

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-34
Hawaii Administrative Rules

December 6, 2001

SUMMARY

1. §§5-34-1, 5-34-2, 5-34-3, 5-34-4, and 5-34-5 are amended.
2. §5-34-6 is repealed.
3. §§5-34-7 and 5-34-8 are amended.
4. §§5-34-10, 5-34-11, 5-34-12, 5-34-13, 5-34-14, 5-34-14.5, 5-34-15, and 5-34-16 are amended.
5. §5-34-17 is repealed.
6. §§5-34-18, 5-34-19, 5-34-20, and 5-34-21 are amended.
7. §5-34-22 is repealed.
8. A new §5-34-25 is added.
9. Chapter 34 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

SUBTITLE 3 CHILD SUPPORT ENFORCEMENT

CHAPTER 34

PRACTICE AND PROCEDURE FOR ADMINISTRATIVE PROCESS

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SUBCHAPTER 1

GENERAL PROVISIONS

§5-34-1 Purpose. This chapter provides rules of practice and procedure to govern expedited administrative proceedings commenced within the department of the attorney general pursuant to 42 United States Code section 666, and chapters 576E and 91, Hawaii Revised Statutes, for the purpose of establishing, modifying, suspending, terminating, and enforcing child support orders while guaranteeing a fair evidentiary hearing. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §91-2, HRS chapter 576E, 45 C.F.R. §303.101)

§5-34-2 Definitions. For the purposes of this chapter:

"Administrator" means the hearings officer appointed and commissioned by the attorney general as the supervisor of the OCSH.

"Agency" means the child support enforcement agency as defined in section 576E-1, Hawaii Revised Statutes.

"Custodial parent" means the custodial parent as defined in section 576E-1, Hawaii Revised Statutes.

"Debt" means public assistance debt as described in section 346-37.1, Hawaii Revised Statutes.

"Department" means the department of the attorney general.

"Hearings officer" means a hearings officer as defined in section 576E-1, Hawaii Revised Statutes.

"Office" means the office of child support hearings as defined in section 576E-1, Hawaii Revised Statutes.

"Party" means a person, state, or agency named in a proceeding or any interested person or aggrieved person entitled as of right to participate in the proceeding before a hearings officer.

"Proceedings" means the expedited administrative proceedings under this chapter pursuant to chapters 576E and 91 and, when otherwise applicable, chapters 231, 571, 576B, 576D, 580, and 584, Hawaii Revised Statutes.

"Responsible parent" means a responsible parent as defined in section 576E-1, Hawaii Revised Statutes. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §§91-2, 576E-1)

§5-34-3 Office. All communications to the hearings officers as authorized by this chapter, unless otherwise specifically directed, shall be addressed to:
Office of Child Support Hearings
Department of the Attorney General
State of Hawaii
Kakuhihewa Building
601 Kamokila Boulevard, Room 436
Kapolei, HI 96707

All communications to the administrative process branch of the agency, unless otherwise specifically directed, shall be addressed to:

Administrative Process Branch
Child Support Enforcement Agency
Department of the Attorney General
State of Hawaii
Kakuhihewa Building
601 Kamokila Boulevard, Room 251
Kapolei, HI 96707

[Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-4 Pro se appearance. A party may appear on his or her own behalf at any stage of the proceedings. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §§91-2, 576E-9)

§5-34-5 Representation. A party, at his or her own expense, may be represented by legal counsel or any other individual authorized by the party at any stage of the proceedings. A representative may be required to furnish proof of authorization and qualification to act in that capacity. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§ 91-2, 576E-9) (Imp: HRS §§91-2, 576E-9)

§5-34-6 REPEALED. [R DEC 24 2001]

§5-34-7 Consolidation. The hearings officer, sua sponte, or upon any party's motion timely made and for good cause shown, may consolidate two or more proceedings which involve substantially the same issues, arising out of the same general transaction, or involving the same person or persons. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-8 Requests and motions. (a) Requests and motions regarding a hearing shall be in writing, shall be signed by the party or representative submitting the request or motion, and shall include the following:

- (1) The date the request is written;
- (2) The name, address, and telephone number of the party or representative making the request;
- (3) The names of the responsible parent and the custodial parent;

- (4) The date, time, and location of the hearing;
 - (5) The agency's case number; and
 - (6) The request and the reason for the request.
- (b) Unless otherwise provided, motions and requests regarding a hearing shall be submitted to the office. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-9 Computation of time. In computing any period of time prescribed or allowed by these rules, 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, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawaii Revised Statutes. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-10 Hearings officer. A hearings officer shall have the following powers:

