

**Rules of Procedure  
Ethics Commission of the  
City and County of Honolulu**

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RULE 1. GENERAL PROVISIONS

1.1 Purpose

These rules are intended to carry out and to provide for the efficient administration of the provisions of Article XI of the Revised Charter of the City and County of Honolulu 1973, as amended, (hereafter referred to as "RCH"), relating to Standards of Conduct, and; Article 6 of Chapter 3 of the Revised Ordinances of Honolulu 1990 (hereafter referred to as "ROH"), relating to the Ethics Commission of the City and County of Honolulu (hereafter referred to as the "Commission"); and Article 8 of Chapter 3, ROH, relating to Additional Standards of Conduct. They shall

be liberally construed to secure the just, swift, and inexpensive determination of every proceeding.

## 1.2 Authority

These rules are promulgated pursuant to the authority granted to the commission under ROH Sec. 3-6.3; RCH Secs. 4-105.4 and 11-107 and Chapter 91, Hawaii Revised Statutes (hereafter referred to as "HRS").

## 1.3 Effect of Rules

These rules shall have the force and effect of law. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3; HRS Sec. 91-4)

## 1.4 Definitions

Unless the context clearly requires otherwise, as used herein the following terms shall have the meaning set forth below:

"Associate legal counsel" means a commission staff attorney under the supervision and direction of the legal counsel.

"Commission" means the ethics commission of the City and County of Honolulu.

"Complainant" means a person who has submitted a complaint to the commission, or the commission or its legal counsel, if the commission so designates itself or its legal counsel in a notice of alleged violation.

"Complaint" means a written statement of facts or allegations giving rise to a reasonable inference that a violation of the standards of conduct by an officer or employee has occurred, which statement is either: (1) submitted to the commission by a person other than the person whose conduct is in question; or (2) initiated by the commission based on written or non-written information.

"Decision" means the written opinion, findings, and conclusions of the commission, rendered after a contested hearing and conforming to the requirements of HRS Chapter 91.

"Designee" means a hearing officer or a committee of the commission of between one and three members as determined by a majority vote of the total membership to which the commission is entitled.

"Employee" means the persons defined in RCH §13-101.3.

"Exempt employee" means all employees of the executive and legislative branches of the City and County of Honolulu who are exempt from civil service pursuant to RCH §§ 6-1103(a) through (d) and (i) and 6-1104(a) through (d), but shall not mean exempt employees in clerical positions or employees within a bargaining unit as described in HRS § 89-6.

"Formal advisory opinion" means a written opinion in response to a request for advice of a complaint approved by an affirmative vote of the majority of the entire membership of the commission.

"Informal advisory opinion" means a written or oral response rendered by the Legal Counsel pursuant to a request for advice or a complaint.

"Legal counsel" means the chief staff member and executive director of the commission.

"Notice of alleged violation" means the written notice issued to a respondent after the commission has found probable cause to believe that there has been a violation of the standards of conduct.

"Officer" means the persons defined in RCH § 13.101.4.

"Probable cause" means that there are facts and circumstances that would persuade a reasonable person to believe that there has been a violation of the standards of conduct.

"Request for advice" means a written or oral request to the commission for an opinion as to whether the conduct of an officer or employee would be a violation of the standards of conduct.

"Respondent" means the person who is alleged in a complaint or notice of alleged violation to have violated one or more provisions of the standards of conduct.

"Staff" means all commission full and part time employees, those employed on a personal services contract, and consultants including, but not limited to, legal counsel, associate legal counsel, legal clerk, and investigator.

"Standards of conduct" means the provisions regarding ethical conduct stated in Article XI, RCH, and Article 8 of Chapter 3, ROH. [Eff ]  
(Imp: Article XI, RCH, and Article 8 of Chapter 3, ROH; ROH Sec. 3-6.  
(Ord. 12-1, Sec. 2); RCH Sec. 11-107; RCH Sec. 13-101)

## 1.5 Disqualification of Commissioners; Bias or Prejudice

- a. Any person, officer or employee may file an affidavit that one or more of the commissioners or designee has a personal bias or prejudice. Such affidavit may be filed on any matter before the commission affecting or involving such person, officer or employee. The commissioner or designee against whom the affidavit is filed may answer the affidavit or may file a disqualifying certificate with the commission. If the commissioner or designee chooses to answer the affidavit, the remaining commissioners shall decide whether or not that commissioner or designee should be disqualified from proceeding therein. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least ten working days before the date on which the matter will be considered by the commission, or good cause shall be shown for the failure to do so.
- b. A commissioner or designee may disqualify themselves by filing with the commission a disclosure of conflict of interest pursuant to RCH Sec. 11-103 that they deem themselves unable for any reason to participate with absolute impartiality in the pending proceeding.
- c. A commissioner or designee shall be disqualified from participating in any proceeding where such participation would be a violation of the conflict of interest provisions of under the standards of conduct. A commissioner or designee shall disclose before the commencement of any meeting agenda item or hearing all relationships to any of the parties or participants. [Eff                    ] (Imp: ROH Secs. 3-6.3, 3-6.5 and 3-6.7)

#### 1.6 Consolidation

The Commission, upon its own initiation or upon a motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff                    ] (Imp: ROH Sec. 3-6.3).

#### 1.7 Right to Appear

Except as otherwise stated herein, any person, officer or employee, or his or her authorized representative, having business with the commission may appear before it, unless the commission or designee determines that the person, officer or employee, or his or her representative, is acting in a manner which prevents the orderly and peaceful conduct of its proceedings. The right to appear before the commission or designee may be reinstated upon the commission's or designee's acceptance of a written statement that the person will abide by the commission's rules and will not

disrupt the orderly and peaceful conduct of its proceedings. The commission may set restrictions on appearances as it deems necessary to carry out its duties and functions. [Eff \_\_\_\_\_ ] (Imp: ROH Secs. 3-6.6 and 3-6.7)

#### 1.8 Maintenance and Custody of Files and Records

The legal counsel to the commission shall have charge of the commission's official records and shall be responsible for the maintenance and custody of the files and records of the commission, including the papers, transcripts of testimonies and exhibits filed in proceedings, the minutes of all actions taken by the commission, and all its decisions, advisory opinions, rules and approved forms. The legal counsel or delegate shall receive all documents required to be filed with the commission and shall promptly stamp the time and date upon papers filed with the commission. [Eff \_\_\_\_\_ ] (Imp: ROH Sec. 3-6.3)

#### 1.9 Authentication of Commission Action

All decisions, formal advisory opinions and guidelines of the commission shall be signed by the chairperson of the commission or in accordance with authority delegated by the commission. [Eff \_\_\_\_\_ ] (Imp: ROH Secs. 3-6.2 and 3-6.3)

#### 1.10 Advisory Opinions

##### a. Informal Advisory Opinions

The legal counsel may provide informal advisory opinions at the direction of the commission or when the opinion is on a matter which is established by precedent or is clear under the applicable provisions of the law and the legal counsel determines that it is not likely that the commission would render a different opinion. Legal counsel shall submit the request to the commission in the following circumstances:

- (1) The case raises an important legal or policy issue on which the Commission has not taken a position in a formal advisory opinion or guideline;
- (2) An opinion in the case is likely to set new precedent;

- (3) The requester asks for a formal advisory opinion from the Commission; or
- (4) There are other unique aspects to the case of which the Commission should be made aware, including that the request concerns an elected official.

