

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 5

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Historical Note: Chapter 5 of Title 10, Hawaii Administrative Rules, is based substantially upon Part 10, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 11/14/77; R 7/30/81]

SUBCHAPTER 1 RULES OF GENERAL APPLICABILITY

§10-5-1 Scope of rules. This chapter governs practice and procedure before the commission and department pursuant to the act and the Hawaii administrative procedure act. These rules shall be construed to effect a just and speedy determination of every proceeding. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

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§10-5-2 Commission procedures. The commission may on its own motion or upon the petition of any interested person or agency, hold proceedings as it deems necessary for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules. For such purposes, it may subpoena witnesses and require the production of evidence. Procedures to be followed by the commission shall, unless specifically prescribed in these rules or by the Hawaii administrative procedures act, be such as in the opinion of the commission will best serve the purposes of such proceedings. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-3 Suspension, waiver of rules. Any person or agency may submit a signed request that any rule contained in this chapter not be applied and the commission or the hearing officer before whom the matter is presented, upon such request may suspend or waive such a rule to prevent hardship in any particular instance. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-4 Appearances before the commission. (a) Any individual or agency or designated representative thereof may appear before the commission or hearing officer in any proceeding, unless otherwise provided in subsection (c).

(b) When a person acting as a representative appears in person or signs a paper before the commission or hearing officer, the appearance or signature shall constitute a representation to the commission or hearing officer that under the provisions of these rules or applicable law, the individual is authorized and qualified to act as a representative.

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(c) No person who has been associated with the commission or department as a member, officer, employee, or counsel shall represent in any manner, any party in connection with any proceeding or matter which was handled or passed upon by that person while associated in any capacity with the commission.

(d) No person who has been associated with the commission or department as a member, officer, employee, or counsel shall represent in any manner, any party in connection with any proceeding or matter which was pending before the commission or hearing officer at the time of the association with the commission unless the person shall first have obtained the commission's written consent upon a verified showing that the person did not give personal consideration to the proceeding or matter as to which consent is sought or gained particular knowledge of the facts thereof during the association with the commission.

(e) No person appearing before the commission or hearing officer in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the commission or hearing officer in such proceeding or matter. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-5 Filing of documents. (a) Any document or other papers required to be filed with the commission in any proceeding or matter shall be filed with the department. Such document or paper may be sent by mail or hand carried to the department office within the time limit for such filing. The date on which the papers are actually received shall be deemed to be the date of filing.

(b) Any document or other papers filed with the commission shall be plainly legible.

(c) All documents or other papers must be signed by the party or a designated representative filing the same. The signature of the person signing the document shall represent that, to the best of the individual's

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knowledge, information, and belief, every statement contained in the instrument is true and that no 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 commission, an original and nine copies of all papers shall be filed.

(e) The initial document filed by any person in any proceeding shall state on the first page the name, mailing address, and telephone number of the person or persons who may be served with any documents filed in the proceeding. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-6 Docket. The department shall assign a number to each proceeding and maintain a docket of all proceedings. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-7 Time computation. (a) In computing any period of time prescribed or allowed by these rules, order of the commission, or any applicable law, the day of the act, event, or default, after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal State holiday in the State in which event the period runs until the next day which is neither a Saturday, Sunday, or holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.

(b) Upon written request, additional time will be granted to take actions or to file documents or other papers required or allowed by these rules where good cause is clearly shown. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

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§10-5-8 Amendments, dismissal of documents. If any document or other paper filed in a proceeding are not in substantial conformity with these rules as to the contents thereof, or are otherwise insufficient, the commission or hearing officer on its own motion, or on motion of any party, may strike or dismiss the document, or require its amendment. If amended, the document shall be effective as of the day of the original filing. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-9 Document retention. All documents filed with or presented to the commission may be retained in the files of the commission. However, the commission may permit withdrawal of original documents upon submission of properly authenticated copies to replace such documents. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-10 Commission decisions. All final orders, opinions or rulings entered by the commission in a proceeding and rules adopted by the commission as a result of a contested case hearing shall be released for general publication. Copies of such published materials shall be available for public inspection in the department office or may be obtained upon a signed request and payment of fees imposed by law. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

