

DEPARTMENT OF THE ATTORNEY GENERAL

Repeal of the Rules of the
Department of the Attorney General
Relating to Notaries Public and
Adoption of Chapter 5-11, Hawaii Administrative Rules
April 17, 2008

SUMMARY

1. Rules of the Department of the Attorney General, Relating to Notaries Public, adopted on August 10, 1959 and October 14, 1964, are repealed.

2. Chapter 5-11, Hawaii Administrative Rules, entitled "Notaries Public" is adopted.

Iman#222894

HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 11

NOTARIES PUBLIC

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SUBCHAPTER 1

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes, as amended, to the end that the provision thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, or advertise or represent oneself as a notary public, without a current commission previously obtained from the attorney general. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-3 Conduct. Every notary public shall perform notary public duties in accordance with chapter 456, HRS, this chapter, and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these may be amended. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-7)

§5-11-4 Powers. Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19)

§5-11-5 Official seal. (a) A notary public shall obtain and keep an official seal of one type, either an engraved seal or a rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii."

(b) The notary public shall authenticate all of the notary public's official acts, attestations, certifications, and instruments with the notary public's official seal.

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

(d) The notary public shall surrender the notary public's seal to the attorney general within ninety days of resignation, removal from office, or the expiration of a term of office without renewal. Failure to comply with this requirement may result in a fine not more than \$200. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3)

§5-11-6 Official signature. (a) A notary public shall sign on every notarial certificate, at the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary

public's commission. [Eff **MAY 05 2008**] (Auth: HRS
§§28-10.8, 456-8) (Imp: HRS §456-3)

§5-11-7 Acceptable forms of identification of signers. No acknowledgment, jurat, or other instrument shall be taken, unless the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-15)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public. The certificate shall include the printed name of the notary public, the official stamp or seal of the notary public, identification of the jurisdiction in which the notarial act is performed, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.3, 456-8) (Imp: HRS §456-15)

§5-11-9 Record book. (a) A notary public shall record all of the notary public's transactions, as prescribed in chapter 456, HRS.

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

(c) The pages of the record book shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each record book the notary public's name, business address, commission number, and commission expiration date, the book number, and the beginning and ending dates of the

notarial acts recorded in that book.

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

(f) The notary public shall deposit the notary public's record book with the attorney general within ninety days of the end date of the notary public's commission. Failure to comply with this requirement may result in a fine of no less than \$50 and no more than \$500. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-15, 456-16)

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

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

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

[Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

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

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

employed.

(c) This section shall apply to notaries in government service. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-12 Term of commission. The term of office of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of office, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-13 Forfeited commission. (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-14 Suspended commission. No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8)

(Imp: HRS §456-1)

§5-11-15 Revoked commission. A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

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

(1) Surrender the notary public's commission certificate, seal, and notarial record books as provided in section 5-11-17(a); and

(2) Cease conducting all notarial services.

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

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

[Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-17 Surrender of notary public commission certificate, seal, and record book. (a) Within ninety days of resignation, removal from office, or the expiration of a term of office without renewal, the notary public shall:

(1) Surrender the notary public's commission certificate to the attorney general for the purpose of destruction;

(2) Surrender the notary public's seal to the attorney general for the purpose of defacement; and

(3) Deposit the notary public's record book with the attorney general.

(b) Upon the death of the notary public, the notary public's employer or personal representative shall within ninety days fulfill the requirements of subsection (a).

(c) Failure to comply with subsection (a)(2) may result in a fine not more than \$200. Failure to

comply with subsection (a)(3) may result in a fine not less than \$50 nor more than \$500.

[Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §§456-1, 456-3, 456-7, 456-16)

§5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book. Within ten days after loss, misplacement, or theft of the notary public's official seal or notarial record book or both, a notary public shall deliver written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3, 456-16)

SUBCHAPTER 2

APPLICATIONS

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

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

hours.

(b) The application may require the applicant to provide the following:

- (1) The applicant's legal name;
- (2) Verification that the applicant is at least eighteen years of age;
- (3) The applicant's current residence, business, and mailing addresses;
- (4) The date and place of any conviction of a penal crime;
- (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; and
- (6) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.

