

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

April 15, 2016

TO: CHAIR VICTORIA MARKS, VICE CHAIR MICHAEL LILLY AND  
MEMBERS OF THE ETHICS COMMISSION

FROM: CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE APRIL 20, 2016 MEETING, **OPEN SESSION**

---

I. CALL TO ORDER

II. NEW BUSINESS

A. For Action: Motion to Approve the Open Session Minutes of the March 9 and 16, 2016 Meetings.

B. Executive Director and Legal Counsel's Administrative Report. (Written)

1. Reports from Staff Members.

a. Legal Clerk III Lisa Parker.

- Ms. Parker continued her duties in keeping the office running by performing her usual administrative P-Card duties, as well as her normal duties of sorting and filing incoming pleadings and mail, finalizing letters and other documents from this office, as well as worked with COR's administrative services officer and administrative support agencies on other fiscal and personnel matters.
- She conferred with Kristine Bigornia and researched all the necessary administrative requirements for the potential move to Kapalama Hale, as well as determined which complaint files, administrative files, etc., that would either be scanned or stored at the Fasi Municipal Building parking lot, and worked-out a schedule for she and Kristine to take the time to prepare nine (9) banker's boxes for scanning.
- She received, responded and forwarded all telephone and email complaints and/or follow-up complaints that were redirected to her while the EDLC was on leave during

the month of March. She also assisted the EDLC with rescheduling meeting or conference requests as well.

- She reviewed, researched and gathered all documents and correspondence, pursuant to a records request by Mr. Nick Grube of Civil Beat, as well as drafted and finalized a transmittal memo to Deputy Corporation Counsel, Duane Pang, for his review and formal response.
- She also assisted the EDLC in finalizing all the meeting materials, as well as drafted, edited and finalized the Minutes of the March 9 and 18 EC meetings.

b. Legal Clerk I Krissy Bigornia

Ms. Bigornia's report is **4-20-16 – OPEN-1, Agenda Item II.B.1.b. [Bigornia's Monthly Report]**.

c. Investigator Bill Shanafelt.

Investigator Shanafelt's recent activities are shown in the attached redacted case investigation spreadsheet. **4-20-16 – OPEN-2, Agenda Item II.B.1.c. (CONFIDENTIAL) [Shanafelt's Spreadsheet]**.

d. Executive Director and Legal Counsel.

- Working with Investigator Shanafelt on processing and closing Complaint investigations;
- Respond to Requests for Advice;
- Research and draft testimony regarding proposed amendments (#39, #153) to the Charter Commission;
- Research and preparation of work flow charts and pending cases report;
- Setting work assignments and priorities;
- Reviewing Staff work product;
- Working with our Fiscal Officer to ensure sufficient funds are available for necessary expenses in the remainder of FY16.

2. General Statistics: Complaints and Requests for Advice as of the end of last month.

## REQUEST FOR ADVICE & COMPLAINTS

	Total	Responses, Referral, Withdrawn or No Action	Under Review	Under Review – Net change from last report
<b>July 1, 2013 - June 30, 2014</b>	<b>489</b>	<b>489</b>	<b>0</b>	<i>Closed 9</i>
<b>FY 14 TOTAL</b>				
<b>July 1, 2014 – June 30, 2015</b>	<b>398</b>	<b>368</b>	<b>30</b>	<i>Closed 1</i>
<b>FY 15 TOTAL</b>				
<b>July 1, 2015 – March 31, 2016</b>	<b>282</b>	<b>237</b>	<b>45</b>	<i>Closed 69</i>
<b>FY16 TOTAL</b>				

These statistics show the total number of Requests for Advice and Complaints Requiring Investigation for each fiscal year. They also show the outstanding requests and complaints at the end of the last month and the net reduction in cases during the last month. The vast majority of outstanding matters are complaints because they take much longer to investigate and respond to than do the requests for advice.

Please note that the last column shows the number of requests for advice and complaint investigations closed during the preceding month.

Pending Complaints Requiring Investigation and Requests for Advice. Refer to **4-20-16, OPEN-3, Agenda Item II.B.2. (CONFIDENTIAL) [Pending Complaints and Requests as of 3/31/16]**.

FY16 website hits through 3/31/16: 4,319

FY 16 New Employee Ethics training through 3/31/16: 548

### 3. Fiscal Year 2016 Budget Issues.

- COR has asked whether the EC is still going to enter into a contract for \$18,000 for an independent investigator/consultant contract and, if so, whether the Commission is expecting these funds to come from the EC's FY16 budget. To date, staff has assumed that EC FY16 funds will be used.
- Staff is requesting that BFS release the lapsed funds from the first 3 quarters of FY16 in order to be able to pay our bills. We are to be assisted by COR.

### 4. Fiscal Year 2017 Budget.

The EC is aware of the cuts made to the budget by the Administration. Additional cuts from the Council have been withdrawn. The next logical step would be to ask the Budget Chair, Ann Kobayashi, for increased funds. The Council has until the beginning of June to submit its proposal to the Mayor.

5. Financial Disclosure Compliance.

All financial disclosures have been filed. Krissy and Lisa did a masterful job in making this the smoothest and most compliant filing ever.

6. Ethics Training Program Status.

Nothing new to report.

7. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws.

Two proposed ethics amendments are still viable:

- #39, which is the EC request to have the Salary Commission set a range for the EC lawyers' salaries. The attached testimony in support was submitted at the April 14, 2016 hearing. Also included is the Charter Commission's Ethics PIG Report dated March 23, 2016. The last document is the version of #39 passed by the Commission to its Style Committee on April 14. **4-20-16 – OPEN-4, Agenda Item II.B.7. [EC Lawyers' Salaries]**. The Charter Commission decided not to have the Salary Commission set the range of EC lawyers' salaries because it was not comfortable having the SC set the EC's director's salary. Instead, the EC will set the salaries for the EDLC and the ALC. The EDLC salary will be based on an excluded manager's pay range. Currently the EDLC's pay is required by ordinance to be within the EM-7 range, approximately \$80,000 - \$140,000.
- #153, which would require proof of intent to influence the city official before the official could be found in violation of the gift law. Testimony opposing #153 is in **4-20-16 – OPEN-5, Agenda Item II.B.7. [Gift Law-Proof of Intent]**. Discussion of #153 was deferred until a later meeting.

8. Electronic Protection of Commission Records.

The EC's I:Drive is now separated from COR's I:Drive.

9. 2015 Service Efforts and Accomplishments Report and National Citizen Survey for Honolulu.

For the last few years, the City Auditor has offered the SEA report to show performance trends regarding government accountability and other topical areas regarding city services. The NCS provides a comparison of 500 other communities in the U.S. You may find the attached pages of the reports interesting in that city government continues to be ranked below the national benchmark in "Confidence in City government," "Acting in the best interest of Honolulu," "Being honest," and "Treating all

residents fairly.” The relevant parts of the reports are in **4-20-16 – OPEN-6, Agenda Item II.B.9. [SEA Report]**.

10. Review of Ethics Commission Rules of Procedure.

The survey by the law student is **4-20-16 -- OPEN-7, Agenda Item II.B.10. [Rules Survey]**

11. Work Flow Charts for Requests for Advice and Complaints Requiring Investigation.

The charts are **4-20-16 – OPEN-8, Agenda Item II.B.11. [Work Flow Charts (2)]**.

12. Process to Transfer Complaint and Investigation Report to Department When the Complaint’s Subject is a Civil Service Employee.

As you know, the Commission does not have jurisdiction to impose discipline or civil fines on civil service employees (those covered by a collective bargaining agreement or the civil service laws). Even after a contested case hearing, the EC may only make a recommendation to the department that employs the civil servant.<sup>1</sup> In addition, we are under-resourced to handle the number of complaints requiring investigation.

As a result, for some months now, staff has been trying to develop a process with the Administration whereby the department that employs the civil servant will expeditiously request our investigative files under HRS Sec. 92F-19.<sup>2</sup> The department would then be responsible to determine

---

**<sup>1</sup>Sec. 3-8.5 Violation Penalty.**

(d) In addition to any other penalty, sanction or remedy provided by law, the ethics commission may impose a civil fine against a former or current officer or exempt employee of the city who has been found by the ethics commission to have violated the standards of conduct in Article XI of the revised charter or this article.

**Sec. 3-6.5 Requirements applicable to the rendering of advisory opinions.**

(e) After an opinion has been rendered, the commission shall notify the appointing authority of the officer or employee involved or the council in the case of elected officials, of its decision and shall recommend appropriate disciplinary action against officers and employees found to have violated standards of conduct established by the revised charter or by ordinance. The appointing authority or the council shall take whatever action is deemed necessary, and report the action taken and the reasons for the action to the commission within 15 days after receiving the decision and recommendation of the commission.

**<sup>2</sup>§92F-19 Limitations on disclosure of government records to other agencies.** (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

(1) Necessary for the performance of the requesting agency's duties and functions and is also:

(A) Compatible with the purpose for which the information was collected or obtained; or

(B) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;

(2) To the state archives for the purposes of historical preservation, administrative maintenance, or destruction;

(3) To another agency, another state, or the federal government, or foreign law enforcement agency or authority, if the disclosure is:

(A) For the purpose of a civil or criminal law enforcement activity authorized by law; and

(B) Pursuant to:

(i) A written agreement or written request, or

(ii) A verbal request, made under exigent circumstances, by an officer or employee of the requesting agency whose identity has been verified, provided that such request is promptly confirmed in writing;

whether there was misconduct and to determine the discipline, if any. Any lapse in time is important in these cases because the collective bargaining agreements often have certain time periods or at least a requirement that the investigation be completed within a reasonable time frame.

To date, we have had differing success with different departments – some promptly request the information and others do not. I have asked the Managing Director to help and he seems in general favor, and has helped on a case-by-case basis.

C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel. (Refer to 2-11-16 – OPEN-1, Agenda Item II.A. [**Vice Chair Lilly's Excel Eval Form**])

Should you have any questions on these matters, please contact me.

- 
- (4) To a criminal law enforcement agency of this State, another state, or the federal government, or a foreign criminal law enforcement agency or authority, if the information is limited to an individual's name and other identifying particulars, including present and past places of employment;
  - (5) To a foreign government pursuant to an executive agreement, compact, treaty, or statute;
  - (6) To the legislature, or a county council, or any committee or subcommittee thereof;
  - (7) Pursuant to an order of a court of competent jurisdiction;
  - (8) To authorized officials of another agency, another state, or the federal government for the purpose of auditing or monitoring an agency program that receives federal, state, or county funding;
  - (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions;
  - (10) To the department of human resources development, county personnel agencies, or line agency personnel offices for the performance of their respective duties and functions, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety, workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or
  - (11) Otherwise subject to disclosure under this chapter.
- (b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency.

**4-20-16**

**OPEN – 1**

**Agenda Item II.B.1.b., Pg. 2**  
**[Bigornia's Monthly Report]**

To: Ethics Commission  
From: Kristine Bigornia, Legal Clerk  
Date: April 14, 2016  
Subject: Report from March 17, 2016 – April 14, 2016

---

I. FINANCIAL DISCLOSURE FORMS

- A. Checking for those who had not filed
  - 1. There are three lists that I follow:
    - a. City Employees (Eforms)
    - b. Board and Commission Members (Paper)
    - c. Cabinet Members (City Clerk)
- B. On March 4, 2016, former ALC sent a memo regarding delinquency to specified employees and board and commission members to Council Chair Martin and MD Amemiya
  - 1. Deadline: Monday, March 14, 2016
- C. Seven (7) Notice of Violation Letters were sent out on March 17, 2016 via Certified-Return Mail by Legal Clerk Parker
- D. As of March 28, 2016, EVERYONE has complied

II. LOBBYIST FORMS – REGISTRATION AND ANNUAL REPORTS

- A. Revising the registered list
  - 1. On March 8, 2016, updated the lobbyist registered list because there were a few new names to add or delete
  - 2. On March 21, 2016, updated the lobbyist registered list one last time
  - 3. On April 8, 2016, updated registered lobbyist list

III. ASSISTING THE EDLC

- A. Creating Work Flow Charts for Request for Advice and Complaints
- B. Revising the “EC Outstanding Cases”

IV. TRAINING

- A. Mindflash
  - 1. Gathering the clips of Parks & Recreation to re-do the audio
  - 2. Revising the PowerPoint presentation with former ALC
  - 3. Currently, working on the audio to be consistent throughout the PowerPoint

V. PREPARING FOR THE MOVE TO KAPALAMA HALE

- A. There are nine (9) boxes in the office that needs to be prepped for DIT to scan and then archived

**4-20-16**

**OPEN – 4**

**Agenda Item II.B.7., Pg. 4**

**[EC Lawyers' Salaries]**

**Parker, Lisa P**

---

**From:** Totto, Charles W.  
**Sent:** Thursday, April 14, 2016 9:03 AM  
**To:** Charter Commission  
**Cc:** Parker, Lisa P; Bigornia, Kristine Ian D; Shanafelt, William  
**Subject:** Testimony of Ethics Commission in Support of Charter Proposal #39, Hearing: Thursday, April 14, 2016, 3:30 pm, Agenda Item V

Good Afternoon Chair Rae and Members of the Commission:

My name is Chuck Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission.

The Ethics Commission submitted and strongly supports this proposal, which would require the Salary Commission to set the range for the salaries of the Ethics Commission's attorneys. The Ethics Commission would then set salaries within that range. This salary setting process would be the same used by other City law departments.

The amendment has been brought to you because the Commission faces a recruitment and retention problem that no other City law department faces. City lawyers, except for those at the Ethics Commission, have their salary ranges set by the Salary Commission. The Salary Commission process helps to assure that City lawyers with similar relevant legal experience and responsibilities are paid similar salaries. Currently, there is a gross disparity between the salaries recommended by the Salary Commission for City lawyers and the pay allowed by law for Ethics Commission lawyers. For example, under current law, the Ethics Commission's Associate Legal Counsel salary is set on a range that is capped at \$13,000 below the maximum pay for lawyers with comparable experience and duties at the Corporation Counsel.

This low pay cap will result in the Ethics Commission not being able to hire or retain high quality attorneys. Lawyers will opt for better pay at the other City or state law departments. In turn, the lack of good attorneys at the Ethics Commission means that the staff will be less skilled and less effective in training, advising and enforcing the ethics laws. And this undermines our service to the public and City government.

The proposal will help assure pay equity between the Commission's lawyers and other City lawyers and prevent the deterioration of the Ethics Commission's quality legal staff so that we can continue our service to the public. The proposal will also reinforce the independence of the Ethics Commission by requiring the Ethics Commission to set the lawyers' salaries, and prevent the City Administration from lowering the lawyers' salaries, as has been done in the past.

I am available to answer any questions.

Thank you.

CHARLES W. TOTTO  
Executive Director and Legal Counsel  
Honolulu Ethics Commission  
715 South King Street, Suite 211, Honolulu, HI 96813-3091  
Office (808) 768-7786 / Fax (808) 768-1352  
Email: [ctotto@honolulu.gov](mailto:ctotto@honolulu.gov)  
Website: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

**CONFIDENTIALITY NOTICE: *This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone or [ctotto@honolulu.gov](mailto:ctotto@honolulu.gov) and permanently delete the original and any copy of this message, its attachments, and any printout thereof.***

THANK YOU.

4/14/16

Charter Amendment Proposal #21 (Draft #5)  
Ethics Staff Salaries

**Section 11-107. Ethics Commission --**

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the position of executive director **and staff attorneys**, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be **[fixed by ordinance] set by the ethics commission within [the EM-7 range applicable to city and county civil service employees; provided that the salary may fall below the EM-7 range if the position of executive director is less than a full time position] an excluded managerial compensation plan applicable to city and county employees. The salary of staff attorneys shall be set by the ethics commission; provided that salaries of staff attorneys shall not be more than comparable salaries of attorneys in the department of corporation counsel.**

The commission is authorized to hold hearings and to conduct investigations concerning the application of this article of the charter and shall have the powers provided in Section 13-114 of this charter.

The commission may, on its own initiative, render advisory opinions with respect to this article of the charter. An advisory opinion shall be rendered pursuant to a written request of any elected or appointed officer or employee concerned and may be rendered pursuant to the request of any person. The commission shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the persons involved.

The commission may impose civil fines established by ordinance against elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance, found by the commission to have violated the standards of conduct established by this article of the charter or by ordinance. The commission shall recommend appropriate disciplinary action against officers and employees found to have violated the standards of conduct established by this article of the charter or by ordinance. The appointing authority shall promptly notify the commission of the action taken on the recommendation.

**Report of the  
Permitted Interaction Group  
on Proposals Relating to  
Ethics and the  
Ethics Commission  
March 23, 2016**

**Members:**

**Kevin D. Mulligan, Chair**

**Judge Michael F. Broderick (Ret.)**

**Paul T. Oshiro**

## PERMITTED INTERACTION GROUP REPORT – ETHICS

**Proposal #15** – This proposal attempts to address the conflict of interest issue by focusing on a matter not within the Commission's jurisdiction and should not be considered.

**Proposal #39** – Authorize the Salary Commission to set salary ranges for attorneys who work for the Ethics Commission, who would set their actual salaries.

**Comment/Analysis:** *We recommend modifying Proposal #39 by allowing the Ethics Commission to set the salary of the Executive Director and the salaries of the staff attorneys assigned to the Ethics Commission. Section 11-107 would be amended to read as follows:*

### **Section 11-107. Ethics Commission --**

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the position of executive director and staff attorneys, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be ~~[fixed by ordinance]~~ set by the ethics commission within the EM-7 range applicable to city and county civil service employees; provided that the salary may fall below the EM-7 range if the position of executive director is less than a full time position. The salary of staff attorneys shall be set by the ethics commission; provided that salaries of staff attorneys shall not be more than comparable salaries of attorneys in the department of corporation counsel.

**Proposal #107** – Create an Office of the Inspector General to replace the Ethics Commission. The Inspector General would not be under the control or administrative authority of the Corporation Counsel to provide a more independent watchdog agency for residents and taxpayers. The person who submitted this proposal pointed to several other jurisdictions with this type of structure, including Broward County, Florida, Cuyahoga County, Ohio and Montgomery County, Maryland.

In *Broward County*, the OIG investigations program is responsible for the investigation of allegations of misconduct and gross mismanagement by Broward and municipal elected officials, employees and providers. Misconduct is defined as “any violation of the state or federal constitution, any state or federal statute or code, any county or municipal ordinance or

code; or conduct involving fraud, corruption, or abuse." Gross mismanagement is defined as "the material waste or significant mismanagement of public resources."

The *Cuyahoga County Agency of Inspector General* was established by the County Executive and County Council to protect taxpayers' interests by promoting honesty and accountability in County government. To further this objective, the Agency of Inspector General is granted broad authority to conduct investigations, inspections and audits relating to fraud, corruption, waste, abuse, misfeasance, malfeasance and nonfeasance in the operations of County government. In addition, the Agency of Inspector General is the investigative officer for all issues arising under the County's Ethics Ordinance. The Agency of Inspector General is responsible to ensure that County employees and contractors/vendors who do business with the County meet the highest ethical standards.

The *Montgomery County Office of the Inspector General* prevents and detects fraud, waste, and abuse in government activities and proposes ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies by reviewing the efficiency and effectiveness of programs and operation of County government and independent County-funded agencies.

**Comment/Analysis:** *We do not believe we need this type of structure in the City and County of Honolulu. This constitutes a major policy change and would involve considerable expense. We already have the Ethics Commission and the City Auditor that perform similar functions.*

*The City Auditor has the authority to conduct performance and financial audits of funds, programs, and operations of any agency of the city, as determined by the auditor.*

*An alternative would be to make strengthen the Ethics Commission through the qualifications necessary to be appointed as a member and allowing the Ethics Commission to set the salary of its staff attorneys.*

*For example, in the City of Oakland, California, there are specific qualifications in the appointments made by the Mayor, City Attorney and City Auditor. The mayor must appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.*

*The City Attorney must appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters. The City Auditor must appoint one member with a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.*

*We provided this information to the Executive Director of the Honolulu Ethics Commission and he spoke with the Executive Director of the Oakland Public Ethics Commission. He is supportive of this type of change to the Honolulu City Charter.*

Therefore, we recommend leaving the current appointment process in place, but adding the qualifications used by the City of Oakland.

**Proposal #114** – This proposal submitted by the League of Women Voters supports the increased independence of the Ethics Commission by: 1) changing the appointment process to one adopted by Atlanta, Georgia and 2) locating the Ethics Commission in the Office of the Auditor.

Under the Atlanta model, the selection of ethics commissioners is made by the following organizations:

- The Atlanta Bar Association selects one member
- Another Bar Association selects one member
- The Atlanta Business League selects one member
- The Atlanta Chamber of Commerce selects one member
- The Atlanta-Fulton County League of Women Voters selects one member
- The Atlanta Planning Advisory Board selects one member
- The six major colleges and universities within Atlanta region select one member

**Comment/Analysis:** *This particular method of selecting members of the Ethics Commission is questionable. Commissioner Waihee raised a very legitimate issue by questioning what gives these organizations preference over others. Would their selections be more representative of the community or have any expertise with ethics matters? The selection criteria used by Oakland, California is a more effective way of addressing this issue. Therefore, we recommend not adopting this proposal.*

**Proposal #147** – This is not a proposal but several editorial statements about different issues, including ethics. Therefore, it should not be considered.

**Proposal #153** – This proposal would amend Section 11-102 (a) of the Charter by inserting the following language:

"No elected or appointed officer shall:

Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances [~~in which it can reasonably be inferred that the gift is~~] which are intended to influence the officer or employee in the performance of such person's official duties and which benefit the elected or appointed officer or employee personally affect the financial interests of their family or involve individuals or organizations with which the elected or appointed officer or employee has some past, present or future connection away from their official duties."

The rationale is that the current language is overly broad and warrants change so that there is a clear standard of conduct.

**Comment/Analysis:** *Based upon an analysis from the Honolulu Ethics Commission, the language in Proposal #153 is overly broad. It would require the Ethics Commission to prove that whoever gave a gift had the intention to influence a city official in carrying out their duties. This is the standard of proof required in a criminal bribery conviction.*

*However, we also recognize that the term "can reasonably be inferred" in Section 11-102 (a) of the Charter is open to interpretation and application. We are currently seeking guidance in how other municipalities deal with the issue of gift to city officials.*

*Therefore, we make no recommendation with respect to Proposal #153.*

**4-20-16**

**OPEN – 5**

**Agenda Item II.B.7., Pg. 4**  
**[Gift Law-Proof of Intent]**

## Parker, Lisa P

---

**From:** Totto, Charles W.  
**Sent:** Thursday, April 14, 2016 9:04 AM  
**To:** Charter Commission  
**Cc:** Parker, Lisa P; Bigornia, Kristine Ian D; Shanafelt, William  
**Subject:** Ethics Commission Testimony in Opposition to Charter Proposal #153, Hearing: April 14, 2016, 3:30 p.m., Agenda Item VI  
**Attachments:** Gift flyer.pdf

Dear Chair Rae and members of the Charter Commission,

My name is Chuck Totto. I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission.

I strongly oppose Proposal 153 because it will result undermine government ethics by allowing unlimited gifts to flow from lobbyists and contractors to City officials in the hope of receiving preferential treatment in return.