§10-5-11 Commission counsel. The attorney general or a designated representative shall serve as counsel for the commission, or the department. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §28-4)

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§10-5-12 Substitution of parties. Upon motion and for good cause shown, the commission may order substitution of parties, except that, in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-13 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which involve the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business, promote justice and will not unduly delay the proceedings. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-14 Ex parte communications. In any proceeding to be determined by the commission after the notice and hearing and upon a record:

- (1) No person, either in private life or public life, shall communicate privately on the merits of the case to any member of the commission or its staff or to the hearing officer designated to hear and decide the matter unless specifically provided by law;
- (2) No member of the commission's staff or any other governmental agency who participates in the hearing as a witness or counsel shall communicate privately on the merits of the case to a member of the commission or to the hearing officer designated to hear and decide the matter, unless specifically provided by law; and
- (3) It shall be improper for any person interested in a case to seek to sway the

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judgment of the commission by attempting to influence or bring pressure to bear upon any member of the commission or its staff, or for such person or any member of the commission's staff directly or indirectly to give statements to the press, radio, or television, via paid advertisements or otherwise, designed to influence the commission's judgment in the case. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§§10-5-15 to 10-5-20 (Reserved).

SUBCHAPTER 2 RULEMAKING PROCEDURES

§10-5-21 Rule change petitions, procedures. (a) Any person or agency may petition the commission for the adoption, amendment or repeal of any rule. The petition shall set forth the text of any proposed rule or amendment desired or specify the rule, the repeal of which is desired and state concisely the nature of petitioner's interest in the subject matter and the reasons for seeking the change. No petition which does not conform to the requirements will be considered by the commission.

(b) Petitions for rulemaking shall become matters of public record upon filing. The commission shall, within thirty days following the filing of the petition, either deny the petition in writing or initiate public rulemaking procedures. No other public hearing, oral arguments, or other form of proceeding shall be held as a result of any such petition. Where the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceeding, the procedures to be followed shall be as

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set forth in this chapter. Where the commission determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules, the commission shall deny the petition and the petitioner will be so notified, together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-6)

§10-5-22 Proposed rulemaking notice. (a) When, pursuant to a petition or upon its own motion, the commission proposes to adopt, amend, or repeal a rule, the commission shall publish a notice of proposed rulemaking at least once in a newspaper of general circulation in the State. All rulemaking notices shall be issued at least thirty days before the date set for public hearing.

- (b) The proposed rulemaking notice shall include:
 - (1) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and
 - (2) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays in advance for the copy and the postage, together with a description of where and how the requests may be made;
 - (3) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be viewed in person; and
 - (4) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal. The notice

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shall be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings, and given at least once statewide.

(c) Copies of the proposed adoption, amendment, or repeal of a rule shall be sent at least thirty days before the date set for public hearing as follows:

- (1) Five copies to each district office;
- (2) Fifteen copies to the state library, main branch, for distribution to selected libraries as suggested by the department;
- (3) Two copies to each registered and recognized homestead association; and
- (4) Five copies to the main office identified in §10-1-2(a)(1). [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-1) (Imp: HRS §91-2)

§10-5-23 Hearing conduct. (a) The public hearing shall be presided over by the chairman or, in the absence of the chairman, by another member designated by the commission. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(b) Each such hearing shall be held at the time and place set in the notice of hearing, but may at such time and place be continued by the chairman from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) 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. Evidence shall then be received with respect

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to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe. Persons testifying shall be limited to fifteen minutes. Whenever time permits, the presiding officer may allow additional time upon request. After all persons who have requested to appear before the commission hearing have testified, any person whose request for additional time has been granted may present such additional relevant testimony.

(d) Submission of evidence shall include the following:

- (1) Before giving testimony, every witness shall state his or her name, address, and any representative capacities in which the witness serves and shall give other information respecting appearance as the presiding officer may request. The presiding officer shall confine the evidence presented to the questions before the hearing and may receive evidence whether or not the evidence would be admissible in a court of law; and
- (2) Every witness shall be subject to questioning by the members of the commission, but cross-examination by private persons shall not be permitted unless expressly permitted by the presiding officer.

