

DEPARTMENT OF THE ATTORNEY GENERAL

Repeal of Rules of the
Department of the Attorney General
Relating to Practice and Procedure
and Adoption of Chapter 5-1
Hawaii Administrative Rules
December 18, 1992

SUMMARY

1. Rules of the Department of the Attorney General, Relating to Practice and Procedure, adopted on October 30, 1969, are repealed.
2. Chapter 5-1, Hawaii Administrative Rules, entitled "General Organization, Practice, and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

SUBTITLE 1 GENERAL DEPARTMENTAL PROVISIONS
AND PROGRAMS

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SUBCHAPTER 1

GENERAL PROVISIONS

§5-1-1 Statement of purpose. This chapter shall govern the practice and procedure before the department of the attorney general. It is the intention that this chapter shall, in part, effectuate and carry out the purposes and policies of chapters 91 and 92, Hawaii Revised Statutes, and shall be construed and interpreted in the manner most favorable to secure the just, speedy, and inexpensive determination of every proceeding authorized by law. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-2)

§5-1-2 Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Complainant" means the person, agency, or officer upon whose complaint a proceeding is instituted.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after opportunity for hearing before the director.

"Department" means the department of the attorney general, including all administrative offices, agencies, boards, and commissions placed or established within the department.

"Director" means the attorney general or the head of a board, commission, agency, or office placed within the department for administrative purposes.

"Hearing" means any formal proceeding for the determination of the legal rights of specific parties that is authorized by law or rules in a matter which is initiated by action taken, or to be taken, by the department or which may be initiated by a petition or application for the granting of any right, privilege, authority, or relief from or after administrative action.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in a hearing.

"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Petitioner" means the person making or on whose behalf a petition or application is made for a hearing which the director may hold under statutory or other authority delegated to the director or for a declaratory ruling, as to the applicability of any statutory provision or of any department rule or order, or for the adoption, amendment, or repeal of any department rule.

"Presiding officer" means the person conducting the hearing and may be the director or the director's representative.

"Public records" means those government records that the department may disclose pursuant to chapter 92F, Hawaii Revised Statutes.

"Respondent" means the party in a contested case against whom an order to show cause has been issued by the director on the director's own initiative or a notice of hearing has been issued on the basis of a complaint filed with the director.

"Rulemaking" means any formal action for the adoption, amendment, or repeal of any rule of the department. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-2)

§5-1-3 Offices of the department. (a) The central office of the department and the office of the attorney general are located in Hale Auhau at 425 Queen Street, Honolulu, Hawaii 96813.

(b) The department has divisions that are either legal services providers or administrative in functions. These divisions are located in Hale Auhau and in other locations in Honolulu, Oahu, in Hilo and Kealahou, Hawaii, in Wailuku, Maui, and in Lihue, Kauai. For the purposes of facilitating the request of information directly from offices in other locations, the following are some of the other office locations:

(1) Oahu:

- (A) Hawaii Criminal Justice Data Center
Kekuanao'a Building
465 South King Street
Honolulu, Hawaii 96813
- (B) Office of Information Practices
Kapuwaiwa Building, Room 201
426 Queen Street
Honolulu, Hawaii 96813
- (C) Crime Prevention Division
City Center, Suite 701
810 Richards Street
Honolulu, Hawaii 96813
- (D) Child Support Enforcement Agency
(principal office)
680 Iwilei Road, Suite 490
Honolulu, Hawaii 96817
- (E) Office of Child Support Hearings
680 Iwilei Road, Suite 435
Honolulu, Hawaii 96817

(2) Hawaii:

- (A) Child Support Enforcement Agency
400 Hualani Street, No. 13A
Hilo, Hawaii 96720
- (B) Child Protective Services Unit, Social
Services Division
101 Aupuni Street, Suite PH1014D
Hilo, Hawaii 96720

