

MINUTES OF THE MEETING OF THE
ADMINISTRATIVE AND AUDIT COMMITTEE OF THE BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII

FEBRUARY 9, 2022

CITY FINANCIAL TOWER
201 MERCHANT STREET, SUITE 1200
HONOLULU, HAWAII 96813

Trustees present: Mr. Bennett Yap, Chair
(by teleconference) Mr. Lance Mizumoto, Vice Chair
Mr. Craig Hirai
Mr. Emmitt Kane

Staff present: Mr. Thomas Williams, Executive Director (in person)
(City Financial Tower Ms. Kanoe Margol, Deputy Executive Director (in person)
by teleconference) Mr. Bart Asato, Program Specialist
Ms. Shanna Sakagawa, Program Specialist
Ms. Dale Kehau Kanae, Recording Secretary
Ms. Lori Kim, Secretary

Attorney present: Mr. Ivan Torigoe, Deputy Attorney General
(by teleconference) Ms. Elmira Tsang, Deputy Attorney General
Ms. Diane Wong, Deputy Attorney General

Guests present: Mr. Peter Hanashiro, KMH LLP
(by teleconference) Mr. Tyson Suehiro, KMH LLP

QUORUM/CALL TO ORDER

A quorum being present (Chair Yap, Vice Chair Mizumoto, and Trustees Hirai and Kane), Chair Yap called the meeting of the Administrative and Audit Committee (Committee) of the Board of Trustees (Board) of the Employees' Retirement System of the State of Hawaii (ERS) to order at 2:02 p.m. and identified the Trustees present and had them confirm that they are the only ones present at their remote location and that no one else was able to listen in on their teleconference while attending the meeting.

On a motion made by Vice Chair Mizumoto, seconded by Trustee Hirai, and unanimously carried, the Committee voted to hold a meeting closed to the public and allow Trustees to participate by teleconference or other remote meeting technology, pursuant to Act 220, Hawaii Session Laws 2021, and the Governor of the State of Hawaii's Emergency Proclamation Related to Sunshine Law In-Person Meetings, dated January 26, 2022, in order to implement social distancing measures.

PUBLIC COMMENT

Chair Yap called for public comment. There were no members of the public present by teleconference or in person, therefore no public comment. There was also no written public testimony received for this Committee meeting.

REVIEW AND DISCUSS THE
ADMINISTRATIVE AND
AUDIT COMMITTEE AND
INTERNAL AUDIT

Chair Yap presented for review and discussion the Administrative and Audit Committee and Internal Audit Charters to Include Administrative and Audit Committee Performance.

CHARTERS TO INCLUDE
ADMINISTRATIVE AND
AUDIT COMMITTEE
PERFORMANCE

The Committee reviewed the Administrative and Audit Committee Charter as presented and the following edits were requested (deleted items are crossed out and added items are bold and underlined):

III. MEETINGS

- A. The Committee must meet at least three **(3)** times per year ... by law.

V. RESPONSIBILITIES

Oversight Responsibilities Regarding External Audits

- B. ~~Oversee the procurement of external auditing services and recommend to the Board:~~ **The State Office of the Auditor is responsible for the procurement of external auditing services and determines: ...**

On a motion made by Trustee Hirai, seconded by Vice Chair Mizumoto, and unanimously carried, the Committee accepted the changes to the Charter with edits as noted. The edited Charter is attached to these minutes for clarification.

It was noted that there were no changes to the Internal Audit Charter, therefore, it was accepted as presented. Both Charters will be presented for acceptance by the Governance Policy Committee and then final approval by the Board.

The Committee discussed its performance by reviewing the activities from July 2020 to December 2021 in a memo presented by Executive Director Williams and the need for a formal evaluation structure. The Committee considered using KMH LLPs dashboard, performance evaluation samples, and Charter as a starting point. ERS staff will also provide samples of evaluations used by other similar funds.

REVIEW KMH LLP's
INTERNAL AUDIT UPDATE
REPORT FOR ACCEPTANCE
AND RECOMMENDATION TO
THE BOARD OF TRUSTEES

KMH LLP's (KMH) Peter Hanashiro and Tyson Suehiro attended by teleconference and provided the Committee an update from the meeting of October 7, 2021, on the ERS 2022 Internal Audit Report and discussed in summary:

EXECUTIVE SUMMARY

Administrative and Other Matters

- *One-year extension option in Internal Audit's contract has been exercised for the year beginning on February 1, 2022 and ending on January 31, 2023.*
- *IA will continue to attend monthly Branch Chief's meetings to stay apprised on current ERS initiatives, ongoing branch projects, challenges and issues, and upcoming events and other matters.*

Status on Current and Upcoming Projects:

Risk Assessment Re-Evaluation & 2022 Internal Audit Plan Update

- *Completed 2022 Internal Audit Plan update process to ensure that the updated plan covers relevant risk areas for the ERS.*
- *Re-evaluated previously scheduled projects in 2022 for relevance, determined whether new or additional projects were necessary, and adjusted project timing and hours based on information provided by Management.*
- *Held individual meetings with the Executive Team, Branch Chiefs, and Administrative & Audit Committee Chair and members to*

REVIEW KMH LLP's
INTERNAL AUDIT UPDATE
REPORT FOR ACCEPTANCE
AND RECOMMENDATION TO
THE BOARD OF TRUSTEES
(cont'd)

discuss changes within their respective areas of responsibility and identify new and emerging risks as well as other relevant risks.

Employer Communication & Reporting Review

- *Kick-off meeting held in December 2021.*
- *Project objectives focus on the following employer areas: payroll submission, class code reporting, and employer communications.*
- *Walkthrough meetings were held from November to February 2022 in order for IA to properly understand and document the processes.*
- *Testing to be completed in early March.*

IT Governance Content Development

- *Planning began in mid-November 2021 and projected to be completed in early April 2022.*
- *Assisting the IS Team develop 15+ policies covering various IT areas, including physical security, security awareness and training, and cyber risk management.*
- *Policy review workshops between IS Team, KMH, and RSM will be held in March 2022.*

IA Recommendation and Implementation Assistance

- *Finalizing cash reserves and cash forecasting policy templates for the Accounting Branch to leverage. To be provided to the Accounting Branch in February 2022.*
- *IA will continue to assist and work with management to implement current and prior report recommendations.*

INTERNAL AUDIT PLAN UPDATE PROCESS

- *The purpose and objective of this process was to develop an updated 2022 Internal Audit Plan for the ERS. The update process evaluated the identification and analysis of relevant risks and auditable areas to the achievement of ERS' goals, strategies, and objectives, forming the basis for determining how those risks and areas should be managed.*
- *The Internal Audit Plan was developed and updated based on interviews with ERS management and select Board of Trustees held in December 2021 and January 2022; review of the current industry environment; and an evaluation of completed projects during the past year.*
- *The resulting Internal Audit Plan has been developed to ensure that the ERS has sufficient and continuous internal audit coverage of those auditable areas judged as having a relatively higher risk profile or that otherwise require internal audit attention.*

INTERNAL AUDIT ACTIVITY HOURS

2021 INTERNAL AUDIT PLAN RESULTS SUMMARY

KMH requested the Administrative & Audit Committee approve the proposed changes and updates to the 2022 Internal Audit Plan.

On a motion made by Vice Chair Mizumoto, seconded by Trustee Hirai, and unanimously carried, the Committee accepted the proposed changes and updates to the 2022 Internal Audit Plan as presented and will be recommending it for approval by the Board.

After their presentation, Messrs. Hanashiro and Suehiro left the meeting by ending their teleconferences.

(Trustee Kane left the meeting by ending his teleconference at 2:30 p.m. Trustee Hirai also left the meeting by ending his teleconference at 2:49 p.m., whereby Quorum was lost.)

RECESS

Chair Yap called for a recess at 2:50 p.m.

RECONVENE

A quorum being present (Chair Yap, Vice Chair Matsumoto, Trustee Kane), Chair Yap reconvened the meeting at 3:00 p.m. Chair Yap announced that the remainder of the agenda items would be taken out of order starting with Nos., 5, 6, 3, then 4.

DISCUSS BANK OF HAWAII
CONTRACT EXTENSION

Executive Director (ED) Thomas Williams presented to and discussed with the Committee, for their information, the Bank of Hawaii Contract Extension. ED Williams shared that ERS entered into a contract with Bank of Hawaii effective April 1, 2017, which included the option for two (2) contract extensions, each covering a two-year period. ERS exercised its first two-year extension effective April 1, 2020 and has now elected to exercise the remaining extension effective April 1, 2022 with the same terms and conditions as the original contract. The newly extended contract will expire on March 31, 2024.

DISCUSS CHIEF
COMPLIANCE OFFICER
ONBOARDING

ED Williams discussed with the Committee the hiring of the Chief Compliance Officer (CCO) Kona Mann that will be joining the ERS on February 16, 2022. KMH LLP will be helping with the onboarding of CCO Mann with the Audit, and Policies & Procedures development of the ERS.

REVIEW FINAL PROPOSED
AMENDED RULES FOR
CHAPTERS 6-20, 6-21, 6-22, 6-
23, 6-26, AND 6-29, HAWAII
ADMINISTRATIVE RULES,
FOR ACCEPTANCE AND
RECOMMENDATION TO THE
BOARD OF TRUSTEES

Program Specialist (PS) Bart Asato presented to and discussed with the Committee the Final Proposed Amended Hawaii Administrative Rules for Chapters 6-20, 6-21, 6-22, 6-23, 6-26, and 6-29.

PS Asato discussed that a public hearing on the proposed rules changes was held on January 18, 2022, with no substantive changes made to Chapters 6-20, 6-22, 6-26, and 6-29. Changes, however, were made to Chapter 6-23, Contested Case Hearings 6-23-14.02(c) and 6-23-38(c), and that Chapter 6-21, Service Credit, Exclusion from Membership of Certain Employees, be deferred for further review, as possible disadvantages in the amendments could cause the loss of flexibility in applying the rules.

On a motion made by Vice Chair Matsumoto, seconded by Trustee Kane, and unanimously carried, the Committee accepted the proposed rules changes with no changes to Chapters 6-20, 6-22, 6-26, and 6-29, changes to Chapter 6-23, and deferral of Chapter 6-21, as presented, and will be recommending it for approval by the Board. The Final Proposed Amended Hawaii Administrative Rules for Chapters 6-20, 6-21, 6-22, 6-23, 6-26, and 6-29 are attached to the minutes for clarification.

REVIEW HAWAII DOMESTIC
RELATIONS ORDERS (HiDRO)
PURSUANT TO HAWAII
REVISED STATUTES § 88-93.5,
FORMS AND PROCEDURES.
REVISED HiDRO MODEL

PS Asato presented to and discussed with the Committee the Revised Hawaii Domestic Relations Orders (HiDRO) Pursuant to Hawaii Revised Statutes § 88-93.5, Forms and Procedures, Revised HiDRO Model Forms for Pre-Retirement (Form ERS-300) and Post Retirement (Form ERS-301).

**FORMS FOR PRE-
RETIREMENT (FORM ERS-
300) AND POST-RETIREMENT
(FORM ERS-301) FOR
ACCEPTANCE AND
RECOMMENDATION OT THE
BOARD OF TRUSTEES**

PS Asato discussed the changes to both forms adding two selections using a formula to determine the percentage used to calculate the alternate payee's portion of the member's or retirant's benefit. The first added formula, a start and end date can be entered other than the date of marriage and date of divorce to determine the portion paid to the alternate payee (ERS-300, Sections 6.A.2., 6.B.2, 7.B.; ERS 301, Section 6.B.) The second added formula, a defined number of service credits can be entered to determine the portion paid to the alternate payee. If the system determines fewer credits have been credited to the member or retiree, the lower amount would be used (ERS-300, Sections 6.A.3., 6.B.3., 7.C.; ERS 301, Section 6.C.) The three other selections for division of martial property (numerical percentage, numerical dollar amount, and none) currently in the HiDRO model forms, remain in the amended model forms, but have been re-numbered to follow the new formula options.

On a motion made by Trustee Kane, seconded by Vice Chair Mizumoto, and unanimously carried, the Committee accepted the changes to the Revised Hawaii Domestic Relations Orders Pursuant to Hawaii Revised Statutes § 88-93.5, Forms and Procedures, Revised HiDRO Model Forms for Pre-Retirement (Form ERS-300) and Post Retirement (Form ERS-301) as presented, and will be recommending it for approval by the Board. Forms ERS-300 and ERS-301 are attached to the minutes for clarification.

**APPROVAL OF MINUTES
- JANUARY 7, 2022**

On a motion made by Vice Chair Mizumoto, seconded by Trustee Kane, and unanimously carried, the Committee approved the minutes of the January 7, 2022, meeting as presented.

ADJOURNMENT

On a motion made by Vice Chair Mizumoto, seconded by Trustee Kane, and unanimously carried, Chair Yap adjourned the meeting at 3:22 p.m.

REDACTED SIGNATURE

Thomas Williams
Executive Director

TW:dkik



Employees' Retirement System of the State of Hawaii
BOARD OF TRUSTEES
ADMINISTRATIVE & AUDIT COMMITTEE CHARTER

I. PURPOSE

The Administrative & Audit Committee (“Committee”) of the Employees’ Retirement System (“ERS”) of the State of Hawaii is a committee of the Board of Trustees (“Board”). Its primary function is to assist the Board in fulfilling its oversight responsibilities relating to:

- A. The integrity of the ERS’s financial statements and the accounting and financial reporting processes;
- B. The ERS’s compliance with legal and regulatory requirements;
- C. The qualifications, independence and performance of the ERS’s Internal and External Auditors;
- D. Monitoring the performance of the systems of internal controls established by Management and the Board;
- E. Monitoring the performance of the ERS’s Internal and External Audits;
- F. The business practices and ethical standards of the ERS; and
- G. The review and monitor of the administration of the ERS.

The Committee provides an avenue of open and free communication between the Board, the Internal Auditors, the External Auditors and Management of the ERS.

II. COMMITTEE MEMBERSHIP

- A. The membership of the Committee shall consist of at least three members of the Board.
- B. The Board members of the Committee shall be appointed annually by the Board Chair. Committee appointments can be changed at the discretion of the Board Chair at any time. In the event of a vacancy (due to member resignation, removal, or death), the Board Chair will appoint a replacement to serve the remainder of the term.



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- C. The members of the Committee shall be responsible for electing its Chair and Vice Chair.

III. MEETINGS

- A. The Committee must meet at least three (3) times per year or more frequently as circumstances require, with prior notice and publication of the agenda as provided by law.
- B. The Committee may ask members, ERS Management, advisors, and others to attend Committee meetings to provide pertinent information as necessary.

IV. AUTHORITY

The Committee shall have the power to conduct or authorize investigations into any matters within the Committee's scope of responsibilities. In the conduct of any investigation, the Committee shall have the authority to seek information it requires from ERS employees, Management, and external parties; and to engage advisors, or otherwise obtain independent legal, accounting, consulting, or other professional services it requires, at the expense of the ERS, with the approval of the Board.