Proposal 153 would make a crucial change the legal standard for giving gifts to City officials. Instead of being able to use all the relevant facts and circumstances to conclude that the gift giver intended to influence a City official, the new standard would require proof of intent to influence. There are several shortcomings in this approach:

1. The proposal is based on an incorrect assumption. The Ethics Commission has never ruled that "ANY gift from a lobbyist, regardless of its value, is a violation of law."
2. The amendment would make Honolulu's gift laws an ethics aberration. Ours would be the only jurisdiction in the state (and probably in the country) that requires proof of intent for unlawful gifts.
3. "Intent to influence" is very difficult to prove. Intend means "to desire or to do purposefully." To skirt the intent requirement all a gift giver has to say is "I wasn't trying to influence the official;" and all the official has to say is: "I was never influenced by the gift." This was one of former Councilmember Romy Cachola's unsuccessful defenses to receiving thousands of dollars in unlawful gifts.
4. There will be a surge of gifts to City officials which would, in turn, lower the public's trust in City government officials. We should not revive the culture of gift entitlements that created the ethics problems in the past.
5. The current Charter standard has been the law in Honolulu (and the state and counties) for decades and enforcement is just starting to serve the public well. The Commission regularly trains the 10,000 City workers to avoid unlawful gifts. (Please see the attached Gift Flyer.) We have rendered hundreds of advisory opinions to clarify when gifts may or may not be accepted. The opinions and training would become irrelevant. Further, the gift laws in the revised ordinances would have scrapped to be consistent with the new Charter law.
6. The new law would require the same proof of "intent to influence" that is needed for a criminal conviction for bribery under HRS Sec. 710-1040(a). But the ethics laws are envisioned to maintain and foster the public's trust in government, not to convict criminals.

I am available to answer any questions.

Thank you.

CHARLES W. TOTTO

Executive Director and Legal Counsel

Honolulu Ethics Commission

715 South King Street, Suite 211, Honolulu, HI 96813-3091

Office (808) 768-7786 / Fax (808) 768-1352

Email: [ctotto@honolulu.gov](mailto:ctotto@honolulu.gov)

Website: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

---

**CONFIDENTIALITY NOTICE: *This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone or [ctotto@honolulu.gov](mailto:ctotto@honolulu.gov) and permanently delete the original and any copy of this message, its attachments, and any printout thereof.***

THANK YOU.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)



KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

## **DO NOT TAKE ILLEGAL GIFTS**

*What is the law on City personnel accepting a gift?* You may not take a gift if a reasonable City taxpayer would think that the gift was offered to influence or reward you for doing your City job, no matter how much the gift is worth.

*What is a "gift"?* A gift is anything of value that you receive without paying for it. Examples include: food, beverages, door prizes, golf fees, cash, gift cards, discounts, loans, entertainment, travel, recommendations, referrals, and more.

*How can I tell if a gift is illegal?* A gift may be illegal if your job is to contract, review, inspect, permit, manage or authorize work for the gift giver. For instance, a gift to you from a contractor, vendor, permit requester or lobbyist is probably illegal, unless the gift fits into one of these categories:

- The gift giver has no business or personal interest that you can affect in doing your City job;
- The gift is a token of aloha of low value;
- The gift is a discount offered to all City employees;
- The gift is available to the general public; or
- The gift is part of an exchange of gifts with similar value for holidays or special occasions between you and the gift giver.

*What can happen to me if I accept an illegal gift?* Any official or employee could be disciplined. An elected or exempt official could also be fined.

*Questions?* Contact Chuck Totto: [ctotto@honolulu.gov](mailto:ctotto@honolulu.gov), 768-7786 or Laurie Wong-Nowinski: [lwong4@honolulu.gov](mailto:lwong4@honolulu.gov), 768-7717. **It's confidential.**

**PUBLIC SERVICE WITH INTEGRITY**

**4-20-16**

**OPEN – 6**

**Agenda Item II.B.9., Pg. 5**

**[SEA Report]**

# Honolulu Ethics Commission

The Ethics Commission has seven commissioners who are appointed by the mayor and confirmed by the city council for five-year staggered terms. The commission renders advice on ethics questions to city personnel, the public and the media; investigates complaints of violations of the ethics laws; and recommends discipline to appointing authorities for ethics laws violations; and imposes civil fines for violations by exempt or elected officials.

The commission also develops and implements education programs, including mandatory ethics training and re-training for all city personnel. It also recommends legislation before the council and the legislature; develops guidelines explaining the standards of conduct; reviews and maintains financial disclosure statements of city officials with significant discretionary authority; and regulates lobbying and lobbyists.

The commission is administratively attached to the Department of the Corporation Counsel.

*To ensure that city officers and employees understand and follow the ethical standards of conduct governing their work for the public.*

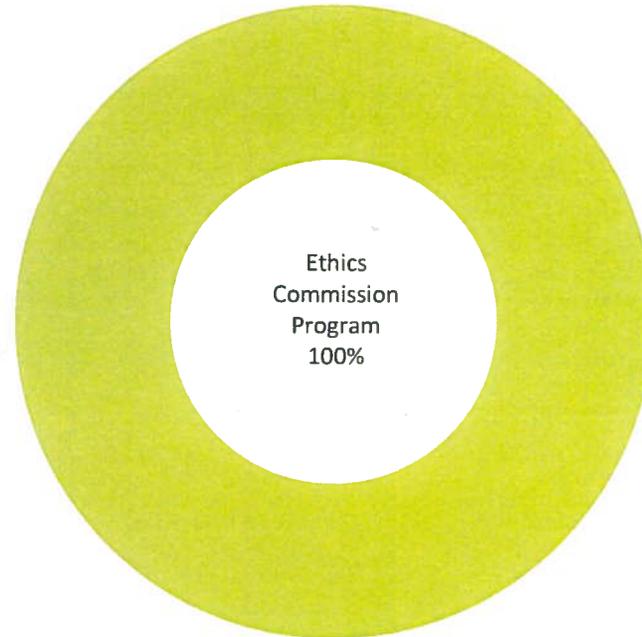
*Mission Statement*

# Spending and Staffing

## Fund Sources



## Fund Uses



### Staffing

	Total Operating Expenditures	Total Authorized FTE	Total Vacant FTE	Cost Per FTE <sup>1</sup>
FY 2011	\$187,871	3.0	0.0	\$62,624
FY 2012	\$254,234	3.0	0.0	\$84,745
FY 2013	\$265,987	3.0	0.0	\$88,662
FY 2014	\$348,125	4.0	0.0	\$87,031
FY 2015	\$351,982	6.0	2.0	\$58,664
Change from last year	1%	50%	--	-33%
Change over last 5 years	87%	100%	--	-6%

Source: Department of Budget and Fiscal Services. The FY 2015 totals are estimates (as of January 20, 2016) as provided by the Department of Budget and Fiscal Services (BFS). FY 2015 FTE staffing as of 7-15-2015. <sup>1</sup>Cost Per FTE = Total Operating Expenditures/Total Authorized FTE.

## Highlights

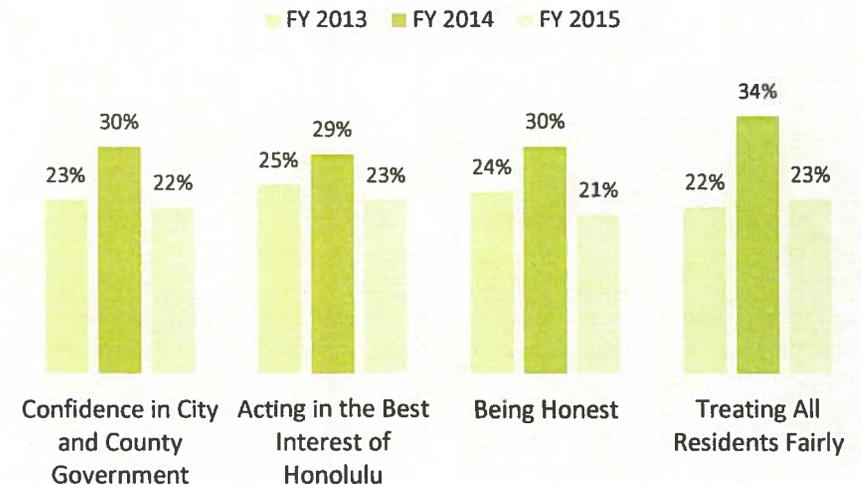
Over the last five years, the commission's operating expenditures increased by 87%.

The commission staff continued the mandatory ethics training program for all elected officials, managers, supervisors, and board and commission members. Honolulu's mandatory ethics training and retraining program is one of the most ambitious in the United States.

In FY 2015, the commission responded to 319 requests for advice, a 19% decrease over the last five years.

In the 2015 National Citizen Survey, residents decreased their ratings of government performance in four different categories, with the greatest decrease being 11% from FY 2014 to FY 2015 in the government's treating all residents fairly. Honolulu resident's ratings of government performance were much lower than percentages reported nationwide and lower than percentages reported in cities with populations over 300,000.

### Citizen Ratings of Government Performance (% Excellent or Good)



Source: 2015 National Citizen Survey (Honolulu)

	Total Ethics Training <sup>1</sup>	Advice Requests & Complaints	Complaints Opened for Investigation	Requests for Advice Answered
FY 2011	887	473	81	392
FY 2012	1,127	440	70	370
FY 2013	2,937	414	86	403
FY 2014	6,292	386	105	389
FY 2015	858	307	93	319
Change from last year	-86%	-20%	-11%	-18%
Change over last 5 years	-3%	-35%	15%	-19%

Source: Honolulu Ethics Commission. <sup>1</sup>FY 2011-FY 2012 includes specialized training hours. This training category was discontinued in FY 2013.

**4-20-16**

**OPEN – 7**

**Agenda Item II.B.10., Pg. 5**

**[Rules Survey]**

**COUNTY OF HONOLULU ETHICS**

**COMMISSION RULES OF**

**PROCEDURE RESEARCH:**

**AGENCY COMPARISON**

## Table of Contents

1. Complaints: Defined .....	3
2. Complaints: Who Can File.....	4
3. Complaints: Contents of a Complaint.....	6
4. Complaints: Inadequate Complaint.....	8
5. Complaints: Basis for Refusal to Entertain or Dismiss .....	9
6. Complaints: Preliminary Determination .....	11
7. Complaints: Notification to the Respondent.....	13
8. Complaints: Response from the Respondent .....	15
9. Complaints: Preliminary Investigations.....	17
10. Hearings Generally: Open or Closed .....	20
11. Hearings Generally: Ex Parte Communications .....	22
12. Hearings Generally: Subpoenas and Discovery .....	25
1. Hearings Generally: Disqualification of Hearings Officers and Board Members ....	29
13. Investigative/Informal Hearings: When Conducted .....	33
14. Investigative/Informal Hearings: Procedures .....	35
15. Investigative/Informal Hearings: Advisory Opinions/Decisions.....	38
16. Contested Case Hearings: When Conducted .....	41
17. Contested Case Hearings: Powers and Duties of Hearings Officers/Commission ...	44
18. Contested Case Hearings: Prehearing Conference and Statement.....	48
19. Contested Case Hearings: Procedures/Presentation of the Case.....	52
20. Contested Case Hearings: Rules of Evidence.....	58
21. Contested Case Hearings: Decisions .....	62
22. Contested Case Hearings: Record of the Hearing.....	67
23. Contested Case Hearings: Mediation.....	70
24. Contested Case Hearings: Request for Reconsideration.....	72
25. Miscellaneous: Formatting.....	74
26. Miscellaneous: Computation of Time.....	76

<b>1. Complaints: Defined</b>	
County of Honolulu Ethics Commission ("Hon. R.")	"[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." Hon. R. 1.4.
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided
County of Maui Ethics Commission ("Maui R.")	Not expressly provided.
County of Kauai Ethics Commission ("Kauai R.")	"[A] notarized letter, or a document authorized by a resolution of the Board, setting forth the basic facts alleging a violation of one or more provisions of the Code of Ethics." Kauai R. 1.2.
Hawai'i State Ethics Commission	"[T]he statement of facts of a violation issued to the legislature or to the governor by the commission after due hearing and determination."  *Note: a "complaint" issued by the State Ethics Commission is functionally a "final decision" that is forwarded to the appropriate agency.
Office of Disciplinary Counsel	A "[g]rievance involving an Attorney that falls within the jurisdiction of the Attorney discipline system." ODC R. 3(d).
Department of Consumer Affairs - RICO	Not expressly provided.
Department of Labor & Industrial Relations	Not expressly provided.
Civil Rights Commission	"'Complaint' means a written statement filed with the commission pursuant to this chapter and section 368-11, HRS, alleging an unlawful discriminatory practice within the meaning of chapter 368 or 489 or 515 or part I of chapter 378, HRS." HAR § 12-46-1.
Departments of Health	"'Complaint' refers to a notice of violation, finding of violation, order or such other document by which the department, a person, or agency starts action against any person or entity." HAR § 11-1-3.
Honolulu Liquor Commission ("HLC R.")	The Honolulu Liquor Commission's rule do not provide for a complaint process.

	<b>2. Complaints: Who Can File</b>
County of Honolulu Ethics Commission ("Hon. R.")	"Complaints may be made by any person or the commission on its own initiative." Hon. R. 5.1. "[T]he 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." Hon. R. 5.2(a).
County of Hawai'i Ethics Commission ("Haw. R.")	Proceedings before the Hawai'i County Ethics Commission's are first initiated by the request of an "informal advisory opinion," which is essentially the equivalent of a complaint, by: (1) an officer or employees whose conduct is subject of the request, <i>see</i> Haw. R. 4.1; (2) a third party (including members of the public), <i>see id.</i> at R. 4.2; (3) an appointing authority, <i>see id.</i> at R. 4.3; or (4) the Board. <i>See id.</i> at R. 4.4. If the informal advisory opinion indicates a probable violation of the code of ethics, the person charged must either request a formal hearing or comply with the informal advisory opinion. <i>See id.</i> at R. 6.1(a).
County of Maui Ethics Commission ("Maui R.")	Complaints can be initiated by a member of the public, <i>see</i> Maui R. 04-101-61, or by the board. <i>See id.</i> at § 04-101-62.
County of Kauai Ethics Commission ("Kauai R.")	Complaints can be initiated by members of the public, <i>see</i> Kauai R. 6.1, or the board. <i>See id.</i> at R. 6.2. If initiated by the board after an investigation, the complaint must be reduced to writing and signed by one (1) or more members of the Board. <i>See id.</i> at R. 6.2(b).
Hawai'i State Ethics Commission	"Charges" can be initiated by a member of the public, <i>see</i> HAR § 21-5-1, or the commission. <i>See id.</i> § 21-5-2.
Office of Disciplinary Counsel ("ODC R.")	Not expressly provided.
Department of Consumer Affairs - RICO	"The department or any aggrieved person may petition the authority or hearings officer for a hearing to resolve a contested matter, including license denials, within the authority's jurisdiction." HAR §16-201-26
Department of Labor & Industrial Relations	Not expressly provided.
Hawai'i Civil Rights Commission	"Any person claiming to be aggrieved by an alleged unlawful discriminatory practice may file a complaint." HAR § 12-46-5(a).  "The commission's executive director may file a complaint whenever there is reason to believe that any person, employer, employment agency, or labor organization has engaged or is engaging in an unlawful discriminatory practice." <i>Id.</i> at § 12-46-5(b).  "The commission's executive director or the attorney general may file a complaint on behalf of a class where an unlawful discriminatory practice raises questions of law or fact which are common to the class and where a class action complaint is superior to other available methods for the fair and efficient adjudication of the controversy. A complaint so filed may be investigated, conciliated, and litigated on a class basis." <i>Id.</i> at § 12-46-5(c).
Hawai'i Department of Health	"The department may schedule a contested case hearing on its own initiative or may schedule one when required by law based upon a complaint." HAR § 11-1-22(a).
Honolulu Liquor Commission ("HLC")	The Honolulu Liquor Commission's rule do not provide for a complaint process.



	<p style="text-align: center;"><b>3. Complaints: Contents of a Complaint</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"Complaints shall be made in writing and signed by the complainant . . ." Hon. R. 5.2(a). "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 omission at issue and any other pertinent information known to the complainant." <i>Id.</i> at R. 5.2(b).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>All requests for an informal advisory opinion submitted to the Board by an officer or employee whose own conduct is subject of the request must be signed by the officer or employee and set forth all pertinent facts. <i>See</i> Haw. R. 4.1(c).</p> <p>All request submitted to the Board by a third party (including members of the public and appointing authorities) must: (1) include the requestors name, address, and telephone number; (2) be signed by the third party; (3) describe the actual situation; (4) set forth all pertinent facts; (4) include the name(s) of the officer(s) or employee(s) involved; and (5) state the specific provisions of the Code of Ethics allegedly violated. <i>See id.</i> at R. 4.2(b).</p>
<p>County of Maui Ethics Commission</p>	<p>"A complaint shall set forth a concise statement of the facts constituting the alleged violation, the name and position of the alleged violator, and shall either be sworn to under oath or accompanied by an affidavit subscribed to by the complainant." Maui R. § 04-101-61(a).</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>All complaints initiated by a member a of the public, "shall contain a concise statement of the facts constituting the alleged violation of the Code of Ethics, the name and position of the respondent, and shall be signed under oath by the complainant. The oath shall be administered in accordance with the laws of the State of Hawai'i." Kauai R. 6.1(a).</p> <p>With respect to complaints initiated by the board, "[i]f after [an] investigation the Board resolves to initiate a complaint, the same shall be reduced to writing and signed by one (1) or more members of the Board." <i>Id.</i> at R. 6.2(b).</p>
<p>Hawai'i State Ethics Commission</p>	<p>A "charge" initiated by a member of the public, must "contain a short and simple statement of the facts constituting the alleged violation, the name and public position of the alleged violator, and shall be signed by the person making the charge, under oath." HAR § 21-5-1(b).</p> <p>With respect to a "charge" initiated by the board, "[i]f after preliminary investigation at least three commissioners decide that a charge should be initiated, the charge will be issued in writing and signed by at least three commissioners." <i>Id.</i> at 21-5-2(b).</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>Not expressly provided.</p>
<p>Department of Consumer Affairs - RICO</p>	<p>"The petition for hearing relief shall state plainly and precisely the facts and circumstances of petitioner's grievance, the laws, rules involved, and the relief sought by petitioner." HAR § 16-201-26.</p>

Department of Labor & Industrial Relations	Not expressly provided.
Hawai'i Civil Rights Commission	<p>Each complaint shall contain the following:</p> <ol style="list-style-type: none"> <li>(1) The full name, address, and telephone number (if any) of complainant;</li> <li>(2) The full name, address, and telephone number (if any, and if known) of the respondent or respondents;</li> <li>(3) A plain and concise statement of the facts constituting the alleged unlawful discriminatory practice;</li> <li>(4) The date or dates on which the alleged unlawful discriminatory practice occurred; or if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which the continuing acts of discrimination are alleged to have occurred; or the dates and acts commenced;</li> <li>(5) If known, the approximate number of employees of the employer, or the approximate number of members of the labor organization, as the case may be; and</li> <li>(6) Other information as required by the commission's executive director.</li> </ol> <p>HAR §12-46-6(a).</p>
Hawai'i Department of Health	<p>A complaint may set or request a hearing and shall contain concise statements of:</p> <ol style="list-style-type: none"> <li>(1) The legal authority under which the proceeding, hearing, or action is to be held or made;</li> <li>(2) The disagreement, denial, grievance, or other matter that is being contested by the complainant;</li> <li>(3) The facts and issues raised; and</li> <li>(4) The relief requested. The department may prepare and require the use of forms that may be substituted for any complaint.</li> </ol> <p>HAR §11-1-22(b).</p>
Honolulu Liquor Commission ("HLC R.")	The Honolulu Liquor Commission's rule do not provide for a complaint process.

	<b>4. Complaints: Inadequate Complaint</b>
County of Honolulu Ethics Commission ("Hon. R.")	Not expressly provided; however, "[i]t is not a defense to a violation of the standards of conduct that the complaint failed to supply all information relevant to the complaint." Hon. R. 5.2(c)
County of Hawai'i Ethics Commission ("Haw. R.")	The board has discretion to reject a request for an informal advisory opinion that fails to substantially comply with the content requirements. <i>See</i> Haw. R. 4.5(b). Additionally, "[i]n no case shall the Board entertain a request that is not in writing and not signed by the person making the request or his representative." <i>Id.</i> at R. 4.5(c).
County of Maui Ethics Commission ("Maui R.")	"Upon receipt of a document that does not comply with the requirements of § 04-101-60(a), or which does not in form or substance constitute a complaint, the board shall notify the person signing the document of the insufficiency." Maui R. 04-101-61(b).
County of Kauai Ethics Commission ("Kauai R.")	"Upon receipt of a document which does not comply with the requirements of subparagraph (a) of this rule, the Board may return the document noting the deficiency." Kauai R. 6.1(b)
Hawai'i State Ethics Commission	"Upon receipt of a document which does not comply with the requirements of § 21-5-1(a) or which does not in form or substance constitute a charge, the commission shall notify the person signing the document of the insufficiency." HAR § 21-5-1(b).
Office of Disciplinary Counsel ("ODC R.")	Not expressly provided.
Department of Consumer Affairs - RICO	Not expressly provided.
Department of Labor & Industrial Relations	"Any document filed with the board, which is not in compliance with applicable rules, orders, or statutes may be accepted by the chief clerk or designee and filed. The mere fact of filing, however, shall not waive any failure to comply with this chapter or any other legal requirement." HAR § 12-47-17.
Hawai'i Civil Rights Commission	Notwithstanding a failure to comply with the content requirements under HAR § 12-46-6(a) (see above), "a complaint is deemed filed if the commission receives from an individual a written statement sufficiently precise to identify the parties and describing with reasonable accuracy the action or practices alleged to be unlawful." <i>Id.</i> at §12-46-6(b).
Hawai'i Department of Health	Not expressly provided.
Honolulu Liquor Commission ("HLC R.")	The Honolulu Liquor Commission's rule do not provide for a complaint process.