(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State. [Eff **MAY 05 2008**]
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

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

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the decision regarding the application for a commission. If the application is denied, written notification of the denial shall state the reason for

denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§28-10.8, 91-13.5, 456-8)

§5-11-23 Application for renewal of notary public commission. (a) Each notary public shall be responsible for timely renewing the notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general before or on the notary public's current date of expiration of commission shall be considered timely filed.

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

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

(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

SUBCHAPTER 3

EXAMINATIONS

§5-11-32 Examination. (a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney

general. The minimum passing score is eighty percent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary examination on the scheduled examination date three consecutive times shall require that the applicant submit a new application for a notary public commission with updated supporting letters.

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

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

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

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-7, 456-8)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notary public duties, and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1, 456-7)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

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

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;
- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (9) Procuring a commission through fraud, misrepresentation, or deceit;
- (10) Professional misconduct, incompetence, gross

- negligence, or manifest incapacity in the practice of a notary public;
- (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
 - (12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;
 - (13) Violating any condition or limitation upon which a conditional or temporary commission was issued;
 - (14) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
 - (15) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a notary public commission to be unfit or an improper person to hold a commission;
 - (16) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
 - (17) Criminal conviction, whether by nolo contendere or otherwise, of a crime related to the qualifications, functions, or duties of a notary public, or involving theft, fraud, dishonesty, or false statement;
 - (18) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in another jurisdiction within thirty days of the disciplinary decision; and
 - (19) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general.
- [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

SUBCHAPTER 5

FEES

§5-11-46 Fees. (a) The attorney general shall charge and collect the following fees, which shall be nonrefundable:

- (1) Application for commission of notary public commission, \$10;
- (2) Application for renewal of notary commission, \$10;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of notary public commission, \$40;
- (6) Renewal of notary public commission, \$40;
- (7) Each examination, \$10;
- (8) Restoration of forfeited commission, \$60;
- (9) Commission name change, \$10;
- (10) Change in judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$3.85 if the manual is to be mailed;
- (12) Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction; and
- (13) Copying, per printed page, 25 cents;

(b) All fees prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.
[Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-9)

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.
The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general.
[Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-1)

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

renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff **MAY 05 2008**] (Auth: HRS §§456-1) (Imp: HRS §456-1)

§5-11-53 Demand for a hearing. Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §456-1)

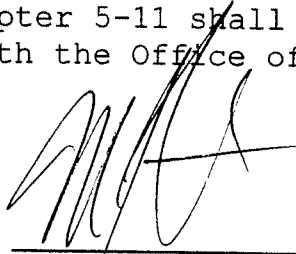
§5-11-54 Proceedings upon demand for a hearing. If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §§91-13.1, 456-1)

§5-11-55 Exceptions. If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an exception to that requirement if the attorney general determines such action to be in the best interest of the State. [Eff **MAY 05 2008**] (Auth: HRS §§28-10.8, 456-6) (Imp: HRS §456-1)

DEPARTMENT OF THE ATTORNEY GENERAL

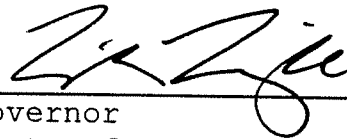
Chapter 5-11, Hawaii Administrative Rules, on the Summary Page dated April 17, 2008, was adopted on April 17, 2008, following a public hearing held on April 14, 2008, after public notice was given in the The Garden Isle on February 29, 2008, in the Honolulu Star Bulletin, The Maui News, and West Hawaii Today on March 2, 2008, and in The Hawaii Tribune-Herald on March 9, 2008.

The adoption of chapter 5-11 shall take effect ten days after filing with the Office of the Lieutenant Governor.



Attorney General


APPROVED:



Governor
State of Hawaii

Dated: APR 24 2008

APPROVED AS TO FORM:



Deputy Attorney General

'08 APR 25 P4:36

LIEUTENANT GOVERNOR'S
OFFICE

Filed