2. Chapter 161 of Title 3 Hawaii Administrative Rules, entitled "Administrative Practice and Procedure Before the Campaign Spending Commission", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 161

ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE THE CAMPAIGN SPENDING COMMISSION

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Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-14.2, Administrative Practice and Procedure Before the Campaign Spending Commission". [Eff 01/03/98; am 01/25/02; R 5/29/10]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-161-1 Purpose, scope, and construction. (a) This chapter is intended to provide uniform rules of administrative procedure to govern proceedings listed below that are brought before the campaign spending commission, the purpose of which is to obtain:

(1) A determination of any contested or controverted matter within the commission's jurisdiction, through [~~a probable cause determination or~~] an evidentiary hearing;

(2) A declaration as to the applicability, with respect to a factual situation, of any rule or order of the commission or of any statute which the commission is required to administer or enforce; or

(3) The adoption, modification, or repeal of any rule of the commission which is initiated by petition.

(b) This chapter shall be construed to secure the just, equitable, speedy, and inexpensive resolution of matters brought before the commission. Whenever this chapter is silent on a matter, the commission or hearings officer may refer to the Hawaii rules of civil procedure for guidance. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-2 Definitions. Unless the context specifically indicates otherwise, as used in this chapter:

"Aggrieved person" means any person who shall be adversely affected by an action, decision, determination, order, or rule of the commission or who shall be adversely affected by the action or conduct of any person if the action or conduct is within the commission's jurisdiction to regulate, and shall also include any person who requires the commission's permission to engage in or refrain from engaging in an activity or conduct which is subject to regulation by the commission.

"Declaratory relief" means the commission's declaration as to the applicability or non-applicability of any rule or order of the commission or a statute that the commission is required to administer or enforce to a factual situation.

"Hearings officer" means any person duly appointed and authorized by the commission to hold a hearing for the purpose of taking evidence or oral argument and making a recommended decision in any case or controversy within the jurisdiction of the commission.

"Hearings relief" means the determination by the commission of the legal rights, duties, or privileges of specific parties which are required by law to be determined after an opportunity for agency hearing, including any determination of complaints of violations of chapter 11, part [~~XII, subpart B, Election Campaign Contribution and Expenditures,~~] XIII, Campaign Finance, Hawaii Revised Statutes.

"Party" means any member of the commission's staff or executive director, or any candidate, authorized representative of a candidate, committee, party, complainant, person permitted or entitled as of right to participate in a proceeding, each person named in a proceeding, or any interested or aggrieved person permitted or entitled as of right to participate in a proceeding before the commission in

the capacity of a petitioner, claimant, respondent, intervenor, or in a capacity other than that of a witness.

"Person" means any individual, partnership, corporation, association, public or private organization of any character, candidate, committee, or party, other than the commission.

"Petition" means an application to the commission by a party which seeks relief hereunder, including any complaint against any person alleging a violation of chapter 11, part [~~XII, subpart B, Election Campaign Contribution and Expenditures,~~] XIII, Campaign Finance, Hawaii Revised Statutes, and the commission's preliminary determination of probable cause and the preliminary findings of fact and conclusions of law issued by the commission pursuant to section 3-160-72.

"Petitioner" means a party who initiates a proceeding and includes but is not limited to any person, complainant, party, or committee who files a complaint pursuant to section 3-160-70, and the commission in cases where the commission has issued an initial decision or determination or an order to cease and desist.

"Respondent" means the party against whom a complaint or petition is filed, the party against whom relief is sought, any party who contests or controverts a proceeding, or any party who contests the commission's preliminary determination of probable cause issued pursuant to section [~~3-160-72~~] 11-405, Hawaii Revised Statutes, and has made a timely request for hearing relief.

"Rule" shall have the same meaning as provided in section 91-1(4), Hawaii Revised Statutes.

"Rule relief" means the adoption, modification, or repeal of any regulatory rule by the commission which is initiated or requested by petition or complaint. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-3 Commencement of proceedings. A proceeding under chapter 91, Hawaii Revised Statutes, shall commence by the filing with the commission of:

(1) A petition or complaint for contested case proceeding;

(2) A petition for declaratory relief; or

(3) A petition for rule relief.

(b) Upon the filing of a petition or complaint, the commission shall docket the petition or complaint and assign a docket number to the petition or complaint.

(c) For good cause shown, the commission may waive or suspend any rule. However, no rule relating to jurisdictional matter shall be waived or suspended by the commission. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-4 Legal counsel. (a) A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearings officer.

(b) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the commission or hearings officer and shall be subject to the guidelines of the Hawaii rules of professional conduct and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-5 Individual representing party. When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the commission or hearings officer, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized and qualified to so act. The individual at any time, however, may be required by the commission or hearings officer to furnish proof of authorization and qualification to act in that capacity. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-6 Substitution of parties. (a) Upon motion and for good cause shown, substitution of parties may be ordered provided that the substitution shall:

(1) Be conducive to effectuating the ends of justice;
(2) Not unduly delay the proceeding; and
(3) Not otherwise unduly harass, hinder, or prejudice the rights of any party.

