

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 47

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RULES OF PRACTICE AND PROCEDURE**

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Historical note: This chapter is based substantially upon chapter 12-43, Hawaii Administrative Rules. [Eff. Nov. 5, 1981; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§12-47-1 Purpose and short title. These rules govern the practice and procedure before the labor and industrial relations appeals board. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. These rules may be cited as "LAB Rules". [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-2 Definitions. As used in this chapter, except as otherwise required by context:

"Board" means the labor and industrial relations appeals board.

"Chairperson" means the chair of the board.

"Chief clerk" means the individual designated to receive, record, and preserve the records of the board.

"Claimant" means a person who files a claim for benefits under chapter 386, HRS.

"Complainant" means a person filing a complaint under any statute granting jurisdiction to the board.

"Contested case" shall be as defined in section 91-1(5), HRS.

"Director" means the director of labor and industrial relations.

"HRS" means the Hawaii Revised Statutes.

"Intervenor" means a person who moves to intervene in a contested case and is admitted as a party.

"Member" means a member of the board.

"Movant" means a party that applies for a ruling or an order from the board.

"Party" shall be as defined in section 91-1(3), HRS, and any other person whose name appears in the title of the case.

"Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust,

partnership, association, or any other legal entity.

"Petitioner" means a person who files an application seeking permission or authorization which the board may grant under statutory or other authority delegated to it.

"Presiding member" means any member who presides at a board hearing in the chairperson's absence. Unless otherwise designated, the chairperson is the presiding member.

"Proceeding" means any matter brought before the board or initiated by the board which it has jurisdiction to entertain and dispose of.

"Respondent" means a person against whom a complaint is filed, under any statute granting jurisdiction to the board, or to whom an order or notice is issued by the board instituting a proceeding.

"Trial" shall have the same meaning as the term agency hearing, which term is defined in section 91-1(6), HRS.

Words importing the singular may extend and be applied to several persons or things, and words importing the plural may include the singular. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-3 The board. (a) The office of the board is at 888 Mililani Street, Suite 400, Honolulu, Hawaii 96813. All communications to the board shall be sent to this address unless otherwise directed.

(b) The regular hours of the board shall be from 7:45 a.m. to 4:30 p.m. daily, except Saturdays, Sundays, and legal holidays, unless otherwise provided by statute or executive order.

(c) Decisions and orders of the board shall be signed by at least two members. Other board actions, including notices, subpoenas, and ministerial matters, may be issued under the signature of the chairperson, member, or chief clerk.

(d) All meetings of the board shall be open to the public except that the board may conduct its adjudicatory function and meet in executive session from which the public may be excluded. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §§80-1, 92-3, 92-4, 92-6, 92-16, 371-4)

§§12-47-4 to 12-47-9 [Reserved]

SUBCHAPTER 2

GENERAL REQUIREMENTS IN PROCEEDINGS BEFORE THE BOARD

§12-47-10 Appearance and practice before the board. (a) An individual may appear in his or her own behalf; a partner may represent the partnership; a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association; and an officer or employee of the State or a political subdivision of the State may represent the agency in any proceeding before the board.

(b) A person may be represented by an attorney or other duly appointed representative, including, but not limited to, insurance representatives and union representatives in any proceeding under this chapter. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-11 Standards of conduct. (a) Any person who signs a pleading, brief, or document, enters an appearance at a proceeding, or transacts business with the board, by that act represents the following:

- (1) That the person is lawfully authorized to so act;
- (2) That the person shall comply with the laws of this State, and the rules of this board; and
- (3) That the person shall maintain the respect due the board and shall not deceive or knowingly present any false statements of fact or law to the board.

(b) The board may at any time require any person appearing before the board in a representative capacity to furnish written authorization to act in that capacity. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-12 Time for filing documents. All pleadings, briefs, and other documents required to be filed shall be filed with the board during the regular hours of the board. The file stamped date on the document shall be regarded as the date of filing. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-13 Format for pleadings and other documents. (a) 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.