- (C) Child Protective Services Unit, Social Services Division
Ashikawa Building, No. 1
Corner of Mamalahoa Highway and Keekee Street
P.O. Box 249
Kealahou, Hawaii 96750
- (3) Maui:
 - (A) Child Support Enforcement Agency
2145 Kaohu Street, No. 105
Wailuku, Hawaii 96793
 - (B) Family Support Unit, Social Services Division
2145 Kaohu Street, No. 106
Wailuku, Hawaii 96793
 - (C) Child Protective Services Unit, Social Services Division
2145 Kaohu Street, No. 104
P.O. Box 1707
Wailuku, Hawaii 96793
- (4) Kauai:
 - (A) Child Support Enforcement Agency
4180 Rice Street, No. 104
Lihue, Kauai 96766
 - (B) Child Protective Services Unit, Social Services Division
3060 Eiwa Street, No. 302A
Lihue, Hawaii 96766
[Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-2)

§5-1-4 Office hours. The offices of the department shall be open from 7:45 a.m. to 4:30 p.m., Monday to Friday, except state holidays and except that, pursuant to executive orders issued by the governor of Hawaii, the civil identification section of the Hawaii criminal justice data center shall be open from 7:45 a.m. only to 3:30 p.m. and the child support enforcement agency offices shall be open only from 9:00 a.m. to 3:00 p.m. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §80-1; Exec. Order Nos. 90-2 and 91-4)

§5-1-5 Public records. All public records of the department shall be available for inspection during established office hours, subject to chapter

§5-1-5

92F, Hawaii Revised Statutes, and rules adopted under that chapter. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-2, ch. 92F)

§5-1-6 Public information and submittals.

(a) Any person may obtain information available for public dissemination concerning the activities of the department from the appropriate offices of the department during established business hours.

(b) Any person may file in the office of the director requests, objections, or views on any matter in any proceedings before the department in accordance with this chapter. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-2)

§5-1-7 Seal of the attorney general. (a) The official seal of the attorney general shall be circular in shape, one and fifteen-sixteenths inches in diameter, with the heraldic shield of the great seal of the State of Hawaii in the center. Framing the heraldic shield at the top and sides shall be an equal-arm balance symbolizing the scales of justice, with the beam above the heraldic shield being arched or curved as a yoke and with bowl-shaped scalepans suspended on each side by three cords. Below the heraldic shield shall be a banner bearing the latin words "LEX SUPREMA EST," meaning "the law is supreme." The heraldic shield, the equal-arm balance, and the banner shall be encircled concentrically first by a string of beads and then by a rope. In the area between the concentric circles formed by the string of beads and by the rope, there shall be the words "ATTORNEY GENERAL" on the scroll or curve in the top portion and the words "STATE OF HAWAII" on the scroll or curve in the bottom portion. Between those words, level with the scalepans, there shall be one five-pointed star on each side. For illustrative purposes, a black and white drawing of the official seal is attached at the end of this section as Exhibit "A," titled "Seal of the Attorney General," and dated November 1, 1988, and made a part of this section.

(b) The official seal of the attorney general shall be embossed near the signature of the attorney general to verify commissions of appointment of deputy attorneys general and notaries public, certificates, and other formal official documents on which the

official seal has been customarily used or is appropriate to be used, as the attorney general may determine on a case-by-case basis.

(c) The seal of the attorney general may also be reproduced, in either an enlarged or a reduced size, on official stationery, reports, certificates, equipment, supplies, uniform insignia, and other objects and items to be used or produced by the department of the attorney general, but the reproduction and use of the seal of the attorney general shall always be subject to the exclusive control of the attorney general.

(d) A reproduction of the seal may be a black and white drawing, an engraved image, or a colored image, whether printed, painted, or embroidered, as approved by the attorney general for a particular use.

