

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11
Hawaii Administrative Rules

July 1, 2021

1. Chapter 5-11, Hawaii Administrative Rules, entitled "Notaries Public", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 5-11

NOTARIES PUBLIC

Subchapter 1 General provisions

| | |
|------------------|---|
| §5-11-1 | Purpose |
| <u>§5-11-1.5</u> | <u>Definitions</u> |
| §5-11-2 | Commission required to act as a notary public |
| §5-11-3 | Conduct |
| §5-11-4 | Powers |
| <u>§5-11-4.5</u> | <u>Prohibited acts</u> |
| §5-11-5 | [Official] Notary seal |
| §5-11-6 | Official signature |
| §5-11-7 | Acceptable forms of identification of signers |
| §5-11-8 | Acknowledgments; jurats |

| | |
|-------------------|--|
| §5-11-9 | [Record book; suspension for failure to deposit] <u>Journal</u> |
| §5-11-10 | Notification and filing of names, addresses, and changes; failure to notify |
| <u>§5-11-10.5</u> | <u>Notification of status change</u> |
| §5-11-11 | [Display of commission; hours of business] <u>Repealed</u> |
| §5-11-12 | Term of commission |
| §5-11-13 | [Forfeited Commission] <u>Repealed</u> |
| §5-11-14 | [Suspended Commission] <u>Repealed</u> |
| §5-11-15 | [Revoked Commission] <u>Repealed</u> |
| §5-11-16 | Resignation of commission |
| §5-11-17 | Surrender of notary public commission certificate [,] and notary seal [, and record book, journal] ; retention of journal; failure to comply |
| §5-11-18 | Loss, misplacement, or theft of notary public certificate, <u>notary seal</u> , or [record book] <u>journal</u> |

Subchapter 2 Applications

| | |
|----------|---|
| §5-11-21 | Application for notary public commission |
| §5-11-22 | Action on application |
| §5-11-23 | Application for renewal of notary public commission |

Subchapter 3 Examinations

| | |
|----------|----------------------------|
| §5-11-32 | Examination |
| §5-11-33 | Examination subject matter |

Subchapter 4 Disciplinary Sanctions

| | |
|-----------------|--|
| §5-11-39 | Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions |
| <u>§5-11-40</u> | <u>Forfeited commission</u> |

§5-11-41 Suspended commission
§5-11-42 Revoked commission

Subchapter 5 Fees and Administrative Fines

§5-11-46 Fees and administrative fines

Subchapter 6 Practice and Procedure

§5-11-51 Administrative practice and procedure
§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action
§5-11-53 Demand for a hearing
§5-11-54 Proceedings upon demand for a hearing
§5-11-55 Exceptions

Subchapter 7 Remote Online Notarization

§5-11-61 Authority to perform remote online notarization
§5-11-62 Application for a remote online notary public commission
§5-11-63 Action on application for remote online notary public commission
§5-11-64 Remote online notary public examination
§5-11-65 Remote online notary public commission
§5-11-66 Term of commission as remote online notary public
§5-11-67 Application for renewal of remote online notary public commission
§5-11-68 Means of performing a remote online notarial act
§5-11-69 Identity proofing
§5-11-70 Other methods of identity verification
§5-11-71 Standards for communication

| | |
|-----------------|--|
| <u>§5-11-72</u> | <u>technology</u> <u>Electronic signature and</u> <u>electronic notary seal; electronic</u> <u>stamping device; electronic</u> <u>notarial certificate</u> |
| <u>§5-11-73</u> | <u>Retention and repositories of</u> <u>electronic journal and audiovisual</u> <u>recording</u> |

SUBCHAPTER 1

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the [provision] provisions thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-8)

§5-11-1.5 Definitions. As used in this chapter, unless the context requires otherwise:

"Affirmation" or "oath" means a solemn pledge made orally or in writing by a person to attest to the truth of the person's statement.

"Appear personally" means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange proof of the signer's signature and identity with that person; or
- (2) Interacting with a remotely located individual by means of communication

technology that complies with the provisions of section 456-23, HRS, and this chapter.