Each informal advisory opinion shall include a statement informing the person submitting the request for advice or complaint that he or she may request the commission to review the informal advisory opinion. A record shall be kept of all informal advisory opinions given under this rule and shall be available to the commissioners at the commission meeting following the date on which the opinion is given.

b. Formal Advisory Opinions

All formal advisory opinions rendered by the commission shall be in writing and shall be published in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved unless disclosure is required or allowed under applicable law.

c. When Effective

An oral informal advisory opinion is effective when it is communicated to the person requesting the advice. A written informal or formal advisory opinion is effective when it is signed and placed in the mail, postage prepaid, and addressed to the person requesting the opinion at the address furnished by the person, or upon personal delivery, or when it is sent electronically or via facsimile transmission to a facsimile number provided by the person making the request for advice or complaint.

d. Concurring or Dissenting Opinion

- (1) Any commissioner who agrees with the commission's formal advisory opinion, but for different reasons from those stated, may file a concurring opinion which will be placed at the end of the commission's formal advisory opinion.
- (2) Any commissioner who disagrees with the commission's formal advisory opinion may file a

dissenting opinion, which will be placed at the end of the commission's formal advisory opinion or at the end of the concurring opinion, if any concurring opinion is filed. [Eff \_\_\_\_\_] (Imp: ROH Secs. 3-6.2 through 3-6.5; RCH Sec. 11-107)

#### 1.11 Confidentiality of Commission Records, Permitted Disclosures

- a. All advisory opinions, files, records, reports, writings, documents, exhibits, electronic records and other information prepared or received by the commission or its staff or consultants relating to a request for advice or a complaint shall be held in confidence and no information as to the contents thereof shall be disclosed unless such disclosure is:
  - (1) The result of the information being presented to and received by the commission at a hearing or meeting that is open to the public;
  - (2) Ordered by a court of competent jurisdiction;
  - (3) Reasonably required by the commission or its staff or designee to investigate or otherwise discharge its duties regarding the request for advice or the complaint, including but not limited to providing information to the appointing authority or council, in the case of a councilmember, in support of the commission's advisory opinion and recommended disciplinary action, unless otherwise protected by law. If disciplinary action is taken against an employee, the employee's exclusive representative shall also be entitled to the information, unless otherwise protected by law; or
  - (4) Allowed or required by applicable law.
- b. Any commission member or commission staff member or designee who discloses information related to a request for advice or complaint, unless disclosure is allowed pursuant to subsection (a), shall be subject to the applicable provisions of section 11-106, RCH, and section 3-8.5, ROH.
- c. The commission may disclose the name of any officer or employee who has been determined by the commission, following investigation and a hearing or opportunity for a hearing, to have violated any of the standards of conduct when required or allowed by applicable law.
- d. The commission may submit information or records to another agency, an agency of the State of Hawaii, an agency of another state, or to an agency of the federal government, or a foreign law enforcement agency or authority as permitted under HRS Chapter 92F.

- e. The disclosures of conflicts of interests required to be filed as provided in section 11-103, RCH, shall be made matters of public record at any time that such a conflict becomes apparent.
- f. Financial disclosure statements shall be treated as open to the public or confidential in accordance with section 3-8.4(e), ROH.
- g. All hearings before the commission involving an alleged violation of the standards of conduct by an officer or employee shall be held in executive session; provided that a public hearing may be held where the officer or employee alleged to have violated the standards of conduct consents to a public hearing.  
[Eff \_\_\_\_\_] (Imp: RCH Secs. 11-103, 11-106 and 11-107; ROH Secs. 3-6.3, 3-6.\_\_(Ord. 12-1, Sec. 3), 3-8.4 and 3-8.5; HRS Chapter 92F-13)

#### 1.12 Availability of Commission Documents

- a. The public may obtain information on matters relating to the commission and the standards of conduct by inquiring in person or by telephone during the commission's regular business hours, by contacting the commission in writing or via email, or online.
- b. The rules of the commission are available for public inspection during regular business hours at the commission offices, the office of the city clerk, or online.
- c. Access to commission documents, including but not limited to requests for advice, complaints, responses, and investigative files and information shall be in accordance with the requirements of applicable law.
- d. Disclosures of conflict of interest filed in accordance with rule 10 shall be available for public inspection during regular business hours at the commission offices or at the office of the city clerk.
- e. Public financial disclosures which are filed with the city clerk in accordance with rule 9 herein shall be available for public inspection during regular business hours at the office of the city clerk.
- f. Requests for access and copies pursuant to subsection (c) shall be made in writing and shall specifically identify the records sought. [Eff \_\_\_\_\_] (Imp: ROH Sec. 3-6.3, 3-6.\_\_(Ord. 12-1, Sec. 3), 3-8.4; HRS Chapter 92F-13)

#### 1.13 Operations

- a. The offices of the commission are located at 715 South King Street, Suite 211, Honolulu, Hawaii 96813, or such other address where the commission may be located. All written communications to the commission shall be addressed to the commission at its official address, unless otherwise specifically directed, or to the email addresses or facsimile numbers of the commission or its staff.
- b. The offices of the commission shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, except for official city holidays.
- c. The commission meets as it deems appropriate. Special meetings may be called by the chairperson or by two or more commissioners upon notice to the staff and other commissioners. Except when considering matters made confidential by law or matters considered in executive session, meetings are open to the public.
- d. The legal counsel is responsible for the operations and administration of the commission. The legal counsel may hire and remove associate legal counsel, hearing officers, investigators, clerical assistants, and other employees as the business of the commission requires, prescribe their duties and fix their compensation. The legal counsel may engage the services of experts, consultants and other contractors as the legal counsel deems necessary. [Eff            ] (Imp: ROH Sec. 11-107, ROH Secs. 3-6.3 and 3-6.4)