(b) In the case of the death or legal incapacity of any party, substitution may be ordered without the necessity of filing a motion therefor. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-7 Intervention. Upon timely motion and at the discretion of the commission or the hearings officer, any person may be permitted to intervene and be admitted as a party in a proceeding before the commission or hearings officer if that person has a substantial interest in the outcome of the proceeding which is not protected by the interests of any of the parties, or the intervention shall be conducive to effectuating the ends of justice and to achieving the goals and purposes of the commission; provided that no intervention shall be permitted if the intervention shall unduly delay the proceeding or harass, hinder, or prejudice the rights of any party to the proceeding. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-8 Consolidation. The commission or hearings officer sua sponte, or upon any party's motion timely made and for good cause shown, may consolidate two or more proceedings which involve

substantially the same issues, arise out of the same general transaction, or involve the same person or persons, provided the consolidation shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-9 Format and certification of pleadings. (a) Petitions, motions, and other pleadings shall be typed or printed in ten or twelve point pica or equivalent type size upon good quality paper, 8-1/2 x 11 inches in size and of at least sixteen pound weight, except that documentary exhibits may be larger, if folded to the size of the pleadings to which they are attached.

(b) All copies shall be legible on paper 8-1/2 x 11 inches in size and of at least sixteen pound weight. No "wet" type copies shall be accepted.

(c) The first page of every pleading shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the docket number, and the name of the proceeding.

(d) All pleadings shall be signed in black or other photo-reproducible ink by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the person's knowledge, information, and belief, the pleading is true or has good grounds to support it and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(e) Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the commission on or before the time limit prescribed by statute, rule, or order of the commission. Unless otherwise ordered, the date on which the papers are received shall be regarded as the date of filing.

(f) When a petition has been assigned to a hearings officer, all pleadings, motions, memoranda, and other documents shall be filed with that hearings officer. [Eff 5/29/10; comp] (Auth: HRS §§ 91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-10 Service, generally. (a) Unless otherwise provided by this chapter or by other applicable law, whenever service is required to be made on any party to a proceeding before the commission, service shall be made personally or by first class mail at the party's last known address or to the party's attorney of record or to any other individual representing the party in the proceeding.

(b) If personal service or service by mail is unsuccessful, the commission or hearings officer may authorize service by publication if permitted by statute. The commission or hearings officer may require that personal service be attempted prior to permitting service by publication. After service by publication has been authorized, whenever service is required to be made on that party thereafter, service by first class mail to the party's last known address shall be sufficient.

(c) Unless otherwise required by this chapter or the commission, all parties shall file with the commission an original and one copy of each pleading

or amendment thereof. Additional copies shall be promptly provided if the chairperson, hearings officer, or executive director so requests.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-11 Service by whom. (a) Unless otherwise provided by this chapter, a party filing a pleading, motion, memorandum, document, or other paper shall cause a copy of the pleading, motion, memorandum, document, or other paper to be served upon each of the other parties to the proceeding, or upon any agent or attorney representing the other party. The party serving the pleading, motion, memorandum, document or other paper shall file a certificate of service.

(b) The commission or hearings officer may cause each respondent to be served with a copy of the petition, or the commission or hearings officer may require the petitioner to serve each respondent with a copy of the petition and to file a certificate of service.

(c) The commission or hearings officer may cause the notice of hearing to be served upon the parties, or the commission or hearings officer may require the petitioner to serve notice upon the other parties and to file a certificate of service.

(d) Unless otherwise provided by this chapter, the commission shall cause to be served all notices, documents, orders, and other papers issued by it.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-12 Time. (a) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed by this chapter, 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 holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less. A half-day administrative leave shall not be considered a holiday for the purpose of these computations.

(b) The hours of a day during which documents will be accepted for filing by the commission or hearings officer shall be those specified in section 78-1.6, [~~HRS~~] Hawaii Revised Statutes. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-13 Extensions of time. Unless otherwise provided, the commission or hearings officer may extend the time within which any action shall be taken at the request of any party. The commission or hearings officer, in its/his/her sole discretion, may require that the extension be stipulated to by all parties to the proceeding or that the request be by motion for good cause shown as to why the extension should be granted. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-14 Motions. (a) An application for any relief or order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(b) Motions referring to facts not of record shall be supported by an affidavit or declaration and exhibits, if appropriate, and if involving a question of law shall be accompanied by a memorandum in support.

(c) If a hearing is held on the motion, the party filing the motion shall serve a copy of the motion and notice of hearing on the motion upon all parties not later than seventy-two hours before the hearing and the opposing party shall file and serve any counter affidavits or declarations and memorandum in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the commission except that after a petition has been transferred to a hearings officer, all motions shall be filed with and decided by the hearings officer.

(e) Failure to comply with the requirements of this section may be the basis for denial of any motion.

(f) The decision on the motion may be made orally at the time of the hearing on the motion, or in writing, or as part of the commission's decision or the hearings officer's recommended decision.