"Conviction" means a formal judgment entered by a court based on a verdict or plea of guilty or a plea of nolo contendere.

"Department" means the department of the attorney general.

"Electronic notary seal" or "electronic seal" means an electronic image that contains information attached to or logically associated with an electronic record and that contains the notary public's name, the notary public's commission number, and the words "notary public" and "State of Hawaii".

"Electronic signature" has the same meaning as in section 456-1.6, HRS.

"Identity proofing" has the same meaning as in section 456-23, HRS.

"Notarial act" has the same meaning as in section 456-1.6, HRS.

"Notary public" has the same meaning as in section 456-1.6, HRS.

"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Remote online notary public" has the same meaning as in section 456-23, HRS.

"Signature" has the same meaning as in section 456-1.6, HRS.

"Stamping device" has the same meaning as in section 456-1.6, HRS. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)

(Imp: HRS §§456-1, 456-2, 456-13, 456-22, 456-23, 456-24, 456-25)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, [or] advertise or represent oneself as a notary public, or

perform notarial acts, without a current commission [previously] obtained from the attorney general. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-26)

§5-11-3 Conduct. Every notary public shall perform [notary public duties] notarial acts in accordance with chapter 456, HRS, this chapter, [and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these may be amended.] other laws in Hawaii, and official guidelines (e.g., Notary Manual) that pertain to notarial acts and shall follow recognized industry best practice standards that do not conflict with Hawaii law. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-7)

§5-11-4 Powers. Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff 5/5/08; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19, 456-23)

§5-11-4.5 Prohibited acts. (a) A notary public shall not do any of the following:

(1) Refuse to perform a lawful and proper notarial act because of the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics;

advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;

- (2) Base the charging of a fee for performing a notarial act or the amount of the fee on the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (3) Notarize the notary public's own signature;
- (4) Perform a notarial act if the notary public has an actual and apparent conflict of interest regarding the transaction in question;
- (5) Deliver a signed notarial certificate to another person and authorize that person to attach the certificate to a document outside of the notary public's presence; or
- (6) Provide legal advice, unless the notary public is an attorney licensed to practice law in this State.

(b) Nothing contained in this section shall be construed to limit or deny the enforcement of any provision of chapters 456 and 502, HRS, or this chapter.

(c) Nothing contained in subsection (a) (2) shall be construed to prohibit reducing or waiving a fee at the notary public's discretion, provided that doing so is not done for an unlawful or discriminatory purpose.

[Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-1.5, 456-2, 456-9, 456-17, 456-22, 456-23, 456-24, 456-26)

§5-11-5 [Official] Notary seal. (a) A notary public shall obtain and keep [~~an official~~] a rubber stamp notary seal [~~of one type, either an engraved seal or a rubber stamp facsimile seal, on~~] which, when stamped or impressed upon a tangible document, shall [be inscribed] clearly show the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii". The notary public shall not possess more than one rubber stamp notary seal at a time.

(b) The notary public shall authenticate all of the notary public's [~~official~~] notarial acts, attestations, certifications, and instruments with the notary public's [official] notary seal] contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) The [~~official~~] rubber stamp notary seal of every notary public [~~shall be affixed by either an engraved seal or a rubber stamp facsimile seal which~~] shall be a circular, [not over two inches in diameter,] rubber stamping device with a serrated or milled edge border between one inch and two inches in diameter and shall include the required wording and information specified in subsection (a).

(d) The notary public shall safeguard and maintain sole control of the notary seal.

[~~d~~] (e) The notary public shall surrender the rubber stamp notary [~~public's~~] seal to the attorney general within ninety days of resignation[, removal from office,] from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal. Failure to comply with this requirement may result in [a] an administrative fine [~~not more than~~] of \$200. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-23)

§5-11-6 Official signature. (a) A notary public shall sign on every notarial certificate, at

the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's notary seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-3, 456-23)

§5-11-7 Acceptable forms of identification of signers. [No acknowledgment, jurat, or other instrument shall be taken,] A notary public shall not perform a notarial act unless [the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.] there is proof of the signer's signature and identity as defined in section 456-1.6, HRS, or as otherwise provided in sections 5-11-69 and 5-11-70. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-15, 456-20, 456-22)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public[.]

contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the [official stamp or] notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed[~~, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document~~]. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

§5-11-9 [Record book, suspension for failure to deposit.] Journal. (a) A notary public shall [~~record~~ all of the notary public's transactions, as prescribed in chapter 456, HRS.] create, maintain, and retain a journal in which the notary public chronicles all notarial acts performed by the notary public in accordance with the requirements of section 456-15, HRS, and this chapter.