	<b>5. Complaints: Basis for Refusal to Entertain or Dismiss</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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." Hon. R. 5.4.
County of Hawai'i Ethics Commission ("Haw. R.")	Except for cases involving written requests from elected or appointed officers or employees, or former such officers or employees, the Board may refuse for good cause to entertain a request for an advisory opinion. <i>See</i> Haw. R. 4.5(a). Grounds for such refusal include, but are not limited, to requests that: (1) are speculative or purely hypothetical and do not involve an actual situation; (2) are frivolous; or (3) fail to substantially comply with the content requirements. <i>See id.</i> at R. 4.5(b). Additionally, "[i]n no case shall the Board entertain a request that is not in writing and not signed by the person making the request or his representative." <i>Id.</i> at R. 4.5(c).
County of Maui Ethics Commission ("Maui R.")	<p>"The board <u>may</u> decline further review of a complaint when the complaint concerns matters under review by law enforcement or other investigatory agencies and may refer the complainant to other agencies. The board <u>shall</u> decline review of a complaint when the complaint concerns matters not within the jurisdiction of the board or when the board has deemed the complaint to be frivolous, or when the person signing the document fails to comply with 04-101-60(a), even after being notified of the insufficiency." Maui R. 04-101-61(c) (emphasis added).</p> <p>Further, a complaint will not be processed where: (1) it was not filed within the one-year statute of limitations period; (2) the complaint on its face is speculative, hypothetical, or not based on factual circumstances; (3) the identical allegations are being, or will soon be, litigated in a criminal action; (4) complainant has given notice of intention to seek remedies through a civil suit; (5) subject of complaint is not within the board's jurisdiction; or (6) the complainant's interest are not of the type that would give him/her standing in a court of law and the complainant is not an eyewitness to the events that are the basis of the complaint. <i>See</i> § 04-101-63.</p>
County of Kauai Ethics Commission ("Kauai R.")	Not expressly provided.
Hawai'i State Ethics Commission	Not expressly provided.
Office of Disciplinary Counsel ("ODC R.")	The ODC's rules do not provide the grounds for refusing to entertain a "grievance" generally. However, if the grievance is against an attorney member of the Board or Counsel and the reviewer determines that: (a) the grievance falls outside the jurisdiction of the Board; (b) sufficient information is not contained in the grievance to allow a meaningful investigation; or (c) a finding of an ethical violation and the imposition of discipline is not likely to occur, the reviewer must notify the Complainant that no investigation will be undertaken. <i>See</i> ODC R. 11(a)(iii).
Department of Consumer Affairs - RICO	"The authority or hearings officer may upon the motion of any party, or <i>sua sponte</i> , 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 one year 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 authority or hearings officer. The notice of

	<p>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 authority 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 authority 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.” HAR § 16-201-34.1(c).</p> <p>“Unless the order of dismissal issued by the authority or hearings officer specifies otherwise, a dismissal under subsection (c) and any other dismissal not provided for in this section, except a dismissal for lack of jurisdiction or improper venue, shall operate as an adjudication upon the merits.” HAR § 16-201-34.1.</p>
Department of Labor & Industrial Relations	The DLIR’s rules do not expressly provide the circumstances under which the Board may refuse to entertain an appeal; however, “[a] motion to dismiss any appeal or complaint made before a hearing on the merits of the case shall not be heard until five business days after the motion has been served.” HAR § 12-47-33.
Hawai‘i Civil Rights Commission	The executive director shall dismiss complaint if the: (1) commission lacks jurisdiction; (2) investigation results in lack of reasonable cause; (3) complainant or respondent cannot be located; (4) complaint has failed or is unable to cooperate fully with investigation; (5) executive director determines there are inadequate remedies; (6) another agency has conducted investigation and issued final determination; or (7) if dismissal is otherwise justified for administrative reasons. <i>See</i> HAR § 12-46-11(a).
Hawai‘i Department of Health	<p>“If any document initiating . . . a contested case is not in substantial conformity with the applicable rules of the department as to the contents of the document, or is otherwise insufficient, the department, on its own motion or on motion of any party, may reject or dismiss the document or require its amendment.” HAR § 11-1-29(a).</p> <p>Further, “[f]or good cause shown . . . a hearings officer may . . . dismiss a complaint, whether or not a party requests such relief.” <i>Id.</i> at § 11-1-41(a).</p>
Honolulu Liquor Commission (“HLC R.”)	The Honolulu Liquor Commission’s rule do not provide for a complaint process.

	<b>6. Complaints: Preliminary Determination</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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" and "(2) Make a determination as to whether the allegations, if taken as true, would constitute a violation of the standards of conduct." Hon. R. 5.5.
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided.
County of Maui Ethics Commission ("Maui R.")	"All filed complaints shall be immediately forwarded to the board's executive secretary who shall assign each complaint to the board's chair and the board's assigned legal counsel. The chair and the board's assigned legal counsel shall do a preliminary review of the complaint and shall report and make a recommendation to the board regarding the processing of the complaint . . ." Maui R. 04-101-63.
County of Kauai Ethics Commission ("Kauai R.")	<p>Upon receipt of a complaint initiated by a member of the public, "the Board shall investigate and/or deliberate on its merits. The Board may request more information. The Board may reject such complaint at this time and so notify the complainant, or decide to investigate further by calling for an informal or formal hearing." Kauai R. 6.1(c).</p> <p>Regarding complaints initiated by the board,"[u]pon receipt of information indicating a possible violation of the Code of Ethics, the Board shall initiate an investigation, the nature and scope of which shall be defined by resolution." <i>Id</i> at R. 6.2(a). "If after such an investigation the Board resolves to initiate a complaint, the same shall be reduced to writing and signed by one (1) or more members of the Board." <i>Id.</i> at R. 6.2(b).</p> <p>In the event that an informal hearing is held, within a reasonable time after the hearing, the Board must render an opinion as to whether or not there is a probable violation of the Code of Ethics. <i>See id.</i> at R. 7(d). "If no probable violation is indicated by the opinion, the complaint shall be dismissed by the Board, and the complainant so notified." <i>Id.</i> at R. 7(d)(1). "If a probable violation is indicated by the opinion, the Board shall cause the respondent to be served with a copy of the complaint and preliminary opinion." <i>Id.</i> at R. 7(d)(2).</p>
Hawai'i State Ethics Commission	<p>When initiated by members of the public, "[u]pon receipt of a document . . . which does not in form or substance constitute a charge, the commission shall notify the person signing the document of the insufficiency." HAR § 21-5-1(b). If no such deficiencies exist, the commission must provide the respondent with an informal hearing to explain the conduct at issue. <i>See id.</i> at § 21-1-3.</p> <p>When initiated by the commission, "[i]f after a preliminary investigation at least three commissioners decide that a charge should be initiated, the charge will be issued in writing and signed by at least three commissioners." HAR § 21-5-2(b). If the commission initiates a charge, it must provide the respondent with an informal hearing to explain the conduct at issue. <i>See id.</i> at § 21-1-3.</p>

Office of Disciplinary Counsel (“ODC R.”)	<p>Under the ODC’s rules, a preliminary determination is made by the Disciplinary Counsel upon the conclusion of his/her investigation, which must be within 180 days from the date a grievance is received, in the form of a recommendation to a Reviewing Board Member. <i>See</i> ODC R. 12(d)(ii).</p> <p>Upon the conclusion of an investigation, Counsel shall forward or present the following to a Reviewing Board Member:</p> <ul style="list-style-type: none"> <li>(i) Counsel's summation of the file;</li> <li>(ii) Relevant portions of the file, including substantive communications received from the Respondent in response to the notice given under DBR 14; and</li> <li>(iii) Counsel's recommendation as to the disposition of the matter by any of the following based on clear and convincing evidence: <ul style="list-style-type: none"> <li>• Dismiss the matter;</li> <li>• Dismiss with a letter of caution, with or without violation;</li> <li>• Impose a private Informal Admonition; or</li> <li>• Institute a Formal Disciplinary Proceeding</li> </ul> </li> </ul> <p><i>Id.</i> at R. 16(b).</p> <p>“Any Petition for Discipline shall be filed within two months/60 days of the date a recommendation is made to a Reviewing Board Member.” <i>Id.</i> at 12(d)(iii).</p>
Department of Consumer Affairs - RICO	<p>“Unless otherwise provided by law, upon the filing of the petition, and as expeditiously as possible, the authority shall determine whether or not to proceed further on the petition.” HAR §16-201-26.3(a). “If the authority determines to proceed further, it shall either set the matter for further proceedings before the authority or assign the petition to a hearings officer for further proceedings . . . .” <i>Id.</i> at § 16-201-26.3(b). “If the authority determines not to proceed further, the authority 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 authority’s determination or pursue judicial review, pursuant to sections.” <i>Id.</i> at §16-201-26.3(c).</p>
Department of Labor & Industrial Relations	Not expressly provided.
Hawai‘i Civil Rights Commission	Not expressly provided; however, as noted above, the executive director shall dismiss a complaint if the investigation results in a “lack of reasonable cause.” <i>See</i> HAR § 12-46-11(a)(2).
Hawai‘i Department of Health	Not expressly provided.
Honolulu Liquor Commission (“HLC R.”)	The Honolulu Liquor Commission’s rule do not provide for a complaint process.

	<b>7. Complaints: Notification to the Respondent</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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 witness." Hon. R. 5.6(a).
County of Hawai'i Ethics Commission ("Haw. R.")	When a request for an informal advisory opinion has been made by a third party, "a copy of the request shall be sent to the officer or employee involved with the name of the person making the request deleted." Haw. R. 4.6(b).  If the Board proceeds with a formal hearing, "[a] copy of the charge and a further statement of the alleged violation shall be served upon the alleged violator by certified or registered mail with return receipt requested." Haw. R. 6.3(a).
County of Maui Ethics Commission ("Maui R.")	"Upon filing of a complaint, the board shall notify the respondent of the charges in writing and schedule an informal hearing." Maui R. § 04-101-62(b).  Further, after "approval [from] the board to process a complaint, the board, or its staff, shall provide respondent with a copy of the complaint, and may request the complainant and respondent's attendance at an informal hearing." § 04-101-64(a). "The notice of the informal hearing shall state the date, time, and place of the hearing, and shall be issued to the respondent no later than fifteen (15) days before the hearing." <i>Id.</i>  In the event that the board decides not to process a complaint, "[i]t shall be up to the board, after consulting with it's legal counsel, whether or not the board would like to send a copy of: (1) The complaint (with complainant's identity redacted/or not); and/or (2) A copy of the letter of non-processing of the complaint, to the subject of the complaint." <i>Id.</i> at § 04-101-63.
County of Kauai Ethics Commission ("Kauai R.")	Respondents appear to only receive notice of a filed complaint if the Board decides to proceed with either a formal or informal hearing. <i>See</i> Kauai R. 6.1(c), 6.2(b). In the event of an informal hearing, the Board must provide notice no less than six (6) days prior to the hearing. <i>See Id.</i> at R. 7(a). In the event of a formal hearing, the Board must provide notice no less than fifteen (15) days prior to the hearing, unless waived in writing by the respondent. <i>See Id.</i> at R. 8.1(e).
Hawai'i State Ethics Commission	"Upon filing of a charge by a member of the public or the commission, the commission shall notify the respondent of the charges in writing and afford the respondent an opportunity to explain the conduct alleged to be in violation of the chapter." HAR § 21-5-2(c).
Office of Disciplinary Counsel ("ODC R.") ("ODC R.")	"After a Complaint has been docketed and before the Conclusion of an Investigation, [the Disciplinary] Counsel shall notify the Respondent in accordance with RSCH 2.11(b) by communication marked "CONFIDENTIAL" and afford the Respondent an opportunity to respond." ODC R. Rule 14.
Department of Consumer Affairs - RICO	"Unless otherwise provided by law, all parties shall be given written notice of the hearing at least fifteen days before the hearing." HAR § 16-201-26.5. The notice shall include: <ol style="list-style-type: none"> <li>(1) The date, time, place, and nature of hearing;</li> <li>(2) The legal authority under which the hearing is to be held;</li> <li>(3) The particular sections of the statutes and rules involved; and</li> <li>(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</li> </ol>

	satisfies this requirement. <i>Id.</i> The notice shall further apprise each party of their right to retain legal counsel if so desired.” <i>Id.</i>
Department of Labor & Industrial Relations	Not expressly provided.
Hawai‘i Civil Rights Commission	“Within ten days after a complaint is filed with the commission, or within ten days after the commission receives a complaint on deferral from the EEOC or the United States Department of Housing and Urban Development, the commission’s executive director shall serve a copy of the complaint on the respondent . . . .” HAR § 12-46-7(a). “Where a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint, including the date, place, and general description of the alleged unlawful discriminatory practice, within ten days after filing of the complaint.” <i>Id.</i> at § 12-46-7(b).
Hawai‘i Department of Health	Not expressly provided; however, “[n]o hearing on a contested case shall be held until due notice is given to all parties as provided” in sections 91-9 and 91-9.5, HRS.” HAR § 11-1-22.
Honolulu Liquor Commission (“HLC R.”)	The Honolulu Liquor Commission’s rule do not provide for a complaint process.

	<b>8. Complaints: Response from the Respondent</b>
County of Honolulu Ethics Commission ("Hon. R.")	"The respondent shall submit a response to the allegations in the complaint within 15 calendar days of the receipt of the complaint." Hon. R. 5.6(b).
County of Hawai'i Ethics Commission ("Haw. R.")	<p>Once an officer or employee has been provided with a copy of a request for an informal advisory opinion made by a third party, the officer or employee "shall have an opportunity to respond in writing within twenty days after receipt of the copy of the request." Haw. R. 4.7(a). In the response, the officer or employee may include a request for a hearing before the board, which will be deemed to be a request for an investigatory hearing. <i>See id.</i> at R. 4.7(b).</p> <p>In the event that a case progresses to a formal hearing, "[t]he respondent shall have twenty working days after service of the notice to file a written answer. The answer shall specifically admit, deny, or explain any charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense." <i>Id.</i> at R. 6.3(b). "Failure to file an answer will constitute default whereupon the Board shall notify the Council or the appointing authority having power to discipline of the decision in default." <i>Id.</i> at R. 6.3(c).</p>
County of Maui Ethics Commission ("Maui R.")	<p>In the event the board elects to proceed with a formal hearing, "[t]he respondent shall have twenty days after service to answer the complaint and statement in writing. The answer shall specifically admit, deny, or explain the allegations of the complaint and statement, and shall set forth any matter constituting a defense." Maui R. 04-101-65(a).</p> <p>"If the respondent fails to file an answer or admits the allegations of the complaint, the board shall transmit its opinion and recommendations, if any, to the prosecuting attorney for appropriate disposition. Copies of the board's opinion and recommendations shall be referred to the respondent's agency for possible disciplinary action." <i>Id.</i> at § 04-101-65(b).</p>
County of Kauai Ethics Commission ("Kauai R.")	If the Board proceeds to hold an informal hearing, the respondent "shall be afforded an opportunity to explain the alleged violation of the Code of Ethics." Kauai R. 7(c)(1). If, upon concluding the informal hearing, the Board issues a "preliminary opinion" indicating a probable violation of the Code of Ethics, the "respondent shall have twenty (20) days after service to answer the complaint in writing. The answer shall specifically admit, deny, or explain the allegations of the complaint and shall set forth any matter constituting a defense." <i>Id.</i> at R. 7(d)(2).
Hawai'i State Ethics Commission	The commission must "afford the respondent an opportunity to explain the conduct alleged to be in violation of the" Code of Ethics once a charge has been filed. HAR § 21-5-2(c).
Office of Disciplinary Counsel ("ODC R.")	Once formal disciplinary proceedings have been initiated (i.e. when a Petition for Discipline has been filed), the respondent may submit an answer that includes every defense in law or fact. <i>See</i> ODC R. 20(c). All allegation include in a Petition for Discipline are deemed admitted if not denied in the answer or if no answer is filed. <i>See id.</i> "If the Respondent fails to answer, the Record of Formal Disciplinary Proceeding shall be transmitted directly to a Hearing Officer or Hearing Committee for review and disposition in accordance with RSCH 2.7(c)." <i>Id.</i>

Department of Consumer Affairs - RICO	"Before the hearing, each respondent may file and serve upon each petitioner, the authority, or hearings officer, 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." HAR § 16-201-28.
Department of Labor & Industrial Relations	Not expressly provided.
Hawai'i Civil Rights Commission	Not expressly provided.
Hawai'i Department of Health	Not expressly provided.
Honolulu Liquor Commission ("HLC R.")	The Honolulu Liquor Commission's rule do not provide for a complaint process.

<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p style="text-align: center;"><b>9. Complaints: Preliminary Investigations</b></p> <p>"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." Hon. R. 5.7(a).</p> <p>"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." <i>Id.</i> at R. 5.7(b).</p> <p>"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." <i>Id.</i> at R. 5.7(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>Upon receipt of a request for an advisory opinion (essentially Hawai'i County's equivalent of a complaint), the board may initiate an investigation and hold investigatory hearings. <i>See</i> Haw. R. 4.8(c). Prior to conducting an investigation, the Board must make a formal resolution, supported by a majority of the board and defining the nature and scope of the inquiry. <i>See id.</i> at R. 5.2(a). In its resolution, the Board may authorize a three-member committee, the Board as a whole, a single member of the Board, or the Board's staff to conduct all or part of an investigation or to hold an investigatory hearing. <i>See id.</i> at R. 5.3.</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"Pursuant to the [Hawai'i County C]harter, the board is charged with . . . investigating complaints of violations of the code of ethics." Maui R. § 04-101-60(b). "In the course of its investigations, the board shall have the power to administer oaths, subpoena witnesses, and to compel the production of books and papers pertinent thereto." <i>Id.</i> at § 04-101-60(b).</p> <p>Additionally, when information indicating a possible violation of the Code of Ethics is provided to Board by <u>someone not under oath</u> or is <u>obtained at the initiative of the board</u>, "the board may verify such facts as may be verified through public documents or the assistance of County officers and employees, including the respondent. Verification may not extend to interviews of persons other than County officers and employees, unless the board, in its discretion, <u>initiates an investigation</u>, the nature and scope of which shall be defined by oral or written resolution, to determine whether a complaint shall be issued. This investigation shall be carried out confidentially by the board or by the board's staff, or a member of the board so delegated by oral or written resolution. After such investigation, the board may file a complaint signed by at least three members. <i>Id.</i> at § 04-101-62(a) (emphasis added).</p>

<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>For complaints initiated by the Board, "[u]pon receipt of information indicating a possible violation of the Code of Ethics, the Board shall initiate an investigation, the nature and scope of which shall be defined by resolution[,]" Kauai R. 6.2(a), and "[i]f after such investigation the Board resolves to initiate a complaint, the same shall be reduced to writing and signed by one (1) or more members of the Board." <i>Id.</i> at R. 6.2(b).</p> <p>For complaints initiated by a member of the public, "[u]pon receipt of a complaint, the Board shall investigate and/or deliberate on its merits. The Board may request a meeting with the complainant to gather more information. The Board may reject such complaint at this time and so notify the complainant, or decide to investigate further by calling for an informal or formal hearing." <i>Id.</i> at R. 6.1(c).</p>
<p>Hawai'i State Ethics Commission</p>	<p>With respect to charges initiated by the commission, "[u]pon receipt of <u>anonymous information</u> or other <u>information not under oath</u>, or <u>information obtained at the initiative of the commission</u>, the executive director or the delegate shall verify such facts as may be verified through public documents or the assistance of department heads, legislators, or other appointed or elected officials or employees, including the respondent. Investigations may not extend to interviews of other persons unless the commission, in its discretion, <u>initiates an investigation</u> to determine whether a charge should be issued. This investigation will be carried out confidentially by the executive director or delegate. The nature and scope of the investigation shall be defined by a vote of three or more members of the commission." HAR § 21-5-2(a) (emphasis added).</p> <p>The Hawai'i State Ethics Commission's rules do not expressly provided for an investigation when a complaint is initiated by a member of the public. Rather, it appears that once a complaint has been initiated by a member of the public, provided that it satisfies the content requirements and on its face constitutes a "charge," <i>see id.</i> at § 21-5-1(b), the Board proceeds to hold an informal hearing. <i>See id.</i> at § 21-5-3.</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>The Disciplinary "Counsel has a duty to investigate all matters involving alleged violations of the Hawai'i Rules of Professional Conduct in accordance with RSCH 2.6(b) (2) and 2.6(b) (3). ODC R. 12(a). The Disciplinary "Counsel shall investigate to elicit factual information relevant to any misconduct alleged or reasonably indicated by the circumstances." <i>Id.</i> at R. 12(b).</p>
<p>Department of Consumer Affairs - RICO</p>	<p>While the DCCA's rules do not expressly outline the Board's investigatory powers, there are several references to such powers. <i>See, e.g.</i>, HAR § 16-201-20(a)(3) (disqualification of member of the authority of hearing officer who "[h]as participated in the investigatory preceding"); <i>id.</i> at § 16-201-25(c)(1) (improper ex parte communications include disclosure to a member of the authority or hearing officer the contents of an "investigatory report"); <i>id.</i> at § 16-201-29(b) (required disclosure of investigation reports).</p>
<p>Department of Labor &amp; Industrial Relations</p>	<p>Not expressly provided.</p>
<p>Hawai'i Civil Rights Commission</p>	<p>"After the filing of a complaint, the executive director shall investigate the charges contained in the complaint." HAR §12-46-12(a).</p> <p>"As part of its investigation, the executive director may require all parties to attend a fact-finding conference." <i>Id.</i> at § 12-46-12(b). "The fact-finding conference is</p>

	<p>primarily for the purposes of: (1) Ascertaining the positions of the parties; (2) Identifying the issues in dispute; (3) Resolving those issues that can be resolved; (4) Obtaining evidence; and (5) Determining the likelihood of a predetermination settlement.” <i>Id.</i> at § 12-46-12(c). “The commission’s executive director is authorized to issue subpoenas for the production of documents or the examination of witnesses deemed necessary for the investigation of a complaint. The executive director can require parties to provide written responses to a complaint and other requests for information or discovery, including but not limited to, interrogatories and requests for admissions or for the production of documents.” <i>Id.</i> at § 12-46-12(d). “If a party or a witness refuses to honor a subpoena or if a party fails to respond to a complaint or discovery requests within the time allowed for such responses under the Hawaii Rules of Civil Procedure, the commission’s executive director is authorized to file a petition for appropriate temporary relief in the circuit court.” <i>Id.</i> at § 12-46-12(e).</p>
<p>Hawai‘i Department of Health</p>	<p>Not expressly provided.</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>The Honolulu Liquor Commission’s rule do not provide for a complaint process.</p>

	<b>10. Hearings Generally: Open or Closed</b>
County of Honolulu Ethics Commission ("Hon. R.")	The County of Honolulu Ethics Commission's rules only provide that "[e]xcept when considering matters made confidential by law or matters considered in executive session, meetings are open to the public." Hon. R. 1.13(c).
County of Hawai'i Ethics Commission ("Haw. R.")	<p>"All Board meetings and hearings before the Board shall be open to the public, that a hearing may be held in closed session where necessary to consult with the Board's attorney on matters concerning the Board's powers, duties, privileges, immunities, and liabilities, or where the Board makes an affirmative finding upon request by the officer or employee involved that such hearing concerns personal matters affecting the privacy of an individual will be considered as provided hereinbelow." Haw. R. 4.13(b).</p> <p>"In closing a meeting or hearing to the public, there shall be required an affirmative vote taken at an open meeting, of two - thirds of the members present, provided the affirmative vote constitutes a majority of the members to which the Board is entitled. The reason for holding such closed sessions shall be publicly announced, and the vote of each member shall be recorded and entered into the minutes of the meeting." <i>Id.</i> at R. 4.13(c).</p>
County of Maui Ethics Commission ("Maui R.")	<p>With respect to <u>informal hearings</u>, the "hearing may be held in executive session as allowed by Sections 92-4 and 92-5, Hawaii Revised Statutes, and shall be conducted for the purpose of obtaining further information concerning the complaint." Maui R. § 04-101-64(a). "If the board votes to hold the informal hearing in executive session, the respondent may request an open hearing, in which case an opening hearing shall be held." <i>Id.</i> at § 04-101-64(b).</p> <p>With respect to <u>formal hearings</u>, "the hearing may be held in executive session, as allowed by Section 92-4 and 92-5, Hawaii Revised Statutes . . ." <i>Id.</i> at § 04-101-66(b). However, "if the board votes to hold the formal hearing in executive session, the respondent may request an open hearing, in which case an open hearing shall be held; provided that, at the board's discretion, the board's deliberations may be closed to the public." <i>Id.</i> at § 04-101-67.</p>
County of Kauai Ethics Commission ("Kauai R.")	"The respondent may request that the hearing be held in open session. Otherwise, the hearing shall be held in closed session." Kauai R. 6.1(d). "A respondent who wants an open [formal] hearing shall file a request for the same at least seven (7) days prior to the time set for the hearing. The board, for good cause shown, may waive the foregoing requirement, and may impose conditions deemed advisable." <i>Id.</i> at 8.2.
Hawai'i State Ethics Commission	For formal and contested case hearings, "[a]ny respondent who wants an open hearing shall file a written request at least two days prior to the hearing. If a request is made for an open hearing at a later time, the commission shall hold an open hearing, but it may, in its discretion, change the date, time, and place of the hearing." HAR § 21-5-6.
Office of Disciplinary Counsel ("ODC R.")	Not expressly provided; however, "[o]nly eligible Board members and board counsel shall be present during the deliberations." ODC R. 24(b).
Department of Consumer Affairs - RICO	Not expressly provided.
Department of Labor	"All meetings of the board shall be open to the public except that the board may

& Industrial Relations	conduct its adjudicatory function and meet in executive session from which the public may be excluded.” HAR § 12-47-3(d).
Hawai‘i Civil Rights Commission	Not expressly provided.
Hawai‘i Department of Health	“Hearings shall be open to the public unless otherwise provided by law. Prehearing and post hearing conferences shall be closed to the public. Hearings may be closed to the public for the time necessary to address information and documents that are confidential pursuant to law.” HAR § 11-1-31(b). “Confidential treatment may be requested where authorized by statute or rule. For good cause shown, the hearings officer may grant such a request.” <i>Id.</i> at § 11-1-31(c).
Honolulu Liquor Commission (“HLC R.”)	Not expressly provided.