(b) 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.

(c) 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-14 Custody of records. The chief clerk or designee shall have custody of the board's official records of cases on appeal and shall be responsible for the maintenance and custody of the docket files, including, but not limited to, transcripts, exhibits, decisions, orders, rules, and approved forms. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-15 Retention of documents by the board. During the pendency of the appeal, all documents filed with or presented to the board shall be retained in the files of the board. The board may, however, permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-12, 371-4)

§12-47-16 Copies. Unless otherwise required, each party shall file with the board an original and one copy of a notice of appeal, and an original of each complaint, or other pleading and any amendment to an appeal, complaint, or other pleading. The chairperson may require that additional copies be provided or additional persons be served. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-17 Defective documents. 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-18 Service of process. (a) The chief clerk or designee shall serve all decisions, orders, notices, and other documents issued by the board, together with any other documents that

the board is required by law to serve. Upon request, the chief clerk or designee may effect service by placing a copy of the document in the attorney's jacket at the board if the party is represented by an attorney. All other documents shall be served by the party who files such document.

(b) Any person filing documents shall serve a copy upon each party or its duly appointed representative and shall attach a certificate of service on the filed original. Any representative entering an appearance after the commencement of a proceeding shall notify all other duly appointed representatives then of record and all parties not represented of that fact.

(c) Documents shall be served personally or, unless otherwise provided by law, by first class mail.

(d) Service upon a party shall be deemed complete upon the occurrence of at least one of the following:

- (1) The party or its duly appointed representative is personally served;
- (2) The document is delivered to the party's home or its duly appointed representative's office and left with a person of suitable age and discretion; or
- (3) The document is properly stamped, addressed, and mailed to the last known address of the party on file with the board or to its duly appointed representative. [Eff

] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-19 Computation of time. 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

SUBCHAPTER 3

PRE-TRIAL PROCEDURES

§12-47-20 Limitation of issues on appeal. The board may decline to hear and determine any issue which the director in the decision on appeal did not decide or left for future determination. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-21 Initial conference. (a) Upon docketing an appeal, the board may convene an initial conference to consider:

- (1) The simplification of issues;
- (2) The necessity or desirability of amendments to pleadings;
- (3) The possibility of obtaining 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.

(b) Initial conference statements shall be filed by the parties no later than three business days before the scheduled initial conference covering those areas identified in the notice of initial conference. Additional conferences may be scheduled at the board's discretion. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-22 Pretrial order. (a) When an initial conference is held, the board may enter a pretrial order which recites the action taken at the conference, including:

- (1) The agreements made by the parties as to any of the matters considered;
- (2) The issues for hearing not otherwise disposed of by stipulation or agreement of the parties; and
- (3) The discovery deadlines.

(b) When the pretrial order establishes discovery deadlines, the specified deadline means as follows:

- (1) Unnamed witness means identification of the name and address of an individual not previously identified in the party's pretrial statement.
- (2) Live witness means identification of individuals previously identified in the party's pretrial statement or unnamed witness statement, and who the party, in good faith, intends to have testify at trial. An individual not identified in the party's live witness statement shall not be allowed to testify at trial.
- (3) Medical report deadline means the date that all medical reports or records shall be filed at the board.
- (4) Discovery deadline means the date that all non-medical documents or records shall be filed at the board, except

that the transcript of an oral deposition of any individual conducted before such deadline may be filed after such deadline.

(c) The pretrial order shall control the subsequent course of the appeal, unless modified by the board at the trial or prior thereto to prevent manifest injustice. The pretrial order shall supersede the pleadings where there is any conflict and shall supplement the pleadings in all other respects.