(b) The [~~record book~~] tangible journal shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the [~~record book~~] tangible journal shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each [~~record book~~] tangible journal the notary public's name, business address, commission number, [~~and~~] commission expiration date, [~~the book~~] journal number, and the beginning and ending dates of the notarial acts recorded in that [~~book.~~] journal.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each [~~record book.~~] tangible journal.

(f) The notary public shall [~~deposit~~] retain the

notary public's [record book with the attorney general within ninety days of the end date of the notary public's commission.] journal for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the journal upon resignation from, or revocation, abandonment, or suspension of the notary public's commission, or the expiration of a commission without renewal. At any time, the journal shall be subject to an audit pursuant to section 456-15, HRS. Failure to comply with this requirement[, after notice to the notary and opportunity to be heard, shall cause the notary's commission to be suspended until the attorney general receives the notary record books for the prior commission term. In addition, the failure to deposit notary record books] may result in [a] an administrative fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-15)

§5-11-10 Notification and filing of names, addresses, and changes; failure to notify. (a) Each notary public shall file with the attorney general the notary public's name, employer, residence and business addresses, [and] telephone numbers, email address, and occupation [with the attorney general,] and shall notify the attorney general of any change, in writing, within thirty days of the change.

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change, and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and new addresses of the notary public's residence, if there is a change in the notary public's residence

address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change.

(d) Failure to provide [written] timely written notification to the attorney general of any change shall subject the notary public to a \$25 administrative fine. Failure to provide [written] timely written notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary public to a \$50 administrative fine. [Eff 5/5/08; am and comp 3/12/15; am and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

§5-11-10.5 Notification of status change. (a)

Each notary public or the notary public's representative or guardian shall notify the attorney general in writing of an adjudication of the notary public's incompetency within thirty days of the adjudication.

(b) Each notary public shall notify the attorney general in writing of a criminal conviction against the notary public of any felony, or a misdemeanor related to the qualifications, functions, or duties of the notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.

(c) Each notary public shall notify the attorney general in writing of any professional disciplinary decision issued against the notary public in this or another jurisdiction within thirty days of the disciplinary decision.

(d) Failure to provide timely written notification to the attorney general of any change, as prescribed under this section, shall subject the notary public to an administrative fine of \$25 per violation. [Eff and comp] (Auth:

HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

[§5-11-11 Display of commission; hours of business. (a) A sign, no smaller than three inches by five inches, bearing the words "notary public" shall be conspicuously displayed within the premises of the place of business where the notary public is employed.

(b) A notary public shall provide notarial services to the public during all normal business hours of operation where the notary public is employed.

(c) This section shall not apply to notaries in government service.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8)

(Imp: HRS §456-1)

§5-11-12 Term of commission. The term of [office] commission of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of [office,] commission, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24, 456-26)

[§ 5-11-13. Forfeited Commission.] (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal

~~by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.~~

~~(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

[§ 5-11-14. Suspended Commission.] No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

[§ 5-11-15. Revoked Commission.] A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-16 Resignation of commission. (a) A notary public may resign the notary public's

commission, and shall:

- (1) Surrender the notary public's commission certificate[~~r~~] and rubber stamp notary seal[, and notarial record books] as provided in [seetion] sections 5-11-5(e) and 5-11-17(a) [~~r~~] and provide to the attorney general the location of the journal as provided in section 5-11-9(f); and

- (2) Cease conducting all notarial services.

(b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.

(c) A person may obtain a new commission by successfully applying as a new applicant should the person desire to engage in any notarial services.