#### 1.14 Delegation of Duties

- a. The legal counsel may take all actions delegated to the legal counsel in these rules, delegated by the commission or its members or reasonably related to the discharge of the duties, powers and functions of the commission including, but not limited to, the authority to administer oaths and affirmations on behalf of the commission.
- b. The legal counsel may delegate the authority to carry out the actions in subsection (a) to associate legal counsel, other staff or consultants of the commission as the legal counsel or the commission deem reasonable for the efficient implementation of the duties, powers and functions of the commission. [Eff            ] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 and 3-6.4)

#### 1.15 Waiver of Procedures, Disposition

With the approval of the commission, any procedure may be modified or waived by stipulation of the parties and disposition may be made by stipulation, agreed settlement, consent order, or default. [Eff            ] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 1.16 Motions

- a. All motions, except when made during a hearing or motion, shall:
  - (1) Be in writing;
  - (2) State the grounds for the motion;
  - (3) Set forth the relief or order sought;
  - (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law; and
  - (5) Be filed with the commission and served on the parties no later than 15 calendar days prior to the hearing.
- b. Every motion, except one entitled to be heard ex parte, shall indicate whether a hearing is requested on the motion. If a motion requires the consideration of facts not appearing of record, it shall be supported by an affidavit or affidavits. Motions shall be served in accordance with HRS Sections 91-9 and 91-9.5.
- c. An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion, or, if the hearing on the motion will occur less than five days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the chairperson or designee.
- d. A party who does not oppose a motion or who intends to support a motion or who desires a continuance shall notify the commission or designee and the opposing attorneys within five days after being served or, if the hearing on the motion will occur less than five days after the motion is served, within forty-eight hours before the time set for hearing. Failure to appear at the hearing may be deemed a waiver of objections to the granting of the motion.
- e. Motions that do not involve the final determination of a proceeding may be heard and determined by the chairperson, a commissioner or designee.
- f. If a hearing is requested, the movant shall obtain a date and time for hearing on the motion from the legal counsel.

- g. If a hearing on the motion is not requested, the commission or designee may decide the matter upon the pleadings, memoranda, and other documents filed.  
[Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 1.17 Hawaii Rules of Civil Procedure and Rules of the Circuit Courts

The commission or designee may refer to the Hawaii Rules of Civil Procedure or the Rules of the Circuit Courts for guidance in interpreting these rules or if the rules are silent on a matter. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 1.18 Rules of Evidence

Section 91-10, HRS, shall apply as to the rules of evidence. Irrelevant, immaterial or unduly repetitious information shall not be admitted into evidence. The commission or designee shall give effect to the privileges recognized at law. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 1.19 Chairperson and Vice-chairperson

- a. A chairperson shall be selected by secret ballot by vote of a majority of members to which the commission is entitled, who shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year.
- b. A vice-chairperson, who shall call and chair meetings in the incapacity or absence of the chairperson, shall be selected by secret ballot by vote of a majority of members to which the commission is entitled, who shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year. [Eff \_\_\_\_\_ ] (Imp: RCH Secs. 11-107 and 13-113; ROH Secs. 3-6.2 and 3-6.3)

#### 1.20 Voting Requirements for Formal Action by the Commission

Except as otherwise provided by law, the concurring votes of at least four Commissioners shall be required to authorize any formal action by the Commission, including but is not limited to the adoption of opinions or resolutions, the granting of requests for reconsideration, the approval of guidelines or forms, or the issuance of decisions or orders. [Eff \_\_\_\_\_ ] (Imp: RCH Secs. 11-107 and 13-113; ROH Secs. 3-6.2 and 3-6.3)

#### 1.21 Appointment of Committee or Hearing Officer as Designee

The commission may appoint as designee a committee of the commission of between one and three members or may appoint a hearing officer. The

designee shall have the power to take actions or make decisions reasonably required to carry out the duties and responsibilities assigned by the commission.

The designee shall perform the duties and responsibilities the commission deems necessary, including but not limited to issuing subpoenas, receiving evidence and taking testimony, deciding motions, implementing orders and recommending to the commission findings of fact and conclusions of law. [Eff \_\_\_\_\_ ] (Imp: RCH Secs. 11-107 and 13-113; ROH Secs. 3-6.1 through 3-6.7)

## RULE 2. PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

### 2.1 Who May File

- a. Any person, officer or employee may petition the commission requesting the adoption of new rules, or the amendment or repeal of any existing rules.
- b. One original and seven copies of the petition shall be submitted to the commission. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### 2.2 Form and Content of Petition

- a. The petition shall contain:
  - (1) The petitioner's name, address, email address and telephone number;
  - (2) A statement of the nature of the petitioner's interest;
  - (3) A draft or statement of the substance of the proposed rule or amendment or a designation of the provision or provisions sought to be repealed or both;
  - (4) A statement of the reasons in support of the proposed rule, amendment or repeal;
  - (5) Any other information relevant to the petition; and
  - (6) The signature of the petitioner or his or her representative. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### 2.3 Processing of Petition

The petition shall be dated upon receipt. The commission or designee shall notify the petitioner of the date, time and place where the commission or designee shall consider the petition, the petitioner's privilege of personal appearance with or without counsel, and the privilege of presenting evidence and argument in support of the petition. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

#### 2.4 Rejection of Petition

The commission or its designee may reject any petition which does not conform to the requirements of these rules. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

#### 2.5 Consideration and Disposition of Petition

Within thirty working days, which period shall commence on the next day following the commission's meeting during which the petition is considered, the commission or designee shall:

- a. Deny the petition in writing, stating the reason for denial; or
- b. Initiate proceedings in accordance with law for the adoption, amendment or repeal of the rule, as the case may be. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### RULE 3. DECLARATORY ORDERS

#### 3.1 Who May File

Any person, officer or employee may petition the commission for a declaratory order as to the applicability of any statute, ordinance, rule or order of the commission. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

#### 3.2 Form and Content of Petition

- a. One original and seven copies of the petition shall be submitted to the commission. It shall contain:
  - (1) The name, address, email address and telephone number of the petitioner;
  - (2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition;