(d) The board may impose administrative sanctions as described in section 12-47-48 for noncompliance with the board's order. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-23 Dismissal for non-appearance. Where it appears that the appellant or complainant was served with a notice of hearing or initial or settlement conference but fails to appear at such hearing or conference, either in person, by attorney, or duly appointed representative, the board may, after service of notice of intention to dismiss, dismiss the appeal or may proceed and make a decision as is just and proper. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-24 Remand for director's determination of certain issues. (a) The board may issue an order remanding any proceeding:

- (1) For determination of an issue not decided by the director; or
- (2) For such other action by the director as may serve the interests of the just, speedy, and inexpensive determination of the appeal.

(b) The order of remand shall specify the issue or issues for determination or other action to be taken.

(c) Following the director's decision on remand, the director shall transmit the case file to the board, and upon such transmittal, the board shall proceed to hear and determine the issues raised in the original appeal. Should any party desire to appeal issues addressed by the director's decision on remand, it shall be necessary for such party to file an appeal within twenty days after a copy of the decision on the remanded issue has been sent to the parties. [Eff] (Auth: HRS §371-4) (Imp: HRS §§371-4, 386-87)

§12-47-25 Substitution of parties. Upon motion and for good cause shown, the board may order substitution of parties, except that in the case of a party's death, substitution may be ordered without filing a motion. [Eff] (Auth: HRS §371-4) (Imp: HRS

§371-4)

§12-47-26 Joinder of parties. (a) The board may order the joinder of additional parties necessary for the full adjudication of the case. Motions to join additional parties shall be made within sixty days following the initial conference on the appeal. The board may permit joinder of additional parties beyond this period upon a showing of good cause.

(b) Upon the filing of the order of joinder, the board shall schedule another conference to clarify the issues on appeal and may, at that time, modify the discovery deadlines and hearing date.

(c) When written notice has been given to a party pursuant to section 12-10-74, Hawaii Administrative Rules, and that party has been afforded a reasonable opportunity to participate in the proceedings before the director, that party shall be deemed a party to the appeal and there shall be no necessity to file a motion to join that party in the proceeding before the board.

(d) When the special compensation fund is a captioned party in the director's decision, the special compensation fund shall be deemed a party to the appeal and there shall be no necessity to file a motion to join the special compensation fund in the proceeding before the board. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-27 Consolidation or separation. The board, upon its own initiative or upon motion, may consolidate for hearing two or more proceedings that involve the same parties or related questions of fact or law or may separate matters in issue for hearing in two or more separate proceedings, if it finds that consolidation or separation will be conducive to the just, speedy, and inexpensive determination of the proceedings. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-28 Discontinuance of appeal. An appeal pending before the board may be withdrawn or discontinued only upon approval by the board. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-29 [Reserved]

SUBCHAPTER 4

DISCOVERY, SUBPOENAS, AND MOTIONS

§12-47-30 Request for subpoenas. (a) 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.

(b) 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) Specify the particular document or record, or portion of document or record sought.

(c) Only parties may request the issuance of a subpoena.

(d) Any board member may issue a subpoena. The board may decline to issue a subpoena when fairness and equity so dictate.

(e) 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.

(f) Witnesses shall be placed under oath or affirmation prior to testifying. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §§92-16, 371-4, 371-6)

§12-47-31 Depositions and discovery. 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. [Eff _____] (Auth: HRS §387-4) (Imp: HRS §371-4)

§12-47-32 Motions, generally. (a) Form. All motions, except when made during a trial, shall be in writing, state the grounds for the motion, set forth the relief or order sought, and be accompanied by a memorandum in support of the motion. If the motion requires consideration of facts not appearing in the record, it shall be supported by an affidavit. Every motion shall indicate whether a hearing is requested on the motion and shall be accompanied by a

notice of hearing. Motions shall be served in accordance with section 12-47-18.

(b) Responsive memoranda. An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five business days before the date of the hearing. If the hearing on the motion is scheduled within five business days after the motion is filed, then such response shall be served and filed at least one business day before the time set for hearing.