[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-15 Powers of the commission or hearings officer in conducting hearing. To the extent authorized by law, the commission or hearings officer

shall have the powers, in conducting a hearing, without limitation to:

(1) Hold hearings and issue notices;

(2) Administer oaths and affirmations;

(3) Consolidate hearings or sever proceedings, provided that those actions shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;

(4) Subpoena and examine witnesses;

(5) Issue subpoenas;

(6) Rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, repetitious, cumulative, or merely scandalous and accordingly may restrict lines of questioning or testimony;

(7) Regulate the course and conduct of the hearing;

(8) Regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;

(9) Remove disruptive individuals, including any party, legal counsel, witness, or observer;

(10) Hold conferences, including prehearing conferences, [~~and authorize necessary depositions,~~] before or during the hearing, for the settlement or simplification of issues;

(11) Rule on motions and to dispose of procedural matters;

(12) Submit in writing any report or recommended decision together with the findings of fact

and conclusions of law and a recommended order for the commission's consideration and final disposition;

(13) Dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by this chapter, chapter 91, Hawaii Revised Statutes, or any other related laws; and

(14) Examine, after notice to all parties, any site or tangible evidence relevant to the case. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-401, 11-407, 11-408, 11-409, 11-410)

§3-161-16 Subpoenas. (a) The commission or hearings officer on its/her/his own, or at the request of a party, shall have the power on its/her/his own to issue subpoenas requiring the attendance of witnesses or the production of documents at the hearing. The commission or hearings officer may require that any request for the issuance of a subpoena identify with particularity the person to be subpoenaed or the documents desired. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in courts in the State and the fees and mileage shall be paid by the party at whose instance the subpoena issues, or by the commission should the commission itself decide to issue the subpoena, or the hearings officer herself/himself should the hearings officer decide to issue the subpoena.

(b) Application for subpoenas shall be made in writing to the commission. The application shall be reasonable in scope and specify as clearly as possible documents or data desired, and show its general relevancy.

(c) Upon motion timely made, or sua sponte, the commission or hearings officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive, or the application fails to support a showing of general relevancy; or

(2) Condition denial of the motion to quash or modify a subpoena upon advancement by the requesting party of the costs of producing the documents.

(d) A subpoena shall not be issued requiring the attendance of any commission member or its staff. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-401, 11-407, 11-408, 11-409, 11-410)

§3-161-17 Absence of hearings officer. When a petition has been assigned to a hearings officer for hearing or further proceedings, the powers and duties to be performed by the hearings officer in connection with the proceeding, without abatement of the proceeding, may be assigned to another hearings officer, provided no hearings officer shall render a report with recommendations to the commission for the commission's consideration and disposition unless that hearings officer was present at opening and closing arguments and all presentations of evidence concerning those matters. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-18 Disqualification of a commission member or hearings officer. (a) No matter shall be heard by a commission member or hearings officer who:

(1) Has any direct pecuniary interest in the matter being heard;

(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;

(3) Has participated in the investigation preceding the institution of the proceeding or has participated in the development of the evidence to be introduced in the proceeding;

(4) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the commission or hearings officer; or

(5) Has presented circumstances that fairly give rise to an appearance of impropriety and reasonably cast suspicion on the impartiality of the member or hearings officer.

(b) Any member of the commission or hearings officer may be disqualified from hearing the matter sua sponte, or upon motion of any party. Any motion to disqualify a member of the commission or hearings officer shall be filed and decided before the evidentiary portion of the hearing. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-19 Evidence. (a) The admissibility of evidence at the hearing shall not be governed by the [~~laws~~] rules of evidence and all relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The commission or hearings officer shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the nonavailability of the original and the reasons therefor shall be considered by the commission or hearings officer when considering the weight of the documentary evidence.

(c) The commission or hearings officer may 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 at the hearing 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 party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-20 Decision; generally. (a) Unless otherwise provided, every decision and order issued by the commission shall be in writing or stated in the record. Where the case has been contested and the decision is adverse to any party, the decision shall be accompanied by separate findings of fact and conclusions of law.

(b) The commission shall cause a certified copy of the decision and order together with the findings of fact and conclusions of law to be transmitted by hand or by certified or registered mail, return receipt requested, to each party within a reasonable time.

(c) In a contested case where notice of the hearing has been served by publication and the party so served has failed to appear at the hearing, service of the commission's decision is complete upon transmission by registered or certified mail, return receipt requested, to the party at the party's last known address. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-21 Motion for reconsideration. Any party, within ten days after receipt of any final order may move the commission to reconsider the commission's final order or decision. The motion shall be filed with the commission and shall state specifically what points of law or fact the commission has overlooked or misunderstood together with brief arguments on the points raised. No answer or reply to the motion shall be considered unless requested by the commission. Oral argument on the motion shall be with the discretion of the commission. Only one motion for

reconsideration may be filed by each party and the filing of the motion shall not operate as a stay of the commission's final order or decision.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-22 Judicial review of contested cases. (a) Any party aggrieved by a final decision or order of the commission in a contested case or by a preliminary ruling or order of the commission of such a nature that deferral of review pending the entry of a subsequent final order would deprive that party of adequate relief is entitled to judicial review in conformance with section 91-14, Hawaii Revised Statutes.