- (3) A designation of the specific statute, ordinance, rule or order in question;
- (4) A complete statement of pertinent facts;
- (5) A statement of the position or contention of the petitioner;
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention; and
- (7) The signature of the petitioner or his or her personal representative. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH 3-6.3)

### 3.3 Rejection of Petition

The commission or designee may reject any petition which does not conform to the requirements of these rules. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### 3.4 Notice, Consideration and Disposition

- a. The commission or designee shall notify the petitioner of the date, time and place where the commission or designee shall consider the petition, the petitioner's privilege of personal appearance with or without counsel, and the privilege of presenting evidence and argument in support of the petition.
- b. Within a reasonable time after the receipt of the petition, the commission or designee shall render its order in writing. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### 3.5 Declaratory Order on Commission's Own Motion

Notwithstanding the other provisions of this rule, the commission or designee, on its own motion or upon request but without notice or hearing, may issue a declaratory order to resolve a controversy or answer a question. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

### 3.6 Refusal to Issue Declaratory Order

The commission or designee may for good cause refuse to issue a declaratory order. [Eff \_\_\_\_\_ ] (Imp: RCH Sec. 11-107; ROH Sec. 3-6.3)

## RULE 4. REQUESTS FOR ADVICE

### 4.1 Who May Make a Request for Advice

Any person may make a request for advice from the commission regarding the conduct of an officer or employee as it relates to the standards of conduct. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 4.2 Form and Content

Requests for advice may be made orally or in writing and shall describe with particularity all of the pertinent facts and circumstances, including, without limitation, the name(s) of the officer(s) or employee(s) involved, if known, and the nature of the acts or omissions at issue, and any other pertinent information known to the requestor. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 4.3 Acknowledgement of Receipt of Written Request for Advice

The commission shall acknowledge in writing the receipt of a written request for advice to the person submitting the request for advice. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 4.4 Response; Advisory Opinion

#### a. Response by Commission

The commission shall render a formal advisory opinion in response to a request for advice when:

- (1) An officer or employee makes a request for a formal advisory opinion concerning his or her own conduct as it relates to the standards of conduct; or
- (2) The commission, in its discretion, deems it appropriate to render a formal advisory opinion.

#### b. Response by Legal Counsel

The legal counsel may render informal advisory opinions in compliance with the provisions of Rule 1.10. The legal counsel may request from any source information that is reasonably related to the request for advice. When the legal counsel provides an informal advisory opinion in response to a request for advice, he or she shall inform the person making the request that the requestor may make a written request for a formal advisory opinion from the commission.

c. Additional Information

Upon receipt of a request for advice, the commission may render its opinion on the basis of the information available, or it may conduct an investigation or hold hearings if additional information is deemed necessary to render an advisory opinion.

d. Time for Response

Within 30 calendar days after a request for advice has been submitted to the commission, or within 30 calendar days after a final hearing or meeting on a request for advice shall have been concluded, whichever is later, the commission shall render its advisory opinion to the person who has requested the advice. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

4.5 Notification to Subject of Request for Advice

If the request for advice does not concern the conduct of the person making the request, the commission or legal counsel may, in its discretion, notify the subject of the request for advice of the advisory opinion. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

4.6 Basis for Refusal to Entertain Request for Advice

Except in the case of a request by an officer or employee involving his or her own conduct, the commission may for good cause refuse to entertain a request for advice. Without limiting the generality of the foregoing, the commission may refuse to entertain a request when:

- (1) The request is speculative or purely hypothetical and does not involve an actual situation;
- (2) The request does not present a question within the jurisdiction of the Commission; or
- (3) The request is frivolous. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## RULE 5. COMPLAINTS

5.1 Who May File

Complaints may be made by any person or the commission on its own initiative. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.2 Form and Content

- a. Complaints shall be made in writing and signed by the complainant; provided that the commission or legal counsel may initiate an investigation of a possible violation of the standards of conduct based on any written or non-written information.
- b. Complaints should describe the pertinent facts and circumstances, including, without limitations, the name of each officer or employee involved, if known, and the nature of the acts or omissions at issue and any other pertinent information known to the complainant.
- c. It is not a defense to a violation of the standards of conduct that the complainant failed to supply all information relevant to the complaint. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.3 Acknowledgement of Receipt of Complaint

The commission shall acknowledge in writing or by email the receipt of a complaint to the complainant, if the complainant has provided sufficient contact information to the commission. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.4 Basis for Refusal to Entertain Complaint

The commission may for good cause refuse to entertain a complaint. Without limiting the generality of the foregoing, the commission or legal counsel may refuse to entertain a complaint if the request is:

- (1) Speculative or purely hypothetical and does not involve an actual situation;
- (2) The complaint does not present a question within the jurisdiction of the commission; or
- (3) Frivolous. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.5 Preliminary Determinations

Upon receipt of a complaint that complies with the requirements of rules 5.2 and 5.4, the legal counsel shall:

- (1) Make a determination as to whether the subject matter of the complaint is within the jurisdiction of the commission.
  - (a) If the legal counsel determines that the complaint should be dismissed because the subject matter of the complaint does not come within the jurisdiction of the commission, he or she shall notify the complainant in writing of the determination and of the complainant's right to submit a written request for the commission to review the determination. This written notification shall satisfy the commission's obligation to render an advisory opinion in response to a complaint.
  - (b) To obtain commission review of the legal counsel's determination under rule 5.5(1)(a), the complainant must make a written request stating the reasons for the requested review within 15 calendar days of the complainant's receipt of the notification.
- (2) Make a determination as to whether the allegations, if taken as true, would constitute a violation of the standards of conduct.
  - (a) If the legal counsel determines that the complaint should be dismissed because the allegations, even if taken as true, would not constitute a violation of the standards of conduct or the conduct is *de minimis*, he or she shall notify the complainant in writing of the determination and of the complainant's right to request in writing that the commission review the determination. This written notification shall satisfy the commission's obligation to render an advisory opinion in response to a complaint.
  - (b) To obtain commission review of the legal counsel's determination under rule 5.5(2)(a), the complainant must make a written request stating the reasons for the requested review within 15 calendar days of the complainant's receipt of the notification. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.6 Notification to Respondent

- a. Upon receipt of a complaint that complies with the requirements of rules 5.2, 5.4 and 5.5, the legal counsel may send the respondent a copy of the complaint with such deletions as may be necessary to prevent the disclosure of the identity of the complainant and witnesses.
- b. The respondent shall submit a response to the allegations in the complaint within 15 calendar days of the receipt of the complaint. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 5.7 Preliminary Investigation