(c) Required notice; effect of failure to appear. A party who does not oppose a motion or who intends to support a motion or who desires a continuance shall notify the board and the opposing parties within five business days before the date of the hearing. If the hearing on the motion is scheduled within five business days after the motion is filed, the board shall be notified within one business day before the time set for hearing. Failure to appear at the hearing may be deemed a waiver of objections to the granting of the motion.

(d) If a hearing on the motion is not requested, the board may decide the matter upon the pleadings, memoranda, and other documents filed. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-33 Motion to dismiss. 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. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-34 Motion for stay of director's decision and order. A motion for stay of the director's decision and order, in whole or in part, shall be filed no later than ten calendar days after an appeal has been taken. Upon good cause shown, the board may permit the filing of a motion for stay beyond this period. Failure to file the motion within the designated period may constitute grounds to deny the motion. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §§371-4, 386-91)

§12-47-35 Enlargement. (a) When any act is required or allowed to be done at or within a specified time, the board for good cause shown may at any time:

- (1) Upon written request made before the expiration of the period prescribed, order the period enlarged; or
- (2) Upon motion made after the expiration of the specified

period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional matters or where any order expressly provides that no enlargement shall be granted.

(b) Motions for extensions of time and requests or stipulations for continuances must be in writing, except when made at hearing. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions shall not be granted unless a stipulation by all parties is filed with the board. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§§12-47-36 to 12-47-39 [Reserved]

SUBCHAPTER 5

PROCEDURES AT TRIAL/HEARING

§12-47-40 Order of presentation. (a) 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.

(b) 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. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-41 Rules of evidence. 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. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-42 Conduct of hearing and evidence. (a) Testimony shall be taken on oath or affirmation.

(b) 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.

(c) Any member may question any party or witness.

(d) 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-9, 91-10, 371-4)

§12-47-43 Cross examination. 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-10, 371-4)

§12-47-44 Limiting number of witnesses. To avoid unnecessary or unduly repetitious evidence, the presiding member may limit the number of witnesses or the time for testimony upon a particular issue. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-10, 371-4)

§12-47-45 Waiver of procedures, informal disposition. With the approval of the board, any procedure in a contested case may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-46 Rulings on evidentiary matters. (a) The presiding member shall rule on the admissibility of evidence and on any oral motions made in the course of trial. The presiding member may issue a ruling after taking the matter under advisement.

(b) When objections are made to the admission or exclusion of evidence, the ground relied upon may be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(c) An offer of proof for the record shall consist of a statement of the substance of the evidence to which an objection had been sustained. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-47 Official notice of facts. 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. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-10, 371-4)

§12-47-48 Sanctions for contemptuous conduct. (a) Any person whose conduct at any proceeding before the board or before a member is deemed contemptuous by the presiding member, or who has refused to comply with an order of the board, has refused to adhere to reasonable standards of orderly and ethical conduct, has failed to act in good faith, or has engaged in the continued use of dilatory tactics, may be excluded from the proceeding. The board may impose other sanctions, including dismissal of the appeal.

(b) If a witness refuses to answer any question which has been ruled to be proper, the presiding member may strike all testimony previously given by the witness on related matters. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-49 [Reserved]

SUBCHAPTER 6

POST-TRIAL MATTERS

§12-47-50 Briefs. The presiding member may require briefs to be submitted and may fix the time for filing briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a table of contents. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-51 Service of decisions and orders. The 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 in accordance with section 12-47-18 as applicable. [Eff] (Auth: HRS §371-4) (Imp: HRS §§386-87, 386-88)

§12-47-52 Effective date. The effective date of the decision or order is the date it is filed by the chief clerk or designee. [Eff] (Auth: HRS §371-4) (Imp: HRS §371-4)

§12-47-53 Reconsideration or reopening of decision or order.

(a) 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 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.

(b) 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.