V. RESPONSIBILITIES

The Committee provides oversight of various ERS functions: Administration, Risk Assessment, Internal Audits, External Audits, and Others. In fulfilling its oversight responsibilities, Committee members need to maintain an independent stance. Members of the Committee shall be considered independent if they have no relationship to the ERS that may interfere with the exercise of their fiduciary responsibilities.



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It is the duty of the Committee to report regularly to the Board with respect to any issues that arise concerning:

- A. The quality or integrity of the ERS's financial statements;
- B. The ERS's compliance with legal or regulatory requirements;
- C. The performance and independence of the ERS's External Auditors;
- D. The performance of the internal audit function;
- E. Or any other matter within the scope of the Committee's function.

In carrying out its oversight responsibilities, the Committee's practices/procedures should remain flexible in order to best react to changing conditions and assure the Board that the risk assessment process, the accounting and financial reporting processes, internal controls, and internal and external auditing are in accordance with all related requirements and are of the highest quality.

Oversight Responsibilities Regarding Administration:

- A. Annually review the ERS strategic goals and objectives adopted by the Board and if appropriate, recommend any changes.
- B. Monitor Administration's implementation of these strategic goals and objectives.
- C. Provide direction to the Executive Director (ED) and Deputy Executive Director (DED) on priorities and actions to successfully execute the responsibilities of the Administrative Branch.
- D. Monitor compliance with administrative policies.
- E. Review and monitor the operating budget and provide recommendations to the full Board as necessary.

Oversight Responsibilities Regarding Risk Assessment:

- A. Inquire of Management, the Internal Auditors, and the External Auditors about significant risks or exposures.



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- B. Meet with the necessary parties to discuss the results of periodic risk assessments and obtain a clear understanding of the risk assessment process.
- C. Assess the steps Management has taken to minimize significant risks or exposures to the ERS.

Oversight Responsibilities Regarding Internal Audits:

- A. Where appropriate, oversee the procurement of internal auditing services and recommend to the Board:
 - 1. The Internal Auditor to be nominated;
 - 2. Approval of fees for the Internal Auditor; and
 - 3. The discharge of the Internal Auditor.
- B. Review the adequacy and effectiveness of the ERS's accounting and financial controls (including information technology and security controls) with:
 - 1. Personnel (from financial, accounting, and information systems);
 - 2. Internal and External Auditors; andelicit any recommendations to improve the system of internal controls or particular areas where new or more detailed controls or procedures are desirable.
- C. Obtain an understanding of any corrective actions to be taken with regard to controls and procedures.
- D. Recommend to the Board any co-sourcing or outsourcing internal audit services.
- E. Review the ERS Internal Audit Charter, including the independence and authority of the internal audit function, and its reporting obligations, qualifications, and staffing for the calendar year.
- F. Review the annual Internal Audit Plan (and all major changes to the plan) and recommend its approval to the Board.
- G. Review the reports and findings/recommendations of the Internal Auditors and the responses of the ERS Management, and monitors completion of Management's



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action plans.

- H. Review a summary of major findings from completed internal audits and a progress report on the execution of the Internal Audit Plan and Management's implementation of action plans.
- I. Meet separately with the Chief Audit Executive¹ and/or Management to discuss any matters that the Committee, or these parties, believe should be discussed privately.
- J. Review the effectiveness of the internal audit functions, including compliance with the Institute of Internal Auditors Standards for the Professional Practice of Internal Auditing.
- K. Report the results of the Internal Audit Plan to the Board. At the invitation of the Committee, the Internal Auditors will attend Board meetings to assist in reporting the results of the Internal Audit Plan and to answer questions.

Oversight Responsibilities Regarding External Audits

- A. Obtain a basic understanding of government accounting, financial reporting, auditing processes, and critical policies, and ensure that the financial leadership team is qualified and competent.
- B. ~~Oversee the procurement of external auditing services and recommend to the Board~~The State Office of the Auditor is responsible for the procurement of external auditing services and determines:
 - 1. The External Auditor to be nominated;
 - 2. Approval of the audit fees of the External Auditor; and
 - 3. The discharge of the External Auditor.
- C. Review prior year comments from the Government Finance Officers Association (GFOA) in its determination of the ERS's compliance with the requirements for

¹ The Chief Audit Executive may be an individual employee or a firm contracted to outsource or co-source the internal audit function.



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the Certificate of Achievement in Financial Reporting, where applicable.

- D. Review with Management and the External Auditor the draft financial statements to be filed with the GFOA.
- E. Assess the integrity of the annual financial statements and related disclosures, including significant accounting judgements and estimates.
- F. Review and examine the independence (including any potential conflict of interest) of the External Auditor, including a review of Management consulting services and related fees provided by the External Auditor.
- G. Review with the External Auditor the coordination of audit effort to assure completeness of coverage, reduction of redundant efforts, and the effective use of audit resources.
- H. Review, at least annually, with Management and/or the External Auditor:
 - 1. Scope of the proposed audit for the current fiscal year and the procedures to be utilized.
 - 2. The ERS's annual financial statements and related footnotes.
 - 3. The External Auditor's audit of the financial statements and audit report thereon.
 - 4. The adequacy of the ERS's internal financial controls.
 - 5. Any significant changes required in the External Auditor's scope and audit plan.
 - 6. Other matters related to the conduct of the audit, which are to be communicated to the Committee under Generally Accepted Government Auditing Standards, including audit adjustments made and passed.
 - 7. Judgments about the quality, not just the acceptability of accounting principles and the clarity of the financial disclosures.
 - 8. Any difficulties encountered in the course of the external audits, including any disputes with Management, restrictions on the scope of their work or access to required information.



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- I. Consider and review with Management any significant findings during the fiscal year and recommendations of the External Auditor's and Management's responses thereto.
- J. Meet separately with the External Auditor and/or Management to discuss any matters the Committee, or these parties, believe should be discussed privately with the Committee.
- K. Report the results of the annual external audit to the Board. At the invitation of the Committee, the External Auditor will attend Board meetings to assist in reporting the results of the annual audit and to answer questions.

Other Oversight Responsibilities:

- A. Report Committee actions, including any investigative actions, to the Board with such recommendations as the Committee may deem appropriate.
- B. Monitor the implementation of procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, auditing or other matters, including mechanisms for anonymous submission of related concerns by ERS employees or the appropriate bodies.
- C. Consult with the Attorney General on legal matters regarding financial transactions, fraud, or any other issue that could have a significant impact on the annual reports.
- D. Obtain any information and training needed to enhance the Committee members' understanding of the role of Internal and External Auditors, the risk management process, internal controls and a certain level of familiarity in government financial reporting standards and processes.
- E. Obtain the Board's approval of this Charter and, on an annual basis, evaluate the adequacy of this Charter and recommend any proposed changes to the Board for approval.
- F. Confirm annually that the Committee has performed its responsibilities as



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outlined in this Charter.

- G. Coordinate with the Legislative Committee, Investment Committee, Governance Policy Committee, and Compensation Review Committee, as deemed necessary.
- H. Perform such other functions as assigned by the Board.

VI. LIMITATIONS OF THE ADMINISTRATIVE AND AUDIT COMMITTEE'S ROLE

- A. It is not the duty of the Committee to plan or conduct audits or to determine that the ERS's financial statements are complete, accurate, and in accordance with Generally Accepted Accounting Principles. This is the responsibility of Management and the External Auditors.
- B. While the Committee is responsible for reviewing the ERS's policies and practices with respect to risk assessment and management, it is the responsibility of the Executive Director and Senior Management to determine the appropriate level of the ERS's exposure to risk.

Adopted by the Board of Trustees on June 12, 2012

Revised by the Administrative & Audit Committee on July 21, 2020, February 9, 2022

Approved by the Board of Trustees on August 10, 2020



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INTERNAL AUDIT CHARTER

I. INTRODUCTION

Internal auditing is an independent, objective assurance and consulting activity¹ designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

II. ROLE OF INTERNAL AUDIT

The Internal Audit function of the Employees' Retirement System ("ERS") is established by the ERS Board of Trustees ("Board") and its responsibilities are defined in this charter which is approved by the Board. The Chief Audit Executive ("CAE"), which may be an individual employee or a firm contracted to outsource or co-source the internal audit function, reports functionally to the ERS Administrative & Audit Committee ("Committee") and administratively to the ERS Executive Director ("ED") or designee. Approval from the Board is required for the hiring, compensation, removal, or replacement of the CAE.

The objectives of Internal Audit are to assist management and employees of the ERS in the effective discharge of their responsibilities by providing them with analyses, appraisals, recommendations, counsel, and information concerning the activities reviewed and to promote effective internal controls at a reasonable cost.

III. AUTHORITY

The CAE and the Internal Audit staff are authorized to:

- A. Review all areas of the ERS;

¹ As defined by the Institute of Internal Auditors, an *assurance* activity is an examination of evidence for the purpose of providing an independent assessment on governance, risk management, and control processes for the organization, while *consulting* refers to advisory and related client service activities intended to add value and improve an organization's processes.



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- B. Have full, free, and unrestricted access to all of the ERS's activities, records, physical property, and personnel necessary to complete their work;
- C. Have full, free, and unrestricted access to the Board, Committee, ED, Deputy ED, Chief Investment Officer, Branch Chiefs, and all members of management;
- D. Allocate resources, set frequencies, select subjects, determine scopes of work, and apply the techniques required to accomplish internal audit objectives; and
- E. Obtain the necessary assistance of personnel in units of the ERS where they perform audits, as well as other specialized services from within or outside the ERS.

The CAE and the Internal Audit staff are not authorized to:

- A. Perform any operational duties for the ERS;
- B. Initiate or approve accounting transactions external to the internal audit function; nor
- C. Direct the activities of any ERS employee not employed by the internal auditing function, except to the extent such employees have been appropriately assigned to auditing teams or to otherwise assist the internal auditors.

IV. INDEPENDENCE & OBJECTIVITY

Internal auditors have no direct responsibility or any authority over any of the activities or operations that they review. They should not develop and install procedures, prepare records, or engage in activities that would normally be reviewed by internal auditors.

Internal Audit's objectivity is not adversely affected, however, by recommending standards of controls to be applied in developing systems and procedures, or by evaluating existing or planned financial and operating systems and related procedures, and making recommendations for modification and improvements thereto in order to improve controls and/or enhance operational effectiveness.

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V. SCOPE OF WORK

The scope of work of the Internal Audit function is to determine whether the ERS's network of risk management, control, and governance processes, as designed and represented by management, is adequate and functioning in a manner to ensure:

- Risks are appropriately identified and managed.
- Interaction with the various governance groups occurs as needed.
- Significant financial, managerial, and operating information is accurate, reliable, and timely.
- Employee actions are in compliance with policies, standards, procedures, and applicable laws and regulations.
- Resources are acquired economically, used efficiently, and adequately protected.
- Programs, plans, and objectives are achieved.
- Quality and continuous improvement are fostered in the ERS's control process.
- Significant legislative or regulatory issues impacting the ERS are recognized and addressed properly.

Opportunities for improving management control, process efficiency, and the ERS's image may be identified during audits. They will be communicated to the appropriate level of management.

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VI. RESPONSIBILITIES

Internal Audit is responsible for the following activities:

Standards

- A. The CAE is responsible for ensuring that all activities of the internal audit function are carried out in compliance with the Institute of Internal Auditors' ("IIA") mandatory guidance including the Core Principles for the Professional Practice of Internal Auditing, the "Definition of Internal Auditing," the "Code of Ethics," and applicable standards found in the "International Standards for the Professional Practice of Internal Auditing."
- B. Conduct a periodic risk assessment for the ERS and present the results to the Committee.
- C. Develop a flexible annual Internal Audit Plan using an appropriate risk-based methodology, which considers risks or control concerns identified by management, and submit the plan to the Committee and the Board for review and approval.
- D. Implement the annual Internal Audit Plan, as approved, including, and as appropriate, any special tasks or projects requested by management, the Committee, and the Board.

Ethics

- E. Review the adequacy of the ERS's adopted code of conduct activities, including the process to receive, retain, and treat complaints received on accounting and internal auditing matters.
- F. Monitor management's process for ensuring compliance with Hawaii Revised Statutes – Chapter 84, *Standards of Conduct* ("State Ethics Code").



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Monitoring & Follow-Up

- G. Evaluate any plans to correct reported conditions for satisfactory improvement of the business process.
- H. Provide adequate follow-up to ensure corrective action is taken and evaluate its effectiveness before recommending closure of an issue.
- I. Monitor and evaluate the effectiveness of the organization's risk management processes.

Reporting

- J. Prepare and issue a written report following the conclusion of each audit and follow-up audit. This report shall include significant findings, recommendations to management, and management's action plan. A copy of the report will be forwarded to the Committee, ED, Deputy ED, and appropriate members of management.
- K. Inform and advise management and the Committee as to significant deficiencies or other substantive issues noted in the course of its activities.
- L. Provide periodic reports on Internal Audit's progress on implementing the annual Internal Audit Plan, including management's progress on addressing previously reported matters, the impact of resource limitations, and significant interim changes.
- M. On a regular basis, the CAE will meet separately with the Committee to discuss any matters that is deemed necessary by the Committee or Internal Audit.

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Other

- N. Conduct special examinations at the request of management or the Committee.
- O. Perform consulting services, beyond internal auditing assurance services, to assist management in meeting its objectives. Examples may include facilitation, consultation on internal control improvement initiatives, training, and advisory services.
- P. Assist in the investigation of significant suspected fraudulent activities within the organization and notify management and the Committee of the results.
- Q. Coordinate audit efforts with those of the ERS's external auditors and other regulatory agencies.
- R. Evaluate and assess significant merging/consolidating functions and new or changing services, processes, operations, and control processes coincident with their development, implementation, and/or expansion.
- S. Keep the Committee informed of emerging trends and successful practices in internal auditing.
- T. Review this Internal Audit Charter on a periodic basis to ensure the purpose, authority, and responsibilities of Internal Audit continue to be adequate in accomplishing its objectives. Modify as appropriate, and submit to the Committee and ED for review and approval.

Adopted by the Board of Trustees on June 12, 2012

Revised by the Administrative & Audit Committee on June 9, 2020

Approved by the Board of Trustees on August 10, 2020

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 20

PUBLIC RECORDS AND INFORMATION;
ADOPTION, AMENDMENT, OR REPEAL OF RULES;
DECLARATORY RULING; COST OF RULES

Subchapter 1 General Provisions

§6-20-1 Definitions

Subchapter 2 Public Records and Information

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and rules

Subchapter 3 Adoption, Amendment, or Repeal of
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§6-20-5 Petition

§6-20-6 Form and content of petition

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§6-20-8 Petition for declaratory ruling; scope

§6-20-9 Form and content of petition

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§6-20-11 Repealed

§6-20-12 Renumbered as §6-20-23

§6-20-13	Renumbered as §6-20-24
§6-20-14	Notice of hearing
§6-20-15	Computation of time
§6-20-16	Conduct of hearing
§6-20-17	Parties; service
§6-20-18	Advisory memorandum
§6-20-19	Request for additional facts or supplemental memorandum; documents
§6-20-20	Argument
§6-20-21	Proposed findings of fact and conclusions of law
§6-20-22	Disposition of petition
§6-20-23	Applicability of orders
§6-20-23.01	Withdrawal of petition

Subchapter 5 Repealed

§6-20-24 Repealed

SUBCHAPTER 1

GENERAL PROVISIONS

§6-20-1 Definitions. As used in chapters 20 to 29 of this title:

~~["Administrator" means the administrator of the system or a duly designated assistant.]~~

"Alternate payee" means a spouse or former spouse of a member, a former member who has vested benefit status, or retirant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to that member, former member with vested benefit status, or retirant.