[Eff 5/5/08; comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-15,
456-24)

§5-11-17 Surrender of notary public commission certificate[~~r~~] and notary seal[, and record book; journal]; retention of journal; failure to comply.

(a) Within ninety days of resignation[, removal from office,] from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;
- (2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and
- (3) [Deposit] Retain the notary public's [record book with] journal and inform the attorney general [.] of the location of the journal.

(b) Upon the death of [~~the~~] a current notary public, the notary public's employer [or], personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection [(a).] (a) (1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

[+e)] (d) Failure to comply with subsection (a) (2) may result in [~~a~~] an administrative fine of not more than \$200. Failure to comply with subsection (a) (3) or (c) may result in [~~a~~] an administrative fine of no[~~t~~] less than \$50 and no[~~f~~] more than \$500.

Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. [Complete] Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-7, 456-15, 456-24)

§5-11-18 Loss, misplacement, or theft of notary public certificate, notary seal, or [record book.] journal. Within ten days after loss, misplacement, or theft of the notary public's [~~official~~] notary seal or [~~notarial record book~~] journal or both, a notary public shall [~~deliver~~] transmit written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. Failure to comply with this section shall result in an

[§25] administrative fine[.] of \$20. [Eff 5/5/08; am
and comp 3/12/15; am and comp]
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp:
HRS §§456-3, 456-9, 456-15)

SUBCHAPTER 2

APPLICATIONS

§5-11-21 Application for notary public commission. (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
 - (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
 - (3) A letter of justification from the applicant's employer[.] or, if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. ~~The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.]~~
- (b) The application may require the applicant to provide the following:
- (1) The applicant's legal name;
 - (2) Verification that the applicant is at least

- eighteen years of age;
- (3) The applicant's current residence, business, [and] mailing, and email addresses;
- (4) The date and place of [any] a conviction of [a penal crime;] any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;
- (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; [and]
- (6) Proof of the applicant's identity by a current government-issued photo identification; and
- (7) Proof that the applicant is a resident of the State;
- (8) Proof that the applicant has executed an official surety bond that has been approved by a judge of the circuit court;
- (9) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.
- (c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.
- [+d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State.] [Eff 5/5/08; comp

3/12/15; am and comp] (Auth: HRS
§§28-10.8, 456-1.5, 456-2, 456-5, 456-8, 456-23)
(Imp: HRS §§456-1, 456-9, 456-18, 456-24)

§5-11-22 Action on application. (a) Unless otherwise provided by law, the attorney general shall take the following actions within [one year] six months after the filing of a complete application for a commission:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the [~~decision regarding~~] status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general.

[Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-22) (Imp: HRS §§28-10.8, 91-13.5, 456-8, 456-24)

§5-11-23 Application for renewal of notary public commission. (a) Each notary public shall be responsible for timely renewing the notary public's

commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general [before or on the notary public's current date of] within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited.

[~~(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State.~~] [Eff 5/5/08; comp 3/12/15; am and comp
[Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

SUBCHAPTER 3

EXAMINATIONS

§5-11-32 Examination. (a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney general. The minimum passing score is eighty per cent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary public

examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than forty-eight hours before the examination.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a reexamination without submitting a new application, provided that the applicant requests, pays the examination fee, and reschedules a reexamination within fourteen calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to request, pay for, and reschedule a reexamination within the fourteen calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission.

[Eff 5/5/08; am and comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of [notary public duties,] notarial acts,

and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. [+(a)] In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, or deny[,~~or condition,~~] a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and [to] may seek administrative fines for each occurrence or [to] otherwise discipline a former or current notary public for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;

- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (9) Procuring a commission through fraud, misrepresentation, or deceit;
- (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
- (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- [(12) ~~Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;~~
- [(13) ~~Violating any condition or limitation upon which a conditional or temporary commission was issued;~~]
- [(14) (12) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
- [(15) (13) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a

notary public commission to be unfit or an improper person to hold a commission;