(e) All interested persons or agencies shall be afforded an opportunity to submit data, views or arguments which, in the opinion of the presiding officer, are relevant to the matters specified in the notice of the hearing. In addition, persons or agencies may also file with the commission signed, written protests, comments, or recommendations in support of or in opposition to the proposed rulemaking. The period for filing written protest, comments, or recommendations may be extended beyond the hearing date by the presiding officer for good cause.

(f) Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the

hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, ten copies of the exhibits shall be submitted. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-3)

§10-5-24 Commission action. The chairman or presiding officer shall announce the date when its decision shall be made. The commission shall fully consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Upon adoption, amendment, or repeal of a rule, the commission, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-3)

§10-5-25 Emergency rulemaking. Subject to chapter 91, HRS, and, notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires issuance, amendment, or repeal of a rule upon less than twenty days notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule which will be effective for a period not longer than one hundred twenty days without renewal. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-3)

§§10-5-26 to 10-5-30 (Reserved).

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SUBCHAPTER 3

CONTESTED CASE RULES

§10-5-31 Contested case hearing requests.

(a) Any person or agency including the commission and the department may request a contested case hearing and shall have the right and full opportunity to assert a claim provided that the claim is based on a law or rule over which the commission has jurisdiction.

(b) Such complaint shall be in writing, signed by the complainant and shall contain a short and simple statement of the facts constituting the alleged violation and the name and address of the alleged violator.

(c) Upon receipt of the complaint, the department shall initiate an investigation of the matters contained in the complaint. The complaint shall be presented within a reasonable time to the commission, together with investigator's report and staff recommendation and on the basis thereof the commission shall determine whether proceedings shall be initiated and the matter set for hearing.

(d) It is the policy of the commission not to initiate proceedings where the matters complained of involve a private controversy redressable in the courts and where the public interest is not involved, or where it is clear on the face of the complaint that there has been no violation of the law or any rule of the commission.

(e) If the commission orders the matter to be set for hearing, a notice of hearing pursuant to HRS section 91-9.5 shall be served upon the respondent. The respondent shall specifically admit or deny or explain the charges filed against him or her and set forth any other matters constituting an avoidance or affirmative defense. [Eff 7/30/81; comp 10/26/98]
(Auth: HRS §91-2)(Imp: HRS §§91-9, 91-9.5)

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§10-5-32 Decision to hold hearing, scheduling.

(a) The commission shall hold a contested case hearing whenever it finds that:

- (1) Such a hearing is required by Chapter 91, HRS;
- (2) There is a reason to believe that a law or rule of the commission has been violated;
- (3) Such a hearing would be in the best interest of one or more of the beneficiaries of the act; and
- (4) A proceeding by the commission would be in the interest of the department.

(b) Whenever the commission determines that a contested case hearing should be held, the matter shall be set for a hearing and a notice of hearing shall be served upon all parties as required by HRS section 91-9.5. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5, 91-10)

§10-5-33 Hearing officer. (a) No hearing officer shall be assigned to serve in any proceeding who:

- (1) Has any pecuniary interest in any matter or business involved in the proceeding;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding;
- (3) Has participated in the investigation proceeding, the institution of the proceeding or in a determination that it should be instituted or in the preparation of the notice of hearing or order to show cause or in the development of the evidence to be introduced therein; and
- (4) A hearing officer assigned by the commission or the chairman to hold a hearing and to make a recommended decision shall withdraw from a proceeding at any time the hearing officer is deemed disqualified; or the hearing officer may be withdrawn by the commission or chairman for good cause found after timely

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affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the commission or chairman.