"Applicant" means a person who files an application for disability retirement or accidental death benefits as provided in chapter 6-22, subchapter 1 of chapter 6-23, and subchapter 1 of chapter 6-26.

"Beneficiary" means the recipient of any benefit from the system or, as the context may indicate, the person or persons designated by a member, former member, or retirant, or as provided by law to receive the benefits payable in the event of the member's, former member's, or retirant's death.

"Board" or "board of trustees" means the board of trustees of the system.

"Contested case" means a contested case proceeding as defined in section 91-1, HRS.

"Executive director" means the executive director of the system or, in the executive director's absence, the deputy executive director of the system or other officer appointed by the board of trustees to act as the executive director of the system.

"Hearing officer" means a licensed attorney, duly appointed ~~[and authorized by the board of trustees]~~ by the board of trustees or the system to administer proceedings under this chapter and chapter 6-23.

"Member" means any person included in the membership of the system.

"Party" means any person or agency who participates in a declaratory ruling under subchapter 4 or in a contested case proceeding under chapter 6-23 as a petitioner, respondent, or intervenor.

"Petition" ~~[as used in subchapter 4,]~~ means a request filed pursuant to section 6-20-8 ~~[with the board of trustees]~~ for a declaratory ruling under subchapter 4, or a petition for a contested case hearing under chapter 6-23.

"Petitioner" means a member or other authorized person who files a petition for declaratory ruling under subchapter 4 or a petition for contested case hearing under chapter 6-23.

"Presiding officer" means the chairperson or other designated member of the board of trustees, or a hearing officer ~~[designated]~~ appointed by the board of trustees or the system, who presides over matters set forth in subchapter 4 or chapter 6-23.

"Retirant" means a member who has retired and becomes a beneficiary of the system.

"System" means the employees' retirement system of the State of Hawaii. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 88-93.5) (Imp: HRS §§88-21, 88-29, 91-2, 88-93.5)

SUBCHAPTER 2

PUBLIC RECORDS AND INFORMATION

§6-20-2 Public inspection. All public records shall be available for inspection at the office of the system, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813, during regular business hours. [Eff 11/9/81; am 6/11/92; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-103, 91-2, 92F-11, 92F-12)

§6-20-3 Information. Information on matters within the jurisdiction of the system, except confidential information, may be obtained by inquiring in person during regular business hours at, or by submitting a written request to, the office of the system. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 92F-11, 92F-12, 92F-13, 92F-14, 92F-21, 92F-22, 92F-23)

§6-20-4 Disclosure of information. Information about a member, a beneficiary, or a retirant contained in the records of the system may be disclosed only to the member, beneficiary, or retirant or to a person authorized in writing by the member, beneficiary, or retirant, or to the duly appointed executor, legal representative, or administrator of the estate of the member, beneficiary, or retirant, or to an agency

complying with the requirements of section 92F-19, HRS.

Upon receipt of a request for information regarding domestic relations orders under section 88-93.5, HRS, and a certified copy of a complaint or decree for divorce, the system shall provide the alternate payee with information regarding benefits that are relevant to the alternate payee's interest in the member's, former member's with vested benefit status, or retirant's benefits. Information about a deceased member, beneficiary, or retirant may be disclosed to any person under chapter 92F, HRS, without written authorization from the deceased member's, beneficiary's, or retirant's representatives, to the extent authorized by law. [Eff 11/9/81; am 6/11/92; comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 92F-11, 88-93.5) (Imp: HRS §§88-103.5, 92F-11, 92F-12, 92F-13, 92F-14, 92F-19, 92F-21, 92F-23, 88-93.5)

§6-20-4.01 Cost of copies for government records and rules. (a) Government records. The system may charge ~~[up to]~~ a minimum of fifty cents per page, [or less,] or an amount to be approved by the board, for each copy of a document that it reproduces under section 92-21, HRS, pursuant to a public records request under ~~[section 92F-19,]~~ chapter 92F, HRS[-], and shall include but not be limited to the labor, material, electricity, equipment, certification and other related costs of reproduction.

(b) Administrative rules. Compilations and supplements of rules adopted by the board shall be made available free of charge upon request by state officers in the case of a state agency and by county officers in the case of a county agency. Compilations and supplements may also be made available, free of charge, to organizations representing public employees and to agencies of the federal government or of other states.

As to all other persons, the price for a copy shall be one dollar for each chapter compilation or chapter supplement. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§ 91-2.5, 91-5, 92- 21)

SUBCHAPTER 3

ADOPTION, AMENDMENT, OR REPEAL OF RULES

§6-20-5 Petition. Any interested person may petition the board for the adoption, amendment, or repeal of any rule of the system. The petition shall be submitted in duplicate and delivered to the office of the system. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-6 Form and content of petition. The petition need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft or the substance of the proposed rule or amendment or repeal and a designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the

reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

§6-20-7 Consideration of petition. Within [~~thirty~~] sixty days after the receipt of the petition, the board shall either deny the petition, stating in writing, its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. [Eff 11/9/81; comp 11/26/93; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-6) (Imp: HRS §91-6)

SUBCHAPTER 4

DECLARATORY RULING

§6-20-8 Petition for declaratory ruling; scope.

(a) Any person or agency may petition the board for a declaratory ruling as to the applicability of any statutory provision administered by the system or of any rule or order adopted by the system.

(b) The scope of this subchapter is limited to petitions requesting the board's interpretation of a statute, rule, or administrative order administered by the board, regarding circumstances that have not yet been decided by the system or the board. A petition for declaratory ruling is a way to seek an advance determination from the board. A petition under this subchapter may not request the board to review a concrete decision already made by the system or the board. For example, a petition alleging that the system has improperly granted or denied the petitioner or other person a benefit, service credit, or other entitlement under chapter 88, HRS, must be filed as a petition for contested case hearing under subchapter 2

of chapter 6-23, and not as a petition for declaratory ruling. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS § 91-8)

§6-20-9 Form and content of petition. (a) The petition shall be submitted in duplicate. It need not be in any special form but it shall contain:

- (1) The petitioner's name, address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts;
- (5) A statement of the issues raised;
- (6) A statement of the petitioner's proposed interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
- (7) A memorandum containing the reasons, including any legal authorities, in support of the interpretation and relief sought[~~- The board may require the petitioner to file additional data or memoranda~~];
- (8) The names of any other potential parties; and
- (9) The petitioner's signature.

(b) Any petition which does not conform to the foregoing requirements may be rejected by the board. The rejection shall be in writing and shall state the reasons therefor. [Eff 11/9/81; am and comp 11/26/93; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-10 Consideration of petition. (a) The board, within a reasonable time after the receipt of a

petition for declaratory ruling, shall do one of the following:

- (1) Deny the petition, without a hearing, where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
 - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
 - (C) The issuance of the declaratory ruling may adversely affect the interest of the State, the system, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise;
 - (D) The petition requests a ruling on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board;
 - (E) The petition is frivolous;
 - (F) The petition is beyond the scope of this subchapter as provided in section 6-20-8(b), or there exists a genuine issue of material fact, the resolution of which is necessary before any declaratory ruling may issue. In either case, the board may dismiss the action or request that the petitioner re-file the action as a petition for contested case hearing under subchapter 2 of chapter 6-23; or
 - (G) There is other good cause for denial of the petition;
- ~~[(2) Set the petition for hearing before the board or hearing officer in accordance with this subchapter. If the board assigns the petition to a hearing officer, the board shall use the decision making procedures set~~

~~forth in sections 6-23-48, 6-23-49, 6-23-50, 6-23-51, 6-23-52, and 6-23-53. A hearing officer shall have the same powers as a presiding officer under this subchapter; or~~

~~(3)]~~ (2) Grant the petition, without a hearing, at the board's discretion [-]; or

(3) Set the petition for a hearing before the board or a designated hearing officer.

(b) If the board denies or grants a petition without a hearing, ~~[then]~~ the board shall notify the petitioner in writing of the denial or grant by the board, and shall state the reasons therefor.

(c) If the board assigns the petition to a hearing officer, the board shall use the decision-making procedures set forth in sections 6-23-48, 6-23-49, 6-23-50, 6-23-51, 6-23-52, and 6-23-53. The hearing officer shall have the same powers as a presiding officer under this subchapter. [Eff 11/9/81; am and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8, 92-16) (Imp: HRS §§ 91-8, 92-16)

§6-20-11 REPEALED. [R 11/26/93]

§6-20-12 Renumbered as §6-20-23.

§6-20-13 Renumbered as §6-20-24.

§6-20-14 Notice of hearing. (a) If the board, at its discretion, sets the petition for hearing, all parties shall be given written notice of the hearing, including:

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

- (2) The section of the pertinent statutes or rules involved; and
 - (3) A concise statement of the issues and basic facts giving rise to the petition. A copy of the petition attached to the notice of the hearing shall satisfy this requirement.
- (b) The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested at least fifteen days before the hearing.
- (c) The notice shall also inform each party of the right to retain and be represented by legal counsel, if desired. ~~[A party may be represented by or with counsel.]~~ The board or hearing officer designated by the board may, at any time, require any person ~~[transacting business before the board in a representative capacity]~~ purporting to represent a party in the declaratory ruling proceeding to show the person's authority or qualification to act in that capacity. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-9, 91-9.5)

§6-20-15 Computation of time. In computing any period of time prescribed or allowed by this subchapter, the provisions of section 6-23-9 shall apply. [Eff and comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§ 88-28, 91-2, 91-8)
(Imp: HRS §91-8)

§6-20-16 Conduct of hearing. (a) In the event that the board, at its discretion, sets the petition for hearing, the chairperson or other member of the board designated by the chairperson, or a hearing officer~~[7]~~ designated by the board, shall preside at all hearings governed by this subchapter.

(b) The presiding officer shall have the following powers and duties:

- (1) To continue or postpone, at the request of a party, any hearing;
- {2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;
- (6) To rule on offers of proof and to accept evidence;
- (7) To hold conferences, before or during the hearing, for the simplification of issues; and
- (8) To rule on motions and dispose of procedural requests and similar matters.

(c) The presiding officer shall convene the hearing and summarize [~~the statement of~~] what is stated and requested in the petition. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. The party having the burden of proof shall proceed first in the presentation of opening statements, witnesses, and arguments, followed by the [~~administrator~~] executive director and any other person duly admitted by the board to the proceedings. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp]
 (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-10, 92-16)

§6-20-17 Parties; service. (a) Unless a petition has been denied or granted in accordance with section 6-20-10, the [~~administrator~~] executive director of the system shall be considered a party to the proceedings and shall be served accordingly. Within fifteen days after the petition is filed, other persons having a direct and substantial interest in the petition may request, in writing, that the board recognize them as

parties to the proceedings. The board may, at its discretion, grant or deny their request.

(b) All parties recognized by the board, including the ~~[administrator,]~~ executive director, shall be served with the petition, correspondence, and other documents filed with the board. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-18 Advisory memorandum. The ~~[administrator,]~~ executive director, within thirty days after receiving the notice of hearing, shall file a memorandum advising the board or hearing officer of the ~~[administrator's]~~ executive director's position and responding to the points raised in the petition. The ~~[administrator]~~ executive director shall recommend whether the board should grant or deny the petition, and state the legal and factual reasons for the recommendation. Other parties recognized by the board, within thirty days after receipt of the notice of hearing, may also file and serve upon the board or hearing officer and all parties a memorandum responding to the petition, advising the board of the parties' position and stating concisely and fully the parties' legal position or contentions and reasons, including legal authorities. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §91-8)

§6-20-19 Request for additional facts or supplemental memorandum; documents. (a) The board or hearing officer at any time before ~~[it files its]~~ they file their ~~[decision]~~ decisions may request the petitioner or any party, including the ~~[administrator,]~~ executive director, to submit a statement of additional facts or a legal memorandum, the purpose of which is to clarify a specific factual

or legal issue, position, or contention, provided the request shall aid in effectuating the ends of justice, or in achieving its purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party.

(b) If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the board, or is otherwise insufficient, the board or hearing officer may, on its own motion or on motion of a party, strike that document or require its amendment. All documents filed with or presented to the board or hearing officer may be retained in the files of the system. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-20 Argument. In the event that the board[~~7~~] or hearing officer, at [~~its~~] their discretion, sets the matter for hearing, oral [~~argument~~] arguments shall be heard before the board or [~~the designated~~] hearing officer. All parties shall be afforded a full opportunity to present arguments on all issues involved. The argument shall be at the time and place set forth in the notice of hearing, but that time and place may be continued from day to day and adjourned to a later day or to a different place without notice, other than the announcement thereof at the hearing. (Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 92-16)

§6-20-21 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law, except [~~where~~] when ordered in the discretion of the board[~~7~~] or hearing officer.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon. (Eff and comp 11/26/93; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-22 Disposition of petition. In the event that the board [~~at its discretion,~~] sets the matter for hearing[~~7~~] before the board, the board, within sixty days after the close of arguments or submission of all evidence and any permitted or requested memoranda, whichever is later, shall issue its declaratory ruling, either denying or granting the petition and stating the reasons therefor. The [~~administrator~~] executive director shall promptly notify the petitioner of the board's ruling and of the petitioner's rights to appeal the ruling to the circuit court. [Eff and comp 11/26/93; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS §§91-8, 91-12)

§6-20-23 Applicability of orders. Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the board. [Eff 11/9/81; am, ren 6-20-12, and comp 11/26/93; comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2, 91-8) (Imp: HRS § 91-8)

§6-20-23.01 Withdrawal of petition. A petitioner shall file a written notice of withdrawal in order to

withdraw a petition under this subchapter. If a hearing has been set, the petitioner must serve the notice, no later than five days before the date of the scheduled hearing, on all parties named in the petition and the board. A petition withdrawn within five days of the hearing date shall result in the petition being dismissed with prejudice, i.e., the petition may not be refiled at any time thereafter. If a hearing has not been set, the petitioner may withdraw the petition at any time, and shall serve a notice of withdrawal on the board, the ~~administrator,~~ executive director, and all other applicable parties. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2, 91-8) (Imp: HRS §91-8)

SUBCHAPTER 5 REPEALED

§6-20-24 REPEALED. [R NOV 26 2009]

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 21

SERVICE CREDIT: EXCLUSION FROM MEMBERSHIP
OF CERTAIN EMPLOYEES

Subchapter 1 Claim of Prior Service
 Credit for Service as a
 Legislator Rendered Prior
 to July 1, 1951