(b) Any party requesting judicial review in writing, shall serve a copy of the request upon the commission and all other parties to the proceeding in accordance with the Hawaii rules of civil procedure.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 91-14, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-23 Ex parte communications. (a) In any contested case, declaratory relief, or adoption, modification of rules proceedings before the commission:

(1) No party or person, either in private or public life, shall communicate privately on the merits of the case with the commission,

the commission's staff, or with the hearings officer designated to hear and decide the matter unless specifically provided for by law; and

(2) No member of the commission's staff or any other government agency who participates in the hearing as a witness or counsel shall privately communicate on the merits of the case with the commission or with the hearings officer designated to hear and decide the matter, unless specifically provided for by law.

(b) It shall be improper for any person interested in a proceeding to seek to influence the judgment of the commission or hearings officer.

(c) Nothing in this section shall prohibit the introduction of the investigatory report at the [~~Hearing~~] hearing pursuant to and in conformance with sections 3-161-34 and 3-161-37. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-8, 91-9, 91-13, 91-14, 91-15, 92-16, 11-314(7), 11-407, 11-408, 11-409, 11-410)

SUBCHAPTER 2

HEARING RELIEF

§3-161-30 Contents of petition for contested case proceeding; preliminary determination. (a) The commission's executive director or any aggrieved person may petition the commission or hearings officer for a hearing to resolve a contested matter within the commission's jurisdiction. The petition for contested case proceeding shall state plainly and precisely the

facts and circumstances of the petitioner's grievance, the laws and rules involved, and the relief sought by the petitioner.

(b) The commission's preliminary determination of probable cause and preliminary findings of fact and conclusions of law issued by the commission after a meeting conducted under chapter 92, Hawaii Revised Statutes, may be filed as a petition for contested case proceeding. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-41011-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-31 Action by the commission. (a) Unless otherwise specifically provided by [~~law~~] statute or rules, upon the filing of the petition, and as expeditiously as possible, the commission shall either set the matter for further proceedings before the commission or
assign the petition to a hearings officer for further proceedings pursuant to section 3-161-32 to 3-161-51.

(b) If the commission determines not to proceed further, the commission shall promptly provide the petitioner with a written notice of any determination not to proceed further, together with a statement as to the reasons therefor. The petitioner may request reconsideration of the commission's determination or pursue judicial review, pursuant to section 3-161-21 or 3-161-22. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-32 Notice of hearing. (a) Unless otherwise specifically provided by [~~law~~] statute or rule, all parties shall be given written notice of the hearing at least fifteen days before the hearing. The notice shall include:

(1) The date, time, place, and nature of hearing;

(2) The legal authority under which the hearing is to be held;

(3) The particular sections of the statutes and rules involved; and

(4) A short and concise statement of the issues involved and the facts giving rise to the petition. Attachment of a copy of the petition to the hearing notice satisfies this requirement.

(b) The notice shall further apprise each party of their right to retain legal counsel if so desired. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-33 Response. Before the hearing, each respondent may file and serve a written response stating briefly therein facts, circumstances, laws, rules, or reasons in defense and shall further specifically admit or deny the allegations of the Petition upon:

(1) [each] Each petitioner or complainant,

(2) [the] The commission, and

(3) [hearings] Hearings officer, if applicable.

[Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-34 Disclosure. (a) Any party, by timely written demand filed with the commission or hearings officer, and served upon any other party, may request of any other party to the proceeding, the full disclosure of:

(1) The identity of all witnesses to be called by the party, including their addresses and phone numbers, if known;

(2) The identity of all persons, including their addresses and phone numbers, known by the party to have material knowledge relevant to the proceeding; and

(3) All exhibits, including but not limited to documents, photographs, and other tangible evidence to be introduced at the hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested as and when it becomes available and to supplement the information previously disclosed to the extent appropriate.

(c) The information requested shall be disclosed to the requesting party at the prehearing conference or at least fourteen days before the hearing whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to be introduced at the hearing. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-35 Prehearing conference. (a) The commission or the hearings officer may order that a prehearing conference be conducted and attended by all parties to the proceeding. The purpose of the prehearing conference shall be to facilitate the settlement of the petition or complaint and the simplification of issues. At the prehearing conference, the commission or the hearings officer may require all parties to disclose to the other parties the information which may be requested pursuant to section 3-161-34(a).

(b) The commission or hearings officer may require each party to submit a statement disclosing and identifying all witnesses to be called at the hearing, all exhibits to be used at the hearing, and other matters as shall simplify the issues and facilitate the orderly progress of the hearing. A copy of the statement shall be served upon all other parties to the proceeding. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-36 Testimony. (a) A record shall be made of all oral testimony taken at the hearing.

(b) Testimony taken at the hearing may be electronically recorded and need not be transcribed. Unless otherwise provided, the cost of the transcription of the electronic recording of the testimony shall be paid by the requesting party.