(b) The hearing officer shall conduct the proceeding in a fair and impartial manner and, except to the extent required for the disposition of ex parte matters as authorized by law, no hearing officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(c) A hearing officer designated by the commission or chairman to hold a hearing and to make a recommended decision in a proceeding shall have the following powers:

- (1) To hold hearings;
- (2) To administer oaths and affirmations;
- (3) To examine witnesses;
- (4) To issue subpoenas;
- (5) To rule upon offers of proof and to receive relevant evidence;
- (6) To regulate the course and conduct of the hearing;
- (7) To hold conferences before or during the hearing, for the settlement or simplification of issues;
- (8) To rule on motions and to dispose of procedural request or similar matters;
- (9) Within the hearing officer's discretion, or upon the direction of the commission, to certify any question to the commission for its consideration and disposition;
- (10) To make a recommended decision to the commission in writing to be acted upon by the commission; and
- (11) To dispose of any other matter that normally and properly arises in the course of the proceedings.

(d) In the case of the absence of the hearing officer or in the hearing officer's inability to act, the powers and duties to be performed under this section in connection with the proceeding may, without

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abatement of the proceeding, be assigned to another hearing officer duly designated by the commission or chairman, unless otherwise ordered. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5, 91-10)

§10-5-34 Settlements. (a) In order to encourage and to provide opportunities for settlement of disputes, there may be held at any time before or during contested case hearings, such informal conferences among the parties for the purpose of submission and consideration of facts, arguments, proposal of adjustment or offers of settlement, as the nature of the proceeding, time and public interest may permit.

(b) Any party may submit offers of settlement or proposals of adjustment to any other party or request conferences for such purposes at any time.

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any counsel or person claiming that privilege.

(d) Whenever a complaint has been satisfied or a settlement has been reached by all parties, a signed and verified statement to that effect, stating when and how the complaint has been satisfied or the settlement has been reached shall be filed with the commission and served upon all parties of record. Such statement may be by letter. Satisfied complaints may be dismissed at the discretion of the commission with due regard to the interests of the public. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§10-5-35 Service of papers. (a) The commission shall cause to be served all orders, notices, and other papers issued by the commission, together with any other papers required by law to be served by the commission. Every other paper shall be served by the filing party.

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(b) All papers served by either the commission or any party shall be served upon all counsel of record at the time of such filing and upon all parties not represented by counsel or upon their designated agents, in fact or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall so notify all other counsel then of record and all parties not represented by counsel.

(c) The final order, and any other paper required to be served by the commission upon a party, shall be served upon such party or upon the representative authorized to receive service of such papers, and a copy shall be furnished to all agents designated in fact or by law.

(d) Service upon parties shall be regarded as complete by mail when deposited in the United States mail properly stamped and addressed. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§10-5-36 Deposition. (a) Upon the application of a party to a proceeding, and for good and exceptional cause shown, the commission or hearing officer may, at any time after the filing of the complaint or order to show cause, order the taking of testimony by oral deposition or by deposition upon written interrogatories.

(b) Any party desiring to take the deposition of a witness shall make application in writing to the commission or hearing officer setting out the reasons why such deposition should be taken, the character of the deposition, the time when; the place where; and the name and post office address of the person before whom such deposition should be taken, the name and post office address of each witness, and the subject matter concerning which the witness is expected to testify. If good and exceptional cause is shown, an order containing such instructions will be made and served upon the parties.

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(c) Upon application granted, such deposition may be taken before a person having power to administer oaths other than the person designated in the notice, provided reasonable written notice of such change is given to all parties. Each witness so testifying shall be duly sworn and the adverse party shall have the right to cross-examine such witness and the answers thereto shall be reduced to writing, and in the presence of the officer taking the deposition read to the witness and subscribed by the witness and certified in the usual form by said officer. Thereafter the officer shall forward said deposition with two copies thereof, in an envelope under seal, endorsed with the title of the case and addressed to the office of the commission.

(d) A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding if the commission or the hearing officer designated to preside at the hearing finds that the evidence is otherwise admissible and that:

- (1) The witness is dead; or
- (2) The witness is outside the State of Hawaii, unless it appears that the absence of the witness is procured by the party, offering the deposition; or
- (3) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or
- (4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or
- (5) In any event, upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the commission or hearing officer, to allow the deposition to be used.