	<b>11. Hearings Generally: Ex Parte Communications</b>
County of Honolulu Ethics Commission ("Hon. R.")	<p>In any matter pending where the commission has found probable cause:</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>Hon. R. 5.10.</p> <p>The following classes of ex parte communications are authorized:</p> <p>(1) Communication that relates solely to matters which a commissioner or designee is authorized to dispose of on an ex parte basis;</p> <p>(2) Communication with counsel or staff for the commission or designee relating solely to matters of practice and procedure;</p> <p>(3) Communication had after adequate notice and opportunity for all parties to participate; and</p> <p>(4) Communication with counsel for the commission or designee other than the legal counsel to the commission."</p> <p><i>Id.</i></p>
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided.
County of Maui Ethics Commission ("Maui R.")	Not expressly provided.
County of Kauai Ethics Commission ("Kauai R.")	Not expressly provided.
Hawai'i State Ethics Commission	Not expressly provided.
Office of Disciplinary Counsel ("ODC R.")	"Except as otherwise provided herein, ex parte communications concerning a pending or impending proceeding between the ODC, a Respondent, or a Respondent's counsel, on the one hand, and any member of the Board, a Hearing Officer or a member of a Hearing Committee, on the other hand, are prohibited." ODC R. 9(d).
Department of Consumer Affairs - RICO	<p>In any proceeding before the authority:</p> <p>(1) Neither the department nor any person, either in private or public life, shall communicate privately on the merits of the case with any member of the authority, the authority's staff or with the hearings officer designated to hear and decide the matter unless specifically provided for by law; and</p> <p>(2) No member of the authority's staff or any other government agency who</p>

	<p>participates in the hearing as a witness or counsel shall privately communicate on the merits of the case with any member of the authority or with the hearings officer designated to hear and decide the matter, unless specifically provided for by law.</p> <p>§16-201-25(a).</p> <p>“It shall be improper for the department or any person interested in a proceeding to seek to influence the judgment of the authority or hearings officer.” <i>Id.</i> at §16-201-25(b). “Except as otherwise provided herein, it shall be improper for the department:</p> <p>(1) To disclose or reveal to any member of the authority or hearings officer designated to hear and decide the matter the contents of any investigatory report concerning the matter before the authority or hearings officer; or</p> <p>(2) To furnish the report or a copy thereof to any member of the authority or hearings officer designated to hear and decide the matter.”</p> <p><i>Id.</i> at §16-201-25 (c).</p>
<p>Department of Labor &amp; Industrial Relations</p>	<p>Not expressly provided.</p>
<p>Hawai‘i Civil Rights Commission</p>	<p>Because of the commission’s role as final arbiter and because the commission will not be involved in pre-hearing stages, in any proceedings before a hearings examiner or the commission:</p> <p>(1) Neither the commission’s staff nor any person, either in private or public life, shall communicate privately on the merits of the case with any member of the commission or with the hearings examiner designated to hear and decide the matter unless specifically provided for by law; and</p> <p>(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 any member of the commission or with the hearings examiner designated to hear and decide the matter, unless specifically provided for by law.</p> <p>HAR §12-46-40(a).</p> <p>“It shall be improper for the commission’s staff or any person interested in a proceeding to seek to influence the judgment of the commission or hearings examiner.” <i>Id.</i> at §12-46-40(b). It shall be improper for the commission’s staff:</p> <p>(1) To disclose or reveal to any member of the commission or hearings examiner designated to hear and decide the matter the contents of any investigatory report, prepared by the commission, concerning the matter before the commission or hearings examiner; or</p> <p>(2) To furnish the report or a copy thereof to any member of the commission or hearings examiner designated to hear and decide the matter.”</p> <p><i>Id.</i> at §12-46-40(c).</p>
<p>Hawai‘i Department of Health</p>	<p>“No person shall have ex parte communications with the hearings officer or final decision maker regarding any substantive or disputed factual or legal matter to be heard or decided with the intent, or the appearance of the intent, to influence the decision of the hearings officer or final decision maker, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the hearings officer or final decision maker.” HAR §11-1-27(a).</p>

	<p>“If a communication is made privately with the hearings officer or final decision maker in violation of subsection (a), the hearings officer or final decision maker shall disclose the communication to all parties on the record and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication.” <i>Id.</i> at §11-1-27(b).</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>In any proceeding before the Commission:</p> <ul style="list-style-type: none"> <li>(a) No person shall communicate privately on the merits of the case with any member of the Commission or the Commission’s staff unless specifically provided for by law; and</li> <li>(b) No member of the Commission’s staff or any other government agency who participates in the proceeding as a witness or counsel shall communicate privately on the merits of the case with any member of the Commission, unless specifically provided for by law.”</li> </ul> <p>HLC R. § 3-81-19.13.</p>

## 12. Hearings Generally: Subpoenas and Discovery

<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>With respect to <u>investigative hearings</u>, "[t]he commission or designee may subpoena witnesses and records, administer oaths, and take testimony and receive evidence." Hon. R. 6.2(b).</p> <p>With respect to <u>contested case hearings</u>, "[a]ny 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." <i>Id.</i> at 7.3(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>In exercising its investigatory powers, the "Board may subpoena witnesses, administer oaths, and take testimony relating to matters before the Board and require the production for examination of any books or papers relative to any matter under investigation or in question before the Board." Haw. R. 5.1.</p> <p>"With respect to formal hearings, the Board shall set the time and place for a hearing, and all parties shall have an opportunity: (1) to be heard; (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings; (3) To be represented by counsel; and (4) to have the right of cross-examination." <i>Id.</i> at R. 6.2(b).</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"In the course of its investigations, the board shall have the power to administer oaths, subpoena witnesses, and to compel the production of books and papers pertinent thereto." Maui R. § 04-101-60.</p> <p>With respect to hearings, "[t]he board may issue or cause to be issued subpoenas requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing." <i>Id.</i> at § 04-101-34(a). "Any party of record may make application to the board for the issuance of subpoenas. The application must be in writing, be reasonable in scope, and specify as clearly as possible, documents or data desired and their relevancy." <i>Id.</i> at § 04-101-34(b).</p> <p>"For the attendance of witnesses or the production of documentary evidence at a hearing, application for subpoenas shall be made at least ten days before the hearing. If application is made at a later time, the board may, in its discretion, continue the hearing or any part thereof." <i>Id.</i> at § 04-101-34(c). "Enforcement of subpoenas served under these rules shall be effected by written application of the board to any circuit court judge." <i>Id.</i> at § 04-101-34(d).</p> <p>"Witnesses summoned shall be paid the same fees and mileage as are paid to witnesses in courts of the State of Hawaii, and shall be paid by the party at whose instance such witnesses appear." <i>Id.</i> at § 04-101-35.</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>"The Board may issue or cause to be issued subpoenas requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing." Kauai R. 2.5(a). "Any party of record may make application to the Board for the issuance of subpoenas. The application must be in writing, must be reasonable in scope, and must specify as clearly as possible documents or data desired and show their relevancy." <i>Id.</i> at 2.5(b).</p> <p>"Application for subpoenas shall be made at least five (5) days prior to the hearing.</p>

	<p>If application is made at a later time, the Board may, in its discretion, continue the hearing or any part thereof.” <i>Id.</i> at 2.5(c). “Enforcement of subpoenas served pursuant to these rules will be effected by written application of the Board to any circuit judge.” <i>Id.</i> at 2.5(d).</p>
Hawai‘i State Ethics Commission	<p>“Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing may be issued by any member of the commission.” HAR § 21-2-5(a).</p> <p>“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 their general relevancy.” <i>Id.</i> at § 21-2-5(b).</p> <p>“For production of documentary evidence or appearance of witnesses at a hearing, application for subpoenas shall be made at least three days prior to the hearing. If application for a subpoena is made at a later time, the commission may, in its discretion, continue the hearing or any part thereof.” <i>Id.</i> at § 21-2-5(c).</p> <p>“Enforcement of obedience to subpoenas issued by the commission and served pursuant to this chapter will be effected by written application of any commissioner to any circuit judge.” <i>Id.</i> at § 21-2-5(d). “Witnesses summoned shall be paid the same fees and mileage as are paid to witnesses in courts of the State of Hawaii and shall be paid by the party at whose instance witnesses appear.” <i>Id.</i> at § 21-2-6.</p>
Office of Disciplinary Counsel (“ODC R.”)	<p>“No discovery may be initiated by a Respondent until the matter is addressed at the prehearing conference.” ODC R. 22(b). “All requests for discovery shall be made in writing to the Board Chairperson through the Hearing Officer or the Hearing Committee. A Party making the request shall provide a copy of the request to the opposing Party at the same time it is submitted to the Hearing Officer or Hearing Committee. The Board Chairperson may order discovery for good cause.” <i>Id.</i> at 22(b)(i). “In the event a deposition upon oral examination is permitted, it may be recorded by any means agreed upon by the Parties, and in the absence of agreement, as ordered by the Board Chairperson under DBR 22(b).” <i>Id.</i> at 22(b)(ii).</p>
Department of Consumer Affairs - RICO	<p>“The authority or hearings officer, at the request of a party, shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents at the hearing. The authority 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.” HAR § 16-201-18(a) (emphasis added).</p> <p>“Upon motion timely made, or <i>sua sponte</i>, the authority or hearings officer may: (1) Quash or modify the subpoena if it is unreasonable and oppressive; or (2) Condition denial of the motion upon advancement by the requesting party of the costs of producing the documents.” <i>Id.</i> at § 16-201-18(b). “A hearings officer shall not have the power to subpoena the authority or a majority of the members of the authority for whom the case is being heard.” <i>Id.</i> at § 16-201-18(c).</p>
Department of Labor & Industrial Relations	<p>“Any party may request the issuance of a subpoena requiring the attendance of a witness to testify before the board or for the taking of depositions.” HAR § 12-47-30(a). “Any party may request the issuance of a subpoena duces tecum for the production of documents or records. The request must: (1) Be in writing[; and] (2)</p>

	<p>Specify the particular document or record, or portion of document or record sought.” <i>Id.</i> at § 12-47-30(b). “<u>Only parties may request the issuance of a subpoena.</u>” <i>Id.</i> at § 12-47-30(c) (emphasis added). “Any board member may issue a subpoena. The board may decline to issue a subpoena when fairness and equity so dictate.” <i>Id.</i> at § 12-47-30(d).</p> <p>“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 of Hawaii.” <i>Id.</i> at §12-47-30(e). “Witnesses shall be placed under oath or affirmation prior to testifying.” <i>Id.</i> at § 12-47-30(a).</p> <p>“After the filing of the notice of appeal any party may proceed to obtain discovery by deposition upon oral examination, written interrogatories, or request for production of documents in the manner and effect prescribed by the Hawaii Rules of Civil Procedure; provided that to protect a party or person from undue burden or expense or for other good cause, the board may on motion by any party or on its own motion, order that the discovery not be taken or be taken upon such terms and conditions as the board may specify. The board may upon written application and for good cause shown, compel discovery, order that discovery be made by any other means prescribed by the Hawaii Rules of Civil Procedure, and impose sanctions as provided by the Hawaii Rules of Civil Procedure or section 12-47-48, or both, as it deems appropriate, for the failure of any party or person to allow discovery.” <i>Id.</i> at § 12-47-31.</p>
Civil Rights Commission	<p>In exercising his/her investigatory powers, the “commission’s executive director is authorized to issue subpoenas for the production of documents or the examination of witnesses deemed necessary for the investigation of a complaint. The executive director can require parties to provide written responses to a complaint and other requests for information or discovery, including but not limited to, interrogatories and requests for admissions or for the production of documents.” HAR § 12-46-12(d).</p> <p>“The hearings examiner, <u>at the request of a party</u>, shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents prior to or at the hearing. The hearings examiner 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 or commission at whose instance the subpoena issues.” <i>Id.</i> at § 12-46-33(a).</p> <p>“Upon motion timely made, or without suggestion, the hearings examiner may: (1) Quash or modify the subpoena if it is unreasonable and oppressive; or (2) Condition denial of the motion upon advancement by the requesting party of the costs of producing the documents.” <i>Id.</i> at § 12-46-33(b).</p>
Departments of Health	<p>“Witnesses may be subpoenaed to give oral testimony, produce documents and things, or both.” HAR § 11-1-39(a). “Subpoenas may be issued by the hearings officer. No subpoena shall be issued unless the party requesting the subpoena provides the name and address of the witness; identifies the document, record or thing sought, if any; and tenders the proper, required witness and mileage fees. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which</p>

	<p>shall be filed in the proceeding. Subpoenas shall state at whose request the subpoena is issued.” <i>Id.</i> at § 11-1-39(b).</p> <p>“Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii, and such fees and mileage shall be paid by the party at whose request the witness appears, except that State and county agencies are exempt from paying witness fees and mileage.” <i>Id.</i> at § 11-1-39(c).</p>
Honolulu Liquor Commission (“HLC R.”)	In adjudicatory hearings before the Honolulu Liquor Commission, “[s]ubpoenas may be issued by the Administrator or designee. Compliance with the subpoenas shall be enforced in the courts.” HLC R. § 3-85-91.1(b).

	<p align="center"><b>1. Hearings Generally: Disqualification of Hearings Officers and Board Members</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"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." Hon R. 1.5(a).</p> <p>"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." <i>Id.</i> at 1.5(b). "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." <i>Id.</i> at R. 1.5(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>"Any person, officer, or employee may file an affidavit that one or more of the Board members has a personal bias or prejudice. Such affidavit may be filed on any matter before the Board affecting or involving such person, officer, or employee. The Board member against whom the affidavit is filed may answer the affidavit or may file a disqualifying certificate with the Board. If the Board member chooses to answer the affidavit, the remaining Board members shall decide whether or not that Board member 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 Board, or good cause shall be shown for the failure to do so. Board members may disqualify themselves by filing with the Board a certificate that they deem themselves unable for any reason to participate with absolute impartiality in the pending proceedings." Haw. R. 1.5(a).</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"A party to a hearing or a member of the board may request disqualification of any board member by filing an affidavit alleging that such member cannot act impartially because of personal bias or prejudice or that the participation of such member will create an appearance of impropriety. Every such affidavit shall state the facts and reasons therefore, and shall be filed at least ten days before the date on which the matter will be considered by the board. The board member against whom the affidavit is so filed shall answer the affidavit in writing prior to the meeting or orally at the meeting or file a disqualifying certificate. If the member chooses to answer the affidavit, the remaining members of the board shall decide whether the member should be disqualified." Maui R. § 04-101-28(a).</p> <p>"Any board member may disqualify himself or herself, for good cause, from participating in the discussion and/or voting upon any matter, and shall state the reasons for disqualification." <i>Id.</i> at § 04-101-28(b).</p>
<p>County of Kauai</p>	<p>"A party to a hearing may request disqualification of any Board member by filing an</p>

<p>Ethics Commission ("Kauai R.")</p>	<p>affidavit alleging that such member cannot act impartially because of personal bias or prejudice. Every such affidavit shall state the facts and reasons therefore, and shall be filed at least ten (10) days before the hearing. The Board member against whom the affidavit is so filed shall answer the affidavit or file a disqualifying certificate. If he chooses to answer the affidavit, the remaining members of the Board shall decide whether or not he should be disqualified." Kauai R. 4.1.</p> <p>"Any Board member may disqualify himself by filing with the Board a certificate that he deems himself unable for stated reasons to sit in judgment with impartiality in the pending hearing." <i>Id.</i> at R. 4.2.</p>
<p>Hawai'i State Ethics Commission</p>	<p>"Any party to a hearing may make and file an affidavit that one or more of the commissioners before whom the hearing is being held has a personal bias or prejudice. The commissioner against whom the affidavit is filed may answer the affidavit or may file a disqualifying certificate with the commission. If the commissioner chooses to answer the affidavit, the remaining commissioners shall decide whether or not that commissioner 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 days before the hearing, or good cause shall be shown for the failure to do so. Commissioners may disqualify themselves by filing with the executive director a certificate that they deem themselves unable for any reason to participate with absolute impartiality in the pending hearing." HAR § 21-1-4.</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>"If a Respondent submits a written request to disqualify <u>Counsel</u>, the matter shall be decided by the Board Chairperson, after Counsel has had an opportunity to respond." ODC R. 10(a) (emphasis added). "The Board Chairperson shall decide whether to grant or deny the request. "The Board Chairperson's decision shall be communicated to the Parties without further Board action." <i>Id.</i> at R. 10(a)(i). "If Counsel is disqualified, the Board Chairperson shall appoint Special Assistant Disciplinary Counsel to discharge the powers and duties of Counsel in the particular matter." <i>Id.</i> at R. 10(a)(ii).</p> <p>"If a Respondent submits a written request or orally moves to disqualify a <u>Board Member</u>, the matter shall be decided by the Board Chairperson, after Counsel has had an opportunity to respond." <i>Id.</i> at R. 10(b). "The Board Chairperson shall decide whether to grant or deny the request. The Board Chairperson's decision shall be communicated to the Parties without further Board action." <i>Id.</i> at R. 10(b)(i). "Ad hoc members may be appointed to the Board pursuant to RSCH 2.4 (c)." <i>Id.</i> at R. 10(b)(ii). "A Board member shall not represent a Respondent in the investigation of a Grievance or Complaint or in any investigation or proceeding before any Hearing Officer, Hearing Committee, or the Board while serving or within a one-year period after the conclusion of his or her term. A Board member shall not accept representation of a Respondent in any matter that was pending with the ODC while said member was serving." <i>Id.</i> at R. 10(b)(iii).</p> <p>"No person representing a Respondent in any investigation or proceeding shall be appointed as a <u>Hearing Officer</u> or as a <u>Hearing Committee member</u>." <i>Id.</i> at R. 10(c)(i) (emphasis added). "If, a person on the panel of Hearing Officers or Hearing Committee Members undertakes representation of a Respondent, that person shall be disqualified from further service for a period of one year following conclusion of his or her representation of such Respondent." <i>Id.</i> at R. 10(c)(ii).</p>

<p>Department of Consumer Affairs - RICO</p>	<p>No matter shall be heard by a member of the authority or by a hearings officer who:</p> <ol style="list-style-type: none"> <li>(1) Has any direct pecuniary interest in the matter being heard;</li> <li>(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;</li> <li>(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; or</li> <li>(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 member of the authority or hearings officer.</li> </ol> <p>HAR § 16-201-20(a).</p> <p>“Any member of the authority 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 authority or hearings officer shall be filed and decided before the evidentiary portion of the hearing.” <i>Id.</i> at § 16-201-20(b).</p>
<p>Department of Labor &amp; Industrial Relations</p>	<p>Not expressly provided.</p>
<p>Hawai'i Civil Rights Commission</p>	<p>No matter shall be heard by a hearings examiner or commissioner who:</p> <ol style="list-style-type: none"> <li>(1) Has any pecuniary interest in the matter being heard;</li> <li>(2) Is related within the third degree by blood or marriage to any party to the proceeding;</li> <li>(3) Has initiated the complaint of the proceeding, 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;</li> <li>(4) Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; or</li> <li>(5) Has served as a lawyer in the matter in controversy, or a lawyer with whom the hearing's examiner or commissioner previously practiced law, served during such association as a lawyer concerning the matter, or such lawyer, hearings examiner, or commissioner has been a material witness concerning it.</li> </ol> <p>HAR § 12-46-35(a).</p> <p>“A hearings examiner or commissioner may be disqualified from hearing a matter sua sponte, or upon motion of any party. Any motion to disqualify a hearings examiner or commissioner shall be filed and decided prior to the evidentiary portion of the hearing.” <i>Id.</i> at § 12-46-35(b).</p>
<p>Hawai'i Department of Health</p>	<p>A hearings officer, director, or member of an attached entity is disqualified from hearing or deciding a contested case if the hearings officer, director, or member of the attached entity:</p> <ol style="list-style-type: none"> <li>(1) Has a substantial financial interest as defined by section 84-3, Hawaii Revised Statutes, in a business or other undertaking that will be directly affected by the decision of the contested case;</li> <li>(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;</li> <li>(3) Has participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or</li> </ol>

	<p>(4) Has substantially participated in making the decision or action contested; or</p> <p>(5) Has a personal bias or prejudice concerning a party or matter that will prevent a fair and impartial decision involving that party or matter.</p> <p>HAR § 11-1-25(a).</p> <p>“A hearings officer, director, or member of an attached entity shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the allegedly disqualified individual need not voluntarily withdraw, and the party seeking the disqualification may file a motion to disqualify.” <i>Id.</i> at § 11-1-25(b).</p> <p>“A motion to disqualify shall be filed promptly after discovery of the alleged disqualifying facts. The motion shall be filed first with the challenged hearings officer, director, or attached entity, which shall rule on the motion.” <i>Id.</i> at § 11-1-25(c).</p> <p>“If a hearings officer appointed by the director or attached entity is disqualified, the director or attached entity shall appoint another representative to serve as the hearings officer. If the director or attached entity is disqualified, the director or attached entity shall appoint another representative to serve as the hearings officer, final decision maker, or both.” <i>Id.</i> at § 11-1-25(d).</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>No matter shall be heard by a member of the Commission who:</p> <ol style="list-style-type: none"> <li>(1) Has any direct or indirect pecuniary interest in the matter being heard;</li> <li>(2) 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; or</li> <li>(3) 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.</li> </ol> <p>HLC R. § 3-81-19.12(a).</p> <p>“Any member of the Commission may be disqualified from hearing the matter upon motion of any party. Any motion to disqualify a member of the Commission shall be filed and decided before the evidentiary portion of the hearing.” <i>Id.</i> at § 3-81-19.12(b).</p>

	<b>13. Investigative/Informal Hearings: When Conducted</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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." Hon. R. 6.1(a). "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." <i>Id.</i> at R. 6.1(b).
County of Hawai'i Ethics Commission ("Haw. R.")	In the process of conducting its investigation, the Board is authorized to conduct investigative hearings. <i>See</i> Haw. R. 5.4.
County of Maui Ethics Commission ("Maui R.")	Under the Maui Ethics Commission's rules, an informal hearing is essentially the equivalent of an investigatory hearing under the Honolulu Commission's rules. Accordingly, "[a]fter the filing and approval of the board to process a complaint, the board, or its staff, shall provide respondent with a copy of the complaint, and may request the complainant and respondent's attendance at an informal hearing." Maui R. § 06-101-64(a). The purpose of the informal hearing is to "obtain[ ] further information concerning the complaint." <i>Id.</i>
County of Kauai Ethics Commission ("Kauai R.")	Under the Kauai County Ethics Commission's rules, the board may conduct an investigation without necessarily holding, or at least prior to holding, an informal hearing. <i>See</i> Kauai R. 6.1(c), 6.2(a). Whether the complaint is initiated by the Board or a member of the public, the Board can call for an informal hearing to further investigate the allegations. <i>See id.</i> at R. 7(a). Similar to investigative hearings under the Honolulu Commission's rules, "the Board shall notify the respondent in writing of a proposed informal hearing and request his attendance for the purpose of obtaining further information concerning his alleged violation of the Code of Ethics." <i>Id.</i> ; <i>see also id.</i> at R. 7(c) (procedures for informal hearings).
Hawai'i State Ethics Commission	After a complaint has been initiated (either by the board or a member of the public), "[t]he commission shall notify the respondent in writing and afford the respondent an opportunity to explain the conduct alleged to be in violation of" the Code of Ethics at an informal hearing. HAR § 21-5-3 "The commission may request the respondent's attendance at an informal hearing conducted for the purpose of obtaining further information from the respondent." <i>Id.</i> ; <i>see also id.</i> § 21-5-4 (procedures for informal hearings).
Office of Disciplinary Counsel ("ODC R.")	While the Disciplinary Counsel is authorized to conduct investigations, and make recommendations to the Reviewing Board Member as to whether to commence formal disciplinary proceedings, the ODC's rules do not expressly provide for an investigatory hearing. <i>See generally</i> ODC R. 12.
Department of Consumer Affairs - RICO	While the DCCA's rules do not expressly provide for an investigatory or informal hearing, there are several references to such proceedings. <i>See, e.g.,</i> HAR § 16-201-20(a)(3) (disqualification of member of the authority of hearing officer who "[h]as participated in the investigatory proceeding"); <i>id.</i> at § 16-201-25(c)(1) (improper ex parte communications include disclosure to a member of the authority or hearing officer the contents of an "investigatory report"); <i>id.</i> at § 16-201-29(b) (required disclosure of investigation reports).
Department of Labor & Industrial Relations	Not expressly provided.