- §6-21-1 Filing of claim and enrollment
- §6-21-2 Retirement

Subchapter 2 Computation of One Year of Service

- §6-21-3 Applicability
- §6-21-4 Fractional month of employment
- §6-21-5 General employees
- §6-21-6 Teachers of the Department of Education
 and the Hawaii State Public Charter
 School Commission
- §6-21-7 Elected officials
- §6-21-8 Part-time employees
- §6-21-8.1 Average final compensation

Subchapter 3 Conversion of Unused Sick
 Leave to Additional Service
 Credit

- §6-21-9 Unused sick leave defined
- §6-21-10 Limitations
- §6-21-11 Conversion rate
- §6-21-12 Certification

Subchapter 4 Exclusion from Membership of
 Certain Employees

- §6-21-13 Scope
- §6-21-14 Employees excluded from membership
- §6-21-15 Acquisition of service credit by excluded
 employees

§6-21-1

Historical Note: Subchapter 1 of this chapter is based substantially on Procedural Rules Relating to Claim of Prior Service Credit for Service as a Legislator Rendered Prior to July 1, 1951, Employees' Retirement System of the State of Hawaii. [Eff 6/15/70; R 11/9/81]

SUBCHAPTER 1

CLAIM OF PRIOR SERVICE CREDIT FOR SERVICE AS A LEGISLATOR RENDERED PRIOR TO JULY 1, 1951

§6-21-1 Filing of claim and enrollment. Upon receipt of a claim for service as a legislator rendered to July 1, 1951, and upon verification of the service, the claimant shall be enrolled as a member of the system. [Eff 11/9/81; comp 2/9/89; comp
] (Auth: HRS §§88-28, 88-52) (Imp: HRS
§88- 52)

§6-21-2 Retirement. Any legislator or former legislator who has been enrolled as a member in accordance with section 6-21-1 shall be retired in accordance with sections 88-73 and 88-74, Hawaii Revised Statutes. [Eff 11/9/81; am and comp 2/9/89; comp
] (Auth: HRS §§88-28, 88-52) (Imp: HRS §88-52)

Historical Note: Subchapter 2 of this chapter is based substantially on Procedural Rules Relating of the Employees' Retirement System of the State of Hawaii Relating to the Computations of One Year of Service [Eff 6/15/70; R 11/9/81]

SUBCHAPTER 2

COMPUTATION OF ONE YEAR OF SERVICE

§6-21-3 Applicability. This subchapter shall apply in determining how much service in any year is equivalent to a year of service for members classified as general employees in section 88-102, Hawaii Revised Statutes, for members classified as teachers in section 88- 102, Hawaii Revised Statutes, for elected officials and part-time workers who are included in the membership of the system. [Eff 11/9/81; comp 2/9/89; comp] (Auth: HRS §§88-28, 88-50) (Imp: HRS §88-50)

§6-21-4 Fractional month of employment. A fractional month of employment resulting from initial employment, termination of employment, death, suspension or leave of absence without pay, shall be considered one full month of service if the employee ~~[worked for fifteen or more days during the month, or, for the month of February, if the employee worked for fourteen or more days during the month.]~~ was paid or on paid status for at least one-half of the month. [Eff 11/9/81; comp 2/9/89; am and comp] (Auth: HRS §§88-28, 88-50) (Imp: HRS §88-50)

§6-21-5 General employees. (a) For general employees, twelve full months of employment shall be considered one year of service.

(b) A fractional month of employment shall be considered one full month of service, if it meets the requirements of section 6-21-4. [Eff 11/9/81; am and

comp 2/9/89; comp] (Auth: HRS §§88-28, 88-50) (Imp: HRS §88-50)

§6-21-6 Teachers of the Department of Education and the Hawaii Public Charter School Commission. (a) For employees classified as teachers, a year of service shall be computed on the basis of a school year. If service is terminated earlier through death or retirement, service shall be computed to the date of death or retirement.

(b) [A]For traditional school year schedules, a fractional month of employment shall be considered one full month of employment if it meets the requirements of section 6-21-4; provided that if absences without pay total two and one-half months or more in any one semester, one additional month shall be excluded in computing a year of service.

(c) For other school year schedules, a fractional month of employment shall be determined on the basis of teacher days worked and paid during the official school year. [Eff 11/9/81; am and comp 2/9/89; am and comp] (Auth: HRS §§88-28, 88-50) (Imp: HRS §88-50)

§6-21-7 Elected officials. (a) For elected officials, any twelve months of service in the office to which they were elected or appointed shall be considered a year of service. For legislators, computation of a year of service shall commence from the day they are elected or appointed. For all other elected officials, computation shall commence from the day they take office.

(b) A fractional month in office shall be treated in the same manner as a fractional month of employment provided for in section 6-21-4. [Eff 11/9/81; am and comp 2/9/89; comp] (Auth: HRS §§88-28, 88-50, 88-52) (Imp: HRS §§88-50, 88-52)

§6-21-8 Part-time employees. (a) For an employee to be eligible for membership in the system, employers shall establish the part-time employee position with one full-time equivalence and base pay, and the part-time employee must meet the minimum of fifty percent (50%) full-time equivalence.

(1) Employers shall designate and report eligible part-time employees at a minimum of fifty percent (50%) full-time equivalence or greater.

(2) Employers shall convert hourly-paid employees to a percentage of full-time equivalence for the position.

(3) Employers shall determine and report a full-time equivalence base pay compensation rate for part-time hourly-paid employees consistent with a bargaining unit salary schedule:

(A) Annual Compensation: Hourly Rate x 2080 = Annual Base Salary.

(B) Monthly Compensation: Hourly Rate x 2080 ÷ 12 = Monthly Base Salary.

(4) For part-time employees who are included in the membership of the system, twelve months of part-time service shall be considered a year of service[-] for eligibility purposes.

(b) If an employee has service comprised of periods including both part-time and full-time employment, the part-time service shall be converted to full-time equivalent service or vice-versa, for the purpose of determining average final compensation and the retirement allowance payable. Whatever method of conversion is used, the part-time or full-time service shall conform to the same basis of part-time or full-time salary used to determine average final compensation; provided that if the employee is employed on the same part-time basis throughout the member's membership, no conversion to full-

time equivalent is required and the average final compensation shall be based on the part-time salary.

- (c) A fractional month of employment shall be considered a month of part-time service if it meets the requirement of section 6-21-4. [Eff 11/9/81; am and comp 2/9/89; am and comp] (Auth: HRS §§88-28, 88-50)
(Imp: HRS §88-50)

§6-21-8.1 Average final compensation. (a) For the purpose of computing average final compensation, a year of credited service means a period of twelve consecutive months of service; provided that if a fraction of a month is considered a full month of service, the actual compensation, pay, or salary paid for the month shall be used in the computation.

(b) For the purpose of computing average final compensation under the provisions of §6-21-6 for teachers of the Department of Education and the Hawaii Public Charter School Commission, a year of credited service means a period of twelve consecutive months of service as determined on the basis of traditional school year schedules under section 6-21-6(b) or other school schedules under section 6-21-6(c). [Eff and comp 2/9/89; am and comp] (Auth: HRS §§88-28, 88-50) (Imp: HRS §§88-50, 88-81)

Historical Note: Subchapter 3 of this chapter is based substantially on Procedural Rules Relating to the Conversion of Unused Sick Leave to Additional Service Credit, Employees' Retirement System of the State of Hawaii [Eff 8/4/75; R 11/9/81]

SUBCHAPTER 3

CONVERSION OF UNUSED SICK LEAVE TO ADDITIONAL SERVICE CREDIT

§6-21-9 Unused sick leave defined. Unused sick leave means the number of working days of sick leave which has been accumulated by the member in accordance with existing statutes, rules, regulations or collective bargaining agreements, and which remains unused at the time the member retires or terminates service. [Eff 11/9/81; am and comp 2/9/89; comp] (Auth: HRS §88-28) (Imp: HRS §88-63)

§6-21-10 Limitations. (a) Unused sick leave shall be converted to additional service credit only if the member has at least sixty days of that leave for each term of membership service at the time the member retires or terminates service.

(b) Additional service credit derived from the conversion of unused sick leave shall be used only for the purpose of computing retirement allowances and shall not be used to meet any length of service requirement, such as eligibility for retirement, the election of mode of retirement or for establishing vested benefit status.

(c) The conversion of unused sick leave to additional service credit shall apply only to members retiring or terminating service in good standing after July 1, 1975[.] as determined and reported to the system by the member's employing agency. [Eff 11/9/81; am and comp 2/9/89; am and comp] (Auth: HRS §§88-28, 88-63) (Imp: HRS §88-63)

§6-21-11 Conversion rate. (a) Unused sick leave accumulated other than on the basis of working days shall be converted into working days at the rate of one working day for each eight hours, or in the case of firefighters who are employed on twenty-four hour work shifts, at the rate of two and one-tenth working

days for each working shift.

(b) For the purpose of computing retirement allowance, unused sick leave shall be converted into additional service credit at the rate of one additional month of service for each twenty days of sick leave with any remaining balance of ten or more days being equal to another additional month of service. [Eff 11/9/81; am and comp 2/9/89; comp] (Auth: HRS §§88-28, 88-63) (Imp: HRS §88-63)

§6-21-12 Certification. On such form as may be prescribed by the system, or on such form as is being used by the employing agency, the agency responsible for the maintenance of sick leave records shall certify the amount of unused sick leave at the time of retirement or termination of service of the member. [Eff 11/9/81; am and comp 2/9/89; comp] (Auth: HRS §§88-28, 88-63) (Imp: HRS §88-63)

Historical Note: Subchapter 4 of this chapter is based substantially on Rules Relating to the Exclusion from Membership of Certain Employees, Employees' Retirement System of the State of Hawaii [Eff 8/25/73; R 11/9/81].

SUBCHAPTER 4

EXCLUSION FROM MEMBERSHIP OF CERTAIN EMPLOYEES

§6-21-13 Scope. This subchapter shall govern the exclusion from membership in the system of certain classes of employees who are employed on a part-time or short-term basis and members of the legislature who do not elect to be members of the system. [Eff 11/9/81; am and comp 2/9/89; comp] (Auth: HRS §88-28) (Imp: HRS §88-43)

§6-21-14 Employees excluded from membership. The following classes of employees shall be excluded from membership in the system:

- (1) Persons employed by the legislature or any committee thereof; except that legislative employees employed on a full-time basis during and between sessions and any member of the system on leave of absence to be employed by the legislature during any legislative session shall be included in the membership of the system as provided in sections 88-21 and 88-54, Hawaii Revised Statutes;
- (2) Persons employed on short-term or temporary appointments of three months or less;
- (3) Persons employed as substitute teachers;
- (4) Persons employed in part-time positions in adult education and evening class programs;
- (5) Persons in any position requiring less than one-half ~~of~~ of full-time employment, including but not limited to, lecturers teaching less than seven credit hours per semester at baccalaureate colleges of the University of Hawaii and lecturers teaching less than eight credit hours per semester in the community colleges of the University of Hawaii;
- (6) Graduate assistants of the University of Hawaii;
- (7) Persons employed in any position where employment is casual or intermittent and the percentage of full-time equivalence is indeterminate; provided that after at least three months, any person whose employment has been determined to average twenty or more hours per week shall be included in the membership of the system;
- (8) Members of the legislature who do not elect to be members as provided in section 88-42,

- Hawaii Revised Statutes; or
- (9) Students, including graduate school students, employed as student helpers, student hires, student aides, summer student law clerks, college student interns, or in similar non- permanent positions. [Eff 11/9/81; am and comp 2/9/89; am and comp] (Auth: HRS §88-28)
- (Imp: HRS §§88-21, 88-43)

§6-21-15 Acquisition of service credit by excluded employees. (a) A member shall not be eligible for service credit for any period of service as an employee excluded from membership in the system.

(b) A member who rendered service in the armed forces of the United States during the period 1941-1949 who was employed by the Territory or a county at the time of induction into the armed forces but was not included in the membership of the system, and who returned to employment by the Territory or a county shall be eligible to purchase service credit not to exceed four years for the period of military service between 1941-1949, if the member returned to employment with the Territory or a county within five years after discharge from the armed forces. [Eff and comp 2/9/89; comp] (Auth: HRS §88-28)

(Imp: HRS §88-43, 88-51(8))

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 22

CERTIFICATIONS AND FINDINGS OF THE MEDICAL BOARD
OR DESIGNATED ENTITY

- §6-22-1 Scope
- §6-22-2 Definitions
- §6-22-3 Examination of member [~~by the medical board~~]
- §6-22-4 Engagement of other specialists
- §6-22-5 Workers' compensation and Social Security
Administration reports and findings
- §6-22-6 Position description of member
- §6-22-7 Pre-existing condition of member
- §6-22-8 [~~Medical board's certifications~~]
Certifications and findings
- §6-22-9 Appearance as witness
- §6-22-10 Additional medical reports

§6-22-1 Scope. This chapter shall govern the procedures for the certifications and findings of the medical board or a designated entity relating to applications for:

- (1) Ordinary disability retirement under sections 88-75, 88-284, and 88-334, HRS;
- (2) Service-connected disability retirement under sections 88-79, 88-80, 88-285, and 88-336, HRS; and
- (3) Accidental death benefits under sections 88-85, 88-286, and 88-339, HRS. [Eff 1/9/84; am and comp 11/26/2009; am and comp

] (Auth: HRS §88-28)
(Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-
284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-2 Definitions. Definitions generally applicable to this chapter are also provided in section 88-21, HRS, and section 6-20-1. As used in this chapter:

"Accident" means an unlooked for mishap or untoward event which is not expected or designed, occurring while in the actual performance of duty at some definite time and place.

"Actual performance of duty": If the member is disabled as the natural and proximate result of an accident, the accident shall be deemed to have occurred while in the actual performance of duty even if the member may not have been actually engaged in performing the duties of the member's job; provided that the accident occurred during working hours either:

- (1) On the work premises; or
- (2) At wherever the member's duties require the member to be.

"Designated entity" means an entity designated by the system to review applications for disability retirement and accidental death benefits and to provide findings and certifications to the system regarding those applications in accordance with sections 88-75, 88-79, 88-85.5, 88-284, 88-285, 88-286, 88-335, 88-336, or 88-339, HRS.

"Gainful employment" means substantial gainful employment which is commensurate with the member's age, education, experience, training, and physical and mental capacities.

"Medical board" means the board of physicians provided for in section 88-31, HRS.

"Natural and proximate result" means the result that would naturally follow from the accident, unbroken by any independent cause.

"Occupational hazard" means a danger or risk which is inherent in, and concomitant to, a particular occupation [~~or particular job, if not a risk common to employment in general~~]. To be considered an "occupational hazard," the causative factors must be those which are not ordinarily incident to employment in general and must be different in character from those found in the general run of occupations, the general run of occupations meaning many but not all occupations.

"Ordinary disability" means a mental or physical incapacity for the further performance of duty, that, at the time of the application for disability retirement, is likely to be permanent.

"Service-connected disability" means a mental or physical incapacity for the further performance of duty that, at the time of the application for disability retirement is likely to be permanent, is not the result of wilful negligence on the member's part, and is:

- (1) The natural and proximate result of an accident occurring while in the actual performance of duty at some definite place and time; or
- (2) The cumulative result of some occupational hazard.