- a. After the legal counsel makes the preliminary determinations required under rules 5.2, 5.4 and 5.5, he or she shall conduct a preliminary investigation into the allegations of complaint that are within the jurisdiction of the commission and the allegations, which, if taken as true, would constitute a violation or violations of the standards of conduct. The primary purpose of the preliminary investigation is to determine whether there is probable cause to believe that a violation of the standards of conduct has occurred.
- b. The legal counsel shall determine the nature and scope of the preliminary investigation, and shall have the authority without limitation, to conduct interviews or depositions of the complainant, the respondent and other witnesses, to request and review records, and to obtain information reasonably related to the nature and scope of the preliminary investigation from any officer, employee, agency, person or entity.
- c. Nothing herein shall prevent the legal counsel from investigating possible violations of the standards of conduct that are not stated in the complaint and which are based on information obtained in the course of the investigation of the complaint. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 5.8 Probable Cause Determination

- a. After conducting a preliminary investigation under Rule 5.7, the legal counsel shall make a determination as to whether there is probable cause of a violation of the standards of conduct.
- b. If the legal counsel determines that there is not probable cause to believe that there has been a violation of the standards of conduct, he or she shall dismiss the complaint and notify the complainant in writing of the dismissal and of the complainant's right to request that the commission review the legal counsel's determination by submitting a written request stating the reasons for the request within 15 calendar days of the receipt of

the notification. The written notification shall satisfy the commission's obligation to render an advisory opinion in response to a complaint.

- c. If the legal counsel determines that there is probable cause to believe that there has been a violation of the standards of conduct, but that the violation was *de minimis*, he or she may dismiss the complaint and notify the complainant in writing of the determination and of the complainant's right to request that the commission review the legal counsel's determination by submitting a written request within 15 calendar days of the receipt of the notification stating the reasons for the request. The written notification shall satisfy the commission's obligation to render an advisory opinion in response to a complaint.
- d. If the legal counsel determines that there is probable cause to believe that there has been a violation of the standards of conduct, he or she shall provide a written report to the commission or designee containing the basis for the determination.
  - (1) The commission or designee shall consider the report of the legal counsel and any other information it deems relevant and determine whether there is probable cause to believe that the respondent has violated the standards of conduct.
  - (2) Neither the complainant nor the respondent has a right to appear or to submit information to the commission or designee at the probable cause stage.
  - (3) If the commission or designee determines that probable cause of a violation of the standards of conduct does not exist or there is probable cause of a violation of the standards of conduct, but that the violation was *de minimis*, it may request additional information or it shall dismiss the complaint and notify the complainant and the respondent of its determination in writing.
  - (4) If the commission or designee determines that probable cause of a violation of the standards of conduct does exist, it shall issue a notice of alleged violation to the respondent in accordance with these rules. [Eff ] (imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.9 Notice of Alleged Violation

- a. A notice of alleged violation shall conform to the requirements of section 91-9(b), HRS, and include:

- (1) An explicit statement in plain language of the factual allegations constituting the alleged violation(s) of the standards of conduct;
  - (2) The specific provision(s) of the standards of conduct alleged to have been violated;
  - (3) Notification to the respondent of his or her right to make a written request for a contested case hearing before the commission and the time period within which the request for the hearing must be made;
  - (4) A statement that the respondent may retain legal counsel if the respondent so desires and that an individual may appear on the respondent's behalf; and
  - (5) A copy of the complaint with such deletions as may be necessary to prevent the disclosure of the identity of the complainant and witnesses.
- b. The notice of alleged violation shall designate the party alleging the violation of the standards of conduct as the complainant and the officer or employee involved as the respondent. In the discretion of the commission or the legal counsel, the commission itself or its legal counsel may be the complainant or may be made a co-complainant.
- c. A notice of alleged violation shall be served in accordance with section 91-9.5, HRS.
- d. The commission or designee, in its discretion, may amend a notice of alleged violation.
- e. If the respondent, within 15 calendar days after receipt of a notice of alleged violation, requests a hearing, the commission or designee shall issue a notice of hearing, setting forth the date, time, place and nature of the hearing and the legal authority under which the hearing is to be held.
- (1) A notice of hearing shall be served in accordance with section 91-9.5, HRS.
  - (2) The legal counsel may, in his or her discretion, conduct further investigation into the complaint prior to the commencement of the hearing.
- f. If the respondent, after receipt of a notice of alleged violation, does not timely request a hearing, the commission may render its opinion on the

basis of the information available, or the commission or designee may conduct further investigation if additional information is necessary in order to render an advisory opinion.

- g. The respondent shall respond to the notice of alleged violation within 15 calendar days of receipt. If a timely response is not submitted, the commission may render its opinion on the basis of the information available, or the commission or designee may conduct further investigation if additional information is necessary in order to render an advisory opinion. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7; HRS Chapter 91)

#### 5.10 Ex Parte Communications

In any matter pending where the commission has found probable cause:

- a. No person shall communicate privately regarding the facts or contentions of the case with any member of the commission or designee unless specifically allowed by law or these rules;
- b. No commissioner or designee shall communicate privately regarding the facts or contentions of the case with any party, witness, counsel or representative for a party or a witness unless specifically allowed by law or these rules; and
- c. All written and oral ex parte communications received by any commissioner or designee containing facts or contentions in a matter where probable cause has been determined by the commission, that are known or believed to be unauthorized at the time of receipt, shall be immediately sent to all interested parties to the proceeding and made an official part of the record.
- d. The following classes of ex parte communications are authorized:
  - (1) Communication that relates solely to matters which a commissioner or designee is authorized to dispose of on an ex parte basis;
  - (2) Communication with counsel or staff for the commission or designee relating solely to matters of practice and procedure;
  - (3) Communication had after adequate notice and opportunity for all parties to participate; and

- (4) Communication with counsel for the commission or designee other than the legal counsel to the commission. [Eff \_\_\_\_\_]  
(Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 5.11 Formal Advisory Opinions

Within 30 calendar days after a complaint has been submitted to the commission, or within 30 calendar days after a final hearing or meeting on a complaint shall have been concluded, whichever is later, the commission shall render a formal advisory opinion.