(e) A colored reproduction of the seal of the attorney general shall conform to the following description. The heraldic shield shall bear the colors specified for the heraldic shield of the state coat of arms described in section 5-5, Hawaii Revised Statutes. The yoke-shaped beam and the scalepans of the equal-arm balance and the banner shall be in gold, with the cords suspending the scalepans and the motto on the banner in black. Appropriate shading shall be used to present a three-dimensional appearance. The background within the string of beads shall be white. The string of beads, the outer circle of rope, and the letters and stars between the beads and rope shall be in gold. The background area between the string of beads and outer circle of rope shall be in royal blue. [Eff Jan. 16, 1993] (Auth: HRS §28-12) (Imp: HRS §28-12)

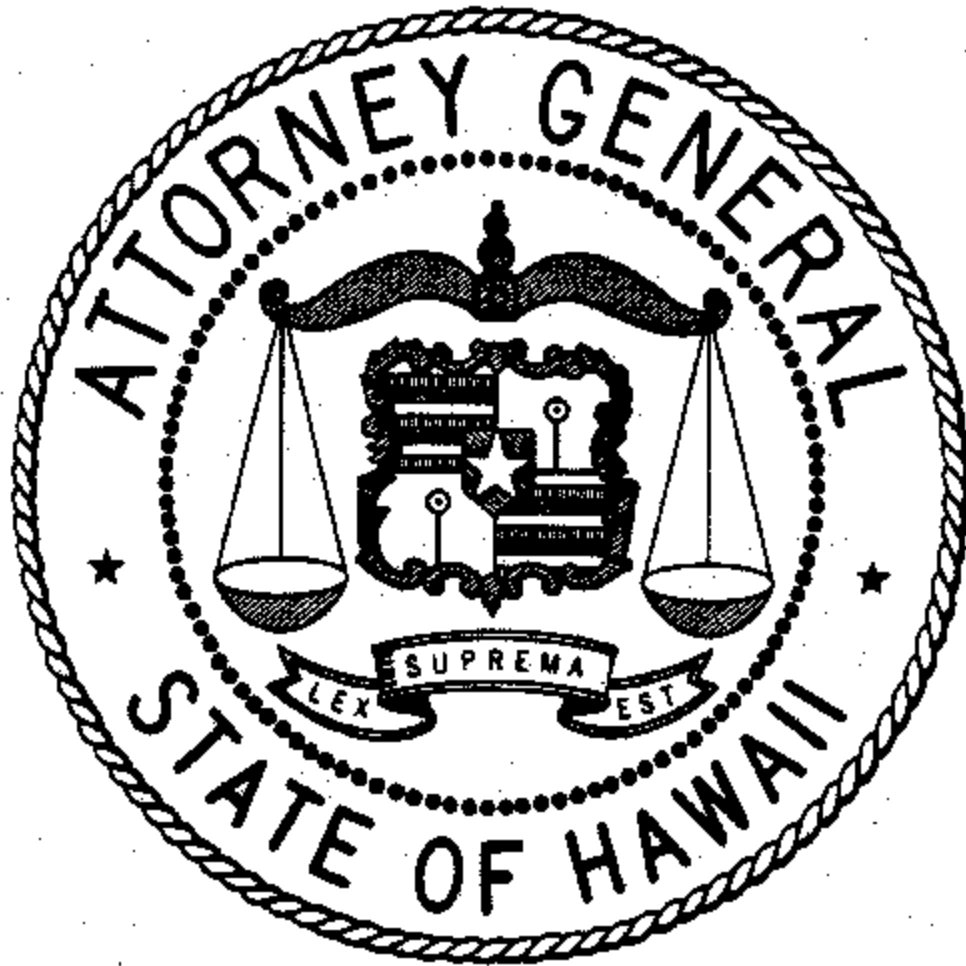


Exhibit "A"
"Seal of the Attorney General"
November 1, 1988

SUBCHAPTER 2

MEETINGS

§5-1-21 Applicability. This subchapter shall apply to any agency, board, commission, authority, or committee of the department that is a "board" as defined by section 92-2, Hawaii Revised Statutes. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §§91-2, 92-3)

§5-1-22 Conduct of meetings. (a) Unless otherwise required by statute or administrative rule, meetings shall be conducted in accordance with the current edition of Robert's Rules of Order.