"Substantial gainful employment" means a significant amount of fairly constant physical or mental work activity, or both, which is productive in nature and is done for remuneration or profit, whether or not the work activity is part-time, pays less or has less responsibility than that of the person's previous employment; provided that the work activity:

- (1) Shall amount to at least thirty hours a week; or
- (2) Shall produce a gross income of not less than an amount which is equivalent to the minimum hourly wage as set by state law multiplied by thirty hours, regardless of the number of hours the person may have actually worked.

"Wilful negligence" means the intentional failure

to use ordinary care such as a reasonably prudent person would exercise. [Eff 1/9/84; am 2/9/89; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-3 Examination of member ~~[by the medical board].~~ (a) The medical board or a designated entity, as determined by the executive director on behalf of the system, shall investigate, review, and evaluate all medical reports submitted to it as well as the employer's report of the accident as submitted to the disability compensation division of the department of labor and industrial relations and the member's position description submitted by or on behalf of the member's employer ~~[member in support of the applicant's claim]~~.

(b) The applicant shall submit medical reports to the medical board or designated entity as provided in section 6-26-7, including the physician's statement. The medical board or designated entity may, at its discretion, disregard any medical reports or other records submitted:

- (1) More than sixty days after the application has been filed; or
- (2) After any longer period of time that the medical board or designated entity expressly provides for the submission of medical reports or other records.

The medical board or designated entity may disregard any medical reports or other records submitted to ~~[the medical board]~~ it after ~~[the medical board]~~ it has issued its certifications and findings pursuant to section 6-22-8, except as provided in section 6-22-10. The medical board or designated entity may or may not, at its discretion, subject the member to a physical examination in arriving at its certifications and findings on all matters referred to it. [Eff 1/9/84; am and comp 11/26/2009; am and comp]

(Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-4 Engagement of other specialists. The medical board[~~7~~] or designated entity, if it deems necessary, may at the expense of the system engage other physicians or specialists, or both, to examine the member or review records as requested, or both, and report their findings to the medical board[~~7~~] or designated entity. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-5 Workers' compensation and Social Security Administration reports and findings. Any determination of the disability compensation division of the department of labor and industrial relations, the labor and industrial relations appeals board, and the Social Security Administration relating to the same incapacity for which the applicant or member is claiming a disability or death benefit may be taken into consideration; however, that determination shall not be binding upon the medical board[~~7~~], designated entity, or the system. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-6 Position description of member. The determination of whether the member is incapacitated for the further performance of duty shall be related to the duties prescribed in the official position description of the employing agency in which the member was employed at the time the accident which resulted in the condition occurred. The medical board

or designated entity may consider other probative and credible evidence of the member's actual job duties. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-284, 88-285, 88-334, 88-336)

§6-22-7 Pre-existing condition of member.

Permanent incapacity that is caused by or results from the natural deterioration, degeneration, or progression of a non-service connected pre-existing condition is not the natural and proximate result of an accident nor is it the cumulative result of some occupational hazard. The medical board or designated entity shall not consider, and the ~~[board]~~ system shall not grant, disability retirement benefits for a permanent incapacity that is caused by or results from the natural deterioration, degeneration, or progression of a non-service connected pre-existing condition. Whenever there is evidence of a non-service connected pre-existing condition, the applicant shall have the burden of proof, including the burden of producing evidence and the burden of persuasion, of proving that the member's permanent incapacity was not caused by and did not result from the natural deterioration, degeneration, or progression of the non-service connected pre-existing condition. The degree or quantum of proof required shall be by a preponderance of the evidence. [Eff 1/9/84; am 2/9/89; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-79, 88-285, 88-336)

§6-22-8 ~~[Medical board's certifications]~~

Certifications and findings. Upon completion of the examination of the member and the reports submitted to it, the medical board or designated entity shall certify in writing to the ~~[board]~~ system the following:

- (1) In the case of an application for ordinary disability or service-connected disability retirement, whether ~~or not the incapacity is~~, at the time of the application:
- (A) ~~[For the further performance of duty; or]~~ The member is incapacitated for the further performance of duty or for gainful employment; and
- ~~[(B) For gainful employment; and~~
- ~~(C) Likely to be permanent.]~~ (B) The member's incapacity for the further performance of duty or for gainful employment is likely to be permanent.
- (2) In the case of an application for service-connected disability retirement or for accidental death benefits, whether ~~or not~~ the incapacity or death is:
- (A) The natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place; or
- (B) The cumulative result of some occupational hazard (in the case of service-connected disability retirement) or the result of some occupational hazard (in the case of accidental death benefits); and
- (C) Through no wilful negligence on the part of the member. [Eff 1/9/84; am and comp 11/26/2009; am and comp
-] (Auth: HRS §88-28)
- (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-9 Appearance as witness. ~~[The chairperson of or one]~~ One or more of the members of the medical board ~~[shall]~~ may serve as a witness on behalf of the medical board, whenever required to do so, at any hearing of an appeal from the certifications and

findings of the medical board. One or more representatives of a designated entity may serve as a witness on behalf of the designated entity, whenever required to do so, at any hearing of an appeal from the certifications and findings of the designated entity. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

§6-22-10 Additional medical reports. Upon receipt of prior approval of the [~~board,~~] executive director on behalf of the system, the medical board or a designated entity may consider additional medical reports offered by the applicant after the submission of the medical board's or designated entity's certifications and findings to the [~~board;~~] system; provided, however, the additional medical reports must relate to the condition of the member at the time of the application and any determination of disability shall be related to the condition of the member at the time of application. [Eff 1/9/84; am and comp 11/26/2009; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-31, 88-75, 88-79, 88-85, 88-284, 88-285, 88-286, 88-334, 88-336, 88-339)

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 23

CONTESTED CASE HEARINGS

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Retirement and Accidental Death
Benefits

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SUBCHAPTER 1

CONTESTED CASE HEARINGS ON APPLICATIONS FOR DISABILITY RETIREMENT AND ACCIDENTAL DEATH BENEFITS

§6-23-1 Scope. This subchapter shall govern all petitions for contested case hearing filed with the [~~board~~] system disputing a preliminary decision by the [~~board~~] system regarding an application for disability retirement benefits or accidental death benefits, pursuant to the medical board's or a designated entity's certifications and findings under chapter 6-22. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-2 Definitions. Definitions ~~[generally]~~ applicable to this subchapter are also provided in section 88-21, HRS, and ~~[section]~~ sections 6-20-1[-] and 6-22-2. As used in this subchapter:

"Causation" refers to a finding as to whether or not a ~~[disability]~~ member's disability or death is:

- (1) The result of an accident occurring while in the actual performance of duty at some definite time and place; or
- (2) ~~[As the]~~ The cumulative result of some occupational hazard; ~~[and]~~ or
- (3) ~~[Whether or not the disability was the]~~ The result of wilful negligence on the part of the member.

~~["Medical board" means the board of physicians provided for in section 88-31, HRS.]~~

"Petition" means a request filed with the ~~[board of Trustees]~~ system pursuant to section 6-23-4, in which an applicant for disability retirement benefits or accidental death benefits disputes the ~~[board of trustees']~~ system's preliminary decision regarding the medical board's or designated entity's certifications and findings. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-3 Preliminary decision by ~~[board of trustees]~~ the system; notice of preliminary decision; petition for contested case hearing. (a) Upon receipt of the medical board's or a designated entity's certifications and findings pursuant to section 6-22-8, the ~~[board]~~ executive director on behalf of the system shall make a preliminary decision as to whether to accept, reject or remand the medical board's or designated entity's certifications and findings ~~[or to remand the certifications and findings to the medical board for any clarification or correction. The board].~~ The executive director on behalf of the system, may reject the medical board's or designated entity's certifications or findings,

including findings regarding causation[-], and make independent determinations. The executive director on behalf of the system, may remand the certifications and findings to the medical board or designated entity for any clarification or correction.

(b) Upon acceptance, rejection, or remand of the medical board's or a designated entity's certifications and findings, or any part thereof, the ~~[administrator]~~ executive director on behalf of the system shall, within fifteen days thereafter, notify the applicant of the ~~[board's]~~ system's preliminary decision and the medical board's or designated entity's certifications and findings.

(c) If any certification or finding accepted by the ~~[board]~~ executive director on behalf of the system in ~~[its]~~ the preliminary decision, or any independent determination made by the ~~[board,]~~ executive director on behalf of the system in the preliminary decision, is adverse to the applicant, the ~~[administrator]~~ executive director on behalf of the system shall notify the applicant of the applicant's right to file a petition for contested case hearing disputing the ~~[board's]~~ preliminary decision pursuant to section 6-23-4 and of the procedure for filing the petition.

[Eff 11/9/81; am and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§88-82, 91-2)

§6-23-4 Filing of petition for contested case hearing. After receipt of notice of the ~~[board's]~~ system's preliminary decision pursuant to section 6-23-3, an applicant may file a petition for contested case hearing disputing any adverse determination contained in the preliminary decision. The petition shall be filed in the office of the system in Honolulu no later than ~~[sixty]~~ thirty days from the date of receipt of the written notification from the ~~[administrator]~~ executive director of the ~~[board's]~~ system's preliminary decision regarding the medical board's or the designated entity's certifications and

findings. [Eff 11/9/81; am and comp 11/26/2009; am and
comp] (Auth: HRS §§88-28, 91-2)
(Imp: HRS §§88-82, 91-2)

§6-23-5 Contents of petition. (a) The petition
for contested case hearing disputing the ~~[board's]~~
system's preliminary decision shall include the
following:

- (1) The identity of the petitioner. If the
petition is filed by ~~[an employee
organization]~~ a person or other entity on
behalf of the member or applicant, the
~~[organization]~~ person or other entity shall
state that it has the right to represent the
member or applicant and shall submit proof
of that right with the petition; and
- (2) The grounds for the petition, the specific
issues involved, the contentions of the
petitioner, and a description of the
evidence that the petitioner intends to
introduce in support of the contentions.

(b) An incomplete petition may be returned to
the petitioner with an explanation for the return. If
returned, the petitioner shall have fifteen days in
which to correct and refile the petition. Any petition
refiled within the fifteen-day period may be rejected
if the petition is still incomplete and the
incompletion is material and substantial.

(c) Any petition that is not filed within the
period prescribed in section 6-23-4 and any petition
that is returned and not corrected and refiled within
the period prescribed in subsection (b) shall be
rejected. [Eff 11/9/81; am and comp 11/26/2009; am and
comp] (Auth: HRS §§ 88-28, 91-2)
(Imp: HRS §§88-82, 91-2)

§6-23-6 Contested case hearing~~[; before board or~~

~~hearing officer~~]. When a petition for contested case hearing is filed in accordance with this subchapter, the petitioner shall be afforded a contested case hearing before ~~[the board or]~~ a hearing officer appointed by the ~~[board.]~~ system. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-7 Time and place of hearing and notice.

~~[If the petition will be heard by the board, the board shall set the time and place of hearing and the administrator shall give written notice thereof to the petitioner. Unless otherwise directed by the board, when the hearing of a petition is assigned to a hearing officer, the]~~ The hearing officer shall set the time and place of hearing and give written notice thereof to the petitioner. The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested at least fifteen days before the hearing. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9.5, 92-9)

§6-23-8 Docket. The ~~[administrator]~~ system

shall maintain a docket of all petitions and each petition shall be assigned a number. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-9 Computation of time; extension of time.

(a) In computing any period of time prescribed or allowed by this subchapter, or any order of the board, system or a presiding officer, 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 shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period of time runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays shall not be included in the computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for purposes of these computations. All references in this subchapter to days shall mean calendar days, unless otherwise expressed.

(b) Except for the time for filing exceptions pursuant to section 6-23-19[~~(b)~~], whenever a person or ~~[agency]~~ entity is required or allowed to act within a time specified by this subchapter, the ~~[board or]~~ hearing officer or the executive director on behalf of the system or board may:

- (1) With or without motion or notice extend such period if written request therefor is made before the expiration of the specified period; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff 11/9/81; am and comp 11/26/2009; am and comp]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-10 Documents. (a) If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the ~~[board]~~ system, or is otherwise insufficient, the board or hearing officer or the executive director on behalf of the system or board may, on its own motion or on the motion of any party, strike such document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

(b) All documents filed with or presented to the board or hearing officer or the executive director on behalf of the system or board, may be retained in the files of the ~~[board]~~ system. The ~~[board]~~ system may permit the withdrawal of original documents upon submission of photostatic or properly authenticated copies to replace the originals. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-11 Deposition; application for. (a) Upon the written application of a party to a proceeding governed by this subchapter and for good cause shown, ~~[the board or]~~ the hearing officer may at any time after the filing of the petition, order the taking of testimony of a witness by oral examination.

(b) The application shall be made to ~~[the board or]~~ the hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and mailing address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-12 Depositions; person before whom taken, oath, examination, and cross-examination, record of examination, filing of deposition. (a) The deposition shall be taken before an officer authorized to administer oaths.

(b) The officer before whom the testimony is to be taken shall put the witness to oath. The adverse party shall have the right to cross-examine the

witness. The questions propounded to the witness and the answers thereto shall be taken stenographically and transcribed.

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the [~~board~~] system at the system's office. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-13 Use of depositions. (a) A deposition ordered and taken in accordance with section 6-23-12 may be used in a proceeding if the [~~presiding~~] hearing officer finds that the evidence is otherwise admissible and:

- (1) The witness is dead;
- (2) The witness is out of the State, unless it appears that the absence of the witness is procured by the party offering the deposition;
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or
- (5) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the

board or hearing officer, to allow the deposition to be made.

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2)

§6-23-14 [Presiding] Jurisdiction; presiding officer; powers and duties. (a) ~~[The chairperson or other member of the board designated by the chairperson or a hearing officer designated by the board shall preside at all hearings on petitions governed by this subchapter.]~~ The hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter. The chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-20. The hearing officer, and chairperson of the board or other member of the board designated by the chairperson, shall have jurisdiction over those matters expressly authorized by this subchapter, respectively.

(b) ~~[When the presiding officer is a hearing officer,]~~ With respect to contested case hearings governed by this subchapter, the hearing officer as the presiding officer shall have the following powers and duties:

- (1) To determine the time and place of hearing and, in the hearing officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To administer oaths and affirmations;
- (4) To examine witnesses;
- (5) To issue subpoenas;

- (6) To rule on offers of proof and receive evidence;
- (7) To hold conferences, before or during the hearing, for the simplification of issues;
- (8) To rule on motions and dispose of procedural requests or similar matters;
- (9) To remand, in the hearing officer's discretion, to the medical board or designated entity the certifications and findings involved in the petition, or any matter or issue related thereto; and to accept from the medical board or designated entity any new or amended report or documents, including any new certifications or findings;
- (10) To make a recommended decision to the board;
- (11) To dispose of any matter that normally and properly arises before or in the course of the hearing; and
- (12) To take any other action authorized by this subchapter or by law that the hearing officer may deem necessary for the orderly and just conduct of the hearing.