(c) Any party may request that all of the testimony taken at the hearing be taken by a court reporter. The request shall be made in writing, at

least ten days before the date of the hearing and shall be within the sole discretion of the hearings officer or the commission to grant or deny. The transcript of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the hearings officer or the commission. The cost of the transcript shall be paid for by the [~~requesting~~] party requesting the services of the court reporter. If a party desires a copy of the transcript, the [~~requesting~~] party requesting a copy shall pay the cost of a copy of that transcript.

(d) The commission or hearings officer shall make the electronic recording of the testimony available to the parties for use in preparing exceptions to or statements in support of a proposed decision or recommended order.

(e) If judicial review is requested, the commission or hearings officer shall cause a transcript of the hearing to be prepared if requested as part of the record on appeal. The party seeking judicial review shall pay for the cost of transcribing the electronic recording of the proceeding. If [~~a~~] another party desires a copy of the transcript for their personal use, [~~the requesting~~] that party shall pay the cost of a copy of that transcript.

(f) Unless the commission has been notified in writing of a party's request for judicial review within the time permitted for requesting the review, the commission or hearings officer, after the time for requesting judicial review has passed, may erase the electronically recorded testimony. Where by statute

judicial review is by trial de novo, a transcript need not be prepared unless expressly requested and paid for by the requesting party. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-37 Record. (a) The record shall consist of the following:

(1) All pleadings, motions, and intermediate rulings;
(2) All evidence received or considered including without limitation, oral testimony, exhibits, and matters officially noted by the commission or hearings officer;
(3) All offers of proof and rulings thereon;
(4) All proposed findings and exceptions;
(5) The recommended decision of the hearings officer who presided at the hearing, if the hearing was held before a hearings officer;
(6) Any report of the hearings officer or of the commission who conducted the hearing; and
(7) Staff memoranda submitted to the commission in connection with consideration of the case, provided first, that the memoranda have also been timely provided to parties to the proceeding, and the parties have been permitted an opportunity at the hearing to rebut the memoranda.

(b) Unless the commission has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the commission or hearings officer, after the time for requesting judicial review has passed, may

cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-38 Dismissal of petitions. (a) A petition for hearing relief may be voluntarily dismissed by the petitioner without order of the commission or hearings officer by:

(1) Filing a notice of dismissal at any time before service of the petition on the respondent or respondents; or

(2) Filing a stipulation of dismissal signed by all parties who have been served with the petition or appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal shall be without prejudice, except that a notice of dismissal shall operate as an adjudication upon the merits when filed by a petitioner who has once dismissed a petition for hearing relief based on or including the same claim before the commission.

(b) Except as provided in subsection (a), a petition shall not be dismissed except upon motion and on order of the commission or hearings officer granting the motion and upon such terms and conditions as the commission or hearings officer deems proper. Unless otherwise specified in the order, a dismissal under this subsection shall be without prejudice.

(c) The commission or hearings officer may upon the motion of any party, or sua sponte, issue a notice of proposed dismissal to any petitioner based on:

(1) The failure of the petitioner to prosecute or otherwise pursue the petitioner's claim for relief within six months from the filing of the request for relief excluding periods of delay caused by a party other than the petitioner; or

(2) The failure of the petitioner to comply with this chapter or any order of the commission or hearings officer.

The notice of proposed dismissal shall set forth the basis for the proposed dismissal and shall provide an opportunity for the petitioner to request a hearing to contest the proposed dismissal at least fifteen days prior to the actual dismissal. The notice of proposed dismissal shall also provide that in the event the petitioner does not request a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the commission or hearings officer may thereafter issue an order dismissing the proceedings with prejudice. If a petitioner requests a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the commission or hearings officer shall schedule a hearing in accordance with this chapter or dissolve the notice of proposed dismissal. The petitioner shall have the burden of showing why the petition should not be dismissed pursuant to this section.

(d) Unless the order of dismissal issued by the commission or hearings officer specified otherwise, a dismissal under subsection (c) and any other dismissal not provided for in this section, except a dismissal for lack of jurisdiction or improver venue, shall

operate as an adjudication upon the merits.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-39 Hearings. All hearings shall be conducted pursuant to chapter 91, Hawaii Revised Statutes, and this chapter. All hearings shall be heard before the commission or a duly designated hearings officer. All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The hearing shall be at the time and place set forth in the notice of hearing, but that time and place may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice.
[Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-40 Procedure at hearing. Unless otherwise stipulated by the parties, which stipulation is approved by the commission or the hearings officer, all hearings shall proceed as follows:

(1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the

opportunity. The opening statement shall be heard in the following order:

(A) Petitioner's opening statement; and

(B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of petitioner's evidence;

(2) The petitioner's evidence shall be presented first, and shall be followed by the presentation of evidence in support of respondent's case;

(3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;

(4) Each witness shall be examined first by the party calling the witness, before cross-examination by the opposing party;

(5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:

(A) Petitioner's final argument;