(b) Interested persons wishing to submit data, views, or arguments, in writing, on any agenda item shall submit to the agency, board, commission, authority, or committee, no later than the workday prior to the day of the meeting, a legibly written or typed copy of the information, on 8 1/2 by 11 inch paper. The information must be in a form that may be reproduced by xerographic means for distribution to the members of the agency, board, commission, authority, or committee.

(c) Oral testimony may be given to the agency, board, commission, authority, or committee on any agenda item, but the presiding officer may limit each person to no more than five minutes per agenda item and may further limit or terminate testimony that the presiding officer determines to be repetitious or given solely for purposes of delay. The presiding officer may at any time require any person appearing before the agency, board, commission, authority, or committee in a representative capacity to show that person's authority and qualifications to act in such a representative capacity and to identify the persons and interests that are being represented.

(d) The presiding officer may order the removal of any person who wilfully disrupts a meeting or otherwise interferes with the proper and expeditious conduct of the meeting. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2, 92-3) (Imp: HRS §§91-1, 92-3)

SUBCHAPTER 3

GENERAL PROCEDURES FOR CONTESTED CASES

§5-1-31 Applicability. The general procedures specified in this chapter shall apply to all contested cases that may come before any division or administratively attached agency, board, commission, or office of the department to the extent that specific procedures, such as those for child support enforcement and for information practices, are not otherwise provided. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-32 Docket. The director or the director's representative shall maintain a docket of all contested cases processed under this subchapter and not under other specific procedures and each case shall be assigned a number. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-33 Hearings; request for and scheduling.

(a) A hearing on a contested matter shall be scheduled by the department on its own motion or upon the complaint or petition of any interested person or any agency of the state or county governments when the processing of a complaint or petition necessitates such a hearing.

(b) A complaint or petition by an aggrieved person or proper party or by an interested agency of the state or county governments requesting such a hearing shall contain concise statements of: (1) the legal authority under which the proceeding, hearing, or action is to be held or made; (2) the disagreement, denial, grievance, or matter that is being contested by the complainant or petitioner; (3) the basic facts and issues raised; and (4) the relief to which the party, complainant, or petitioner deems itself entitled. The department may prepare departmental forms that may be substituted for any complaint or petition which may be required for any authorized proceedings pursuant to law or rules.

(c) No hearing on a contested case shall be held until due notice is given to all parties as provided

in sections 91-9 and 91-9.5, Hawaii Revised Statutes.
[Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp:
HRS §91-9)

§5-1-34 Presiding officer of hearings; duties and powers. (a) The director shall conduct the hearings on a contested case, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative who shall be the presiding officer, conduct the hearings, and make recommendations in writing to the director, which recommendations shall include recommendations as to findings of fact and conclusions of law. The director shall then render the decisions as to findings of fact and conclusions of law and shall issue such orders and take such actions as may be further required.

(b) In all such hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) Any rule of these rules of practice and procedure may be suspended or waived by the department or by the presiding officer, before whom the matter is heard, to prevent undue hardship in any particular instance.

(d) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of the evidence presented at any hearing. If a verbatim record is taken, any party may request a certified transcript of the proceedings. The party making the request shall be responsible for the fees for the transcript. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-35 Disqualification of presiding officers.
(a) A presiding officer shall be disqualified from

deciding a contested matter if the presiding officer:

- (1) Has a substantial financial interest, as defined by section 84-3, Hawaii Revised Statutes, in a business or other undertaking that will be directly affected by the decision of the contested case;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the contested matter to be decided. If a presiding officer designated by the director is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding on the director without the director's review and concurrence, notwithstanding section §5-1-34(a). [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §§84-14, 91-9)

§5-1-36 Substitute presiding officers. If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of

the proceedings. [Eff Jan. 16, 1993] (Auth: HRS
§§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-37 Communications with presiding officers.