- [+16+] (14) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
- [+17+] (15) Criminal conviction, whether by nolo contendere or otherwise, of [a crime] any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public[~~r~~] or involving theft, fraud, dishonesty, or false statement;
- [+18+] (16) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in this jurisdiction or another jurisdiction within thirty days of the disciplinary decision; and
- [+19+] (17) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-40 Forfeited commission. (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's

forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-41 Suspended commission. A notary public commission may be suspended by the attorney general for a period not exceeding ten years. A person whose commission has been suspended pursuant to section 5-11-39 may apply for reinstatement of the commission upon strict compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-42 Revoked commission. A person whose commission is revoked pursuant to section 5-11-39 may apply for a new commission, unless the revocation is permanent, after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

SUBCHAPTER 5

FEES AND ADMINISTRATIVE FINES

§5-11-46 Fees and administrative fines. (a)

[Notwithstanding any law to the contrary,] Pursuant to section 456-9, HRS, the attorney general shall charge and collect the following fees, [and administrative fines,] which shall be nonrefundable:

- (1) Application for [~~commission of~~] notary public commission, \$20;
- (2) Application for renewal of notary public commission, \$20;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue notary [~~record books,~~] public journals, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or business address, telephone number, or judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5 if the manual is to be mailed;
- (12) Certification of each notarial transaction from a notary public's journal in the disposition of the attorney general, \$5 per notarial transaction;
- (13) Copying, per printed page, 25 cents;
- (14) Replacement commission certificate, \$10;
- (15) Request to reschedule examination more than forty-eight hours before the examination, \$15;
- (16) Request to reschedule examination less than forty-eight hours before the examination, \$20;
- (17) Administrative fee to process returned documents from the court, \$15;
- (18) Application for remote online notary public commission, \$20;

- (19) Application for renewal of remote online notary public commission, \$20;
 - (20) Issuance of remote online notary public commission, \$100;
 - (21) Renewal of remote online notary public commission, \$100;
 - (22) Administrative fee to process and catalogue audiovisual recordings, \$10; and
 - (23) Any other fees or charges referenced in chapter 456, HRS, or this chapter.
- (b) The attorney general may impose and collect the following administrative fines for each occurrence of the following:
- [+11)] (1) Failure to timely notify the attorney general of change of any item specified in [paragraph (10),] section 5-11-10, \$25 per occurrence;
 - [+12)] (2) Failure to timely notify the attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
 - [+13)] (3) Failure to timely notify the attorney general of loss, misplacement, or theft of the notary public's [official] notary seal or [record book,] journal, [\$25;] \$20;
 - ~~(14) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5.00 if the manual is to be mailed;~~
 - ~~(15) Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction; (16) Copying, per printed page, 25 cents;~~
 - ~~(17) Replacement commission certificate, \$10;~~
 - ~~(18) Request to reschedule examination more than forty-eight hours before the examination, \$15;~~
 - ~~(19) Request to reschedule examination less than forty-eight hours before the examination, \$20;~~
 - ~~(20) (4) Failure to appear at the examination without request or notification to~~

reschedule examination received prior to the time of the examination, \$25; [and]

[-(21)] (5) Failure to [pick up] pick up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;

(6) Failure to surrender the notary public's rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;

(7) Failure to surrender the notary public's commission certificate to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;

(8) Failure to destroy or disable the remote online notary public's electronic stamping device and to submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal that the electronic stamping device was destroyed or disabled, \$200;

(9) Possessing more than one rubber stamp notary seal at a time, \$200;

(10) Failure to retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal, no less than \$50 and no more than \$500;

(11) Failure to comply with the audit or inspection of the notary public's journal by the attorney general, no less than \$50 and no more than \$500;

(12) Failure to inform the attorney general of the location of the notary public's journal, no less than \$50 and no more than \$500;

- (13) Failure to transmit the notary public's journal to the attorney general or a repository approved by the attorney general upon the notary public's death, no less than \$50 and no more than \$500;
 - (14) Failure to timely notify the attorney general of the notary public's status change as required by section 5-11-10.5, §25; and
 - (15) Any other administrative fines referenced in chapter 456, HRS, or this chapter.
- [~~(b)~~] (c) All fees and administrative fines prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.
- (d) All unpaid fees and administrative fines shall constitute a debt due and owing to the State.
- [Eff 5/5/08; am and comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-9, 456-24)