(B) Respondent's final argument; and

(C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and

(6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the

expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to section 3-161-42, whichever is later. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-41 Motion to dismiss. (a) After all evidence has been presented by the petitioner in support of the petition, the respondent may move the commission or the hearings officer for an order denying or dismissing the petition or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, the respondent shall have the right to continue with the proceeding as fully as if the motion had never been made. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-42 Taking of further evidence. At any time before the filing of the hearings officer's recommended decision, or if the hearing has been held before the commission, then before the commission's final decision, the hearings officer or the commission, sua sponte or upon motion for good cause shown, may reopen a hearing for the purpose of taking further evidence, and shall do so in writing with a statement of reasons therefor. The commission, sua sponte, shall have the discretion to remand a petition or proceeding to the hearings officer for the purpose

of taking further evidence. The reopening or remanding shall be at the sole discretion of the hearings officer or the commission. Further evidence may be taken either through oral hearing or by certification of questions to the parties. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-43 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the commission, whichever has conducted the hearing.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon.

(c) When the hearing has been conducted by a hearings officer, the parties shall not file, under any circumstances, proposed findings of fact and conclusions of law with the commission. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(b)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-44 The commission's decision. When the hearing has been held before the commission, the commission, as expeditiously as possible, after the close of the hearing, shall issue a final decision and order together with separate findings of fact and

conclusions of law. All findings of fact, conclusions of law, and final decisions and orders issued by the commission shall be based upon the whole record and supported by reliable probative and substantial evidence, including facts on which the commission properly took judicial notice. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-45 Recommended decision. When the hearing has been held before a hearings officer, the hearings officer, as expeditiously as possible, after the close of the hearing, shall file with the commission a recommended decision together with separate findings of fact, conclusions of law, and a recommended order. The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by the reliable probative and substantial evidence, including facts of which the hearings officer properly took judicial notice. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-46 Service of recommended decision. The hearings officer shall cause a copy of the recommended decision, including therein findings of fact, conclusions of law, and any recommended order, to be served upon each party by personal service or by registered or certified mail, return receipt requested. Service of the recommended decision shall

be deemed complete upon its mailing to the party's last known address. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-47 Recommended decision, exceptions. Any party adversely affected by the hearings officer's recommended decision within fifteen days after the receipt of a copy of the decision, may file with the hearings officer written exceptions to the whole or any part of the recommended decision and request review by the commission. Each written exception shall specify the portions of the record and authorities relied upon to sustain each point. A copy of the written exceptions shall be served by the party so excepting upon each party to the proceeding. Unless the time has been extended, no written exceptions shall be filed or accepted for filing after the time specified, except by leave of the commission for good cause shown. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-48 Statement in support of recommended decision. Any party may file with the hearings officer and serve upon all other parties a statement in support of the recommended decision within fifteen days after receipt of a copy of the written exceptions. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-49 Transmittal to the commission. The hearings officer shall transmit to the commission the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statement in support. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-50 Argument on written exceptions. Whenever written exceptions have been timely filed and a party has requested the opportunity to present oral argument, all parties to the proceedings shall be afforded the opportunity to present oral argument to the commission concerning the recommended decision. The commission shall personally consider the whole record or portions of the record as may have been cited by the parties either in support of or in opposition to the recommended decision. All parties shall be served with notice of the time and place of argument at least five days prior to the time for argument. Within a reasonable time after argument has been heard, the commission shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

§3-161-51 No written exceptions. When no written exceptions have been filed, the commission, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting,

modifying or reversing, in whole or in part, the hearings officer's recommended decision. The commission shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-9, 91-9.5, 91-10, 91-11, 91-12, 91-13, 11-314(7), 11-407, 11-408, 11-409, 11-410)

SUBCHAPTER 3

DECLARATORY RELIEF

§3-161-60 Contents of petition for declaratory relief. The executive director or any interested person may petition the commission for a declaratory ruling as to the applicability of any statutory provision or of any rule or order adopted by the commission to a factual situation. Each petition shall state concisely and with particularity the facts giving rise to the petition, including the petitioner's interest, reasons for filing the petition, and the names of any potential respondents, the provision, rule, or order in question, the issues raised, and petitioner's position or contentions with respect thereto. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-61 Memorandum of law in support of petition. The petition for declaratory relief shall be accompanied by a memorandum of law in support of the relief requested. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-62 Disposition of petition. The commission, as expeditiously as possible after the filing of a petition for declaratory relief, shall:

(1) Deny the petition where:

(A) The petition fails to conform substantially with section 3-161-60 or is not supported by a memorandum of law in support of the petition;

(B) The petition is frivolous;

(C) The matter is not within the jurisdiction of the commission;

(D) The petition is based on hypothetical or speculative facts of either liability or damages;

(E) There is a genuine controversy of material fact, the resolution of which is necessary before any order or declaratory relief may issue; or

(F) There is any other reason justifying denial of the petition;

(2) Set the petition for argument before the commission in accordance with this subchapter; or