(c) ~~[When the petition is heard by the board, the presiding officer shall have all of the foregoing powers and duties except the making of a recommended decision.]~~ With respect to hearings of arguments on exceptions governed by this subchapter, the chairperson of the board or other member of the board designated as presiding officer shall have the following powers and duties:

- (1) To determine the time and place of the hearing of arguments on exceptions and, in the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing; and
- (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing.

(d) The substantive provisions of sections 6-22-5, 6-22-6, and 6-22-7 shall apply to contested case hearings and arguments on exceptions under this subchapter. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-14.01 Default. (a) A presiding officer may find a party to be in default upon motion by a party or at the presiding officer's discretion, on the following grounds:

- (1) Failure to comply with an administrative order;
- (2) Failure to appear at a pre-hearing conference or hearing without good cause being shown; or
- (3) Failure to prosecute the case.

(b) When the presiding officer finds that a default has occurred, the presiding officer may issue a default order against the defaulting party. The order shall include findings of fact showing the grounds for the order, conclusions regarding material issues of fact and law, and other terms or conditions, as appropriate. Terms or conditions of a default order can include dismissal of the petition. The default order shall constitute a recommended decision pursuant to section 6-23-17 if filed by a hearing officer. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-14.02 Motions to dismiss or for summary judgment. (a) The presiding officer, upon motion by a party, may at any time issue an order for summary judgment as to all or any part of the claims, if no

genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

(b) The presiding officer, upon motion by a party or on the presiding officer's own motion, may at any time issue an order dismissing the petition on the grounds of lack of standing, lack of jurisdiction, failure to state a claim on which relief may be granted, or any other ground upon which the petition may be dismissed prior to the hearing. In addition, the presiding officer may issue an order of dismissal of the petition upon a stipulation of the parties or upon a voluntary dismissal by the petitioner.

(c) An order that grants or denies disposal of some or all claims in the petition shall constitute a recommended decision pursuant to section 6-23-17 if issued by the hearing officer and not considered an interlocutory order. An order that grants or denies disposal of some or all claims in the petition shall constitute a proposed decision pursuant to section 6-23-18 if issued by the board upon receipt of a recommended decision and not considered an interlocutory order. An order that disposes of some but not all of the claims in the petition shall be considered an interlocutory order and shall be appealable under section 91-14, HRS, only after a final decision has been issued, or if deferral of review would deprive the appellant of adequate judicial review under section 91-14, HRS. [Eff and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-15 Reassignment of petition. If for any reason the hearing officer designated for the hearing of the petition for contested case hearing is unable to complete the hearing, the [~~board~~] system may, without abatement of the proceedings, assign the petition to another hearing officer. [Eff 11/9/81; am and comp 11/26/2009; am and comp]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 92-16)

§6-23-16 Conduct of contested case hearing. (a)

The [~~presiding officer~~] hearing officer shall convene the hearing and summarize the issues in the petition. The petitioner shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(b) Before presenting the case, the petitioner shall have the opportunity to make an opening statement. The deputy attorney general or other counsel assigned to the respondent medical board or designated entity shall also have the opportunity to make an opening statement then or after the petitioner has presented the petitioner's case. Opening statements may be waived by either party.

(c) Witnesses shall testify in the following order:

- (1) Witnesses for the petitioner;
- {2} Witnesses called by the [~~deputy attorney General~~] respondent;
- (3) Witnesses for the petitioner in rebuttal;
- (4) Witnesses called by the [~~deputy attorney general~~] respondent in rebuttal;
- (5) Additional witnesses as the presiding officer may deem necessary.

(d) Witnesses shall be examined in the following order:

- (1) Direct examination by the party calling the witness;
- (2) Cross examination by the other party;
- (3) Redirect examination by the party calling the witness;
- (4) Recross examination by the other party;
- (5) Examination by the presiding officer or any member of the board.

(e) After the presentations of evidence is concluded, unless the petition is submitted by either party or both parties without argument, the petitioner shall open the argument followed by argument by [~~the~~

~~deputy attorney general~~] the respondent and the petitioner may present rebuttal argument which shall be limited to countering any matter or argument presented by the ~~[deputy attorney general]~~ respondent. Reasonable time limits may be imposed by the ~~[presiding]~~ hearing officer for argument. Argument may be waived by either party.

(f) The ~~[presiding]~~ hearing officer, within such time limits as the ~~[presiding]~~ hearing officer may impose, may permit the parties to submit written memoranda in support of their respective positions and proposed findings of fact and conclusions of law.

[Eff 11/9/81; am and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§88-82, 91-2, 91-9, 91-10, 92-16)

§6-23-17 Recommended decision. ~~[When a petition is heard by a hearing officer, the hearing officer, within]~~ Within sixty days after the close of the reception of evidence or the filing of any memoranda or proposed findings of fact or conclusions of law permitted by the hearing officer, whichever is later, the hearing officer shall make and file with the ~~[board]~~ system a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling on each proposed finding so presented. [Eff 11/9/81; am and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-9, 92-16)

§6-23-18 Proposed decision. Upon receipt of the recommended decision, the board may accept it as its proposed decision, or may remand the recommended decision to the hearing officer for any clarification or correction, or may modify the recommended decision

and issue its own draft of a proposed decision. A copy of the proposed decision shall be served upon each party. [Eff 11/9/81; comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-19 Filing of exceptions; extension of time; finality of proposed decision. (a) Within fifteen days after receipt of a copy of the board's proposed decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portion of the record and authorities relied on to sustain each point. Within fifteen days after receipt of a copy of a party's exceptions and request for review, any party may file with the board a response to the exceptions and request for review. ~~[Eight copies of the exceptions and request for review shall be filed with the board.]~~ In addition, a copy of the exceptions and request for review, and response, shall be served upon each of the parties who were served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision, or response, by filing ~~[two copies of]~~ a written application setting forth the reasons for the request. The application shall be filed before the expiration of the respective period prescribed for the filing of exceptions or response. Upon good cause shown, the board, ~~[or]~~ any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed fifteen days after the applying party's receipt of the extension of time within which to file exceptions or response.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the board on its own motion orders further proceedings to be held. [Eff 11/9/81; am and comp 11/26/2009; am and comp]

(Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-20 Argument on exceptions. Upon the filing of exceptions by a party adversely affected by the proposed decision, the board shall grant such party an opportunity to present arguments to the board. The ~~[administrator]~~ executive director shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2, 91-11, 92-16)

§6-23-21 Final decision. (a) Where exceptions have been filed to the board's proposed decision, the board, within sixty days after the hearing on the exceptions, shall render its final decision. In rendering its final decision, the board shall consider the whole record or such portions thereof as may be cited by the parties, and shall resolve all questions of fact by what it deems to be the preponderance of the evidence. The final decision shall be in writing and shall contain findings of fact and conclusions of law upon which the decision is based.

~~[(b) Where the board has heard and examined all of the evidence, the board, within sixty days after the reception of the evidence, or filing of any memoranda or proposed findings permitted to be filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has been permitted to file proposed findings of fact, the final decision shall incorporate a ruling on each proposed finding so presented.]~~

~~(e)]~~ (b) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff

11/9/81; am and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-82, 91-2,
91-10, 91-11, 91-12, 92-16)

§6-23-21.01 Attorneys' fees upon successful petition. (a) If after filing a petition[~~with the board~~], the petitioner is the prevailing party before the board or a court of competent jurisdiction, the petitioner may [~~move~~] file a motion with the system for reasonable attorneys' fees and costs pursuant to the standards set forth in rule 1.5 of the Rules of Professional Conduct adopted by the Hawaii Supreme Court. The system's decision on the motion shall be made by the executive director.

(b) The petitioner shall file a motion for attorneys' fees and costs with the [~~board or the court~~] system no later than sixty days from the date of the board's final decision or the circuit court's ruling if the board's decision is appealed, whichever is later. The motion shall state the amount of fees and costs requested, and shall attach the following:

- (1) A copy of the fee agreement between the petitioner and the petitioner's attorney, or an affidavit or declaration signed by the petitioner stating the attorney's fees agreed upon between the petitioner and the petitioner's attorney;
- (2) A copy of the billing statement(s) from the petitioner's attorney detailing the legal work performed in connection with the petitioner's case, including:
 - (A) The legal work performed shall be itemized and described in detail by each service, along with the time spent on each service shown in increments of one tenth of an hour or less. Lumped entries or block billing shall not be accepted; and
 - (B) Costs shall be itemized and described in detail and accompanied by either:

(i) Invoices and receipts; or
(ii) An affidavit signed by the
petitioner's attorney attesting to
the costs; and
(3) Proof of payment of the requested attorneys'
fees and costs by the petitioner to the
petitioner's attorney.
(c) Reimbursement of attorneys' fees shall not be
awarded until the requirements of this section are
satisfied. The [~~board~~] system may require additional
details and justification of time billed or costs
claimed. [Eff and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§88-28, 88-82, 91-2)

SUBCHAPTER 2

OTHER CONTESTED CASE HEARINGS

§6-23-22 Scope. This subchapter shall govern
all contested case hearings under chapter 88, HRS,
except for petitions from preliminary decisions under
subchapter 1, and petitions for declaratory rulings
under chapter 6-20, subchapter 4. The rules in this
subchapter shall not apply to hearings related to
claims arising under chapter 92F, HRS. [Eff 11/9/81;
am and comp 11/26/2009; comp] (Auth:
HRS §§88-28, 91-2) (Imp: HRS §§ 91-2, 91-9)

§6-23-23 Definitions. Definitions generally
applicable to this subchapter are also provided in
section 88-21, HRS, and section 6-20-1. As used in
this subchapter:

"Informal decision" means a written determination
by the system that has not been expressly approved by
the board of trustees, to deny a member or petitioner

any alleged entitlement to a benefit, service credit, or other alleged entitlement under chapter 88, HRS.

"Petition" means a request for a contested case hearing filed with the ~~[board of trustees]~~ system requesting relief from an alleged misapplication or violation of any provision of chapter 88, HRS, or any rules promulgated thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, and meeting the requirements of sections 6-23-24 and 6-23-28.

"Respondent" means any person proceeded against in ~~[the]~~ a petition[-] under this subchapter. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§88-21, 91-2, 91-9)

§6-23-24 Commencement of proceedings; service.

(a) A proceeding shall commence with the filing of a petition pursuant to section 6-23-28 for a contested case hearing, including a certificate of service, ~~[with the board at the office of the system.]~~ at the system's main office in Honolulu. Upon the filing of a petition and certificate of service, the system shall date stamp the petition and assign a docket number, as provided in section 6-23-8.

(b) The petitioner shall serve personally or by first class mail one copy of the petition and certificate of service on each of the parties to the proceedings, or upon an agent or attorney representing the party. [Eff 11/9/81; am and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-25 Limitations period. All petitions under this subchapter are forever barred unless filed within two years after the petitioner first knew or should have known that the system had denied the petitioner the alleged benefit, service credit, or

other entitlement under chapter 88, HRS, that forms the basis for the petition. Such knowledge includes the petitioner's receipt of an informal decision from the system denying the petitioner the alleged benefit, service credit, or entitlement. The petitioner bears the burden of proving that the petitioner has complied with the imitations period. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 661-5)

§6-23-26 Computation of time; extension of time.

(a) In computing any period of time prescribed or allowed by this subchapter, or any order of the board~~[7]~~ or a hearing officer, 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 shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period of time runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays shall not be included in the computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for purposes of these computations. All references in this subchapter to days shall mean calendar days, unless otherwise expressed.

(b) Except for the time for filing exceptions under section 6-23-50(b), but including the limitations period, whenever a person or agency is required or allowed to act within a time specified by this subchapter, the board or hearing officer may:

- (1) Extend such period, for a reasonable amount of time, if a written request is filed with the board or hearing officer before the specified period expires; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff and comp 11/26/2009;

am and comp] (Auth: HRS
§§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-27 Appearances. Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel must conform to the standards of conduct and ethics required of practitioners before the courts of the State. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-28 Contents of petition; form; rejection.

(a) The original and one copy of the petition shall be filed with the [~~board-~~] system. The petition shall contain:

- (1) The petitioner's name, mailing address, and telephone number, and the petitioner's fax number and e-mail address, if available;
- (2) A brief statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts, including the date of the alleged denial of the benefit, service credit, or other entitlement;
- (5) A brief statement of the issues raised;
- (6) A statement of the petitioner's interpretation of the statute, rule, or order or the petitioner's position or contention with respect thereto;
- (7) A statement containing the legal reasons, including any legal authorities, in support of the petitioner's interpretation and the

relief sought[~~-. The board may require the petitioner to file additional statements~~];

(8) The names of any other parties or potential parties; and

(9) The petitioner's signature.

(b) The petitioner may use Form ERS 202, entitled "Petition for Contested Case Hearing, Sample Format" dated August 2009, Appendix A, located at the end of this chapter, as a petition, or may file a petition in pleading or letter format, so long as the petition is legible and complies with subsection (a).

(c) The ~~[board]~~ executive director on behalf of the system may reject any petition that does not conform to the requirements of subsections (a) and (b). The rejection shall be in writing and shall state the reasons therefor.

(d) A petition that is not rejected will be assigned by the system to a hearing officer. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-29 Consideration of petition. (a) The ~~[presiding]~~ hearing officer, within a reasonable amount of time after the petition has been filed, shall do one of the following:

(1) Deny the petition where:

- (A) The question-is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
- (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
- (C) The issuance of a final decision may adversely affect the interest of the State, the system, or any of the officers or employees in any litigation

which is pending or may be reasonably be expected to arise;

(D) The petition requests a decision on a matter other than the alleged misapplication or violation of any provision of chapter 88, HRS, or rules promulgated thereunder, setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement, or on a matter otherwise not within the scope of this subchapter;

~~[(D)]~~ (E) The petition requests a decision on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board; or

~~[(E)]~~ (F) The petition is frivolous; or

(2) Set the petition for hearing.

(b) Any order dismissing the petition under this section shall:

(1) Be in writing;

(2) Include separate findings of fact and conclusions of law; and

(3) ~~Constitute [a final decision by the board pursuant to section 6-23-52 or, if rendered by a hearing officer,]~~ a recommended decision pursuant to section 6-23-48. [Eff and comp 11/26/2009; am and comp

] (Auth: HRS §§88-28, 91-2)

(Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-30 Jurisdiction; powers and duties of presiding officer. (a) The hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter. The chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-51. The board or the hearing officer ~~[shall preside over the~~

~~matters governed by this subchapter, and]~~ shall have jurisdiction over those matters expressly authorized by ~~[chapter 88, HRS.]~~ this subchapter, respectively.