(a) No person shall communicate with the presiding officer regarding matters to be decided by the presiding officer with the intent, or the appearance of the intent, to influence the decision of the presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties [an opportunity] to respond to, refute, or otherwise comment on the ex parte communication. [Eff Jan. 16, 1993] (Auth: HRS
§§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-38 Computation of time. In computing any period of time prescribed or allowed by these or other applicable rules or by order of the department, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the next day that is not a Saturday, a Sunday, or a holiday. Intermediate Saturdays, Sundays, and holidays shall be excluded in the computation when the period of time prescribed or allowed is seven days or less. As used in this section, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff Jan. 16, 1993] (Auth: HRS
§§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-39 Filing of documents. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any proceeding, shall be filed with the director or as

instructed by the director. Such papers may be sent by mail or hand-carried to the appropriate office of the department, within the time limit, if any, or as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department or at the hearing shall be deemed to be the date of filing.

(b) All papers filed with the department shall be written in ink, typewritten, mimeographed, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached.

(c) All papers must be signed in ink by the party or a duly authorized agent or attorney. The signature shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(d) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed.

(e) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-40 Amendment of documents and dismissal.

If any document initiating, or filed in, a contested case is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the department, on its own motion, or on motion of any party, may strike the document, or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff Jan. 13, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-41 Retention of documents by the department. All documents filed with or presented to the department shall be retained in the files of the department, except that the department may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-42 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the department, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum, or other document filed with the department pursuant to the requirements of a statute or rule or order of this department shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-43 Appearances before the department. (a) An individual may appear in the individual's own behalf; a general partner may represent a partnership; a bona fide officer or employee of a corporation, trust, or association may represent the corporation, trust, or association; and an officer or employee of a governmental agency may represent that agency in any hearing.

(b) A person may be represented by an attorney or attorneys-at-law qualified to practice before the supreme court of Hawaii in any hearing under these rules.

(c) A person shall not be represented in any hearing except as stated in subsections (a) and (b).

(d) When an individual acting in a representative capacity appears in person before the

department, the personal appearance or signature of the individual shall constitute a representation to the department that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the individual acts. The department may at any time require any person acting in a representative capacity to show proof of authority and qualification to act in that capacity. [Eff. Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-44 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff. Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-45 Consolidation. The presiding officer, upon the officer's own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if the officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings. [Eff. Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-46 Intervention. Applications to intervene in a proceeding shall comply with section 5-1-35 and shall be served upon all parties. Applications for intervention will be granted to persons properly seeking and entitled as of right to be admitted as a party; otherwise, at the discretion of the presiding officer, they may be denied. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter. [Eff. Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-47 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences 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 such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. 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. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-48 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memorandum, if any.

(b) The moving party shall serve a copy of all motions on all other parties at least forty-eight hours prior to the hearing on the motion and shall file with the presiding officer the original with proof of service.

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than twenty-four hours prior to the hearing. The original and proof of service shall be filed with the presiding officer.

(d) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-49 Evidence. (a) The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(b) The presiding officer shall rule on the admissibility of all evidence.

(c) 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.

(d) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained, or the submission of the evidence itself.

(e) With the approval of the presiding officer, a witness may read testimony into the record 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 parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading; provided that copies of the prepared testimony shall have been served upon all parties and the presiding officer five days before the hearing to permit proper cross examination of the witnesses on matters contained in the prepared testimony.

(f) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(g) Exhibits shall be prepared as follows:

- (1) Documents, pleadings, correspondence, and other exhibits shall be legible and must be prepared on paper 8-1/2 by 11 inches in size. Charts and other oversize exhibits must be 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.

- (2) When exhibits are offered in evidence, the original and copies in the number specified by the presiding officer shall be furnished to the presiding officer for use, with adequate copies for review by other parties, unless the copies have been previously furnished or the presiding officer directs otherwise.

(h) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference; provided that the particular portions of the document are specifically identified and otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

(i) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts 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.

(j) 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. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §§91-9, 91-10)

§5-1-50 Subpoena of witnesses before boards.

(a) If the contested case is before a board under part II of chapter 92, Hawaii Revised Statutes, witnesses may be subpoenaed as set forth below:

- (1) Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the board 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 parties or a board member may request the issuance of a subpoena.