(e) If any part of the deposition is put in evidence by the offering party, any other party may require the production of the remainder of any other portions of the deposition. [Eff 7/30/81; comp

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§10-5-37 Subpoenas. Subpoenas requiring the attendance of a witness, or the production of documentary evidence from any place within the State, at any designated place of hearing, may be issued by the chairman, any member of the commission, or hearing officer designated to preside at the hearing. Application therefor may be made either to the commission or hearing officer.

(b) Application for subpoenas for the production of documentary evidence shall be made in writing to the commission or hearing officer designated to preside at the hearing. The application must be reasonable in scope and must specify as precisely as possible the documents desired, and must show their general relevancy. The application shall be verified by oath or affirmation. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-10)(Imp: HRS §91-2)

§10-5-38 Witnesses, fees. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in courts of the State and the fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for depositions shall be paid by the party at whose instance the depositions are taken. [Eff 7/30/81; am and comp 10/26/98](Auth: HRS §91-2) (Imp: HRS §92-16)

§10-5-39 Hearings. (a) All contested cases shall be heard either before the commission or a hearing officer duly designated by the commission or chairman.

(b) All contested case hearings shall be held on the island where the affected lessee or applicant resides.

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(c) The record of the hearing shall be compiled in conformance with section 91-9, HRS. The commission shall make provision for stenographic recording of the testimony, but it shall not be necessary to transcribe the recording unless requested for the purposes of rehearing or court review. Any person shall be entitled to a copy of the record of a hearing provided that the cost of the preparation of the record is paid for.

(d) Each party or the party's representative shall have the following rights:

- (1) To examine all documents; documents which a party does not have an opportunity to see shall not be made part of the hearing record and shall not be used in making a decision in the case;
 - (2) To bring witnesses to testify for the party;
 - (3) To establish all relevant facts and circumstances through verbal testimony or documents;
 - (4) To advance any arguments without undue interference;
 - (5) To question or refute any testimony or evidence presented by another party including the opportunity to cross-examine witnesses called by another party; and
 - (6) To be notified either before or during the hearing if the commission or hearing officer plans to consider facts not in evidence.
- [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§10-5-40 Contested case hearing procedures. (a) The following procedures shall be followed in conducting a contested case hearing before the commission or its duly appointed hearing officer:

- (1) The chairman or hearing officer shall convene the hearing and shall read the complaint and shall inquire whether there are any amendments to be made;

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- (2) The complainant or petitioner and the respondent shall have the opportunity to challenge for bias any member of the commission or hearing officer; and
- (3) Before presentation of the case, the parties shall have the opportunity to make opening statements. The usual order of making such statements shall be as follows:
 - (A) Opening statement by the complainant or petitioner; and
 - (B) Opening statement by the respondent, unless the respondent reserves the opportunity to make an opening statement until after the witnesses for the petitioner have been presented; or
- (4) Opening statements may be waived by a party.
- (b) Witnesses shall testify in the following order:
 - (1) Witnesses for complainant or petitioner;
 - (2) Witnesses for the respondent;
 - (3) Witnesses for the complainant or petitioner in rebuttal;
 - (4) Witnesses for the respondent in rebuttal; and
 - (5) Additional witnesses as the commission or the hearing officer may deem necessary.
- (c) Witnesses shall be examined in the following order:
 - (1) Direct examination by the party calling the witness;
 - (2) Cross-examination by the other party;
 - (3) Redirect examination by the party calling the witness;
 - (4) Re-cross examination by the other party; and
 - (5) Examination by the commission or hearing officer.
- (d) After the evidence has been presented, the commission or hearing officer shall give the parties opportunity to summarize. The usual order of final argument shall be as follows:
 - (1) Final argument by the complainant or petitioner;
 - (2) Final argument by the respondent;

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(3) Rebuttal argument by the complainant or petitioner.

(e) Rebuttal argument shall be limited to countering whatever may have been said by the other party during final argument.

(f) A reasonable time limit may be imposed by the commission or hearing officer for the final argument.

(g) Final arguments may be waived by a party.

(h) At the close of the presentation of evidence before the hearing officer in all contested cases, or within a reasonable time thereafter, the hearing officer may permit the filing of proposed findings and conclusions together with the reasons therefor. The proposal shall be in writing and shall be furnished to all parties; ten copies including the signed original, shall be filed with the commission.