- (1) Issue notices;
- (2) Administer oaths and affirmations;
- (3) Consolidate hearings or sever proceedings;
- (4) Subpoena and examine witnesses;
- (5) Issue subpoenas;
- (6) Rule upon offers of proof, receive relevant evidence, and exclude evidence which is irrelevant, immaterial, repetitious, or cumulative;
- (7) Regulate the course and conduct of the hearing, including the referral for contempt proceedings;

- (8) Regulate the manner of any examination so as to prevent the harassment, or intimidation, of any witness at the hearing;
- (9) Remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) Hold conferences, before or during the hearing for the settlement or simplification of issues;
- (11) Rule on motions and dispose of procedural matters;
- (12) Conduct hearings and enter orders as authorized under chapter 576E, Hawaii Revised Statutes, and other applicable statutes;
- (13) Dispose of other matters that properly arise in the course of contested proceedings;
- (14) Continue hearings sua sponte or upon motion of the parties; and
- (15) Dismiss the action whenever it appears by motion of the parties or sua sponte by the hearings officer for good cause shown. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§576E-2, 576E-10) (Imp: HRS §§576E-2, 576E-10, 91-2, 45 C.F.R. §303.101)

§5-34-11 Disqualification of hearings officer.

(a) A hearings officer may disqualify himself or herself when the hearings officer's impartiality might reasonably be questioned, including, but not limited to instances where:

- (1) The hearings officer has a financial interest in the subject matter in controversy or in a party to the proceeding such that the outcome of the proceeding will be substantially affected; or
- (2) The hearings officer or his or her spouse is related to a party to the proceeding within the third degree.

(b) A hearings officer shall not be disqualified if after disclosing the basis of disqualification on the record, all parties agree the officer may nevertheless preside. [Eff 2/13/89; am and comp Oct

31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2)
 (Imp: HRS §91-2)

. §5-34-12 Ex parte communications. (a) In any administrative proceeding before a hearings officer, the agency or any other government agency shall not privately communicate on the merits of the case with the hearings officer.

(b) It shall be improper for the department or any person interested in a proceeding to seek to influence the judgment of the hearings officer. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-13 Subpoenas; where provided by law; form.
 (a) A hearings officer, sua sponte, or at the request of a party, shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents or things at the hearing. The hearings officer may require that any request for the issuance of a subpoena identify with particularity the person to be subpoenaed or the documents or things desired. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in family court in the state. Every subpoena shall state the name of the department and the title of the proceeding, and shall command the person to whom it is directed to attend and give testimony or to produce the documents or things designated. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law. The party requesting issuance of the subpoena shall be responsible for preparation and service of the subpoena and for tendering payment of any fees for attendance and mileage required by law. When the subpoena is issued on behalf of the State or a county, or an officer or agency of the State or a county, fees for attendance and mileage need not be tendered.

(b) Upon motion timely made, or upon the hearings officer's own motion, the hearings officer may quash or modify the subpoena if it is unreasonable or oppressive. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§576E-2, 91-2) (Imp: HRS §§91-2, 576E-2, 576E-10)

SUBCHAPTER 2

PROCEDURES

§5-34-14 Administrative hearings; transmission of case file; notice. (a) Upon receipt of the request for hearing, the agency shall transmit a hearings case file to the office.

(b) All parties shall be given written notice of the hearing at least fifteen days before the hearing. The notice shall include the date, time, place, and nature of the hearing. [Eff 2/13/89; 7/27/90; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 91-9, 576E-4, 576E-9) (Imp: HRS §§91-2, 91-9, 576E-4, 576E-9)

§5-34-14.5 Disposition of actions prior to hearing. (a) Following a request for hearing, a hearings officer may grant:

- (1) A waiver of the requested hearing;
- (2) A motion to dismiss; or
- (3) A motion to continue.

(b) The request of waiver or motion to dismiss or continue shall be made as soon as the facts requiring the request or motion become apparent. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 576E-10) (Imp: HRS §91-2)

§5-34-15 Conduct of hearings. (a) Unless authorized by the hearings officer, attendance at a hearing shall be limited to the parties. The hearing

shall be recorded. A copy of the recording shall be available upon written request submitted to the office. The office does not provide transcripts of recordings.

(b) Hearings may be conducted by telephone or other electronic telecommunication methods at the discretion of the hearings officer.

