasonable cost of producing and mailing such copies, provided that copies shall be available free of charge to other governmental agencies. A copy of these rules shall also be posted on the internet at a website officially endorsed by the County of Hawai'i.