(c) A hearing on the request for reconsideration or reopening may be held at the board's discretion. [Eff] (Auth: HRS §371-4) (Imp: HRS §§371-4, 386-87)

§12-47-54 Correction of records. Clerical mistakes in decisions, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the board at any time of its own initiative or upon the application of any party. During the pendency of a judicial appeal, the mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending, may be so corrected with leave of the appellate court. [Eff] (Auth: HRS §371-4) (Imp: HRS §§91-14, 371-4)

§12-47-55 Approval of attorney's fees. Within ten calendar days following the filing of a final decision and order, or upon the filing of a stipulation and settlement agreement with respect to an appeal compromised pursuant to section 386-78, HRS, attorneys seeking approval of fees pursuant to section 386-94, HRS, shall file with the board a request for approval of attorney's fees setting forth the various activities performed together with the time expended by the attorney in each activity. The request shall be served on those parties against whom the fees are to be assessed. Any party objecting to approval of a request may file a written objection thereto no later than ten calendar days following service. No request for approval of attorney's fees or agreement to pay attorney's fees shall be valid until approved by the board. [Eff] (Auth: HRS §371-4) (Imp: HRS §§371-4, 386-94)

§12-47-56 Record on appeal from board decisions. (a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) At the time of ordering, a party shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript. [Eff] (Auth: HRS §§91-2, 371-4) (Imp: §§91-14, 386-88)

§§12-47-57 to 12-47-59 [Reserved]

SUBCHAPTER 7

PROCEDURE IN ADOPTION, AMENDMENT, OR REPEAL OF RULES

§12-47-60 Adoption, amendment, or repeal of rules. (a) Any interested person or any agency of the state or county government may petition the board for the adoption, amendment, or repeal of any rule.

(b) The petition shall set forth the text of any proposed rule or amendment desired or specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and the petitioner's reasons for seeking the adoption, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by the petitioner. The board may also require the petitioner to serve other persons or

governmental agencies known to be interested in the proposed rulemaking. No request for the adoption, amendment, or repeal of a rule which does not conform to the requirements set forth in this section will be considered by the board.

(c) Petitions for rulemaking will be given docket numbers and will become matters of public record upon filing. The board, within thirty days following the filing of the petition, shall either deny the petition in writing or initiate proceedings for the adoption, amendment, or repeal of the rule as provided by law.

(d) No public hearing, oral arguments, or other form of proceedings will be held directly on any petition unless the board determines that a petition discloses sufficient reasons in support of the relief requested to justify a public hearing. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in any material respect to comply with the requirements of this subchapter, the petitioner shall be so notified together with the grounds for denial. The provisions of this section shall not operate to prevent the board on its own motion from acting on any matter disclosed in any petition. [Eff

] (Auth: HRS §371-4) (Imp: HRS §§91-6, 371-4)

§12-47-61 Conduct of public hearing on proposed rulemaking.

(a) Each public hearing on the proposed adoption, amendment, or repeal of any rule shall be conducted in such a way to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved so as to obtain a clear and orderly record. The presiding member shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) The hearing shall be held at the time and place set in the notice of hearing, but may be continued by the board from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding member shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding member shall prescribe.

(d) All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. All witnesses shall, before proceeding to testify, state their name, address, whom they represent at the

hearing, and shall give such other information regarding their appearance as the board may request. The board shall confine the testimony to questions before the hearing. All witnesses shall be subject to questioning by the board or by any other authorized representative, but cross-examination by private persons shall not be permitted unless the presiding member expressly permits it.

(e) All interested persons or agencies of the State or political subdivision of the State may submit in writing to the board, either prior to or at the hearing, any data, views, or arguments which are relevant to the issue. At the discretion of the board, additional written comments or recommendations may be filed within a period set by the board.

(f) Unless otherwise specifically ordered by the board, testimony given at the hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the board to be authentic and relevant, shall be received and made a part of the record. Unless the presiding member finds that the furnishing of copies is impractical, four copies of the exhibits shall be submitted. [Eff _____] (Auth: HRS §371-4) (Imp: HRS §§91-3, 371-4, 371-6)