- a. If the commission finds that there has been a violation of the standards of conduct, its advisory opinion shall contain a recommendation to the respondent's appointing authority or the council, in the case of a councilmember, of appropriate disciplinary action, and a copy of the advisory opinion shall be provided to the respondent's appointing authority or the council, in the case of a councilmember.
- b. If the commission has determined that a civil fine should be imposed against a former or current officer or exempt employee of the city who has been found by the commission to have violated the standards of conduct, the advisory opinion shall state the amount of the fine imposed, and a copy of the advisory opinion shall be provided to the respondent's appointing authority or the council, in the case of a councilmember.
- c. The commission shall provide copies of its advisory opinion to the complainant, if known, and to the respondent in accordance with applicable law. The copy of the advisory opinion provided to the respondent shall delete information that would disclose the identity of the complainant and witnesses, unless the complainant and witnesses agree to the disclosure of their respective identities.
- d. The commission shall publish its advisory opinion in such form and with such deletions as required or allowed under applicable law. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## RULE 6. INVESTIGATIVE HEARINGS

### 6.1 Notice, When Conducted

- a. The commission, designee, legal counsel or a person with a matter pending before the commission may request an investigative hearing. An investigative hearing may be held by the commission or designee upon written notice to the parties and participants at least 30 calendar days prior to the hearing.

- b. The purpose of the investigative hearing is to obtain information or evidence on any matter under investigation or any question before the commission so that the commission may render an advisory opinion or decision. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 6.2 Procedures

- a. The commission, designee, legal counsel or any person with a matter pending before the commission may request that any officer, employee or other person or entity with information that may be relevant to the matter before the commission appear for the purpose of investigation including, but not limited to, answering questions and producing records.
- b. The commission or designee may subpoena witnesses and records, administer oaths, and take testimony and receive evidence.
- c. The officer, employee, person or entity whose presence is requested or subpoenaed may be represented by counsel or by the public employee union representative if the employee is entitled to union representation.
- d. Each party may present witnesses, records or a statement of position, including memoranda, briefs, arguments or other relevant material regarding the matter under investigation.
- e. Each party shall, at least 15 calendar days prior to the hearing, submit eight copies of the following to the commission:
  - (1) A written statement of his or her position;
  - (2) For each witness a party intends to call, the witness' name, along with address, email address and telephone number, and a summary of the witness' statement; and
  - (3) A copy of each record to be presented.
- f. The commission staff shall prepare a memorandum which discusses the issues and includes any staff recommendations. At least 7 calendar days prior to the hearing, the staff memorandum shall be provided to members of the commission, counsel for the commission and the respondent.
- g. Any other interested person may, upon request, be permitted to present oral testimony or records.

- h. Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the complainant. Proof of a matter shall be by preponderance of the evidence. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 6.3 Advisory Opinion; Decision

Upon conclusion of the investigative hearing, the commission may render an advisory opinion or decision, or the commission or designee may take other action it deems appropriate under the circumstances. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## RULE 7. CONTESTED CASE HEARINGS

### 7.1 Contested Case Hearings, When Conducted

- a. A contested case hearing shall be conducted when the respondent has requested a contested case hearing within 15 calendar days following the receipt of a notice of alleged violation.
- b. A contested case hearing may be conducted when determined to be in the public interest by the commission. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 7.2 Pre-Hearing Statement

- a. No later than 30 calendar days before the contested case hearing date set by the commission or designee, the parties shall submit to the commission or designee and serve on all other parties a pre-hearing statement, which shall include:
  - (1) A statement of facts, which shall include all admitted facts and stipulated facts, if any;
  - (2) All alleged violations of the standards of conduct and all defenses advanced by the party submitting the pre-hearing statement and a brief description of the type of evidence and basic facts expected to be offered in support of each claim and defense;
  - (3) The names and addresses of all witnesses which each party intends to call and a brief description of each witness' expected testimony; and

- (4) A list containing a description of each exhibit the party intends to offer into evidence at the hearing. Each party is required to provide all other parties and the commission or designee with copies of all exhibits identified in the exhibit list at the time the pre-hearing statement is submitted. The exhibit list and the copies of the exhibits may be appended to the pre-hearing statement as attachments.
- b. The time period for submitting and serving the pre-hearing statement and making the required disclosure may be shortened or extended by the commission or designee upon a showing of good cause.
- c. The commission or designee, in its discretion, may impose appropriate sanctions for the failure to comply with the requirements of the pre-hearing statement including, but not limited to, limitations on presenting evidence and default. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 7.3 Presentation of the Case

- a. The commission or designee, in its discretion, may allow the complainant or his or her counsel or representative to present the case for the complainant or may designate the legal counsel to the commission or a special counsel to present the case for the complainant.
- b. The commission's legal counsel shall not provide legal advice to or otherwise counsel the commission or designee regarding the contested case if he or she is designated to present the case for the complainant or is designated as the complainant or co-complainant.
- c. Any party, including the complainant and the respondent, may apply to the commission or designee for the issuance of subpoenas for the appearance of witnesses or the production of records. The party requesting a subpoena shall pay to the witness the same fees and mileage as are paid witnesses in circuit courts of the State.
- d. Witnesses shall be placed under oath prior to testifying. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 7.4 Pre-Hearing Conference

- a. A party may request a pre-hearing conference to seek orders from the commission or designee relating to the contested case. The request for a pre-hearing conference shall be made no later than 15 calendar days prior to the date the contested hearing is scheduled to commence, and the party requesting the pre-hearing conference shall:

- (1) Make its request in writing and serve a copy of the request on all other parties; and
- (2) Include in its request:
  - i. A statement setting forth the issues for which the party seeks an order; and
  - ii. The legal and factual basis for the requested order.
- b. A party may submit and serve a responsive statement within 7 calendar days of the service of a request for a pre-hearing conference.
- c. Upon receipt of a request for a pre-hearing conference, the commission, designee or commission staff shall notify the parties of the date and time for the conference. The conference may be conducted by the commission or designee. If conducted by the commission's designee, the designee shall be authorized to issue appropriate orders. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 7.5 Evidence

- a. Section 91-10, HRS, shall apply as to the rules of evidence. Irrelevant, immaterial or unduly repetitious information shall not be admitted into evidence. The commission or designee shall give effect to the privileges recognized at law.
- b. Documentary evidence may be received in the form of copies, provided that a declaration is made as to the authenticity of the copies.
- c. The commission or designee shall take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity to contest the facts so noticed.
- d. Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the complainant. Proof of a matter shall be by preponderance of the evidence. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 7.6 Post-Hearing Procedures for Hearings Conducted by Commission Designee

- a. Recommendations of designee.