Hawai'i Civil Rights Commission	After a complaint has been filed, "the executive director shall investigate the charges contained in the complaint." HAR § 12-46-12(a). "As part of its investigation, the executive director may require all parties to attend a fact-finding conference." <i>Id.</i> at § 12-46-12(b). The primary purpose of the fact-finding conference is: (1) ascertaining the positions of the parties; (2) identifying the issues in dispute; (3) resolving those issues that can be resolved; (4) obtaining evidence; and (5) determining the likelihood of a predetermination settlement. <i>See id.</i> at § 12-46-12(c).
Hawai'i Department of Health	Not expressly provided.

	<p style="text-align: center;"><b>14. Investigative/Informal Hearings: Procedures</b></p> <p>County of Honolulu Ethics Commission (“Hon. R.”)</p> <p>“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.” Hon. R. 6.2(a). “The commission or designee may subpoena witnesses and records, administer oaths, and take testimony and receive evidence.” <i>Id.</i> at R. 6.2(b). “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.” <i>Id.</i> at R. 6.2(c). “Each party may present witnesses, records or a statement of position, including memoranda, briefs, arguments or other relevant material regarding the matter under investigation.” <i>Id.</i> at R. 6.2(d).</p> <p>At least 15 calendar days prior to the hearing, each party must submit eight (8) 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. <i>See id.</i> at R. 6.2(e). “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.” <i>Id.</i> at R. 6.2(f).</p> <p>“Any other interested person may, upon request, be permitted to present oral testimony or records.” <i>Id.</i> at R. 6.2(g). “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.” <i>Id.</i> at R. 6.2(h).</p> <p>County of Hawai‘i Ethics Commission (“Haw. R.”)</p> <p>“ If an investigatory hearing is held, it must be conducted by the Board member or staff member in charge of the investigation, Haw. R. 5.4(a), “in an informal but orderly manner.” <i>Id.</i> at R. 5.4(b). “The board may request that any officer, employee, or third party involved in a case or any officer or employee of the County with information relevant to the matter before the Board appear before the Board at an informal hearing for the purpose of answering questions posed by the Board members.” <i>Id.</i> at § 5.4(c).</p> <p>“If the person whose appearance is requested does not consent to appear, the appropriate subpoenas may be issued.” <i>Id.</i> at § 5.4(d). “The person whose appearance is requested may be represented by counsel or a member of an employee organization if the person is a member of such an organization.” <i>Id.</i> at § 5.4(e). “If the officer or employee involved wishes to present any witnesses or documentary evidence, he/she shall notify the Board of the names of the witnesses giving testimony and shall submit copies of the documentary evidence to the Board. The Board will consider all relevant evidence.” <i>Id.</i> at § 5.4(f).</p> <p>Additionally, in exercising its investigatory power, “the Board may subpoena witnesses, administer oaths, and take testimony relating to matters before the Board and require production for examination of any books or papers relative to any matter</p>
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	under investigation or in question before the court.” <i>Id.</i> at R. 5.1.
County of Maui Ethics Commission ("Maui R.")	<p>“The presiding officer shall convene the hearing and shall summarize the complaint. The hearing shall be informal. Members shall have an opportunity to direct questions to the respondent and the respondent shall be afforded an opportunity to address the allegations of the complaint. The respondent may attend the informal hearing with counsel or agent.” Maui R. § 04-101-64(c).</p> <p>At informal hearings, “[t]he board, in its discretion, may interview the complainant, other County officers and employees, or any other person the board believes may have information relevant to its consideration of the complaint during the informal hearing. The board may also obtain or cause to be obtained, in its discretion, documentary evidence which may be relevant to the board's consideration of the complaint.” <i>Id.</i> at § 06-101-64(d).</p>
County of Kauai Ethics Commission ("Kauai R.")	<p>“The Presiding member of the Board shall convene the hearing and read the complaint. The hearing, although informal, will be conducted in an orderly manner. Board members shall have an opportunity to direct questions to the respondent and he shall be afforded an opportunity to explain the alleged violation of the Code of Ethics. The Board reserves the right to not take witness testimony.” Kauai R. 7(c)(1). “The respondent may attend the informal hearing with counsel or authorized agent.” <i>Id.</i> at R. 7(c)(2).</p>
Hawai‘i State Ethics Commission	<p>“The chairperson or designate of the commission shall convene the hearing and shall read the charge. The chairperson or designate shall preside at the hearing and will recognize those who wish to speak. The hearing will be informal and conducted in an orderly manner so that all commissioners may have an opportunity to direct questions to the respondent and so that the respondent may be afforded an opportunity to explain the conduct alleged to be in violation of chapter 84, HRS. The respondent may attend the informal hearing with a counsel or agent.” HAR § 21-5-4(a).</p>
Office of Disciplinary Counsel (“ODC R.”)	Not expressly provided.
Department of Consumer Affairs - RICO	Not expressly provided.
Department of Labor & Industrial Relations	Not expressly provided.
Hawai‘i Civil Rights Commission	<p>As a part the investigation, “[t]he commission’s executive director is authorized to issue subpoenas for the production of documents or the examination of witnesses deemed necessary for the investigation of a complaint. The executive director can require parties to provide written responses to a complaint and other requests for information or discovery, including but not limited to, interrogatories and requests for admissions or for the production of documents.” HAR at § 12-46-12(d).</p> <p>If a party or a witness refuses to honor a subpoena or if a party fails to timely respond to a complaint or discovery requests, “the commission’s executive director is authorized to file a petition for appropriate temporary relief in the circuit court.” <i>Id.</i> at § 12-46-12(e).</p>
Hawai‘i	Not expressly provided.

Department of Health	
Honolulu Liquor Commission ("HLC R.")	Not expressly provided.

	<b>15. Investigative/Informal Hearings: Advisory Opinions/Decisions</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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." Hon. R. 6.3.
County of Hawai'i Ethics Commission ("Haw. R.")	<p>"At the conclusion of the investigation or the investigatory hearing, whichever is later, the Board will render an advisory opinion in accordance with [Haw. R.] 4.9, unless the board finds it necessary to conduct a formal hearing before rendering an advisory opinion." Haw. R. 5.5.</p> <p>"If the informal advisory opinion indicates a probable cause violation of the Code of Ethics, the person charged shall request a formal opinion within a reasonable time, or comply with the informal advisory opinion subject to whatever disciplinary action deemed necessary and taken by the Council or appointing authority in accordance with [Haw. R. §] 4.10." <i>Id.</i> at R. 6.1(a). "If a person charged fails to comply with such informal advisory opinion within a reasonable time without requesting a formal opinion, or if a majority of the Board members to which the Board is entitled determine that there exists a probable cause for belief that a violation of the Code of Ethics might have occurred, it may institute proceedings for a formal opinion upon formal hearings." <i>Id.</i> at R. 6.1(b).</p>
County of Maui Ethics Commission ("Maui R.")	<p>Within a reasonable time after an informal hearing, "the board may, on its own initiative, render an advisory opinion to the respondent. If the respondent fails to comply with the advisory opinion, fails to cooperate, or, if at any time, the board determines that there is probable cause for belief that a violation of the code of ethics has occurred and that a formal hearing of the complaint is necessary, the board shall serve or cause to be served a copy of the complaint and a further statement of alleged violations upon the respondent. The respondent shall have twenty days after service to answer the complaint and statement in writing. The answer shall specifically admit, deny, or explain the allegations of the complaint and statement, and shall set forth any matter constituting a defense." Maui R. § 04-101-65(a).</p> <p>"If the respondent fails to file an answer or admits the allegations of the complaint, the board shall transmit its opinion and recommendations, if any, to the prosecuting attorney for appropriate consideration. Copies of the board's opinion and recommendations shall be referred to the respondent's agency for possible disciplinary action." <i>Id.</i> at § 04-101-65(b). "If at any time before or after the informal hearing the board determines that there is no probable cause for belief that a violation of the code of ethics has occurred and choose not to render an advisory opinion, the complaint shall be dismissed by the board, and the complainant and respondent notified in writing." <i>Id.</i> at § 05-101-65(c).</p>
County of Kauai Ethics Commission ("Kauai R.")	Within a reasonable time after an informal hearing, "the Board shall render an opinion as to whether or not there is a probable violation of the Code of Ethics by the respondent." Kauai R. 7(d). "If no probable violation is indicated by the opinion, the complaint shall be dismissed by the Board, and the complainant so notified." <i>Id.</i> at R. 7(d)(1). If, however, a probable violation is indicated, "the Board shall cause the respondent to be served with a copy of the complaint and preliminary opinion. The respondent shall have twenty (20) days after service to answer the complaint in writing. The answer shall specifically admit, deny, or

	<p>explain the allegations of the complaint and shall set forth any matter constituting a defense.” <i>Id.</i> at R. 7(d)(2).</p> <p>“Upon failure to file an answer or upon admission of the allegations of the complaint, the Board shall make its final decision and transmit its decision and recommendation to the Council as to complaints involving County officers and to the Civil Service Board, the Mayor and appropriate Department Head as to County employees for appropriate disposition; in addition, copies of the Board’s decision and recommendations may be referred to the pertinent officer or agency for disciplinary action.” <i>Id.</i> at R. 7(e).</p>
Hawai‘i State Ethics Commission	<p>“Within a reasonable time after the informal hearing, the commission may render an informal advisory opinion to the respondent. If a probable violation is indicated, the respondent shall either request a formal opinion or shall, within a reasonable time, comply with the informal advisory opinion.” HAR § 21-5-4(b).</p> <p>“If the respondent fails to comply with the informal advisory opinion, if any is rendered, or if a majority of the commissioners determine that there is probable cause for belief that a violation of chapter 84, HRS, may have occurred, the commission shall personally serve the respondent with a copy of the charge and a further statement of alleged violation. The respondent shall have twenty days after service thereof to answer the charge and statement in writing. The answer shall specifically admit, deny, or explain the charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense.” <i>Id.</i> at § 21-5-4(c).</p> <p>“Failure to file an answer will constitute default, whereupon the commission shall notify the authority having power to discipline of the decision in default.” <i>Id.</i> at § 21-5-4(d).</p>
Office of Disciplinary Counsel (“ODC R.”)	<p>While the ODC rules do not expressly call for investigatory/informal hearings, the Disciplinary Counsel does make a recommendation to the Reviewing Board Member upon the conclusion of its investigation. <i>See</i> ODC R. 16(b). If the Reviewing Board Member approves Counsel’s recommendation, that recommendation will be implemented and both the respondent and complainant will be so notified. <i>See id.</i> at R. 17. If Counsel’s recommendation is not approved, the investigatory file is returned to Counsel and Counsel has ten (10) days to request review of the file by a second Reviewing Board Member. <i>See id.</i> at R. 18. A decision is final when Counsel does not timely request a second review or when the second reviewing Board Member makes a decision. <i>See id.</i></p>
Department of Consumer Affairs - RICO	Not expressly provided.
Department of Labor & Industrial Relations	Not expressly provided.
Hawai‘i Civil Rights Commission	<p>While the Hawai‘i Civil Rights Commission’s rules permit the executive director to hold “fact-finding conferences” as a part of an investigation, the purpose of the conference ultimately is not the issuance of an informal or advisory opinion, as is the case with most other agencies examined.</p> <p>Nevertheless, “[w]hen the executive director finds reasonable cause to believe that</p>

	<p>an unlawful discriminatory practice has occurred or is occurring, the commission's executive director shall notify the parties of this determination," <i>id.</i> at 12-46-14(a), "shall immediately endeavor to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion" <i>id.</i> at 12-46-14(b), and "may require any or all parties to attend a conciliation conference for the purpose of attempting to informally resolve the matter." <i>Id.</i> at 12-46-14(c). "Should a respondent fail or refuse to confer and otherwise cooperate with the commission's executive director, or fail or refuse to make a good faith effort to resolve any dispute, the commission's executive director shall terminate efforts to conciliate the dispute. In that event, the commission's executive director shall send the respondent a demand letter and a proposed conciliation agreement in accordance with section 12-46-17." <i>Id.</i> at § 12-46-14(d).</p> <p>Conversely, "[t]he executive director shall dismiss the complaint . . . [i]f it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful discriminatory practice has been committed . . ." HAR § 12-46-11(a)(2). Additionally, the executive director shall dismiss a complaint if it is determined that reasonable cause no longer exists because of, among other things: (1) a material change in the allegations of the complainant or respondent; (2) a material change in the testimony of a key witnesses for the complainant or respondent; (3) a change in the law or the discovery of new and material evidence; or (4) the filing of a civil action. <i>See id.</i> at § 12-46-11(a)(7).</p>
Hawai'i Department of Health	Not expressly provided.
Honolulu Liquor Commission ("HLC R.")	Not expressly provided.

**16. Contested Case Hearings: When Conducted**

<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"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." Hon. R. 7.1(a). Further, a contested case hearing may be conducted when the commission determines that it is in the public interest to do so. <i>See id.</i> at R. 7.1(b).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>If an informal advisory opinion indicates a probable violation, "the person charged shall request a formal opinion within a reasonable time, or comply with the informal advisory opinion subject to whatever disciplinary action deemed necessary and taken by the Council . . ." Haw. R. 6.1(a). When either the Board determines that a formal hearing is necessary, or if the person charged requests a formal opinion, "the Board shall designate the party alleging the violation as the 'complainant' and the officer or employee involved as the 'respondent.' In the Board's discretion, the Board itself or its legal counsel may be the complainant or may become a co-complainant." <i>Id.</i> at R. 6.2(a).</p> <p>"The board shall set the time and place for a hearing, and all parties shall have an opportunity: (1) to be heard; (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings; (3) to be represented by counsel; and (4) to have the right of cross-examination. <i>Id.</i> at R. 6.2(b). "Notice of the hearing shall be given to all parties by registered or certified mail with return receipt requested at least fifteen days before the hearing." <i>Id.</i> at R. 6.2(c).</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"If the respondent fails to comply with the advisory opinion, fails to cooperate, or, if at any time, the board determines that there is probable cause for belief that a violation of the code of ethics has occurred and that a formal hearing of the complaint is necessary, the board shall serve or cause to be served a copy of the complaint and a further statement of alleged violations upon the respondent." Maui § 04-101-65(a).</p> <p>"The respondent shall have twenty days after service to answer the complaint and statement in writing. The answer shall specifically admit, deny, or explain the allegations of the complaint and statement, and shall set forth any matter constituting a defense." <i>Id.</i> "If the respondent fails to file an answer or admits the allegations of the complaint, the board shall transmit its opinion and recommendations, if any, to the prosecuting attorney for appropriate consideration. Copies of the board's opinion and recommendations shall be referred to the respondent's agency for possible disciplinary action." <i>Id.</i> at § 04-101-65(b).</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>"Persons aggrieved by actions of the board, may petition for a formal hearing before the board." Kauai R. 8.1(a). Petitions for formal hearings must include: (1) the name, address and telephone number of the petitioner; (2) the nature of petitioner's interest and the reasons for requesting a formal hearing; (3) a complete statement of the relevant facts giving rise to the petitioner's request; and (4) the petitioners position or contention prompting the request. <i>See id.</i> at R. 8.1(b).</p> <p>Once received, petitions for formal hearing may be: (1) approved; (2) modified and approved; or (3) rejected. <i>See id.</i> at R. 8.1(c). Petitioners who have been rejected shall be notified in writing of the Board's action. <i>See id.</i> Should the Board decide to hold a formal hearing, the Board must give at least fifteen (15) days</p>

	<p>written notice prior to the hearing, unless the respondent waives notice. <i>See id.</i> at R. 8.1(e).</p>
Hawai'i State Ethics Commission	<p>When a respondent fails to comply with the informal advisory opinion, or if a majority of the commissioners determine that there is probable cause for belief that a violation may have occurred, the commission will serve the respondent with a copy of the charge and a further statement of alleged violation. <i>See HAR § 21-5-4(c)</i>. After service, the respondent has twenty (20) days to answer the charge and statement in writing. <i>See id.</i> The answer must specifically admit, deny, or explain the charges and set forth any other matter constituting an avoidance or affirmative defense. <i>See id.</i></p> <p>Prior to holding a formal/contested case hearing, the commission must first give the respondent notice at least five days in advance, unless such notice is waived in writing. <i>See id.</i> at § 21-5-5(a). The notice must state: (1) the date, time, place, and nature of the hearing; (2) the legal authority under which the hearing is held; (3) the particular sections of the statutes or rules involved; and (4) the fact that the respondent may retain counsel if desired. <i>See id.</i> The respondent may make a written request for an opening hearing two days in advance. <i>See id.</i> at § 21-5-6.</p>
Office of Disciplinary Counsel ("ODC R.")	<p>The Disciplinary "Counsel shall institute a Formal Disciplinary Proceeding when: (a) a Formal Disciplinary Proceeding is approved or ordered by a Reviewing Board Member; (b) a Respondent rejects Counsel's imposition of a Private Informal Admonition and demands a Formal Hearing pursuant to DBR 25(b)(i); or (c) as provided by RSCH 2.13 (Attorneys Convicted of Crimes)." ODC R. 19.</p> <p>A formal hearing is commenced when the Disciplinary Counsel files a "Petition for Discipline" with the filing clerk after review and approval by the Board Chairperson. <i>Id.</i> at R. 20(a). The petition will name ODC as the petitioner and must be sufficiently clear and specific to inform the respondent of the alleged ethical violations. <i>See id.</i> The Disciplinary Counsel must attach a notice to the petition stating the name and address of Counsel and notifying the Respondent to file a written answer with the Filing Clerk within 20 days after service and to serve a copy upon Counsel. <i>See id.</i> The Disciplinary Counsel must also notify the Complainant that a petition has been filed, and the Complainant shall be provided a copy of such Petition once it is no longer confidential. ODC R. 20(b).</p>
Department of Consumer Affairs - RICO	<p>"Unless otherwise provided by law, upon the filing of the petition, and as expeditiously as possible, the authority shall determine whether or not to proceed further on the petition." HAR § 16-201-26.3(a). If the authority determines to proceed further, it must either set the matter for further proceedings before the authority or assign the petition to a hearings officer for further proceedings pursuant to sections 16-201-26 to 16-201-47 (provisions concerning "hearing relief"). <i>See id.</i> at § 16-201-26.3(b). If the authority determines not to proceed further, the authority must promptly provide the petitioner with a written notice of the determination, including a statement as to the reasons therefore. <i>Id.</i> at § 16-201-26.3(c).</p> <p>The petitioner may request reconsideration of the authority's determination or pursue judicial review, pursuant to sections 16-201-23 or 16-201-24." <i>Id.</i> at § 16-201-26.3(c).</p>
Department of Labor & Industrial Relations	Not expressly provided.