- (2) Request for the issuance of subpoenas 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 of the particular document or record is believed to be material and relevant to the issues involved. Only parties or a board member may request the issuance of a subpoena duces tecum.

(b) Subpoenas may be issued by the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with this section giving the name and address of the desired witness and tendering the proper witness and mileage fees. Signed and sealed blank subpoenas shall 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. Subpoenas shall state at whose request the subpoena is issued. Requests for subpoenas shall be filed not later than three days before the scheduled hearing.

(c) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose request the witness appears. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §92-16)

§5-1-51 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 this chapter, by notice given as prescribed by this chapter or by an order or rule, the presiding officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

§5-1-52 Service of decisions. All final orders, opinions, or rulings entered by the department in a hearing shall be served upon the parties or persons participating in the hearing by regular mail or personal delivery by the department. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-12)

§5-1-53 Correction of transcript. Motions to correct the transcript shall be made within five days after receipt of the transcript and shall be acted upon by the presiding officer. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-9)

SUBCHAPTER 4

PROCEDURES FOR RULEMAKING

§5-1-61 Petitions for adoption, amendment, or repeal of rules. (a) Any interested person or any agency of the state or county government may petition the department for the adoption, amendment, modification, or repeal of any rule which is designed to implement, interpret, or prescribe law, policy, procedure, or practice requirements of the department.

(b) Petitions for rulemaking action shall conform to the requirements of section 5-1-35. The petition shall set forth the text of the proposed rule or amendment desired or specify the rule the repeal of which is desired, state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the adoption, amendment, or repeal of the rule, and include any facts, views, arguments, and data deemed relevant by the petitioner. The department may also require the petitioner to serve other persons or governmental agencies known to be interested in the proposed rulemaking. No request for the adoption, amendment, modification, or repeal of a rule that does not conform to the requirements set forth above shall be considered by the department.

(c) A petition for a change of rules shall be given a docket number and shall become a matter of public record upon filing. The department shall within thirty days following the filing of the petition either deny the petition in writing or initiate the rulemaking procedure. No public hearing,

oral argument, or other form of proceedings, shall be held directly on any petition, but if the department determines that a petition discloses sufficient reasons in support of the relief requested to justify the institution of a public hearing, the procedures to be followed will be as set forth in sections 5-1-62 to 5-1-64. When the department determines that a petition does not disclose sufficient reasons to justify the institution of a public rulemaking action, or when the petition for a change of rules fails in material respect to comply with the requirements of these rules, the petitioner shall be so notified together with the grounds for such denial, or the department may request additional data and supporting authorities before proceeding on the petition. Failure on the part of the petitioner to furnish data or supporting authorities within the time specified in the request shall be deemed to be a withdrawal of the petition. The provisions of this section shall not operate to prevent the department, on its own motion, from acting on any matter set forth in any petition. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-6)

§5-1-62 Notice of proposed rulemaking. When the department proposes to adopt, amend, or repeal an administrative rule, a notice of the proposed rulemaking action will be published, pursuant to section 91-3, Hawaii Revised Statutes, at least once in a newspaper of general circulation in the State and, pursuant to section 92-41, Hawaii Revised Statutes, at least once in a newspaper that is printed at least twice weekly in the county affected by the proposed rulemaking action. In addition, notice shall be mailed to all persons who make a timely request for advance notice of a rulemaking hearing. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §§91-3, 92-41)

§5-1-63 Conduct of hearing. (a) Each rulemaking hearing shall be presided over by the director or the director's representative. The hearing shall be conducted in such a way as to afford to any interested person a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The

presiding officer shall have authority to take all actions necessary for the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(c) All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state the witness's name, address, and whom the witness represents at the hearing, and shall give such other information respecting the witness's appearance as the presiding officer may request. The presiding officer shall confine the testimony to the questions before the hearing. Every witness shall be subject to questioning by the presiding officer, but cross-examination by private persons shall not be permitted unless the presiding officer expressly permits it.