- (1) After taking evidence, the designee shall prepare a recommended decision setting forth findings of fact and conclusions of law and the reasons therefore and submit the recommended decision and order to the commission.
- (2) The record shall include the pleadings, notice of hearing, motions, rulings, orders, transcript or report of the hearing, stipulations, documentary evidence, offers of proof, proposed findings and conclusions, other documents submitted by the parties, all other matters placed in evidence, objections to the conduct of the hearing, and the report of the designee.
- (3) The designee shall serve a copy of the designee's report on all parties.

b. Exceptions to designee's report and recommendations.

- (1) Within 10 work days after service to the parties of the report of the designee or such additional time as may be allowed by the designee, a party may file with the commission its exceptions to the report and shall serve a copy of the exceptions on all other parties and the designee.
- (2) The exceptions shall:
  - i. Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
  - ii. Identify that part of the designee's report and recommended order to which exceptions are made;
  - iii. State by page citation the portions of the record relied upon;
  - iv. Cite any authorities relied upon; and
  - v. State all the grounds and reasons for exceptions to a ruling, finding, conclusion, or recommendation. Grounds not cited or specifically urged are waived.

c. Brief opposing exceptions.

- (1) Within 10 working days after being served with the exceptions taken to the designee's report or within such additional time as may be allowed by the designee, a party may file with the

commission a brief opposing the exceptions, and shall serve a copy of the brief upon each party and the designee.

(2) The brief opposing the exceptions shall:

- i. State the facts and reasons, along with citations, why the report and recommendations should be affirmed;
- ii. Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken; and
- iii. State by page citation the portions of the record relied upon.

d. Oral argument before the Commission.

The commission may, on its own motion or on the request of any party, direct oral argument on the exceptions.

e. Commission decision.

(1) If no exceptions are filed, the commission may approve, reverse, or modify the recommendations of the designee.

(2) If exceptions are filed, upon the filing of briefs and presentation of any oral argument, the commission may render its decision upon the record or it may reopen the hearing and take further evidence or may make other disposition of the case that it deems just and reasonable. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## 7.7 Decisions

- a. Within 30 days after the final hearing or meeting has been concluded, the commission shall render its decision in accordance with sections 91-12 and 91-11, HRS.
- b. If the commission finds that there has been a violation of the standards of conduct, its decision shall contain a recommendation to the respondent's appointing authority or the council, in the case of a councilmember, of appropriate disciplinary action, and a copy of the decision shall be provided to the respondent's appointing authority or the council, in the case of a councilmember.

- c. If the commission has determined that a civil fine should be imposed against a respondent who has been found by the commission to have violated the standards of conduct, the decision shall state the amount of the fine imposed, and a copy of the decision shall be provided to the respondent's appointing authority or the council, in the case of a councilmember.
- d. The commission shall provide copies of its decision to the complainant and to the respondent in such form and with such deletions as may be necessary to prevent the disclosure of the identities of the persons involved unless disclosure is in accordance with applicable law.
- e. The commission shall publish its decision in such form and with such deletions as required or allowed under applicable law. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 7.8 Record of Hearing

A record of the hearing shall be compiled in conformance with section 91-1(3), HRS. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

#### 7.9 Mediation

- a. The commission or designee may encourage parties to a contested hearing to participate in mediation prior to the hearing subject to conditions imposed by the commission or designee. The commission or designee may suspend all further proceedings in the contested hearing pending outcome of the mediation.
- b. No mediation period under this section shall exceed 30 calendar days from the date the case is referred to mediation, unless otherwise extended by the commission or designee.
- c. The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within 10 days of the referral to mediation, the commission or designee shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed by the parties, ordered by the commission or designee, or provided by law.
- d. No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

- e. No preparatory meetings, briefings, or mediation sessions under this rule shall constitute a meeting under section 92-2, HRS. Section 91-10, HRS shall not apply to mediation proceedings. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## RULE 8. REQUEST FOR RECONSIDERATION

### 8.1 Requests for Reconsideration

- a. Within 20 calendar days after receipt of an adverse ruling by the commission, the officer, employee or other person affected by the ruling may submit a request for reconsideration to the commission provided that the request:
  - (1) Shall be in writing;
  - (2) Shall set forth with specificity the reasons for the request;
  - (3) Shall set forth new evidence, including the appropriate allegation of and offer of proof, which was not submitted to or considered by the commission or designee prior to rendering the ruling; and
  - (4) Shall be served on all parties to the matter. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

### 8.2 Grant or Denial of Requests

- a. The commission may deny or grant a request for reconsideration.
- b. If the request for reconsideration follows a contested case hearing, and the commission denies the request, the commission shall render its decision in accordance with section 91-12, HRS.
- c. If the motion for reconsideration is granted, the same rules that are applicable to the rendering of advisory opinions shall be observed. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 through 3-6.7)

## RULE 9. FINANCIAL DISCLOSURES

### 9.1 Who is Required to File

- a. The following officers are required to file financial disclosure forms:

- (1) Members of the council, the mayor, the prosecuting attorney, and the managing director.
- (2) Any person appointed as administrative head of any agency of the City and County of Honolulu or as a member of any board or commission.
- (3) Any person appointed by a board or commission as the administrative head of such agency.
- (4) The first deputy, any other deputy, or a division chief appointed by the administrative head of any agency of the City and County of Honolulu.
- (5) Deputies of the corporation counsel and the prosecuting attorney.

- b. The following employees are required to file financial disclosure forms:

All full-time employees of the executive and legislative branches of the City and County of Honolulu who are exempt from civil service pursuant to sections 6-1103 and 6-1104, RCH, but excluding all persons hired under the Comprehensive Employment and Training Act and under subsections (e), (f), (g), and (h) of section 6-1103, RCH.