Hawai'i Civil Rights Commission	The Hawai'i Civil Rights Commission initially attempts to resolve allegation without formal proceedings; first through a conciliation conference, <i>see</i> HAR §§ 12-46-14, -15, and then by way of a demand letter. <i>See id.</i> at § 14-46-17. However, a "contested case proceeding shall commence by the appointment of a hearings examiner either fifteen days after service of the final conciliation demand or after the expiration of any continuation of conciliation efforts granted pursuant to section 12-46-17. The hearings examiner shall docket the complaint and assign a docket number to the complaint." <i>Id.</i> at § 12-46-18.
Hawai'i Department of Health	"The department may schedule a contested case hearing on its own initiative or may schedule one when required by law based upon a complaint." HAR § 11-1-22. Further, a respondent may request a contested case hearing in writing and within the time period specified in the complaint. <i>See id.</i> at 11-1-22(d).
Honolulu Liquor Commission ("HLC R.")	"Where it is proposed to revoke or suspend a license, assess and collect a penalty, or reprimand a licensee, for a violation of law or of these rules, the administrator shall schedule a hearing before the Commission and issue a Notice of Hearing informing the licensee of the charge(s) and the date, time and place of the hearing. Notice of Hearing shall be issued to the licensee of record at the Commission offices at the time of the violation." HLC R. § 3-85-91.1(a)

	<b>17. Contested Case Hearings: Powers and Duties of Hearings Officers/Commission</b>
County of Honolulu Ethics Commission ("Hon. R.")	Not expressly provided.
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided.
County of Maui Ethics Commission ("Maui R.")	Not expressly provided.
County of Kauai Ethics Commission ("Kauai R.")	Not expressly provided.
Hawai'i State Ethics Commission	Not expressly provided.
Office of Disciplinary Counsel ("ODC R.")	Not expressly provided.
Department of Consumer Affairs - RICO	<p>Unless otherwise provided by law, the authority or hearings officer shall have the powers, in conducting a hearing, without limitation:</p> <ol style="list-style-type: none"> <li>(1) To hold hearings and issue notices;</li> <li>(2) To administer oaths and affirmations;</li> <li>(3) To 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;</li> <li>(4) To subpoena and examine witnesses;</li> <li>(5) To issue subpoenas;</li> <li>(6) To 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;</li> <li>(7) To regulate the course and conduct of the hearing;</li> <li>(8) To 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;</li> <li>(9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;</li> <li>(10) To hold conferences, including prehearing conferences, before or during the hearing, for the settlement or simplification of issues;</li> <li>(11) To rule on motions and to dispose of procedural matters;</li> <li>(12) To certify any question to the authority for its consideration and disposition;</li> <li>(13) To submit in writing any report or recommended decision together with the findings of fact and conclusions of law and a recommended order to the authority for its consideration and final disposition;</li> <li>(14) To 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, HRS, or any other related laws; and</li> <li>(15) To examine, after notice to all parties, any site or tangible evidence</li> </ol>

	relevant to the case. HAR § 16-201-17.
Department of Labor & Industrial Relations	Not expressly provided.
Civil Rights Commission	<p>The hearings examiner shall have in addition to powers as are conferred by law, the powers, in conducting a hearing, without limitation:</p> <ol style="list-style-type: none"> <li>(1) To hold hearings and issue notices;</li> <li>(2) To administer oaths and affirmations;</li> <li>(3) To consolidate hearings or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;</li> <li>(4) To allow and supervise discovery as deemed reasonable and necessary;</li> <li>(5) To subpoena and examine witnesses;</li> <li>(6) To issue subpoenas;</li> <li>(7) To 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;</li> <li>(8) To regulate the course and conduct of the hearing;</li> <li>(9) To 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;</li> <li>(10) To remove disruptive individuals, including any party, legal counsel, witness, or observer;</li> <li>(11) To hold conferences, including prehearing conferences, before or during the hearing for the settlement or simplification of issues;</li> <li>(12) To rule on motions and to dispose of procedural matters;</li> <li>(13) To certify any question to the commission for its consideration and disposition;</li> <li>(14) To submit in writing any decision together with the findings of fact and conclusions of law and a proposed order to the commission for its consideration and final disposition;</li> <li>(15) To 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, HRS, or any other related laws.</li> </ol> <p>HAR § 12-46-32</p>
Departments of Health	<p>“The director or attached entity may act as the hearings officer and personally conduct the hearing of a contested case or may appoint a representative to be the hearings officer. The hearings officer shall conduct the hearing and any related pre-hearing and post-hearing activities as may be required or appropriate. The director or attached entity shall be the final decision maker unless the director or attached entity delegates that responsibility.” HAR § 11-1-24(a).</p> <p>In any contested case, the hearings officer may:</p> <ol style="list-style-type: none"> <li>(1) Give notice of a prehearing conference or the hearing and any continuation of a conference or the hearing;</li> <li>(2) Require that a complaint be answered or be made more definite;</li> <li>(3) Impose time limits on any phase or aspect of the proceedings;</li> <li>(4) Issue subpoenas for people, documents, and things as authorized by law;</li> <li>(5) For good cause shown, upon motion or the hearings officer’s own</li> </ol>

initiative, order a party to produce non-privileged evidence, and may draw inferences against the party if the evidence is not produced without good cause being shown;

- (6) Administer oaths;
- (7) Examine witnesses and inspect sites;
- (8) Certify official documents and acts;
- (9) Rule on motions, requests, and offers of proof;
- (10) Admit, receive, and exclude evidence;
- (11) Regulate the course and conduct of the hearing and related proceedings, including:
  - (i) Allowing or directing the use of telephone or videoconference meetings, hearings, and testimony;
  - (ii) Regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals;
  - (iii) Specifying the time, place, and method of filing documents;
- (12) Enter such orders and rulings against any party who fails to comply with these rules or any other order of the hearings officer, including without limit orders under section 11-1-36(c); and
- (13) Perform such other functions and duties, and issue such orders necessary for the proper conduct of the hearing and the resolution of the case.

*Id.* at § 11-1-24(b).

“Any provision of this chapter may be suspended or waived by the department or by the hearings officer before whom the matter is heard, to prevent undue hardship in any particular instance.” *Id.* at § 11-1-24(c). “The hearings officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of the evidence presented at any hearing. If a stenographer or other person of similar skill is not engaged, the hearings officer shall have the hearing recorded by audiotape, videotape, or comparable means.” *Id.* at § 11-1-24(d).

“Except as provided for under subsection (b)(5), the hearings officer shall not order or approve civil style discovery against non-parties; and unless stipulated to by all parties, the hearings officer shall not order or approve civil style discovery between parties. Civil style discovery refers to procedures initiated by parties under judicial rules of civil procedure, specifically including but not limited to, depositions on oral or written questions, written interrogatories, requests for production of documents or things, requests to enter land or other property, physical and mental examinations, and requests for admissions.” *Id.* at § 11-1-24(e).

Honolulu Liquor Commission (“HLC R.”)

Unless otherwise provided by law, the Commission shall have the power:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;
- (3) To consolidate or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To issue decisions and orders consistent with state statutes and the rules of the Commission;
- (5) To issue subpoenas and examine witnesses;
- (6) To rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, unduly repetitious, or cumulative,

and, accordingly, may restrict lines of questioning or testimony;

- (7) To regulate the course and conduct of the hearing;
- (8) To 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) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To hold conferences, including pre-hearing conferences, before or during the hearing, for the settlement or simplification of issues;
- (11) To rule on motions and dispose of procedural matters;
- (12) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by these rules, Chapters 91 and 281, HRS, or any other related laws; and
- (13) To examine, after notice to all parties, any site or tangible evidence relevant to the proceeding.

HLC R. § 3-81-19.11.

	<p align="center"><b>18. Contested Case Hearings: Prehearing Conference and Statement</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>At least 30 days prior to the contested case hearing, the parties must submit to the commission and serve on all other parties a <u>pre-hearing statement</u>. <i>See</i> Hon. R. 7.2(a). The statement must include: (1) a statement of facts, including all admitted and stipulated facts; (2) all alleged violations and defenses advanced, 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. <i>See id.</i> Further, "[e]ach 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." <i>Id.</i> Finally, the commission has discretion to impose appropriate sanctions upon a party failing to comply with the requirements of the pre-hearing statement, including placing limitations on presenting evidence and default. <i>See id.</i> at R. 7.2(c).</p> <p>In addition to the pre-hearing statement, a "party may request a <u>pre-hearing conference</u> to seek orders from the commission or designee relating to the contested case," at least 15 calendar days before the contested case hearing. <i>Id.</i> at R. 7.4(a) (emphasis added). The requesting party must: (1) make its request in writing and serve a copy of the request on all other parties; and (2) include in its request a statement setting forth the issues for which the party seeks an order; and the legal and factual basis for the requested order." <i>See id.</i> "A party may submit and serve a responsive statement within 7 calendar days of the service of a request for a pre-hearing conference." <i>Id.</i> at R. 7.4(b). "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." <i>Id.</i> at R. 7.4(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>In order to reduce the issues and expedite the contested case hearing, "either the complainant or the respondent may file a written request for a <u>pre-hearing conference</u>." Haw. R. 6.5(a) (emphasis added). At the conference, the conferees may agree to stipulate to: (1) "facts or issues to which there is no dispute;" and (2) "the single issue upon which testimony will be heard or evidence will be received by the Board which would determine whether or not the respondent had violated any section of the Code of Ethics or failed to file a disclosure." <i>Id.</i> at R. 6.5(c). After the conference, a prehearing order must be executed by all conferees, which "supersede[s] the pleadings where there is any conflict" and "supplement[s] the pleadings in all other respects." <i>Id.</i> at 6.5(d).</p> <p>Upon filing for a pre-hearing conference, both parties are required to file a <u>pre-hearing plan</u>. <i>See id.</i> at R. 6.5(b). The plan "shall contain all of the elements which are permitted in the pre-trial brief for a civil suit," including, but not limited to: (1) disclosure of the party's theory of the case, including the basic facts to be proven and the names and addresses of all witnesses to be called; and (2) disclosure and examination of all exhibits in the party's possession/control that the party intends to offer into evidence. <i>See id.</i> at R. 6.5(b). Any exhibit not so disclosed will not be received into evidence over an objection unless the Board determines that there are reasonable grounds justifying the failed disclosure. <i>See id.</i></p>
<p>County of Maui Ethics Commission</p>	<p>Under the Maui County Ethics Commission's rules, the board may direct the parties to appear for a <u>pre-hearing conference</u> to consider: (1) simplification of the issues;</p>

<p>("Maui R.")</p>	<p>(2) amendments to the pleadings; (3) avoidance of unnecessary proof by obtaining admissions of fact and of existence and contents of documents; (4) identification and limitations of the number of witnesses; (5) other matters as may aid in the disposition of the complaint. <i>See</i> Maui R. § 04-101-68(a).</p> <p>While the Rules do not expressly provide for a pre-hearing statement, at the conference each party must disclose: (1) their theory of the case, including the basic facts to be proven and the names and addresses of all witnesses to be called; and (2) disclosure and examination of all exhibits in the party's possession/control that the party intends to offer into evidence. <i>See id.</i> at § 04-101-68(b). Any exhibit not so disclosed will not be received into evidence over an objection unless the Board determines that are reasonable grounds justifying the failure to disclose. <i>See id.</i></p> <p>Lastly, "[a]t least seventy-two hours before the hearing, the board shall issue an order that summarizes the actions taken at the conference," which "supersede[s] the pleadings where there is any conflict" and "supplement[s] the pleadings in all other respects." <i>Id.</i> at § 04-101-68(c).</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>The Kauai County Ethics Commission's rules do not expressly provide for a pre-hearing statement but do provide for a <u>prehearing conference</u> where each party must: (1) disclose their theory of his case, including facts s/he intends to prove and the names and addresses of all witnesses s/he intends to call; and (2) disclose and permit examination of all exhibits in his/her possession or control and that s/he intends to offer as evidence at the hearing. <i>See</i> Kauai R. 8.3(a). Witnesses and exhibits not so disclosed will not be received as evidence at the hearing over objection unless the Board finds reasonable grounds for the prior failure to disclose. <i>See id.</i> at R. 8.3(a)(3).</p> <p>Additionally, at the conference the board can also require the parties to consider: (1) simplification of the issues; (2) amendments to the pleadings; (3) avoidance of unnecessary proof by obtaining admissions of fact and existence and contents of documents; (4) limitation of the number of witnesses; and/or (5) other matters as may aid in the disposition of the complaint. <i>See id.</i> at R. 8.3(b). "At least seventy-two (72) hours prior to the hearing, the Board shall issue an order which summarizes the action taken at the conference." <i>Id.</i> at R 8.3(c).</p>
<p>Hawai'i State Ethics Commission</p>	<p>The Hawai'i State Ethics Commission's rules do not expressly provide for a prehearing statement but do provide for a <u>prehearing conference</u>. <i>See generally</i> HAR § 21-5-8. At the pre-hearing conference each party must disclose: (1) their theory of the case, including the basic facts to be proven and the names and addresses of all witnesses to be called; and (2) disclosure and examination of all exhibits in the party's possession/control that the party intends to offer into evidence. <i>See id.</i> at § 21-5-8(a). Any exhibit not so disclosed will not be received into evidence over an objection unless the Board determines that are reasonable grounds justifying the failed to disclosure. <i>See id.</i> Prehearing orders issued after the conference supersede the parties' pleadings where the two conflict and supplement the pleadings where they do not. <i>See id.</i> at § 21-5-8(b).</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>The ODC's rules do not expressly provide for a pre-hearing statement but do provide for a <u>prehearing conference</u> no later than 30 days after the appointment of a hearing officer or hearing committee, unless extended for good cause. <i>See</i> ODC R. 22(a). The purpose of the conference is to: "address alleged conflicts; expedite matters; narrow contested issues; establish deadlines to exchange exhibit and</p>

	witness lists; explore possible stipulations; discuss proposed submissions of any discovery requests to the Board Chairperson; discuss requests for permission to file motions; and to set the hearing date.” <i>Id.</i> at R. 22(a)(i). Following the prehearing conference, the hearing officer or committee must issue a prehearing order. <i>See id.</i> at R. 22(a)(ii).
Department of Commerce & Consumer Affairs - RICO	<p>Under the DCCA’s rules, “[t]he authority or the hearings officer may order that a <u>prehearing conference</u> be conducted and attended by all parties to the proceeding.” HAR § 16-201-30(a) (emphasis added). The purpose of the prehearing conference is to explore informal satisfaction of the petition and simplification of the issues. <i>See id.</i> Further, the authority or the hearings officer may require the parties to disclose the identity of all witnesses they intend to call and any other persons with material knowledge relevant to the proceedings, and all exhibits to be introduced at the hearing. <i>See id.</i>; <i>see also id.</i> at § 16-201-29(a) (disclosures required upon party request).</p> <p>If no prehearing conference is so ordered, “the authority or hearings officer may require each party to <u>submit a statement</u> 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.” <i>Id.</i> at § 16-201-30(b) (emphasis added).</p>
Department of Labor & Industrial Relations	<p>Under the DLIR’s rules, once an appeal has been docketed, the board has discretion to convene an <u>initial conference</u> to consider: (1) simplification of issues; (2) amendments to pleadings; (3) stipulations of fact and documents to avoid unnecessary proof; (4) limiting the number of witnesses and disclosing the names of witnesses to be called; (5) the position of each party, including the basic facts it intends to prove; (6) marking of exhibits for identification; and (7) other matters which may aid the efficient disposition of the proceeding. <i>See</i> HAR § 12-47-21(a).</p> <p>If the board elects to hold such a conference, the parties must submit “<u>initial conference statements</u>,” at least three days before the conference, addressing the issues noted in the notice of initial conference. <i>See id.</i> at § 12-47-21(b). Further, the board has discretion to require additional conferences if needed. <i>See id.</i></p>
Hawai‘i Civil Rights Commission	Prior to a hearing before the Hawai‘i Civil Rights Commission, the hearings examiner must hold a <u>prehearing conference</u> . <i>See</i> HAR § 12-46-42. The purpose of the conference is to “explore the possibilities of informal satisfaction of the complaint and the simplification of issues.” <i>Id.</i> At the conference, the hearings examiner “may require all parties to disclose to the other parties the identity of all witnesses to be called, together with their addresses and phone numbers if known, and the documents to be introduced.” <i>Id.</i> The Civil Rights Commission’s rules do not expressly provide for a pre-hearing statement.
Hawai‘i Department of Health	Under the DOH’s rules, “[t]he hearings officer may order and hold <u>prehearing conferences</u> with the parties to formulate or simplify issues, obtain stipulations of facts, arrange the exchange of proposed exhibits or written testimony, set schedules, exchange names of witnesses, limit the number of witnesses, and determine such other matters as may expedite the orderly conduct and disposition of the case as permitted by law.” HAR §11-1-36(a) (emphasis added). Regarding <u>pre-hearing statements</u> , “[t]he hearings officer may request memoranda setting forth the issues, facts, and legal arguments upon which the parties intend to rely, and the hearings officer may fix the conditions and time for the filing of memoranda and the number of pages.” <i>Id.</i> at § 11-1-36(b).

Honolulu Liquor  
Commission (“HLC  
R.)

“The Commission may order that a pre-hearing conference be conducted and attended by all parties to an adjudication hearing. At the pre-hearing conference, the Commission may require all parties to disclose to the other parties any information which may be requested pursuant to §3-85-91.6.” § 3-85-91.2(a) (emphasis added).

“If no pre-hearing conference is held, the Commission may require each party to an adjudication hearing to submit a statement disclosing and identifying all witnesses to be called at the adjudication hearing, and all exhibits to be used at the adjudication hearing. A copy of the statement shall be served upon all other parties to the proceeding. The Commission may require other relief in order to simplify the issues and facilitate the orderly progress of the adjudication hearing.” *Id.* at § 3-85-91.2(b).

	<p align="center"><b>19. Contested Case Hearings: Procedures/Presentation of the Case</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>The Honolulu Ethics Commission's rules do not provide detailed guidance for the presentation of a case before the Commission. <i>See generally</i> Hon. R. 7.3. Rather, the Rules address representation for the complainant, <i>see id.</i> at R. 7.3(a), limitations placed on the Commission's legal counsel when the legal counsel is presenting the case on behalf of the complainant, <i>see id.</i> at R. 7.3(b), and the parties' ability to obtain subpoenas for the appearance of witnesses and production of documents. <i>See id.</i> at R. 7.3(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>Similar to the Honolulu Ethics Commission's rules, Hawai'i County's rules do not provide detailed procedures for the presentation of a case before the Commission. Rather, Rule 6.4 simply provides that "[t]he Board in its discretion may allow the complainant or his/her counsel to present the case for the complainant or may designate the legal counsel to the Board to present the case where the Board itself is the complainant as provided in [Haw. R.] 6.2(a)." Haw. R. 6.4.</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>Like several other agencies discussed below, the Maui County Ethics Commission's rules provide the following detailed procedures for the presentation of case before the Commission:</p> <p>"The presiding officer shall convene the hearing and shall read the complaint." Maui R. § 04-101-69(a). "Before presentation of the case, the parties shall have opportunity to make opening statements." <i>Id.</i> at § 04-101-69(b). "Opening statements may be waived by a party." <i>Id.</i> The order of making opening statements shall be as follows:</p> <ol style="list-style-type: none"> <li>(1) opening statement by the complainant; and</li> <li>(2) opening statement by the respondent. The respondent may reserve the opportunity to make the opening statement until after the complainant has presented the complainant's case.</li> </ol> <p><i>Id.</i> "After any opening statements, the complainant shall present complainant's case. After complainant has concluded, the respondent may present respondent's defense." <i>Id.</i> at § 04-101-69(c).</p> <p>Witnesses shall be examined as follows:</p> <ol style="list-style-type: none"> <li>(1) direct examination by the party calling the witness;</li> <li>(2) cross examination by the other party;</li> <li>(3) redirect examination by the party calling the witness;</li> <li>(4) recross examination by the other party; and</li> <li>(5) examination of the witness by the board at any time.</li> </ol> <p><i>Id.</i> at § 04-101-69(d).</p> <p>"After all the evidence has been presented, the board shall give the parties the opportunity to summarize." <i>Id.</i> at § 04-101-69(e). "Final arguments may be waived by either party." <i>Id.</i> The order of final arguments shall be as follows:</p> <ol style="list-style-type: none"> <li>(1) final argument by the complainant;</li> <li>(2) final argument by the respondent; and</li> <li>(3) rebuttal argument by the complainant. Rebuttal arguments shall be limited to the scope of the other party's final argument. Reasonable time limits may be imposed by the board for final arguments. <p><i>Id.</i></p> </li></ol>

	<p>“After hearing final arguments, the board may direct each party to submit proposed findings of fact and conclusions of law. Each party shall do so within the time set by the board and shall deliver the original and nine copies to the board and shall serve a copy upon each party who has appeared in the action. The board shall determine the findings of fact and conclusions of law to be entered.” <i>Id.</i> at § 04-101-69(f).</p>
<p>County of Kauai Ethics Commission (“Kauai R.”)</p>	<p>“The Presiding Officer shall convene the hearing, shall read the complaint, and the pre-hearing order, if any.” Kauai R. 8.4(a)(1). “The Board shall determine the order in which the parties to the proceeding shall present their case to the Board.” <i>Id.</i> at R. 8.4(a)(2). “Opportunity shall be afforded all parties to present evidence and arguments on all issues involved.” <i>Id.</i> at R. 8.4(a)(3). “Every party to the proceeding shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts; and shall have the right to submit rebuttal evidence.” <i>Id.</i> at R. 8.4(a)(4).</p>
<p>Hawai‘i State Ethics Commission</p>	<p>The Hawai‘i State Ethics Commission Rules provide the following detailed outline of how a case is to be presented before it:</p> <p>“The chairperson shall convene the hearing and shall read the charge.” HAR § 21-5-7(a). “Before presentation of the case, the parties shall have the opportunity to make opening statements.” <i>Id.</i> at § 21-5-7(b). The usual order of making open statements shall be as follows:</p> <ul style="list-style-type: none"> <li>(1) Opening statement by the complainant; and</li> <li>(2) Opening statement by the respondent. The respondent may reserve the opportunity to make the opening statement until after the complainant has presented the complainant's case. Opening statements may be waived by a party.</li> </ul> <p><i>Id.</i></p> <p>Witnesses shall be examined as follows:</p> <ul style="list-style-type: none"> <li>(1) Direct examination by the party calling the witness;</li> <li>(2) Cross examination by the other party;</li> <li>(3) Redirect examination by the party calling the witness;</li> <li>(4) Recross examination by the other party; and (5)</li> </ul> <p>Examination of the witness by the commission at any time.</p> <p><i>Id.</i> at § 21-5-7(c).</p> <p>“After all the evidence has been presented, the commission shall give the parties the opportunity to summarize.” <i>Id.</i> at § 21-5-7(d). The usual order of final arguments shall be as follows:</p> <ul style="list-style-type: none"> <li>(1) Final argument by the complainant;</li> <li>(2) Final argument by the respondent; and</li> <li>(3) Rebuttal argument by the complainant. Rebuttal arguments shall be limited to countering whatever may be said by the other party during that party's final argument. Reasonable time limits may be imposed by the commission for the final arguments. Final arguments may be waived by either party.” <p><i>Id.</i></p> </li></ul>
<p>Office of Disciplinary Counsel (“ODC R.”)</p>	<p>Not expressly provided.</p>

<p>Department of Consumer Affairs - RICO</p>	<p>The DCCA's rules provide the following detailed outline of procedures for presenting a case:</p> <p>Unless otherwise stipulated by the parties, which stipulation is approved by the authority or the hearings officer, all hearings shall proceed as follows:</p> <ol style="list-style-type: none"> <li>(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: <ol style="list-style-type: none"> <li>A) Petitioner's opening statement; and</li> <li>(B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of petitioner's evidence;</li> </ol> </li> <li>(2) The petitioner's evidence shall be presented first, and shall be followed by the presentation of evidence in support of respondent's case;</li> <li>(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;</li> <li>(4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;</li> <li>(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: <ol style="list-style-type: none"> <li>(A) Petitioner's final argument;</li> <li>(B) Respondent's final argument; and</li> <li>(C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and</li> </ol> </li> <li>(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 16-201-39, whichever is later.</li> </ol> <p>HAR § 16-201-37.</p>
<p>Department of Labor &amp; Industrial Relations</p>	<p>"In all hearings before the board, the appellant, complainant, or movant shall open and close, unless the presiding member directs otherwise. Appellees, intervenors, and respondents shall be heard in the order the presiding member directs." HAR §12-47-40(a). "The order of presentation shall not alter the burden of proof, including the burden of producing evidence and the burden of persuasion. The party or parties who must bear these burdens shall be determined by law." <i>Id.</i> at §12-47-40(b).</p> <p>"Testimony shall be taken on oath or affirmation." §12-47-42(a). "Each party shall have the right to call and examine parties and witnesses, to introduce evidence, to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in direct examination, to impeach any witness regardless which party first called the witness to testify, and to offer rebuttal evidence." <i>Id.</i> at § 12-47-42(b). "Any member may question any party or witness." <i>Id.</i> at § 12-47-42(c). "The admission of evidence in a hearing shall be controlled by the presiding member in a manner in which the presiding member considers best suited to ascertain the just, speedy, and inexpensive determination of the proceedings." <i>Id.</i> at § 12-47-42(d).</p>

	<p>“Each party has the right to conduct such cross-examination of any party's witnesses as may be required for a full and true disclosure of the facts and has the right to submit rebuttal evidence.” <i>Id.</i> at §12-47-43.</p>
<p>Hawai‘i Civil Rights Commission</p>	<p>The Hawai‘i Civil Rights Commission’s rules provide the following detailed outline of procedures for presenting a case:</p> <p>Unless otherwise stipulated by the parties, which stipulation is approved by the hearings examiner, all hearings shall proceed as follows:</p> <ol style="list-style-type: none"> <li>(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: <ol style="list-style-type: none"> <li>(A) Complainant’s opening statement; and</li> <li>(B) Respondent’s opening statement, unless respondent chooses to reserve same until after presentation of petitioner’s evidence;</li> </ol> </li> <li>(2) The complainant’s evidence shall be presented first, and shall be followed by the presentation of evidence in support of respondent’s case;</li> <li>(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;</li> <li>(4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;*</li> <li>(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: <ol style="list-style-type: none"> <li>(A) Complainant’s final argument;</li> <li>(B) Respondent’s final argument; and</li> <li>(C) Complainant’s final argument in rebuttal which shall be limited to countering matters raised in respondent’s final argument; and</li> </ol> </li> <li>(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 12-46-49, whichever is later.</li> </ol> <p>HAR § 12-46-47.</p>
<p>Hawai‘i Department of Health</p>	<p>The DOH’s rules governing procedures in a contested case hearing are as follows:</p> <p>“Procedures to be followed by the department shall, unless specifically prescribed in this chapter or by chapter 91, HRS, or other statutory provisions, be such as in the opinion of the department will best serve the purposes of such hearings. Cases shall be conducted fairly and impartially.” HAR § 11-1-21(a). “Any procedure in a contested case may be agreed to, modified, or waived by stipulation of the parties, and informal disposition may be made of all or part of any contested case by stipulation, settlement, consent order, or default.” <i>Id.</i> at § 11-1-21(b). “The department may voluntarily withdraw or dismiss a case it brings, and any other party may voluntarily withdraw or dismiss a case upon order of the department and upon such terms and conditions that the department deems pR.er.” <i>Id.</i> at § 11-1-21(c).</p>

Honolulu Liquor  
Commission ("HLC  
R.")