(b) [The] With respect to contested case hearings governed by this subchapter, the hearing officer as presiding officer shall have the following powers and duties:

- (1) Continue or postpone, at the request of a party, any hearing;
- (2) Regulate the course and conduct of the hearing;
- (3) Administer oaths and take affidavits;
- (4) Examine witnesses and admit or exclude documentary or other evidence;
- (5) Issue and dispose of subpoenas;
- (6) Hold conferences, before or during the hearing, for the simplification of issues;
- (7) Rule on motions, requests, offers of proof, procedural requests, and similar matters;
- (8) Hear and decide questions of fact, law, or discretion; and
- (9) Do all other acts and take all measures necessary, as authorized by chapter 88, HRS, for the maintenance of order and for the efficient, fair, and impartial adjudication of issues arising in proceedings governed by this subchapter.

(c) With respect to hearings of arguments on exceptions, the chairperson of the board or other member of the board designated as presiding officer shall have the following powers and duties:

- (1) To determine the time and place of the hearing of arguments on exceptions and, in the presiding officer's discretion or at the request of a party, to continue or postpone any hearing;
- (2) To regulate the course and conduct of the hearing;
- (3) To take any other action authorized by this subchapter or by law that the presiding officer may deem necessary for the orderly and just conduct of the hearing. [Eff and

comp 11/26/2009; am and comp]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§ 91-
2, 91-9, 91-10, 92-16)

§6-23-31 Burden of proof. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The party having the burden of proof shall proceed first in the presentation of opening statements, evidence, witnesses, and arguments, followed by the other party. The degree or quantum of proof shall be a preponderance of the evidence. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-10, 92-16)

§6-23-32 Prehearing conference. (a) The [~~presiding~~] hearing officer, at any time before the hearing is scheduled, may direct the parties and their counsel or other representatives to appear at a prehearing conference to consider:

- (1) The simplification of issues and stipulations as to facts and law not in dispute;
- (2) The necessity or desirability of amendment to the pleadings;
- (3) The exchange of exhibits, documents, and prepared testimony, admissions, and stipulations as to the admissibility or relevance of exhibits;
- (4) The limitation of the number of witnesses;
- (5) Time, place, and other considerations, such as time constraints, for the hearing; and
- (6) Any other matters which may expedite the disposition of the proceeding.

(b) If no prehearing conference is held, the [~~presiding~~] hearing officer may require each party to submit a statement disclosing and identifying all

witnesses to be called at the hearing, all exhibits to be used at the hearing, and other matters as shall simplify the issues and expedite the disposition of the proceeding. A copy of the statement shall be served on all parties at a date prior to the hearing as designated by the hearing officer. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-2 8, 91-2) (Imp: HRS §§ 91-2, 91-9, 92-16)

§6-23-33 Notice of hearing. (a) At least fifteen days prior to hearing, all parties shall be given written notice of the hearing, including:

- (1) The date, time, place, and nature of the hearing;
- (2) The section of the pertinent statutes or rules involved;
- (3) A concise statement of the issues and basic facts giving rise to the petition. A copy of the petition attached to the notice of the hearing shall satisfy this requirement; and
- (4) The right to retain counsel, if desired.
~~[The board may, at any time, require any person transacting business before the board in a representative capacity to show the person's authority or qualification to act in such capacity.]~~

(b) The notice of hearing shall conform to the requirements of section 91-9, HRS, and shall be personally delivered or mailed by registered or certified mail with return receipt requested. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-9.5)

§6-23-34 Memorandum in opposition. Each respondent, within thirty days after the receipt of the notice of hearing, may file and serve upon all parties a memorandum in opposition stating concisely

and fully the respondent's legal and factual position.
[Eff and comp 11/26/2009; comp] (Auth:
HRS §§88-28, 91-2)(Imp: HRS §§91-2, 91-9)

§6-23-35 Procedure at hearings. (a) All hearings shall be conducted pursuant to chapter 91, HRS, and this subchapter, before ~~[the-presiding]~~ a hearing officer. All parties shall be afforded the full opportunity to present evidence and argument on all issues. If there is no dispute of fact, the ~~[presiding]~~ hearing officer may permit the parties to proceed by memoranda of law in lieu of a hearing.

(b) The hearing shall proceed as follows:

- (1) Opening statements. Petitioner shall first present opening statements, followed by respondents;
- (2) Evidence. Petitioner shall first present evidence, followed by respondents, followed by any rebuttal evidence;
- (3) Witnesses. Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
- (4) Closing argument. After all evidence and witnesses have been admitted, petitioner shall first make closing arguments, if necessary, and respondent shall then make closing arguments, if necessary.

(c) The hearing shall conclude after closing arguments have been made and the ~~[presiding]~~ hearing officer is satisfied that no further evidence or argument is necessary. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§ 91-2, 91-9, 91-10, 92-16)

§6-23-36 Evidence; witnesses; exhibits. (a) The ~~[presiding]~~ hearing officer shall admit all evidence that is not irrelevant, immaterial, unduly

repetitious, or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded under rule 408 of the Hawaii Rules of Evidence, chapter 626, HRS, shall not be admissible.

(b) At hearing, witnesses shall be examined orally, under oath. Parties shall have the right to cross-examine witnesses, so long as the cross-examination is not unduly repetitious. At the discretion of the [~~presiding~~] hearing officer, re-direct examination and re-cross examination may be permitted.

(c) [~~For any exhibit sought to be admitted during a hearing before the board, an original plus eight copies shall be furnished to the presiding officer, and one copy shall be furnished to each party.~~] For any exhibit sought to be admitted during a hearing before a hearing officer, an original plus one copy shall be distributed to the hearing officer, and one copy shall be furnished to each party. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-37 Motions. (a) General. All motions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;
- (2) Provide the name of the petitioner and docket number of the case;
- (3) State the factual or legal grounds, or both, for the motion with particularity;
- (4) Set forth the relief or order sought; and
- (5) Be accompanied by an affidavit or declaration or other evidence relied upon.

The motion may be accompanied by legal memorandum, not to exceed twenty pages. All motions shall be accompanied by a certificate of service and shall be served on each party to the proceeding.

(b) Response to motions. Response to motions shall be filed with the [~~board or the hearings~~]

presiding officer within thirty days after service of the motion. The response shall be accompanied by an affidavit or declaration or other evidence, and may be accompanied by legal memorandum, not to exceed twenty pages. If no response is filed within the designated period, the presiding officer may deem that the responsive party has waived any objection to the motion.

(c) Discretion. Upon the motion of a party, or upon the presiding officer's own motion, the presiding officer may extend or shorten the time for a party to file a response to a motion, and may make such other orders regarding a motion as the presiding officer deems appropriate. The presiding officer may permit oral argument where the officer deems it necessary or desirable. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-38 Motions to dismiss or for summary judgment; disposition of claims. (a) The presiding officer, upon motion by a party, may at any time issue an order for summary judgment in favor of the petitioner or respondent as to all or any part of the claims, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

(b) The presiding officer, upon motion by a party or on the presiding officer's own motion, may at any time issue an order dismissing the petition on the grounds of lack of jurisdiction, failure to state a claim on which relief may be granted, or any other ground upon which the petition may be dismissed prior to the hearing. In addition, the presiding officer may issue an order of dismissal of the petition upon a stipulation of the parties or upon a voluntary dismissal by the petitioner.

(c) An order that grants or denies disposal of ~~[to dismiss]~~ some or all claims in the petition shall constitute a ~~[be a final decision if issued by the~~

~~board, and shall be a~~ recommended decision pursuant to section 6-23-48 if issued by the hearing officer and not considered an interlocutory order. An order that grants or denies disposal of some or all claims in the petition shall constitute a proposed decision pursuant to section 6-23-49 if issued by the board upon receipt of a recommended decision and not considered an interlocutory order. An order that disposes of some but not all of the claims in the petition shall be considered an interlocutory order and shall be appealable under section 91-14, HRS, only after a final decision has been issued, or if deferral of review would deprive the appellant of adequate judicial review under section 91-14, HRS. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-39 Intervention. (a) Upon timely motion and at the discretion of the [~~presiding~~] hearing officer, the [~~administrator~~] executive director or any person or agency may be permitted to intervene as a party in a contested case proceeding if the [~~administrator,~~] executive director, person, or agency asserts a substantial interest in the outcome of the contested case proceeding or the intervention will be conducive to effectuating applicable laws or governmental functions and purposes.

(b) The [~~presiding~~] hearing officer shall have the discretion to deny a motion to intervene for reasons including but not limited to the following:

- (1) The position of the person seeking intervention is adequately represented by a party already admitted to the proceeding;
- (2) Granting the intervention will render the proceeding inefficient and unmanageable;
- (3) Granting the intervention will unduly delay the proceeding; or

(4) Granting the intervention will harass, hinder, or prejudice the rights of any party to the proceeding.

(c) Motions to intervene shall be made pursuant to section 6-23-37. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-9, 92-16)

§6-23-40 Default. (a) The presiding officer may find a party to be in default upon motion by a party or at the presiding officer's discretion, on the following grounds:

- (1) Failure to comply with an administrative order;
- (2) Failure to appear at a conference or hearing without good cause being shown; or
- (3) Failure to prosecute the case.

(b) When the presiding officer finds that a default has occurred, the presiding officer may issue a default order against the defaulting party. The order shall include findings of fact showing the grounds for the order, conclusions regarding material issues of fact and law, and other terms or conditions, as appropriate. Terms or conditions of a default order can include dismissal of the petition. The default order shall constitute [a final decision if issued by the board, and shall constitute] a recommended decision pursuant to section 6-23-48 if filed by the hearing officer. The default order shall constitute a proposed decision if filed by the chairperson or other designated member of the board. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-12, 92-16)

§6-23-41 Filing of documents; public records.

(a) Filing. If any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the [board,]

system, or is otherwise insufficient, the presiding officer may, at the presiding officer's discretion or on the motion of any party, strike the document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

(b) Public records. Notwithstanding section 6-20-4, all documents filed in a proceeding under this subchapter shall be retained in the files of the ~~[board]~~ system and shall be government records that are open to inspection and copying by members of the public, except as provided in chapter 92F, HRS, and other applicable law. Any party who believes that a document filed under this subchapter is not a government record shall file a motion with the ~~[board or hearing officer,]~~ system, stating the legal basis as to why the party believes that the document is not a government record as defined in chapter 92F, HRS. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92F-11, 92F-12, 92F-13, 92F-14)

§6-23-42 Deposition; application for. (a) Upon the written application of a party to a proceeding governed by this subchapter and for good cause shown, the ~~[board or the]~~ hearing officer may, at any time after the filing of the petition, order the taking of testimony of a witness by oral examination.

(b) The application shall be made to the ~~[board or the]~~ hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and mailing address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9, 92-16)

§6-23-43 Depositions; person before whom taken, Oath, examination, and cross-examination, record of Examination, filing of deposition. (a) The deposition shall be taken before an officer authorized to administer oaths.

(b) The officer before whom the testimony is to be taken shall put the witness to oath. The adverse party shall have the right to cross-examine the witness. The questions propounded to the witness and the answers thereto shall be taken stenographically and transcribed.

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the board at the system's office. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

§6-23-44 Use of depositions. (a) A deposition ordered and taken in accordance with section 6-23-42 may be used in a proceeding if the [~~presiding~~] hearing officer finds that the evidence is otherwise admissible and:

- (1) The witness is dead;
- (2) The witness is out of the State, unless it appears that the absence of the witness is procured by the party offering the deposition;
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (4) The party offering the deposition has endeavored and has been unable to procure

the attendance of the witness by subpoena;
or

- (5) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the board or hearing officer, to allow the deposition to be made.

(b) If any part of the deposition is put in evidence by a party, any other party may require the production of the remainder of any other portions of the deposition. [Eff and comp 11/26/2009; am and comp
] (Auth: HRS §§88-28, 91-2) (Imp:
HRS §§91-2, 91-9, 91-10, 92-16)

§6-23-45 Disqualification of board member or hearing officer. (a) No matter shall be heard by a member of the board or by a hearing officer who:

- (1) Has any direct financial interest in the matter being heard;
- (2) Has personally and substantially participated:
 - (A) In an investigation relating to the institution of the proceeding; or
 - (B) In the development of the evidence to be introduced in the proceeding; or
- (3) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney.

(b) A board member or hearing officer may be disqualified from the case upon motion of a party or at the presiding officer's discretion, only upon a preponderance of the evidence showing grounds for disqualification. A motion to disqualify a board member or hearing officer shall be filed and decided prior to the hearing. An order granting or denying a motion to disqualify shall contain separate findings of fact and conclusions of law. [Eff and comp

11/26/2009; comp] (Auth: HRS §§88-28,
91-2) (Imp: HRS §§91-2, 92-16}

§6-23-46 Reassignment of case. If for any reason the hearing officer designated for the hearing of a case is unable to complete the hearing, the [~~board~~] system may, without abatement of the proceedings, assign the case to another hearing officer. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 92-16}

§6-23-47 Ex parte contacts. At no time after the petition is served and filed shall any member of the board or the hearing officer, who are deciding the petition, consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. Any ex parte memorandum or other written communication addressed to a board member or the hearing officer, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served on all other parties. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-13, 92-16)

§6-23-48 Recommended decision. When a case is heard by a hearing officer, the hearing officer shall make and file with the board a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact and conclusions of law, the recommended decision shall include rulings on each proposed finding of fact and conclusion of law. The hearing officer shall file the recommended decision within sixty days after the close of the reception of

evidence or the filing of any post-hearing memoranda or proposed findings of fact and conclusions of law, whichever is later. [Eff and comp 11/26/2009; comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§91-2, 91-9, 91-11, 92-16)

§6-23-49 Proposed decision. Upon receipt of the recommended decision, the board may accept it as its proposed decision, or may remand the recommended decision to the hearing officer for any clarification or correction, or may modify the recommended decision and issue its own draft of a proposed decision.

A copy of the proposed decision shall be served on each party. [Eff and comp 11/26/2009; comp] (Auth: HRS §§ 88-28, 91-2) (Imp: HRS §§ 91-2, 91-9, 91-11, 92-16)

§6-23-50 Filing of exceptions; extension of time; finality of proposed decision. (a) Within fifteen days after receipt of a copy of the board's proposed decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portion of the record and authorities relied on to sustain each point. Within fifteen days after receipt of a copy of a party's exceptions and request for review, any party may file with the board a response to the exceptions and request for review. ~~[Twelve copies of the exceptions and request for review shall be filed with the board.]~~ In addition, a copy of the exceptions and request for review, and response, shall be served upon each of the parties who were served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision, or response, by filing ~~[two copies of]~~ a written application setting forth the reasons for the request. The application shall be filed before the

respective expiration of the period prescribed for the filing of exceptions or response. Upon good cause shown, the board, ~~[or]~~ any member of the board, or the executive director on behalf of the system, may extend the time for filing exceptions or response, for an additional period not to exceed ~~[thirty]~~ fifteen days after the applying party's receipt of the extension of time within which to file exceptions or response.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the board on its own motion orders further proceedings to be held. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11, 91-12)

§6-23-51 Argument on exceptions. Upon the filing of exceptions by a party adversely affected by the proposed decision, the board shall grant such party an opportunity to present arguments to the board. The ~~[administrator]~~ executive director shall set the time and place of hearing of argument on exceptions and give written notice thereof to the parties. [Eff and comp 11/26/2009; am and comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11)

§6-23-52 Final decision. (a) Where exceptions have been filed to the board's proposed decision, the board, within sixty days after the hearing on the exceptions, shall render its final decision. In rendering its final decision, the board shall consider the whole record or such portions thereof as may be cited by the parties, and shall resolve all questions of fact by what it deems to be the preponderance of the evidence. The final decision shall be in writing and shall contain findings of fact and conclusions of law upon which the decision is based.