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.
The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff 5/5/08; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-1)

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action. In the event an application for commission or

renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff 5/5/08; comp 3/12/15; comp] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-53 Demand for a hearing. Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with the attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-54 Proceedings upon demand for a hearing. If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff 5/5/08; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§91-13.1, 456-1, 456-24)

§5-11-55 Exceptions. If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an

exception to that requirement if the attorney general determines such action to be in the best interest of the State. [Eff 3/12/15; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-24)

SUBCHAPTER 7

REMOTE ONLINE NOTARIZATION

§5-11-61 Authority to perform remote online notarization. No person shall perform notarial acts for remotely located individuals or advertise or represent oneself as a notary public who is able to do so, without a current commission as a remote online notary public obtained from the attorney general. [Eff and comp] (Auth: HRS §§28-10.88, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-62 Application for a remote online notary public commission. (a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under section 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant

- intends to use to perform remote online notarization;
- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.
- (c) If, during the term of a remote online notary public's commission, the remote online notary public intends to use the technologies or devices of a vendor or person other than those identified in the application submitted under subsection (b), the remote online notary public shall notify the attorney general identifying such other business or other person as required by this section. [Eff and comp
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-63 Action on application for remote online notary public commission. (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission as an online notary public:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and

- (2) After completing any necessary investigation, provide written notification to the applicant of the status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.
- (b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application and the abandoned application may be destroyed by the attorney general.
- [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-64 Remote online notary public examination. No remote online notary public commission shall be issued to any notary public unless the notary public pays the examination fee and takes and passes an examination specific to notarization of remotely located individuals as prescribed by the attorney general and pursuant to the requirements of section 5-11-32. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-65 Remote online notary public commission. The attorney general shall issue a certificate commissioning a notary public to perform remote online notarization, provided that no remote online notary public commission shall be in effect, nor shall a notary public perform remote online notarization

unless, in addition to the requirements of sections 5-11-62 and 5-11-64, the notary public:

- (1) Files a literal or photostatic copy of the notary public's remote online notary public commission issued by the attorney general with the clerk of the circuit court of the circuit in which the remote online notary public resides within thirty days of the receipt of the commission; and
- (2) Submits to the attorney general a tangible copy of the notary public's electronic seal and electronic signature. [Eff and comp] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-66 Term of commission as remote online notary public. A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-67 Application for renewal of remote online notary public commission. (a) Each remote online notary public shall be responsible for timely renewing the remote online notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application to perform remote online notarial acts received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal as a remote online notary public, each remote online notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission as a remote online notary public, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-68 Means of performing a remote online notarial act. (a) A remote online notary public located in the State may perform a notarial act for remotely located individuals only if the remotely located individual personally appears before the remote online notary public at the time of the notarization.

(b) A remotely located individual may comply with the requirement to appear personally before a remote online notary public by appearing before the remote online notary public by means of communication technology. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §465-23)

§5-11-69 Identity proofing. (a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the remotely located individual's identity credential against trusted third-person data sources, bind the remotely located individual's identity to the remotely located individual following successful knowledge-based authentication, and permit the remote online notary public visually to compare

the identity credential and the remotely located individual.

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

- (1) Credential analysis. The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:
 - (A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;
 - (B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;
 - (C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
 - (D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and
- (2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

- (A) The remotely located individual shall answer a quiz consisting of a minimum of five questions related to the remotely located individual's personal history or identity formulated from public or private data sources;
- (B) Each question shall have a minimum of five possible answer choices;
- (C) At least eighty per cent of the questions shall be answered correctly;
- (D) All questions shall be answered within two minutes;
- (E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four hours;
- (F) During a retake of the quiz, a minimum of forty per cent of the prior questions shall be replaced;
- (G) If the remotely located individual fails the second attempt, the remotely located individual is not allowed to retry with the same remote online notary public within twenty-four hours of the second failed attempt; and
- (H) The remote online notary public shall not be able to see or record the questions or answers. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-70 Other methods of identity verification.