Unless otherwise stipulated by the parties, all adjudication hearings shall proceed as follows:

- (a) The licensee who has been notified to appear before the Commission shall enter a plea admitting or denying the allegations contained in the Notice of Hearing;
- (b) If the licensee admits the allegations contained in the Notice of Hearing, the Commission shall determine what action, if any, should be taken against the licensee;
- (c) If the licensee denies the allegations contained in the Notice of Hearing, the parties shall have the opportunity to present any facts tending to prove or disprove the allegations contained in the Notice of Hearing;
  - (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) The City's opening statement; and
    - (B) Licensee's opening statement, unless licensee chooses to reserve same until after presentation of the City's evidence;
  - (2) The City's evidence shall be presented first, and shall be followed by the presentation of the evidence in support of licensee'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 the parties' 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 a final argument. Final argument shall proceed as follows:
    - (A) The City's final argument;
    - (B) Licensee's final argument;
    - (C) The City's final argument in rebuttal which shall be limited to countering matters raised in licensee's final argument.
  - (6) The adjudication 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 §3-85-91.9, whichever is later.
- (d) Any party may file with the Commission a statement in support of the recommended decision within fifteen (15) days after receipt of a copy of the recommended decision. The party filing the statement in support shall serve the statement upon all other parties.
- (e) Whenever written exceptions have been timely filed and a party has requested oral argument, all parties to the proceedings shall be afforded the opportunity to present to the Commission oral arguments concerning the recommended decision. Unless otherwise provided by law, all the parties shall be served with notice of the time and place of argument at least five days prior to the hearing. Within a reasonable time after argument has been heard, the Commission shall either issue its final decision and order

adopting, modifying or reversing, in whole or in part, the recommended decision; or set the matter for a further hearing before the Commission. Before reaching a final decision, the Commission shall personally consider the entire record or portions thereof which may have been cited by the parties.

(f) Where written exceptions to the recommended decision have not been timely filed, the Commission shall issue, within a reasonable time after receipt of the recommended decision, a final written decision and order adopting, modifying, or reversing, in whole or in part, the recommended decision. If the recommended decision is modified or reversed, in whole or in part, the Commission shall specifically state in its final decision, the reasons for such modification or reversal.

HLC R. § 3-85-91.7.

	<b>20. Contested Case Hearings: Rules of Evidence</b>
County of Honolulu Ethics Commission ("Hon. R.")	"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." Hon. R. 7.5(a). "Documentary evidence may be received in the form of copies, provided that a declaration is made as to the authenticity of the copies." <i>Id.</i> at R. 7.5(b). "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." <i>Id.</i> at R. 7.5(c). "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." <i>Id.</i> at R. 7.5(d).
County of Hawai'i Ethics Commission ("Haw. R.")	"The board shall not be bound by the strict rules of evidence. Any evidence which is relevant and material to the complaint may be admitted. Effect shall be given to the rules of privilege recognized by law." Haw. R. 1.7. In formal hearings, "all witnesses shall testify under oath or affirmation" and "all evidence shall conform to the rules of evidence as provided by Section 91-10, HRS." <i>Id.</i> at R. 6.6.
County of Maui Ethics Commission ("Maui R.")	"The board shall not be bound by the rules of evidence, but may receive any oral or documentary evidence. The board may exclude irrelevant, immaterial, or repetitious evidence. The board shall give effect to the rules of privilege recognized by law. The presiding officer shall rule on the admissibility of evidence and upon any objections made to the admission or exclusion of evidence." Maui R. § 04-101-38(a). "Documentary evidence may be submitted to the board in the form of copies or excerpts, if the original is not readily available, provided that, and upon request, parties and the board shall be given an opportunity to compare the copy with the original." <i>Id.</i> at § 04-101-38(b). "The board may take notice of judicially recognizable facts. The board may also take notice of generally recognized technical or scientific facts within members' specialized knowledge, but parties shall be informed either before or during the hearing of facts so noticed, and they shall be afforded an opportunity to contest facts so noticed." <i>Id.</i> at § 04-101-38(c). "The degree or quantum of proof in any hearing shall be a preponderance of the evidence." <i>Id.</i> at § 04-101-38(d).
County of Kauai Ethics Commission ("Kauai R.")	"Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original." Kauai R. 8.4(a)(5). "The Board shall give effect to the rules of privilege recognized by law." <i>Id.</i> at R. 8.4(a)(6). "The Board may take notice of judicially recognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within its knowledge; but parties to the proceedings shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed." <i>Id.</i> at R. 8.4(a)(7).
Hawai'i State Ethics Commission	"The commission shall not be bound by the strict rules of evidence. Any oral or documentary evidence which is relevant and material to the charge may be admitted. Effect shall be given to the rules of privilege recognized by law." HAR § 21-1-7.

Office of Disciplinary Counsel ("ODC R.")	<p>"The Hearing Officer or Hearing Committee shall receive evidence to resolve any factual issues. The Hawaii Rules of Evidence do not apply. Only trustworthy evidence may be admitted in accordance with RSCH 2.7(c). The Hearing Officer or Hearing Committee must disregard any error or defect in the proceeding that does not affect a substantial right or result in a miscarriage of justice." ODC R. 22(d).</p>
Department of Consumer Affairs - RICO	<p>"The admissibility of evidence at the hearing shall not be governed by the laws 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 authority or hearings officer shall give effect to the privileges recognized at law." HAR § 16-201-21(a).</p> <p>"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 authority or hearings officer when considering the weight of the documentary evidence." <i>Id.</i> at § 16-201-21(b).</p> <p>"The authority or the 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." <i>Id.</i> at §16-201-21(c). "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." <i>Id.</i> at § 16-201-21(d).</p>
Department of Labor & Industrial Relations	<p>"The board shall not be bound by statutory and common law rules relating to the admission or rejection of evidence. The board may exercise its own discretion in these matters, limited only by considerations of relevancy, materiality, and repetition, by the rules of privilege recognized by law, and with a view to securing a just, speedy, and inexpensive determination of the proceedings." HAR § 12-47-41.</p> <p>"The board may take official notice of those matters as may be judicially noticed by the courts of the State. It may also take official notice of generally recognized technical or scientific facts within its specialized knowledge, upon notice to all parties before or during trial. Any party shall have an opportunity to contest the facts so noticed, within the time specified by the presiding member." <i>Id.</i> at § 12-47-47.</p>
Hawai'i Civil Rights Commission	<p>"The admissibility of evidence at the hearing shall not be governed by the laws of evidence, and all relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The hearings examiner shall give effect to the privileges recognized at law. 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 hearings examiner when considering the weight of the documentary evidence. The hearings examiner may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The</p>

	<p>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.” HAR § 12-46-36(a).</p> <p>“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.” <i>Id.</i> at § 12-46-36(b).</p>
Hawai'i Department of Health	<p>“The hearings officer shall follow section 91-10, Hawaii Revised Statutes, with respect to evidence submitted or objected to in contested case hearings.” HAR § 11-1-38(a). “The hearings officer shall rule on the admissibility of all evidence.” <i>Id.</i> § 11-1-38(b). When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.” <i>Id.</i> § 11-1-38(c). An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained, or the submission of the evidence itself. <i>Id.</i> § 11-1-38(d).</p> <p>“With the approval or at the direction of the hearings officer, a witness may submit written testimony into the record on direct examination. Before any prepared testimony is read or submitted, unless excused by the hearings officer, the witness shall deliver copies thereof to the hearings officer and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. The hearings officer may order that copies of the prepared testimony be served upon all parties and the hearings officer a set number of days before the hearing to permit proper cross examination of the witnesses on matters contained in the prepared testimony. The hearings officer may order the submission of written direct examination if the officer deems that substantial savings in time will result, or for other good cause.” <i>Id.</i> at § 11-1-38(e).</p> <p>“If relevant and material information is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other information in the document would burden the record, at the discretion of the hearings officer, the relevant and material information may be read into the record, or copies of the redacted document received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.” <i>Id.</i> at § 11-1-38(f).</p> <p>“If testimony in a proceeding other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the hearings officer.” <i>Id.</i> at § 11-1-38(g). “The hearings officer may disregard or strike direct testimony if opposing parties do not have an opportunity for cross-examination.” <i>Id.</i> at § 11-1-38(h). “At the hearing, the hearings officer may require the production of further evidence upon any issue. Upon agreement of the parties, the hearings officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.” <i>Id.</i> at § 11-1-38(i).</p>
Honolulu Liquor Commission (“HLC R.”)	<p>“The admissibility of evidence at an adjudication hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The Commission shall give effect to the privileges recognized at law.” HLC R. § 3-85-91.5(a).</p>

“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 non-availability of the original and the reasons therefore may be considered by the Commission when considering the weight of the documentary evidence.” *Id.* at § 3-85-91.5(b).

“The Commission 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 to contest the facts so noticed.” *Id.* at § 3-85-91.5(c).

“ 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 preponderance of the evidence.” *Id.* at § 3-85-91.5(d).

	<p align="center"><b>21. Contested Case Hearings: Decisions</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"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." Hon. R. 7.7(a). "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." <i>Id.</i> at R. 7.7(b). "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." <i>Id.</i> at R. 7.7(c).</p> <p>"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." <i>Id.</i> at R. 7.7(d). "The commission shall publish its decision in such form and with such deletions as required or allowed under applicable law." <i>Id.</i> at R. 7.7(e).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>"Within a reasonable time after the close of the hearing, the Board shall issue its formal opinion on the alleged conduct which shall be based upon competent and substantial evidence." Haw. R. 6.7(a). "Such a formal opinion shall be in writing and signed by the three or more members of the Board and shall be given to the complainant and alleged violator." <i>Id.</i> at R. 6.7(b).</p> <p>"With respect to officers removable only by impeachment, if there is no compliance of a formal opinion . . . , the board shall issue a complaint and refer the matter to the Council." <i>Id.</i> at R. 7.1. "The complaint must contain a statement of the facts alleged to constitute the violation." <i>Id.</i> at R. 7.1(a). "If within thirty days after the referral the Council has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the Board shall make public the nature of the charges but it shall make clear that the merits of the charges have never been formally determined." <i>Id.</i> at R. 7.1(b).</p> <p>"With respect to the employees and officers other than officers removable only by impeachment, if there is no compliance of a formal opinion . . . , the Board shall issue a complaint and refer the matter to the appointing authority having the power to discipline the employee." <i>Id.</i> at R. 7.2. "The complaint must contain a statement of the facts alleged to constitute the violation." <i>Id.</i> at R. 7.2(a). "The appointing authority may institute hearings thereon as provided by Section 2-88(b), HCC, and such hearings shall be in accordance with Chapter 91, HRS." <i>Id.</i> at R. 7.2(b).</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"Within a reasonable time after final arguments have been completed and all requested submissions filed with the board, the board shall render an opinion." Maui R. § 04-101-69.2(a). "After a hearing or upon review of the board's investigation, the board shall make findings of fact and a conclusion. Said findings of fact and conclusion shall be ratified in open session without disclosing the names of the complainant or accused employee." <i>Id.</i> at § 04-101-69.2(b).</p>

	<p>The board may find:</p> <ol style="list-style-type: none"> <li>(1) The complaint was not based on facts, or the alleged incident did not occur and the complaint is unfounded;</li> <li>(2) There is insufficient evidence to prove the material allegations of the complaint and the complaint is therefore not sustained;</li> <li>(3) The incident complained of occurred, but the act or conduct of the department or employee was either <i>de minimus</i>, a result of a choice of evils, lawful and/or proper, and the accused is exonerated; or</li> <li>(4) There is sufficient evidence to support the allegation of the complaint and ground to justify a recommendation that appropriate action be taken, including the issuance of a fine not to exceed \$1,000, pursuant to Section 10-5 of the Charter and Section 2.56.010, MCC.</li> </ol> <p><i>Id.</i> at § 04-101-69.2(c).</p> <p>“Every opinion of the board rendered after hearing shall be in writing and shall include findings of fact and conclusions of law as determined by the board. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its opinion a ruling upon such proposed findings. Within forty-five days after an opinion has been rendered, the board shall file a summarized or redacted version of the opinion, which shall be a matter of public record.” <i>Id.</i> § 04-101-69.2(d).</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>“Every decision of the Board rendered after hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law. Within forty-five (45) days after a decision has been rendered, the Board shall file a deleted decision which shall be a matter of public record. At the end of each calendar year, the decisions issued during that period may be printed, along with an index. The County Attorney shall provide copies upon request at a charge pursuant to law.” Kauai R. 8.5(a).</p> <p>“The Board may direct the prevailing party to submit proposed findings of fact and conclusions of law. The party required to prepare such shall do so within the time set by the Board and shall obtain from the opposing counsel or party the approval thereon as to form, and deliver the original and nine (9) copies to the Board; or, if not so obtained, serve a copy upon each party who has appeared in the action and deliver the original and nine (9) copies to the Board. The party served with the proposed findings and conclusions may within five (5) days thereafter deliver to the Board a copy of his objections, proposed findings, and conclusions. The Board shall determine the actual findings of fact and conclusions of law.” <i>Id.</i> at R. 8.5(b).</p> <p>“Any member of the Board who disagrees may file a written dissenting decision.” <i>Id.</i> at R. 8.5(c).</p>
<p>Hawai'i State Ethics Commission</p>	<p>“Every decision of the commission rendered after hearing shall be in writing and shall be accompanied by separate findings of fact and conclusions of law. Within forty-five days after a decision has been rendered, the commission shall file a deleted decision which shall be a matter of public record. The executive director shall provide copies upon request without charge. At the end of each calendar year, the decisions issued during that calendar year shall be printed, along with an index, and copies shall be available upon request.” HAR § 2 1-5-9(a).</p> <p>“The commission may direct the prevailing party to submit proposed findings of fact and conclusions of law. The party required to prepare the proposed findings of fact and conclusions of law shall do so within the time set by the commission, shall</p>

	<p>secure the approval as to form thereon of the opposing counsel or party, and shall deliver the original and copies to the commission; or, if not so approved, serve a copy upon each party who has appeared in the action and deliver the original and six copies to the commission. If the form of the proposed findings of fact and conclusions of law has not been approved, a party served with the proposed findings and conclusions may within five days thereafter serve and deliver to the commission objections and a copy of that party's proposed findings and conclusions. The commission shall determine the findings of fact and conclusions of law to be entered." <i>Id.</i> at § 2 1-5-9(b).</p> <p>"Any commissioner who agrees with the decision but for different reasons may file a written concurring decision. Any commissioner may file a written dissenting decision." <i>Id.</i> at § 2 1-5-9(c).</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>Within 30 days of the conclusion of a formal disciplinary hearing, the hearings examiner must submit a report to the board. <i>See</i> ODC R. 23(a). The report must include: (1) findings of facts; (2) conclusions of law; (3) each ethical rule violated and constituting grounds for discipline; (4) any aggravating and mitigating circumstances; and (5) Recommended disposition. <i>See id.</i></p> <p>Once the examiner's report has been submitted, either Party may request permission to submit briefs or to present oral argument to the Board. <i>See id.</i> at R. 23(c). Once briefs have been submitted and argued, if any, the Board must promptly: (1) affirm or modify the report of the Hearing Officer or Hearing Committee; (2) remand the case for further proceedings with instructions; or (3) dismiss the Petition for Discipline with the consent of Counsel, when required by RSCH 2.7(d). <i>See id.</i> at R. 24(d).</p>
<p>Department of Consumer Affairs - RICO</p>	<p>"Unless otherwise provided, every decision and order issued by the authority 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." HAR § 16-201-22(a).</p> <p>"The authority 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." <i>Id.</i> at § 16-201-22(b). "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 authority's decision is complete upon transmission by registered or certified mail, return receipt requested, to the party at the party's last known address." <i>Id.</i> at § 16-201-22(c).</p> <p>"When the hearing has been held before the authority, the authority, as expeditiously as possible, after the close of the hearing, shall issue its final decision and order together with separate findings of fact and conclusions of law. All findings of fact, conclusions of law, final decisions and orders issued by the authority shall be based upon the whole record and supported by reliable probative and substantial evidence, including facts on which the authority properly took judicial notice." <i>Id.</i> at §16-201-41.</p> <p>"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 authority a recommended decision together with separate findings of fact, conclusions of law,</p>

	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.” <i>Id.</i> at §16-201-42.
Department of Labor & Industrial Relations	The DLIR’s rules provide very little guidance on the procedures to be followed by the Board in issuing its decision. In fact, the only specific requirements is that all “[d]ecisions and orders of the board shall be signed by at least two members,” HAR § 12-47-3, and that “[t]he chief clerk or designee shall serve a certified copy of the decision or order of the board on the parties, duly appointed representatives, or their attorneys . . . .” <i>Id.</i> at §12-47-51.
Hawai‘i Civil Rights Commission	<p>Upon the conclusion of a hearing, with permission from the hearings examiner, and within the fifteen days after the close of the hearing, the parties may file and serve upon all other parties, proposed findings of fact and conclusions of law. <i>See</i> HAR § 12-46-50. Within sixty days, or longer if extended by the commission, the hearings examiner must file with the commission a “proposed decision” accompanied by findings of fact, conclusions of law, and a remedy when it has found that an unlawful discriminatory practice has occurred. <i>See id.</i> at § 12-46-51. The commission will then serve a copy of the hearings examiner’s proposed decision upon the parties. <i>See id.</i> at 12-46-52.</p> <p>Any party adversely affected by the hearings examiner’s proposed decision may file a <u>written exception</u> with the hearing examiner with fifteen days after being served with a copy of the decision. <i>See id.</i> at § 12-46-53. Conversely, any party may file a <u>statement in support</u> of the proposed decision with the hearings examiner within fifteen days of being served with a copy of the decision. <i>See id.</i> at § 12-46-54. The hearings examiner will then transmit a copy of the record, proposed decision, and all timely written exceptions and statements in support, to the commission. <i>See id.</i> at § 12-46-55. If written exceptions have been submitted, the commission must afford all parties an opportunity to present oral arguments to the commission concerning the decision prior to issuing its final decision. <i>See id.</i> at § 12-46-56.</p> <p>The time constraints placed upon the commission in issuing its final decision vary according to the alleged violation and whether or not written exceptions have been submitted and argued. <i>See id.</i> at §§ 12-46-56, -57. Ultimately, “every decision and order issued by the commission or hearings examiner shall be in writing or stated in the record. A hearings examiner’s decision shall be accompanied by separate findings of fact and conclusions of law.” <i>Id.</i> at § 12-46-37(a). “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.” <i>Id.</i> at § 12-46-37(b).</p>
Hawai‘i Department of Health	Within thirty days of the conclusion of a hearing, the hearings officer (other than the director or attached entity) must render and serve on all parties the hearings officer’s proposed decision and order, findings of fact, and conclusions of law. <i>See</i> HAR § 11-1-42(a)(1). Additionally, the hearings officer must “[s]et a time limit for any party adversely affected by the hearings officer’s proposal to file and serve specific exceptions to the proposal, designation of parts of the record to consider, and a request for argument before the director or attached entity who will make the final decision.” <i>Id.</i> at § 11-1-42(a)(2); <i>see also id.</i> at § 11-1-42(b) (requirements for written exceptions).