(d) All interested persons or agencies of the State or counties of the State will be afforded an opportunity to submit during the hearing data, views, or arguments that are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the department within five calendar days following the close of the hearing a written protest, other comments, or recommendations in support of or in opposition to the proposed rulemaking. Written protest, comments, or recommendations or replies thereto will not be accepted unless an original and two copies are filed. The period for filing a written protest, comments, or recommendations may be extended by the presiding officer for good cause.

(e) Unless otherwise specifically ordered by the presiding officer, testimony given at a rulemaking hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence to the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer

finds that the furnishing of copies is impracticable, two copies of the exhibits shall be submitted.

(f) A rulemaking hearing shall be held at the time and place set in the notice of hearing, but the hearing may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement of the continuation or adjournment during or at the end of the hearing held at the scheduled time and place. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-3)

§5-1-64 Department action. At the close of the final public hearing, the presiding officer shall announce the decision, or the date when the decision is intended to be made. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-3)

§5-1-65 Emergency rulemaking. Notwithstanding the foregoing rules, if the department finds that an imminent peril to public health, safety, or morals or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-3)

SUBCHAPTER 5

SPECIAL PROCEEDINGS

§5-1-70 Petition for declaratory rulings. (a) Any interested person may petition the department for the issuance of a declaratory order as to the applicability of any statutory provision administered by the department or of any rule or order of the department. Petitions for the issuance of a declaratory order shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority or rule or order involved, shall

include a detailed statement of all the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest, and shall conform to the requirements of section 5-1-35. The department, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner. The department may summarily dismiss a petition for a declaratory order if the petition does not meet the requirements of this section and, after notification of the deficiencies and a reasonable opportunity to correct the deficiencies, the petitioner fails to comply with the requirements of this section in a material respect.

(b) Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the director may in the director's discretion schedule a hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in its request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memorandums of legal authorities, will not permit the fair and expeditious disposition of the petition, and, to the extent that the request for hearing is dependent upon factual assertion, the request shall be accompanied by an affidavit attesting to those facts. In the event a hearing is scheduled by the director, sections 5-1-31 to 5-1-49 shall govern the proceedings.

(c) The director may, for good cause, deny the petition and refuse to issue a declaratory order. Without limiting what may constitute good cause, the director shall refuse to issue a declaratory order when:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or one that reasonably may be expected to occur in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action in a court of law regarding the same factual and legal circumstances presented in the petition;
- (3) The statutory provision cited in the petition is not administered by the department or the rule or order cited in the

petition is not a rule or order of the department; or

- (4) The factual and legal circumstances presented in the petition are involved in pending administrative contested case proceedings or judicial proceedings that will result in a decision on the applicability of the statutory provision or rule or order cited in the petition.

(d) Upon determination of the applicability or nonapplicability of the statutory provision or rule or order cited in the petition to the factual circumstances presented in the petition, the director shall issue a declaratory order in response to the petition. The declaratory order shall be served on the petitioner pursuant to section 5-1-48. [Eff Jan. 16, 1993] (Auth: HRS §§28-10.8, 91-2) (Imp: HRS §91-8)

DEPARTMENT OF THE ATTORNEY GENERAL

The Rules of the Department of the Attorney General relating to practice and procedure, adopted on October 30, 1969, were repealed and chapter 5-1, Hawaii Administrative Rules, on the Summary Page dated December 18, 1992, was adopted on December 18, 1992, following a public hearing held on December 17, 1992, after public notice was given in the Sunday Star-Bulletin & Advertiser, The Garden Island, the Hawaii Tribune-Herald, and the Maui News on November 15, 1992.

The repeal of the 1969 rules of practice and procedure and the adoption of chapter 5-1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/S/ R. A. Marks
Robert A. Marks
Attorney General

APPROVED:

/S/ John Waihee
John Waihee
Governor
State of Hawaii

Dated: Jan. 6, 1993

APPROVED AS TO FORM:

/S/ Maurice S. Kato
Deputy Attorney General

Jan. 6, 1993
Filed