- c. Each candidate for nomination to elective office for the City and County of Honolulu shall file a financial disclosure form. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Secs. 3-6.3 and 3-8.4)

## 9.2 Contents of Disclosures

The disclosure of financial interests shall state all information required in section 3-8.4(c), ROH. [Eff \_\_\_\_\_] (Imp: RCH Sec. 11-107; ROH Sec. 3-8.4)

## 9.3 Form of Disclosures

- a. The form of confidential disclosures shall be as prescribed by the commission. The form of public disclosures shall be as prescribed by the city clerk.
- b. Forms for the confidential disclosure may be obtained from the commission offices during normal business hours or may be obtained on-line through the commission's official web site. Forms for public

disclosures may be obtained from the office of the city clerk during regular business hours. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-8.4)

#### 9.4 Filing of Disclosures

- a. Financial disclosures shall be filed in accordance with section 3-8.4(d), ROH.
- b. Financial disclosures shall be filed in accordance with the deadlines as set forth in sections 3-8.4(b) and (d), ROH.
- c. Any officer or employee who is required to file a financial disclosure may be granted an extension of 10 working days by the commission; provided that such request is submitted in writing to the commission before the statutory deadline for the filing of either the long or short form. The commission or its legal counsel may grant such extension for good cause. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-8.4)

#### 9.5 Confidentiality of Disclosures

Disclosures will be treated as public or confidential in accordance with section 3-8.4(e), ROH. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-8.4)

#### 9.6 Recordation and Review

- a. Upon receipt of a disclosure, it shall be time-stamped by the staff of the commission.
- b. The disclosure may be reviewed by the commission or its staff and if a conflict of interest or other violation of the standards of conduct is apparent from the contents of the disclosure, the commission or its staff may treat the matter as though it were a request for advice or a complaint. [Eff ] (Imp: RCH Sec. 11-107; ROH Sec. 3-8.4)

#### 9.7 Penalties

Any officer or employee who fails to file a financial disclosure as required by section 3-8.4, ROH, and these rules, or who files a financial disclosure that he or she knows or should have known is materially incomplete or inaccurate, shall be subject to the penalty provisions set forth in sections 3-8.4(f) and 3-8.5, ROH.  
[Eff ] (Imp: RCH Sec. 11-107; ROH Secs. 3-8.4 and 3-8.5)

RULE 10. DISCLOSURES OF CONFLICTS OF  
INTEREST

10.1 Disclosures Required of any Elected or Appointed Officer or Employee

- a. Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing at the time such conflict becomes apparent.
- b. The written disclosure shall contain:
  - (1) The name, address and telephone number of the officer or employee;
  - (2) A statement of the interest possessed or acquired by the officer or employee;
  - (3) A statement of the duties of the officer or employee that may be affected by the interest possessed or acquired;
  - (4) A statement by the officer or employee whether he or she has not participated in the matter that created the conflict of interest or will not participate in the matter;
  - (5) Any other information relevant to the matter; and
  - (6) The signature of the officer or employee.
- c. The commission shall provide a form that elected or appointed officers or employees may use to make their written disclosures. Such forms can be obtained from the commission offices during regular business hours or on-line through the commission's official web site.
- d. Disclosure statements shall be submitted by the officer or employee:
  - (1) To the officer's or employee's appointing authority or to the council, in the case of a member of the council; and
  - (2) To the commission.
- e. Disclosure statements shall be made a matter of public record and be filed with the city clerk. [Eff            ] (Imp: RCH Secs. 11-103 and 11-107)

10.2 Additional Disclosures Required of Members of the Council

- a. Any member of the council who knows he or she has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing when the interest first becomes apparent.
- b. Such disclosure shall be made to the council.
- c. Such disclosure shall be made a matter of public record prior to the taking of any vote on any proposal that may reasonably be affected by the interest that is disclosed.
- d. The council may request an advisory opinion regarding any disclosure made under rule 10.1. Such a request shall be treated in the same manner as a request for advice. [Eff            ] (Imp: RCH Secs. 11-103 and 11-107)

### 10.3 Procedure Governing Processing of Disclosures

- a. The commission may review all disclosures made under rule 10.1 to determine whether a conflict of interest exists.
- b. In making its determination, the commission shall treat the disclosure as a request for advice. [Eff            ] (Imp: RCH Secs. 11-103 and 11-107)

## RULE 11. DISCLOSURE OF INTERESTS BY OFFICERS AND EMPLOYEES

### 11.1 Disclosure Required from Officers and Employees

Each city officer and employee shall disclose their non-city employment or business or professional activity in the manner and form prescribed by the commission. The contents of the disclosure shall include:

- a. The name, agency and position of the officer or employee;
- b. The name, address, telephone number and a statement of the general duties of the officer's or employee's non-city work activity;
- c. A statement whether the non-city work activity is likely to come before the officer or employee in his or her official capacity or the officer's or employee's agency; and
- d. Other information that will help determine whether the non-city work activity may create a conflict of interest or a violation of the standards of conduct. [Eff            ] (Imp: RCH Secs. 11-102.1, 11-103 and 11-107; ROH Sec. 3-6.3)

### 11.2 When Required

Each officer and employee shall complete a disclosure within 5 working days of the following:

- a. Entering city employment or service;
- b. Promotion or reallocation to a higher city position;
- c. Transfer from one city agency to another;
- d. Obtaining new non-city employment or business or professional activity;  
or
- e. Other circumstances as the commission may determine. [Eff        ]  
(Imp: RCH Secs. 11-102.1, 11-103 and 11-107; ROH Sec. 3-6.3)

#### 11.3 Review and Maintenance of Disclosures

- a. The appointing authority or person authorized by the appointing authority shall review the disclosure to determine if the officer or employee is participating in an activity that may create a conflict of interest under the standards of conduct.
- b. The department or agency shall maintain the disclosure forms for its officers and employees. [Eff        ] (Imp: RCH Secs. 11-102.1, 11-103 and 11-107; ROH Sec. 3-6)

#### 11.4 Requests for Advice or Complaint

The appointing authority or person authorized by the appointing authority may request advice or submit a complaint to the commission as a result of the review of the disclosure. [Eff        ] (Imp: RCH Secs. 11-102.1, 11-103 and 11-107; ROH Secs. 3-6.3, 3-6.5 through 3-6.7)

### RULE 12. MANDATORY ETHICS TRAINING

#### 12.1 Content

The commission shall determine the content and means of conducting ethics training. [Eff        ] (Imp: ROH Sec. 3-6.10)

#### 12.2 Retraining

All officers and employees of the city who are required by law to attend ethics training shall receive ethics retraining every two years. [Eff        ] (Imp: ROH Sec. 3-6.10)

#### 12.3 Postponement

The commission may postpone or delay ethics training if its workload makes training impracticable. [Eff            ] (Imp: ROH Sec. 3-6.10)

### REPEAL

Any rules of procedure and any amendments thereto which were in effect prior to the effective date of these rules, are hereby repealed.

### EFFECTIVE DATE

These rules shall take effect ten days after filing with the City Clerk.

ADOPTED this 12th day of September, 2012.

CHARLES W. GALL, Chairperson  
Ethics Commission  
City and County of Honolulu

APPROVED AS TO FORM:  
CHARLES W. TOTTO  
Executive Director and Legal Counsel