(c) Hearings shall be conducted in the offices of the agency or at other locations as may be designated by the hearings officer. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§576E-9, 91-2) (Imp: HRS §§576E-9, 91-2)

§5-34-16 Evidence; discovery; admissibility criteria. (a) All relevant and material evidence is admissible which, in the opinion of the hearings officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. In ruling upon the admissibility of evidence, the hearings officer shall give consideration to, but shall not be bound by, the rules of evidence governing civil proceedings.

(b) Documentary evidence may be received in the form of copies and excerpts or incorporated by reference; provided that, upon request, all other parties to the proceedings shall be given an opportunity to compare the copy with the original.

(c) The hearings officer shall give effect to the privileges recognized by law, and may take notice of judicially recognizable facts and of generally recognized technical or scientific facts.

(d) Every party shall have the right to cross-examine witnesses and to submit rebuttal evidence.

(e) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The hearings officer may use discretion to exclude inadmissible or cumulative evidence. Parties objecting to the introduction of evidence shall state the precise ground of objection at the time the evidence is offered.

(f) Except as otherwise provided by law, the burden of proof shall be upon the party initiating the

proceeding. Proof of a matter shall be by a preponderance of the evidence.

(g) Every party shall provide to the other parties copies of all documents intended to be offered or used as evidence. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 91-10, 576E-9, 576E-10) (Imp: HRS §§91-2, 91-10, 576E-9, 576E-10)

§5-34-17 REPEALED. [R **DEC 24 2001**]

§5-34-18 Duty to serve other parties. Unless otherwise provided by law, a party submitting a pleading, motion, memorandum, or request shall provide, in a timely manner, a copy to each of the other parties or their representatives. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §91-2) (Imp: HRS §91-2)

§5-34-19 Consent order. In any administrative proceeding under this chapter, attempts to reach an agreed disposition are encouraged. A case may be disposed by consent order which shall be deemed to be a waiver of the right to a hearing and the right to appeal to the family court. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §§91-2, 91-9, 576E-8) (Imp: HRS §§91-2, 91-9, 576E-8)

§5-34-20 Default. If the party upon whom notice of hearing was served fails to appear at the time and place of the scheduled hearing, the hearings officer may, upon showing of valid notice, enter default against the party and enter orders and decisions as appropriate. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp **DEC 24 2001**] (Auth: HRS §576E-10) (Imp: HRS §91-2, 45 C.F.R. §303.101)

§5-34-21 Decision and order after hearing. After the close of a hearing, the hearings officer shall enter an administrative order or decision, together with findings of fact and conclusions of law. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §§91-2, 576E-9, 45 C.F.R. §303.101)

§5-34-22 REPEALED. [R DEC 24 2001]

§5-34-23 Effective date of order. Only support obligation payments accruing subsequent to service of the request or proposed order on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The effective date of an order establishing or terminating a child support obligation shall be within the discretion of the hearings officer. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §§91-2, 576E-9)

§5-34-24 Appeal to family court. (a) Any party aggrieved by an administrative order is entitled to judicial review in conformance with sections 91-14 and 576E-13, Hawaii Revised Statutes.

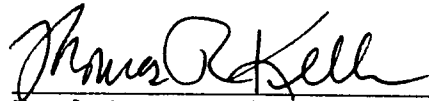
(b) The parties on appeal shall follow applicable rules of the family courts and appellate procedure.

(c) The thirty-day period for filing a notice of appeal with the family court may be extended for good cause shown upon written motion or request submitted to the administrator within the thirty-day period. [Eff 2/13/89; am and comp Oct 31, 1991; am and comp DEC 24 2001] (Auth: HRS §§91-2, 91-14, 576E-9) (Imp: HRS §§91-14; 576E-13)


§5-34-25 Clerical mistakes, oversight, and omissions. Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the hearings officer at any time, sua sponte, or on the motion or request of any party and after such notice, if any, as the hearings officer orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the family court, and thereafter while the appeal is pending may be so corrected with leave of the family court. [Eff **DEC 24 2001**] (Auth: HRS §§91-2, 576E-9) (Imp: HRS §91-2, 576E-9)

Amendments to and compilation of chapter 34, title 5, Hawaii Administrative Rules, on the Summary Page dated December 6, 2001, were adopted on December 6, 2001, following a public hearing held on October 22, 2001, after public notice was given in MidWeek on September 17, 2001, and the full text of the proposed rule amendments was posted on an Internet website through the Office of the Lieutenant Governor.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.


Earl I. Anzai
Attorney General

APPROVED:


Benjamin J. Cayetano
Governor
State of Hawaii

Date: 12-12-01

12/13/01
Filed

APPROVED AS TO FORM:


Deputy Attorney General

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LIEUTENANT GOVERNOR'S
OFFICE