(i) Oral argument may be allowed at the discretion of a hearing officer.

(j) Within a reasonable time, after final arguments have been completed and all requested memoranda submitted, the commission or hearing officer shall bring the matter to a close.

(k) At any time before the filing of a recommended decision, the hearing officer, for good cause shown, may reopen the case for the reception of further evidence. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2)(Imp: HRS §91-9)

§10-5-41 Recommended decision of hearing officer.

(a) Except when the individual shall become unavailable to the commission, the recommended decision shall be made by the hearing officer who presided at the hearing. All findings, conclusions and orders recommended by the hearing officer shall be based upon the whole record and supported by the reliable, probative and substantial evidence, including facts of which he may take official notice.

(b) The hearing officer shall as soon as practical and not later than thirty days after the close of the reception of evidence make and file a

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recommended decision which shall become a part of the record and include separate findings of fact and conclusions of law as well as reasons or basis therefor upon all the material, issues of fact, law or discretion presented on the record. If any party to the proceeding has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling upon each proposed finding so presented.

(c) A copy of the hearing officer's recommended decision shall be served upon each party or the counsel of record.

(d) Any party may within fifteen days after receipt of a copy of the hearing officer's recommended decision file with the commission exceptions thereto and shall specify the portions of the record and authorities relied on to sustain each point. Nine copies of the exceptions and request for review shall be filed with the commission and shall thereupon become part of the record. In addition, a copy of such exceptions and request for review shall forthwith be served upon the hearing officer and upon each of the parties and counsel who were served with a copy of the hearing officer's recommended decision. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-42 Commission decision. (a) Upon filing of exceptions by a party adversely affected by the recommended decision, the commission shall grant such party an opportunity to present argument and the commission shall personally consider the whole record or such portions thereof as may be cited by such party.

(b) If no exceptions or requests for review are filed within the time specified, the recommended decision of the hearing officer shall become final upon approval of the commission, unless the commission on its own motion orders further proceedings to be held.

(c) Where the hearing is held before the commission or where exceptions to the recommended

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decision and a request for review have been filed with the commission, the commission will consider the whole record, including, where applicable, the recommended decision of the hearing officer and exceptions thereto, and will resolve all questions of fact by what it deems to be the greater weight of evidence thereon and make a final decision stating the reasons or basis therefor and enter an appropriate order.

(d) The commission may entertain a written petition to reconsider or re-hear its final order, decision or ruling. The petition shall be determined with reasonable expedition so that the aggrieved party may have timely opportunity to appeal. Denial of such petition shall be in writing with the reasons stated therefor.

(e) Petition to reconsider or re-hear any final order, decision or ruling of the commission shall be filed not later than ten days after a person is served with a certified copy of the final decision and order of the commission. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-14)

§10-5-43 Court appeal. Any appeal to court for judicial review of a final decision of the commission must be made within thirty days after a person is served with a certified copy of the final decision and order of the commission. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-14)

§§10-5-44 to 10-5-50 (Reserved).

SUBCHAPTER 4 PETITION FOR DECLARATORY RULING

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§10-5-51 Form and content. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory authority involved, and include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §§91-7, 91-8)

§10-5-52 Additional data, supporting authority. Upon receipt of the petition, the commission may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

§10-5-53 Dismissal. Without notice or hearing, the commission may dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this chapter. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

§10-5-54 Hearing request. (a) 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 commission may order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling, shall set forth in detail:

- (1) The reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not

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permit the fair and expeditious disposition of the petition; and

(2) To the extent that such request for hearing is dependent upon factual assertion, affidavits establishing such fact shall accompany such request.

(b) In the event a hearing is ordered by the commission, HRS, section 91-9, and sections 10-5-31 through 10-5-43 of this chapter shall govern the proceedings. [Eff 7/30/81; am and comp 10/26/98]
(Auth: HRS §91-8) (Imp: HRS §91-8)

§10-5-55 Declaratory motion on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice of hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 7/30/81; comp 10/26/98]
(Auth: HRS §91-8) (Imp: HRS §91-8)