	<p>When the hearings officer is not the final decision maker, “the final decision maker: (1) shall consider any exceptions that a party files, (2) shall consider the whole hearing record or those parts that the parties designate, (3) shall hear any argument that has been requested, and (4) should issue a final decision, order, findings of fact, and conclusions of law within thirty days after the hearings officer files the officer’s proposal or the parties file exceptions and present argument, whichever is later.” <i>Id.</i> at § 11-1-42(c).</p> <p>When the hearings officer is also the final decision maker, “the final decision maker should issue final decisions, orders, findings of fact, and conclusions of law within thirty days after the end of the hearing or the parties’ filing of proposed findings, conclusions, decision, and order, whichever is later.” <i>Id.</i> at § 11-1-42(d).</p> <p>“All final decisions, orders, findings of fact, conclusions of law, opinions, or rulings issued at the conclusion of a contested case shall be served upon the parties in the hearing by mailing a certified copy within a reasonable time to each party or to the party’s attorney of record.” <i>Id.</i> at § 11-1-42(e).</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>“Unless otherwise provided, every decision and order issued by the Commission shall be in writing or stated on the record.” HLC R. § 3-81-19.14(a). “The Commission shall cause a certified copy of the decision and order together with any findings of fact and conclusions of law to be personally served or by certified or registered mail, return receipt requested, to the licensee, the party’s attorney of record, an authorized agent, or officer or director of the corporation.” <i>Id.</i> at § 3-81-19.14(b). “Where a party has failed to appear at an adjudication hearing, service of the Commission’s decision and order to the party is complete upon transmission by registered or certified mail, return receipt requested, to the party’s last known address.” <i>Id.</i> at § 3-81-19.14(c).</p>

	<p align="center"><b>22. Contested Case Hearings: Record of the Hearing</b></p>
<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>The Honolulu Ethics Commission's rules currently provide that a "record of the hearing shall be compiled in conformance with section 91-1(3), HRS." Hon. R. 7.8. However, HRS § 91-1(3) references the definition of a "Party" under Hawai'i Administrative Procedures Act.</p> <p>I believe the proper citation is to HRS § 91-9(e), which requires a record to include:</p> <ol style="list-style-type: none"> <li>(1) All pleadings, motions, intermediate rulings;</li> <li>(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;</li> <li>(3) Offers of proof and rulings thereon;</li> <li>(4) Proposed findings and exceptions;</li> <li>(5) Report of the officer who presided at the hearing;</li> <li>(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.</li> </ol> <p>HRS § 91-9(e).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>"All testimony and other evidence taken at the hearing shall be recorded." Haw. R. 6.8(a). "Copies of the transcripts of such record shall be available to the complainant or alleged violator at their own expense and the fees therefor shall be deposited in the County's general fund." <i>Id.</i> at R. 6.8(b).</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"The record of the hearing shall be compiled pursuant to law. The complainant and the respondent shall be entitled to a copy of the record of the hearing or any part thereof upon application to the board and upon payment of the costs therefor." Maui R. § 04-101-69.4.</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>"The record of the hearing shall be compiled pursuant to law. The complainant and the respondent shall be entitled to a copy of the record of the hearing or any part thereof upon application to the Board and upon payment of the costs therefore." Kauai R. 8.6.</p>
<p>Hawai'i State Ethics Commission</p>	<p>"The record of the hearing shall be compiled in conformance with § 91-9(e), HRS. The commission will make provisions for stenographic record of the testimony, but it shall not be transcribed unless requested for purposes of rehearing or court review. The complainant and the alleged violator shall be entitled to a copy of the record of the hearing or any part thereof upon application to the commission and upon payment of the costs thereof." HAR § 21-5-10.</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>"Each Hearing Officer or Hearing Committee shall record and preserve in writing, on tape, or by the use of such other device as appropriate, the proceedings and evidence in the Formal Disciplinary Proceeding. In designating the manner of recording and preserving the proceeding, the Hearing Officer or Hearing Committee may include any provision to assure that the record will be accurate and trustworthy. Each Formal Hearing shall be transcribed, and the original of each transcript shall be filed as part of the Record of Formal Disciplinary Proceeding." ODC R. 22(e).</p>
<p>Department of Consumer Affairs - RICO</p>	<p>The record shall consist of the following:</p> <ol style="list-style-type: none"> <li>(1) All pleadings, motions, and intermediate rulings;</li> <li>(2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the authority or hearings officer;</li> <li>(3) All offers of proof and rulings thereon;</li> <li>(4) All proposed findings and exceptions;</li> </ol>

- (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 member of the authority who conducted the hearing;
- (7) Staff memoranda submitted to the members of the authority 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; and
- (8) The investigation report, when the report has been made part of the record, after having been provided to all parties and admitted at the hearing pursuant to section 16-201-29.

HAR § 16-201-32(a).

“Unless the authority has been notified in writing of a party’s request for judicial review within the time permitted for requesting judicial review, the authority 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.” *Id.* at § 16-201-32(b).

“Unless supplemented as provided in this section, in hearings where the issue for determination is whether the authority properly denied an application for licensure, the record shall consist of only the information presented to the authority for consideration in reviewing the application. No other information regarding qualification for licensure shall be admitted unless agreed upon by all parties.” *Id.* at 16-201-32.5.

Department of Labor  
& Industrial  
Relations

While the DILR’s rules provide the following provisions regarding the record on appeal before the Appeals Board, the rules are otherwise silent with respect to the record resulting from Appeals Board hearings and decisions.

“The original papers and exhibits filed with the board, the transcript of any proceedings requested, and the indexes prepared by the chief clerk of the board shall constitute the record on appeal.” HAR § 12-47-56(a). “Within ten days after filing the notice of appeal the appellant shall order from a certified court reporter, a transcript of the board's audio tape recording of the proceedings which are not already on file. The order shall be in writing and within the same ten-day period, a copy of the order for transcript shall be filed with the chief clerk of the board who shall forward the board's audio tape recording of the proceedings to the designated certified court reporter. If no transcript is to be ordered, within the same period, the appellant shall file a certificate to that effect.” *Id.* at § 12-47-56(b).

“Any appellee may, within the following ten days, either order the transcript or move the board for an order requiring the appellant to do so.” *Id.* at § 12-47-56(c). “The court reporter shall file with the board the transcript of the proceedings within thirty-five days after the filing of the notice of appeal. If the court reporter is unable to complete the transcription within that period, the court reporter may request in writing a continuance of the filing for up to an additional fifty days.” *Id.* at § 12-47-56(d). “At the time of ordering, a party shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript.” *Id.* at § 12-47-56(e).

Hawai'i Civil Rights Commission	<p>The record shall consist of the following:</p> <ol style="list-style-type: none"> <li>(1) All pleadings, motions, memoranda and intermediate rulings;</li> <li>(2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the commission or hearings examiner;</li> <li>(3) All offers of proof and rulings thereon;</li> <li>(4) All proposed findings and exceptions;</li> <li>(5) The proposed decision of the hearings examiner who presided at the hearing; and</li> <li>(6) The investigatory report shall not be made part of the record or disclosed to the hearings examiner unless the report has been provided to the respondent and introduced at the hearing pursuant to section 12-46-41.</li> </ol> <p>HAR § 12-46-44(a).</p> <p>“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, 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.” <i>Id.</i> at § 12-46-44(b).</p>
Hawai'i Department of Health	Not expressly provided.
Honolulu Liquor Commission (“HLC R.”)	<p>“A record shall be made of all oral testimony taken at the hearing. Testimony taken at the hearing may be electronically recorded by video or audio tape and need not be transcribed. The cost of copying any transcription shall be paid by the requesting party, unless otherwise provided. The Commission shall make the written record of the testimony available to the parties for use in preparing exceptions to or statements in support of a recommended decision or recommended order.” HLC R. § 3-85-91.3(b).</p> <p>Unless otherwise provided by law, the record shall consist of the following:</p> <ol style="list-style-type: none"> <li>(1) All pleadings, motions, and intermediate rulings;</li> <li>(2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the Commission;</li> <li>(3) All offers of proof and rulings thereon; and</li> <li>(4) All proposed findings and exceptions.</li> </ol> <p><i>Id.</i> at § 3-85.91.3(c).</p>

### 23. Contested Case Hearings: Mediation

<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"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." Hon. R. 7.9(a).</p> <p>"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." <i>Id.</i> at R. 7.9(b). "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." <i>Id.</i> at R. 7.9(c).</p> <p>"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." <i>Id.</i> at R. 7.9(d). "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." <i>Id.</i> at R. 7.9(e).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>Not expressly provided.</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>Not expressly provided.</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>Not expressly provided; however, "informal disposition may be made of any contested case by stipulation, agreed settlement, [or] consent order . . ." Kauai R. 8.</p>
<p>Hawai'i State Ethics Commission</p>	<p>Not expressly provided.</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>Not expressly provided.</p>
<p>Department of Consumer Affairs - RICO</p>	<p>Not expressly provided; however, one of the purposes of the prehearing conference is "to explore informal satisfaction of the petition . . ." <i>See</i> HAR § 16-201-30(a).</p>
<p>Department of Labor &amp; Industrial Relations</p>	<p>Not expressly provided; however, "informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default." HAR § 12-47-45.</p>
<p>Hawai'i Civil Rights Commission</p>	<p>"At any time after the filing of a complaint, but prior to the issuance of a determination, the executive director may encourage the parties to resolve the complaint through a predetermination settlement." HAR § 12-46-13(a). "If the complainant and the respondent agree to the terms of settlement, the settlement shall be reduced to writing, and be signed by the parties and the executive director. If approved, the case will be closed without a finding on the merits of the complaint</p>

	<p>and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested, to the complainant and the respondent.” <i>Id.</i> at § 12-46-13(b).</p> <p>“If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.” <i>Id.</i> at § 12-46-13(c). “The commission shall not subject either party to prejudice as a result of the party’s either participating or refusing to participate in a predetermination settlement attempt.” <i>Id.</i> at § 12-46-13(d). “Participation by the respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the applicable chapter or part of HRS or a waiver of the right to a commission determination on the issues raised by the complaint if a settlement cannot be achieved.” <i>Id.</i> at § 12-46-13(e). “A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, a commission initiated complaint or a complaint in which the allegations are like or related to the individual allegations settled.” <i>Id.</i> at § 12-46-13(f).</p>
Hawai‘i Department of Health	Not expressly provided; however, “informal disposition may be made of all or part of any contested case by stipulation, settlement, consent order, or default.” HAR § 11-1-21(b).
Honolulu Liquor Commission (“HLC R.”)	<p>“The Commission may encourage parties to a contested case hearing to participate in mediation prior to the hearing subject to conditions imposed by the Commission described herein or in rules adopted by the Commission. The Commission may suspend all further proceedings in the contested case pending the outcome of the mediation.” HLC R. § 3-81-17.6(a).</p> <p>“No mediation period under this Rule shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the Commission.” <i>Id.</i> at R. § 3-81-17.6(b). “The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the Commission may select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the Commission, or provided by law.” <i>Id.</i> at R. § 3-81-17.6(c).</p> <p>“No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the matter, including the contested case hearing or a court proceeding.” <i>Id.</i> at R. § 3-81-17.6(d), “No preparatory meetings, briefings, or mediation sessions under this Rule shall constitute a meeting under Section 92-2, HRS. Any mediator notes under this Rule shall be exempt from Section 92-21 and Chapter 92F, HRS. Section 91-10, HRS, shall not apply to mediation proceedings.” <i>Id.</i> at R. § 3-81-17.6(e).</p>

**24. Contested Case Hearings: Request for Reconsideration**

<p>County of Honolulu Ethics Commission ("Hon. R.")</p>	<p>"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. . . ." Hon. R. 8.1(a). All such requests:</p> <ol style="list-style-type: none"> <li>(1) Shall be in writing;</li> <li>(2) Shall set forth with specificity the reasons for the request;</li> <li>(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</li> <li>(4) Shall be served on all parties to the matter.</li> </ol> <p><i>Id.</i></p> <p>"The commission may deny or grant a request for reconsideration." <i>Id.</i> at R. 8.2(a).          " 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." <i>Id.</i> at R. 8.2(b). "If the motion for reconsideration is granted, the same rules that are applicable to the rendering of advisory opinions shall be observed." <i>Id.</i> at R. 8.2(c).</p>
<p>County of Hawai'i Ethics Commission ("Haw. R.")</p>	<p>Not expressly provided.</p>
<p>County of Maui Ethics Commission ("Maui R.")</p>	<p>"Within ten days after entry of a formal hearing opinion, a party may submit a written motion to the board to reconsider or rehear its final opinion. The board may grant the motion where the petition sets forth facts or law of a convincing nature demonstrating one or more of the following: (1) an intervening change in controlling law; (2) the availability of new evidence of type previously unavailable; or (3) the need to correct clear error or manifest injustice." Maui R. § 04-101-69.3.</p>
<p>County of Kauai Ethics Commission ("Kauai R.")</p>	<p>"Within ten (10) days after rendering its final decision, the Board may entertain a written petition to reconsider its decision. The petition shall be promptly granted or denied in writing." Kauai R. 8.4(c).</p>
<p>Hawai'i State Ethics Commission</p>	<p>"Within ten days after entry of an order, decision, or ruling, the commission may entertain a written petition to reconsider or rehear its final order, decision, or ruling. The petition shall be granted or denied with reasonable expedition. Denial of such petition shall be in writing." HAR § 21-5-7(f).</p>
<p>Office of Disciplinary Counsel ("ODC R.")</p>	<p>Not expressly provided.</p>
<p>Department of Consumer Affairs - RICO</p>	<p>"Any party, within ten days after receipt of any final order may move the authority to reconsider its final order or decision. The motion shall be filed with the authority and shall state specifically what points of law or fact the authority 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 authority. Oral argument on the motion shall be with the discretion of the authority. 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 authority's final order or decision." HAR § 16-201-23.</p>
<p>Department of Labor &amp; Industrial</p>	<p>"In the absence of an appeal and within thirty days after mailing of a copy of the board's decision or order, the board may, upon the request of any party, or upon its</p>

Relations	<p>own motion, reconsider or reopen the matter. If reopening is allowed, the board may take further evidence or may modify its decision or order. The time to initiate judicial review shall run from the date of mailing of the further decision if the matter has been reconsidered or reopened. If the request for reconsideration or reopening is denied, the time to initiate judicial review shall run from the date of mailing the denial decision.” HAR § 12-47-53(a).</p> <p>“The request for reconsideration or reopening shall be in writing and shall be served upon all parties. The request shall specify the reasons why reconsideration or reopening is warranted.” <i>Id.</i> at § 12-47-53(b). “A hearing on the request for reconsideration or reopening may be held at the board’s discretion.” <i>Id.</i> at § 12-47-53(c).</p>
Hawai‘i Civil Rights Commission	<p>“Any party within ten days after receipt of any final order may move the commission to reconsider its final order or decision. The motion shall be filed with the commission and shall state specifically what points of law or fact the hearings examiner or commission has overlooked or misunderstood, or any newly discovered evidence, 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.” HAR § 12-46-38.</p>
Hawai‘i Department of Health	<p>Not expressly provided.</p>
Honolulu Liquor Commission (“HLC R.”)	<p>“Any request or motion to reconsider a decision made by the Commission or for a new hearing, or for a stay of the decision or order shall be filed with the Commission within fifteen (15) days from the date the decision and order is served. A suspension or revocation of license shall commence following the fifteenth day after notification.” HLC R. § 3-85-91.10.</p>

	<b>25. Miscellaneous: Formatting</b>
County of Honolulu Ethics Commission ("Hon. R.")	Not expressly provided.
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided.
County of Maui Ethics Commission ("Maui R.")	Not expressly provided.
County of Kauai Ethics Commission ("Kauai R.")	Not expressly provided.
Hawai'i State Ethics Commission	Not expressly provided.
Office of Disciplinary Counsel ("ODC R.")	<p>Briefs shall:</p> <ol style="list-style-type: none"> <li>(1) Be double spaced, except that titles, captions, block quotes and footnotes may be single spaced;</li> <li>(2) Be printed on plain white paper, single sided, in not less than 14 point proportionally spaced font, or 12 point monospaced font, for both body text and footnotes;</li> <li>(3) Initial briefs (Opening and Answering) shall not exceed 35 pages of text, exclusive of title page, table of contents, and table of authorities. Reply briefs must not exceed 10 pages; and</li> <li>(4) Briefs in excess of 15 pages must include a table of contents and table of authorities.</li> </ol> <p>ODC R. 24(a)(vii).</p>
Department of Consumer Affairs - RICO	<p>"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 weight, except that documentary exhibits may be larger, if folded to the size of the pleadings to which they are attached." HAR § 16-201-9(a). "All copies shall be legible on paper 8-1/2 x 11 inches in size and of at least sixteen weight. No "wet" type copies shall be accepted." <i>Id.</i> at § 16-201-9(b). "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." <i>Id.</i> at § 16-201-9(c).</p> <p>"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." <i>Id.</i> at § 16-201-9(d). "Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the authority, except that when a petition has been assigned to a hearings officer, all pleadings, motions, memoranda, and other documents shall be filed with the hearings officer." <i>Id.</i> at § 16-201-9(e).</p>

<p>Department of Labor &amp; Industrial Relations</p>	<p>“Pleadings, briefs, and other documents shall be typewritten upon paper 8-1/2 x 11 inches in size. Tables, maps, charts, exhibits, or appendices may be larger but shall be folded to that size where practical. The impression shall be double spaced, except that footnotes and quotations in excess of a few lines may be single spaced. Reproduction may be by any process which makes clear and permanently legible copies. A facsimile shall not be allowed as a substitute for an original, where an original document is required.” HAR § 12-47-13(a).</p> <p>“Pleadings, briefs, and other documents shall show the title of the case, the docket number, the nature of the document, and the name, address, and telephone number of the person or attorney filing the document.” <i>Id.</i> at § 12-47-13(b). “The original of each document, including appeals, complaints, answers, motions, notices, briefs, and amendments shall be signed and dated in black ink by each party or its authorized representative. Any handwritten entries on documents shall also be in black ink and signed to acknowledge responsibility.” <i>Id.</i> at § 12-47-13(c).</p>
<p>Hawai‘i Civil Rights Commission</p>	<p>“Petitions, motions, and other pleadings shall be typed in twelve point pica or equivalent type size upon good quality paper, 8-1/2 x 11 inches in size and of at least sixteen weight, except that documentary exhibits may be larger, if filed to the size of the pleadings to which they are attached.” HAR § 12-46-27(a). “All copies shall be legible on paper 8-1/2 x 11 inches in size and of at least sixteen weight. No “wet” type copies shall be accepted.” <i>Id.</i> at § 12-46-27(b).</p> <p>“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.” <i>Id.</i> at § 12-46-27(c). “All pleadings shall be signed in black 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.” <i>Id.</i> at § 12-46-27(d).</p> <p>“Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the commission hearings examiner.” <i>Id.</i> at § 12-46-27(e).</p>
<p>Hawai‘i Department of Health</p>	<p>Not expressly provided.</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>“The first page of every pleading in an adjudication hearing 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 name of the proceeding and case number, if any.” HLC R. § 3-85-91.4(a). “All pleadings in an adjudication hearing 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 and correct and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.” <i>Id.</i> at § 3-85-91.4(b).</p> <p>“Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the Commission.” <i>Id.</i> at § 3-85-91.4(c).</p>

	<b>26. Miscellaneous: Computation of Time</b>
County of Honolulu Ethics Commission ("Hon. R.")	Not expressly provided.
County of Hawai'i Ethics Commission ("Haw. R.")	Not expressly provided.
County of Maui Ethics Commission ("Maui R.")	"In computing any period of time under these rules, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday." Maui R. § 04-101-31.
County of Kauai Ethics Commission ("Kauai R.")	"The day of the act, event or default is not to be included in computing any period of time prescribed or allowed by the rules, by order of the Board, or by any applicable law. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday recognized by the State of Hawai'i, in which event, the period runs until the next day which is not a Saturday, Sunday, or holiday." Kauai R. 2.2.
Hawai'i State Ethics Commission	"In computing any period of time prescribed or allowed either by these rules or by order of the commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday." HAR § 21-2-2.
Office of Disciplinary Counsel ("ODC R.")	Not expressly provided.
Department of Consumer Affairs - RICO	"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 holiday shall not be considered a holiday for the purpose of these computations." HAR § 16-210-14(a).
Department of Labor & Industrial Relations	"In computing any period of time specified under this chapter, in a notice, or in any order of the board, the time begins with the day following the act, event, or default and includes the last day of the period so computed, unless it is a Saturday, Sunday, or holiday; in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. As used in this chapter, "holiday" includes any day designated as such by section 8-1, HRS." HAR § 12-47-19.
Hawai'i Civil Rights Commission	"The time in which any act provided by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, HRS." HAR § 12-46-3.
Hawai'i Department of Health	"In computing any period of time prescribed or allowed by these rules or by order of the department, the day from which the period runs is excluded and the last day is

	<p>included. The period shall be extended, if necessary, to ensure that the last day falls on a normal State workday.” HAR § 11-1-7.</p>
<p>Honolulu Liquor Commission (“HLC R.”)</p>	<p>“Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period shall run 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 holiday shall not be considered a holiday for the purpose of these computations.” HLC R. § 3-81-19.8(a).</p> <p>“The hours of a day during which documents will be accepted for filing by the Commission shall be those specified in Section 80-1, HRS.” <i>Id.</i> at § 3-81-19.8(b).</p>

**4-20-16**

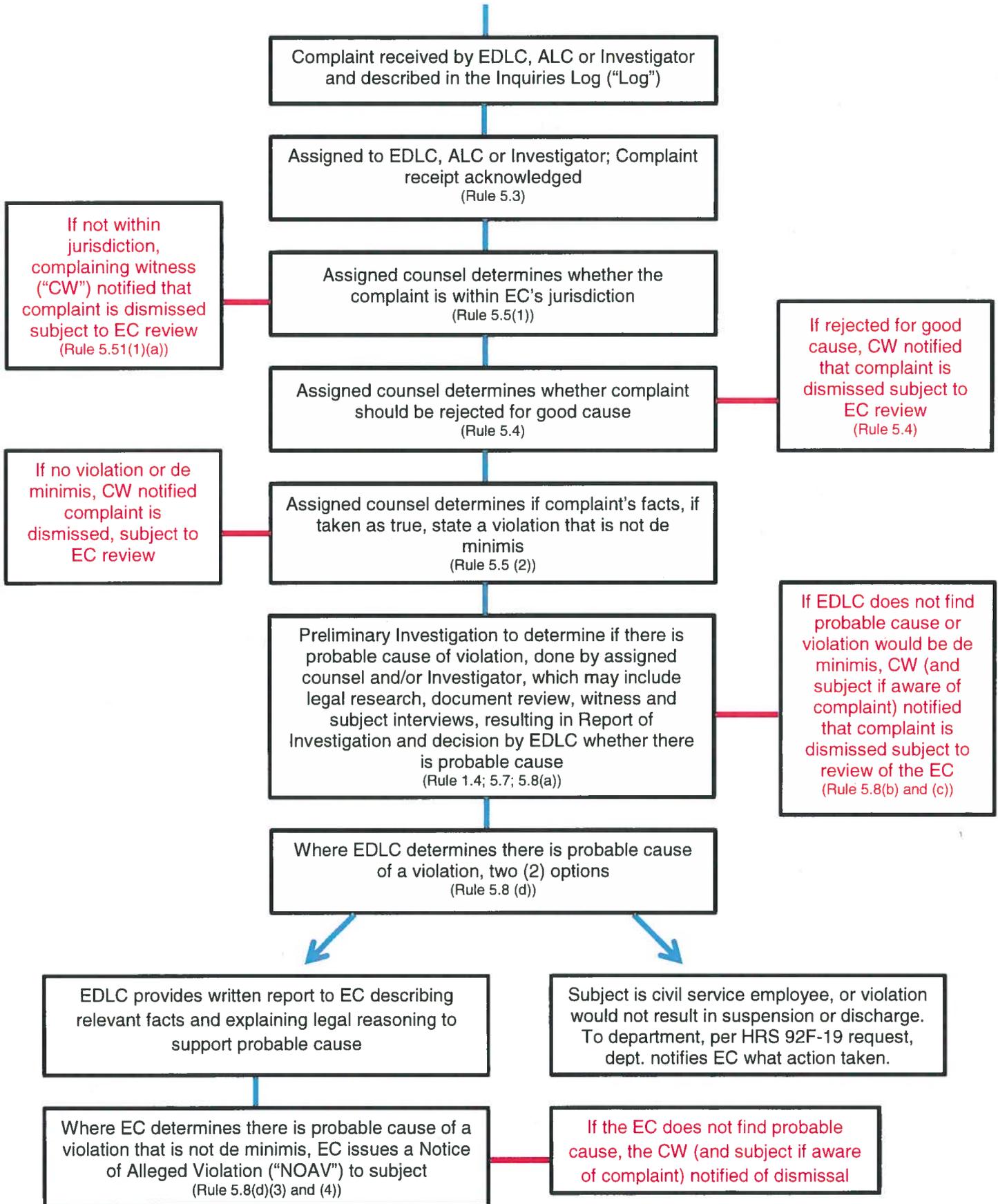
**OPEN – 8**

**Agenda Item II.B.11., Pg. 5**

**[Work Flow Charts (2)]**

# WORK FLOW CHART COMPLAINTS

(ECRP Rules 5.1; 5.2;5.2(a); 1.4)



# WORK FLOW CHART REQUESTS FOR ADVICE (“RFA”)

(Rules 4.1 – 4.2 ECRP; Rule 1.4)