A remote online notary public has satisfactory evidence of the identity of a remotely located individual if the remote online notary public has personal knowledge, as defined in paragraph (1), of the identity of the remotely located individual or if the remote online notary public has satisfactory evidence of the identity of the remotely located

individual by oath or affirmation of a credible witness, as defined in paragraph (2), appearing before the remote online notary public.

- (1) Personal knowledge. A remote online notary public has personal knowledge of the identity of the remotely located individual appearing before the remote online notary public if the remotely located individual is personally known to the remote online notary public through dealings sufficient to provide reasonable certainty that the remotely located individual has the identity claimed; or
- (2) Credible witness. To be a credible witness, the witness shall have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The remote online notary public shall have personal knowledge of the credible witness or shall have verified the identity of the credible witness under section 5-11-69. A credible witness may be a remotely located individual if the remote online notary public, credible witness, and remotely located individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. [Eff and comp]
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-71 Standards for communication technology.

- (a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:
 - (1) Provides continuous synchronous audiovisual feeds;
 - (2) Provides sufficient video resolution and

audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;

- (3) Provides sufficient captured-image resolution for identity proofing;
- (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
- (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
- (6) Ensures that any change to or tampering with an electronic record before or after the electronic notary seal has been affixed and the remote online notarial act has been completed is evident;
- (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
- (8) Provides a means of electronically affixing the notary public's notary seal, signature, and certification to the notarized document;
- (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
- (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process under section 5-11-69 or 5-11-70 from the beginning; and
- (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
 - (A) The live transmission of the

- audiovisual communication;
 - (B) A recording of the audiovisual communication;
 - (C) The verification methods and credentials used in the identity proofing procedure;
 - (D) The electronic records presented for online notarization; and
 - (E) Any personally identifiable information used in the identity proofing.
 - (b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:
 - (1) The technology no longer permits the remote online notary public to meet the requirements of chapter 456, HRS, or this chapter;
 - (2) The vendor ceases to provide the technology, which met the requirements of this section;
 - (3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS, this chapter, or any other laws in Hawaii; or
 - (4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law. [Eff and comp] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-23, 456-25)

§5-11-72 Electronic signature and electronic notary seal; electronic stamping device; electronic notarial certificate. (a) In addition to the rubber stamp notary seal required for all notaries public pursuant to section 456-3, HRS, and section 5-11-5, a remote online notary public shall obtain and keep an electronic stamping device, on which, when logically associated with an electronic document, shall contain the name of the notary public, the commission number

of the notary public, and the words "notary public" and "State of Hawaii" and utilizes tamper-evident technology.

(b) The remote online notary public shall authenticate all of the notary public's notarial acts, attestations, certifications, and instruments with the notary public's electronic notary seal, using an electronic stamping device, contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.

(d) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic signature, electronic notary seal, and electronic notarial certificate.

(e) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(f) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(g) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal

to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled. Failure to comply with this section may result in an administrative fine of \$200.

[Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

§5-11-73 Retention and repositories of electronic journal and audiovisual recording. (a) In addition to the tangible journal required of all notaries public pursuant to section 456-15, HRS, a remote online notary public shall retain an electronic journal as required under section 456-15, HRS, and this chapter and any audiovisual recording created under section 456-23, HRS, in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software. An electronic journal kept by the remote online notary public and the audiovisual recording created pursuant to this subchapter are not subject to the requirements of section 5-11-9.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person

knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements of chapter 456, HRS, and this chapter and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process.
- (d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository under chapter 456, HRS. The contract shall:
 - (1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements of chapter 456, HRS, and this chapter, even if the contract is terminated; or
 - (2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.
 - (e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department as required under section 456-15, HRS.
- (f) The remote online notary public shall retain the remote online notary public's electronic journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the

attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

(g) The failure to comply with this section may result in an administrative fine of no less than \$50 and no more than \$500." [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-23, 456-24)

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

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

4. These amendments to and compilation of chapter 5-11, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

CLARE E. CONNORS
Attorney General

APPROVED AS TO FORM:

Deputy Attorney General