(3) Assign the petition to the hearings officer for further proceedings in accordance with this subchapter. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-63 Parties. Unless a petition has been disposed of pursuant to section 3-161-62, in all petitions for declaratory relief where the executive director of the commission is not the petitioner, the executive director of the commission shall be made a

party respondent to the proceedings and shall be served accordingly. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-64 Memorandum in opposition. Each respondent, within fifteen days after the receipt of the petition, may file and serve upon all parties a memorandum in opposition stating concisely and fully the respondent's position or contentions and reasons, including legal authorities. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-65 Intervention and intervenor's memorandum of law. Except where a petition has been denied pursuant to section 3-161-62 and subject to section 3-161-7, any interested person may request intervention in a proceeding for declaratory relief. Any person permitted to intervene in a proceeding for declaratory relief may file and serve upon the petitioner, a memorandum of law which shall state concisely and fully the intervenor's position or contentions and reasons, including legal authorities. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-66 Request for additional facts or supplemental memorandum. The commission or the hearings officer at any time may request of the petitioner or any party, a statement of additional facts or a memorandum, the purpose of which is to

clarify a specific factual issue, position, contention, or issue provided that the request shall aid the commission in effectuating the ends of justice, or in achieving the commission's purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-67 Notice of argument. All parties shall be given written notice of the hearing of argument at least fifteen days before the [~~time~~] day of the argument. The notice shall include:

(1) The date, time, place, and nature of the argument;
(2) The legal authority under which the argument is to be heard;
(3) Particular sections of the statutes and rules involved; and
(4) A short and concise statement of issues involved, and the basic facts giving rise to the petition. Attachment of a copy of the petition to the notice of argument satisfies this requirement.

The notice shall further apprise each party of their right to retain legal counsel if so desired. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-68 Argument. Argument shall be heard either before the commission or a hearings officer duly designated. All parties shall be afforded full opportunity to present argument on all issues involved. The argument shall be at the time and place

set forth in the notice of argument but at that time and place may be continued from day to day and adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-69 Material issue of fact; public interest. If [,] at any time [,] it appears that there exists a genuine controversy of material fact the resolution of which is necessary before any order of declaratory relief may issue, or that the petition raises issues of public concern and interest that a proceeding for rule relief would more fairly and effectively aid the commission in achieving the commission's purposes and goals and protect that public concern or interest, the commission or hearings officer may:

(1) Sua sponte or on motion of any party dismiss the petition for declaratory relief and allow the petition to be refiled as a petition for hearing or rule relief; or

(2) Convert the proceeding to one for hearing or rule relief and proceed thereafter as if the petition had been brought originally for hearing or rule relief. If the proceeding is converted to a proceeding for hearing or rule relief, the issues may be restricted to those material facts in issue. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-70 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the commission, whichever has conducted the hearing.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon.

(c) When the argument has been held before a hearings officer, the parties shall not, under any circumstances, file proposed findings of fact and conclusions of law with the commission. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-71 Commission's decision. (a) When the argument has been held before the commission, the commission, as expeditiously as possible after the close of the argument or submission of all permitted or requested memoranda, whichever is later, shall issue a final decision and order.

(b) When the petition has been contested, and the commission's decision and order is adverse to any party, the commission shall also issue and serve upon each party to the proceeding, together with the final decision and order, separate findings of fact and conclusions of law.

(c) All final decisions and orders and any findings of fact and conclusions of law issued by the commission shall be based upon the whole record and supported by reliable, probative, and substantial

evidence, including those facts of which the commission properly took judicial notice. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-72 Recommended decision. (a) When the argument has been held before a hearings officer, the hearings officer, as expeditiously as possible after the close of the argument or submission of all requested or permitted memoranda, whichever is later, shall file with the commission the hearings officer's recommended decision and any recommended order.

(b) When the petition has been contested and the recommended decision and order is adverse to any party, the hearings officer shall file with the recommended decision and order separate findings of fact and conclusions of law.

(c) The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by reliable, probative, and substantial evidence, including those facts of which the hearings officer properly took official notice.

(d) The hearings officer shall serve a copy of the recommended decision and any recommended order, together with any findings of fact and conclusions of law upon each party by personal service or by registered or certified mail, return receipt requested. Where notice of the argument has been served by publication and the party so served has failed to appear at the argument, service of the

recommended decision is complete upon its mailing to the party at the party's last known address. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

§3-161-73 Commission's action on recommended decisions. (a) Where the petition has been contested, any party adversely affected by the hearings officer's recommended decision within fifteen days after the receipt of a copy of the decision, may file with the commission written exceptions to the whole or any part of the recommended decision and request review by the commission. Each written exception shall specify the portions of the record and authorities relied upon to sustain each point. A copy of the written exceptions shall be served by the party so excepting upon each party to the proceeding, and upon the hearings officer. Unless the time has been extended, no written exceptions shall be filed or accepted for filing after the time specified, except by leave of the commission for good cause shown.

(b) Where the petition has been contested and written exceptions filed, any party may file and serve upon all other parties and the hearings officer a statement in support of the proposed decision within fifteen days after receipt of a copy of the written exceptions.

(c) Whenever written exceptions have been timely filed and a party has requested an opportunity to present oral argument, all parties to the proceedings shall be afforded the opportunity to present oral argument to the commission concerning the recommended decision. The commission shall consider the whole record or portions of the record as may have been

cited by the parties either in support or in opposition to the recommended decision. All parties shall be served with notice of the time and place of argument at least five days prior to the [~~time~~] day for argument. Within a reasonable time after argument has been heard, the commission shall issue a final decision and order, either affirming, modifying, or reversing, in whole or in part, the hearings officer's recommended decision.

(d) Where the petition has not been contested, or if no written exceptions have been filed, the commission, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. The commission shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 5/29/10; am and comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-8, 11-314)

SUBCHAPTER 4

RULE RELIEF

§3-161-80 Contents of petition for rule relief. The executive director of the commission or any interested person may petition the commission for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought,

together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto. [Eff 5/29/10; comp](Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-81 Disposition. (a) The commission, within the time permitted by chapter 91, Hawaii Revised Statutes, shall either deny the petition or initiate public rulemaking procedures in accordance with this subchapter and chapter 91, Hawaii Revised Statutes.

(b) Without limiting the generality of the foregoing, the commission may deny any petition which:

(1) Fails to substantially conform with the requirements of section 3-161-80;

(2) Discloses insufficient reasons justifying the institution of public rulemaking procedures; or

(3) Concerns a matter not within the jurisdiction of the commission. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-82 Notice of determination. The commission shall promptly notify the petitioner in writing of its determination either to deny the petition or to initiate rulemaking procedures. If the

commission denies the petition, the commission shall state the reasons for the denial in the notice to petitioner. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-83 Determination final. Unless otherwise provided by law, the petitioner shall have no right to move the commission for reconsideration or to seek judicial review of any determination regarding a petition for adoption, modification, or repeal of rules. [Eff 5/29/10; comp](Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-84 Additional facts or supplemental memorandum. The commission may require the petitioner or any person or its executive director to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the commission. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-85 Public hearing. Subject to sections 3-161-90 and 3-161-91, a public hearing shall be held for a petition for rule relief considered by the commission. The hearing shall be at the time and place set forth in the notice of public hearing but at that time and place may be continued from day to day or adjourned to a later day or to a different place

without notice other than the announcement thereof at the hearing. The commission shall afford all interested persons an opportunity to present data, their views or arguments, orally or in writing. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-86 Notice of public hearing. Notice of the public hearing shall be made in accordance with the provisions of chapters 91 and 92, Hawaii Revised Statutes. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-87 Procedure at public hearing. At the commencement of the public hearing the commission shall read the notice of hearing and shall then briefly prescribe the procedure to be followed at the public hearing. All witnesses testifying at the public hearing shall state their name, address, and who, if anyone, the witness represents. Every witness shall be subject to questioning by the commission or by any other representative of the commission. Questioning of witnesses by other persons shall not be permitted except when the commission expressly permits that questioning. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-88 Record of public hearing. (a) A record shall be made of all oral testimony taken at the hearing which record may be written minutes or verbatim.

(b) Testimony given at the public hearing may be electronically recorded verbatim by the commission at the commission's sole discretion, either sua sponte or upon the request of any interested party. It shall not be necessary to transcribe the electronic recording.

(c) The written minutes or electronic record of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the commission.

(d) All written testimony shall be received and made part of the public record. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-89 Decision. The commission shall render a decision at the public hearing or at a time, date, and place as is announced at the public hearing. The commission, upon the request of any interested person, shall issue a concise statement of the principle reasons for and against the decision. In making a decision, the commission shall consider all written and oral submissions respecting the proposed rule relief. Unless otherwise provided by law, the requirements of section 3-161-20 shall not apply to a decision rendered pursuant to this section. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-90 Waiver. The requirements for public hearing and for notice thereof may be waived by the governor when the commission, as a condition to receiving federal funds, is required by federal provisions to adopt rules and the commission is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted. The commission shall make known to the public the proposed adoption, amendment, or repeal of any rule pursuant to this section by publishing in a newspaper of general circulation in this State, at least once prior to the waiver of the governor, a statement as to the substance of the proposed rule change. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-91 Emergency rulemaking. (a) The commission may adopt emergency rules pursuant to the requirements of sections 91-3 and 91-4, Hawaii Revised Statutes.

(b) The commission's determination that there is imminent peril and the reasons therefor shall be stated in, and as a part of the emergency rule.

(c) The commission shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor. [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

§3-161-92 No restriction on the commission. Nothing contained in this subchapter shall be construed to prohibit or restrict the right of the commission, sua sponte, from initiating its own rule adoption, modification, or repeal proceeding on any matter, whether disclosed in any petition or not." [Eff 5/29/10; comp] (Auth: HRS §§91-2, 11-314(8)) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1, 91-4.2, 91-6, 11-314)

3. Material, except source notes, to be repealed is bracketed. New material is underscored.

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

5. These amendments to and compilation of chapters 3-160 and 3-161, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

_____
G. William Snipes, Chairperson
Campaign Spending Commission

_____
Dean H. Seki, Comptroller
Department of Accounting and
General Services

APPROVE AS TO FORM:

_____
Deputy Attorney General