~~[(b) Where the board has heard and examined all of the evidence, the board, within sixty days after~~

~~the reception of the evidence, or filing of any memoranda or proposed findings permitted to be filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has been permitted to file proposed findings of fact, the final decision shall incorporate a ruling on each proposed finding so presented.~~

~~(e)]~~ (b) The final decision shall be personally delivered or mailed to the parties by registered or certified mail with return receipt requested. [Eff and comp 11/26/2009; am and comp]
(Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-11, 91-12)

§6-23-53 Reconsideration of decision. (a) A motion for reconsideration shall be filed with the board within fifteen days after the board files its final decision. The motion for reconsideration shall clearly specify that the motion is for reconsideration.

(b) The motion for reconsideration shall state specifically what points of law or fact, or both, the motion asserts the board has overlooked or misunderstood, together with brief arguments on the points raised.

(c) No answer or reply to a motion for reconsideration shall be required or considered unless requested by the board. Oral argument on the motion shall be at the discretion of the board.

(d) Only one motion for reconsideration shall be filed by each party and the filing of a motion for reconsideration shall not operate as a stay of the board's final decision or order. [Eff and comp 11/26/2009; comp] (Auth: HRS §§88-28, 91-2) (Imp: HRS §§91-2, 91-9)

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 26

APPLICATION FOR RETIREMENT BENEFITS; PROOF OF AGE AND
COMPUTATION OF AGE

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SUBCHAPTER 1

APPLICATION FOR RETIREMENT BENEFITS

§6-26-1 Application for retirement; person filing; when filed. (a) An application for service retirement shall be filed by the member.

(b) An application for ordinary disability retirement or service-connected disability retirement shall be filed by the member.

(c) Any application that a member may file may be filed by the member's duly authorized, court-appointed guardian or legal representative, in the event the member has been found to be incapacitated as provided in chapter 560, article V, HRS.

(d) For the purpose of this chapter, an application is filed when it is received by the system at its offices in Honolulu, Kauai, Maui, or Hawaii.

[Eff 2/9/89; am and comp 11/26/09; comp

] (Auth: HRS §88-28) (Imp: HRS §§88-70, 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334, 88-336)

§6-26-2 Effective date of retirement. The effective date of retirement shall be as follows:

- (1) Service retirement: the date specified in the written application, which date shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of the month, except for the month of December when retirement on the first or last day of the month shall be allowed.
- (2) Ordinary disability retirement: no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. A member whose application is approved by the board while the member is still in service may terminate service and retire at any time following the approval; provided that retirement shall become effective on the first day of the month following the month the member terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.
- (3) Service-connected disability retirement: the date the application is filed with the system, if the applicant is off the payroll as of that date. If an applicant who files an application for service-connected disability retirement continues to work at the applicant's regular job, or remains on the payroll by taking paid sick or vacation leave of absence, the effective date of retirement shall be the date the applicant terminates employment or goes off the payroll. [Eff 2/9/89; am and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-3 Contents of application. (a) All applications for retirement benefits shall contain the following information:

- (1) The member's name, mailing address, and social security number;
- (2) The date of the application;
- (3) The member's date of birth;
- (4) The name of the employing department;
- (5) The position or job title held by the member;
- (6) The retirement allowance option that the member elects under any of the plans for receiving retirement allowances described in sections 88-74, 88-83, 88-282, 88-283, 88-332, and 88-333, HRS;
- (7) The name, relationship, social security number, and date of birth of any beneficiary designated to receive the benefit payable upon the death of the member after retirement;
- (8) The duly notarized signature of the member is required unless:
 - (A) The member executes the application in the presence of a staff member who is authorized by the ~~[administrator]~~ executive director of the system to accept applications; or
 - (B) The application is for ordinary or service-connected disability retirement and is filed by the member's duly authorized and appointed guardian or legal representative, as provided in section 6-26-1(b).

(b) If the application is for disability retirement, the application shall contain the following additional information:

- (1) Whether the application is for ordinary or service-connected retirement.
- (2) If the application is for service-connected disability retirement, a brief statement of

the accident causing the disability, including the date, time, place, and circumstances of the accident, or a brief statement of the occupational hazard causing the disability.

- (c) If the application is for service retirement, the application shall also contain the effective date of retirement. [Eff 2/9/89; am 1/29/90; am and comp 11/26/09; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-4 Simultaneous filing of more than one application. A member may file applications for different types of retirement at the same time, subject to the following limitations:

- (1) The effective date for retirement shall be in accordance with rules governing the effective date for each retirement;
- (2) The retirement allowance option and beneficiary shall be the same for all applications; and
- (3) The election of retirement allowance option shall be irrevocable, notwithstanding the subsequent approval of an application for ordinary disability retirement. [Eff 2/9/89; am and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-75, 88-79, 88-83, 88-281, 88-283, 88-284, 88-286, 88-331, 88-333, 88-334, 88-336)

§6-26-5 Election of retirement allowance option; change; irrevocability. (a) A member may elect only one retirement allowance option. The retirement allowance option elected by the member may be changed to filing with the system's offices in Honolulu, Kauai, Maui, or Hawaii, written notice of change no

later than one business day before the effective date of retirement. Any written notice of change sent by mail shall not be effective unless it is received by the system no later than one business day before the effective date of retirement.

(b) Every written notice of change shall contain the duly notarized signature of the member, or the member may execute the change in the presence of a staff member who is authorized by the administrator of the system to accept changes. If a member does not select a retirement allowance option before the member's effective date of retirement, then the default retirement allowance option shall be the maximum allowance option, and the beneficiary shall be the member's estate, if no beneficiary has been designated on the application. Upon the effective date of retirement, the retirement allowance option is irrevocable and cannot be changed. [Eff 2/9/89; am and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-5.01 Spousal or reciprocal beneficiary notification. (a) No election by a member of any retirement allowance option in accordance with section 88-83, 88-283, or 88-333, HRS, shall take effect:

- (1) Until the system provides the spouse or reciprocal beneficiary of the member written notification that:
 - (A) Specifies the retirement date, the retirement allowance option selected, and the beneficiary designated by the member; and
 - (B) Provides information indicating the effect of the election;
- (2) Unless the member selects option 2, option 3, including an option that includes options 2 or 3 in combination with some other form of benefit payment, option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or

- (3) Unless it is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located; or
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary.
- (b) The notice shall be in writing and provided in one of the following ways:
 - (1) Via hand-delivery; or
 - (2) By mail.
- (c) Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely on the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary. The member shall provide the representations to the system on a form prescribed by the system. [Eff and comp 11/26/09; comp] (Auth: HRS §§88-28, 88-83, 88-283, 88-333) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-6 Designated beneficiary; when more than one. If more than one beneficiary is designated to receive benefits payable upon death, the applicant shall indicate the portion of the benefits payable to each beneficiary and to whom benefits will be paid if the beneficiary predeceases the applicant. [Eff 2/9/89; am and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-7 Disability application; medical evidence. (a) The applicant for ordinary and service-connected disability retirement shall have the responsibility of furnishing all medical evidence available or which can be made available to the applicant pertaining to the applicant's disability, including reports of the applicant's personal physician and consultant physicians, hospital and laboratory reports, and x-rays.

The applicant for service-connected disability retirement shall also submit, on a form provided by the system, information concerning the applicant's education, work experience, and medical history.

(b) If the application is for service-connected disability retirement, the system shall obtain the following:

- (1) A copy of the employer's report of the accident submitted by the employer to the department of labor and industrial relations, disability compensation division, and any other report of or to the disability compensation division, including medical reports, relating to the accident;
- (2) A certified statement from the head of the department in which the applicant is employed, stating the date, time, and place of the accident, and the nature of the service being performed when the accident occurred. The statement shall also include an opinion as to whether or not the accident resulted in the applicant's disability and whether or not the disability was the result of willful negligence on the applicant's part;
- (3) A copy of the latest position description of the applicant's duties and responsibilities; and
- (4) A release form signed by the applicant which enables the system to obtain any medical and worker's compensation reports.

- (c) The application shall be deemed canceled if:
 - (1) The applicant for ordinary or service-connected disability retirement fails to file a report from the applicant's personal physician concerning the applicant's medical condition and disability within sixty days from the date of the filing of the application; or
 - (2) Twice fails to keep an appointment with the medical board or with a consultant to whom the applicant may be referred by the medical board or by the system.

Written notice of the cancellation shall be sent to the applicant.

(d) For the purpose of this subchapter, unless otherwise indicated by the context, the term "service-connected disability retirement" includes service-connected total disability retirement and service-connected occupational disability retirement. [Eff 2/9/89; am and comp 11/26/09; comp]
(Auth: HRS §88-28) (Imp: HRS §§88-75, 88-79, 88-284)

§6-26-8 Application for three-year evaluation; calculation of benefits; cancellation of request for evaluation. (a) A member who has been retired on service-connected occupational disability retirement for accidents occurring before July 7, 1998 shall be notified in writing at least ninety days before the expiration of three years from the effective date of retirement that the member is entitled to be evaluated by the medical board to determine whether the member has become totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard. The member shall notify the system whether the member desires to be evaluated by submitting a written request for evaluation. The written request for evaluation shall be submitted no earlier than the date of the notice from the system that the member is entitled to be evaluated by the medical board and no later than the

expiration of three years from the effective date of retirement. The member shall submit new medical evidence in support of the member's claim of total disability.

- (1) After review by the medical board, if the board determines that the member is totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard, the board shall award the member a service-connected disability benefit consisting of an annuity plus a pension of sixty-six and two-thirds per cent of the member's average final compensation;
- (2) After review by the medical board, if the board determines that the member is not totally incapacitated for gainful employment as a result of the member's service-connected injuries or job hazard, the member's benefit after the completion of three years from the date of retirement shall be the member's annuity plus a pension of thirty-three and one-third per cent of the member's average final compensation.

(b) The right to a three-year evaluation shall be deemed waived and the request for an evaluation canceled if the applicant twice fails to keep an appointment with the medical board or with a consultant to whom the applicant may be referred by the medical board or the system for medical evaluation. Written notice of the cancellation shall be sent to the applicant. [Eff 2/9/89; am and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-77 (1997), 88-79 (1997), 88-80 (1997))

SUBCHAPTER 2

PROOF OF AGE

§6-26-9 Purpose and scope. The purpose of this subchapter is to implement section 88-44, HRS, which provides that a member shall present at that time and in the manner as the board prescribes, evidence of the member's date of birth. This subchapter shall also apply to evidence of the date of birth of a member's beneficiary when the age of the beneficiary is a factor in the computation of any benefit or allowance payable to the member in the beneficiary under any of the retirement options described in sections 88-74, 88-83, 88-282, 88-283, 88-332, and 88-333, HRS. [Eff 2/9/89; am and comp 11/26/09; comp]
(Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

§6-26-10 When submitted. (a) A member shall submit evidence establishing the member's date of birth upon filing an application for retirement. At the request of the system, a member shall also present evidence of the date of birth of the member's beneficiary, whenever the age of the beneficiary is of significance, in computing the allowance or benefit payable to the member and to the beneficiary. At the request of the system, a beneficiary shall present evidence of the beneficiary's date of birth whenever the age of the beneficiary is of significance in computing any benefit to the beneficiary.

(b) Evidence of the member's date of birth may be submitted prior to the filing of any application for retirement. If such evidence is accepted by the system as establishing the date of birth, it need not be presented again when the application for retirement is filed.

(c) No retirement allowance or benefit shall be paid until evidence which satisfactorily establishes date of birth is submitted to the system. [Eff 2/9/89; comp 11/26/09; comp] (Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

§6-26-11 Original documents of record; copies.

All documents or records presented as evidence of date of birth shall be originals ~~[or]~~, copies certified by the custodian of the record~~[-]~~ ~~[Extracts from records shall also be certified by the custodian of the record.]~~, or duplicates thereof, noted in section 6-26-12. If duplicates are submitted, the system may at its discretion, require that originals or copies certified by the custodian of record be presented or made available for inspection.

All original documents except documents addressed to the system shall be returned after the system has made copies thereof. [Eff 2/9/89; comp 11/26/09; am and comp] (Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-332, 88-332, 88-333)

§6-26-12 Types of evidence. (a) The member shall submit one of the following as evidence of date of birth:

- (1) A certified birth certificate;
- (2) An ~~[original]~~ baptismal certificate which shows the date of birth and was recorded before age five; or
- (3) A written statement from the Social Security Administration establishing the member's date of birth; or
- (4) Valid "Real ID" credentials (e.g., driver's licenses with "Gold Star" emblems or equivalent state identification certificates).

(b) If the evidence in subsection (a) cannot be obtained, the member shall submit at least two of the following:

- (1) ~~[An original]~~ A baptismal certificate or religious record which shows the date of birth or age at a certain time and was recorded after age five;
- (2) A passport[;] or passport card;
- (3) An elementary school record which shows date of birth;
- (4) A census record which shows date of birth or age;
- (5) A voter registration record which shows date of birth;
- (6) A marriage record which shows date of birth or age;
- (7) A naturalization record which shows date of birth or age;
- (8) A military record which shows date of birth or age;
- (9) A hospital treatment or birth record which shows date of birth or age;
- (10) An insurance policy which shows date of birth;
- (11) A foreign passport which shows date of birth or age;
- (12) A child's birth certificate which shows the age of the member-parent; or
- (13) A ~~[Hawaii state identification]~~ birth registration card[; ~~or~~
- ~~(14) A Hawaii driver's license].~~ [Eff 2/9/89; am and comp 11/26/09; am and comp]
(Auth: HRS §§88-28, 88-44) (Imp: HRS §§88-44, 88-73, 88-74, 88-83, 88-282, 88-283, 88-331, 88-332, 88-333)

SUBCHAPTER 3

COMPUTATION OF AGE

§6-26-13 Computation of age to determine the actuarial equivalence of the maximum allowance. (a) The member's age nearest a full year shall be used to determine the actuarial factors to be applied in determining the actuarial equivalence of the maximum allowance under any of the retirement allowance options described in sections 88-83, 88-283, and 88-333, HRS. In computing the nearest full year of age of a member, any fraction of six full months or more shall be considered as the next older year of age.

Example A:

Date of retirement	[2004] 2027 - 7 - 1
Date of birth	[1942] 1965 - 12 - 31
Actual age	61 - 6 - 0
Nearest age	62

Example B:

Date of retirement	[2000] 2027 - 6 - 1
Date of birth	[1938] 1965 - 12 - 12
Actual age	61 - 5 - 19
Nearest age	61

(b) The method of computing age prescribed in this section shall apply to a beneficiary when the age of the beneficiary is a factor in the computation of any benefit payable to the member and the beneficiary. [Eff 2/9/89; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-83, 88-283, 88-333)

§6-26-14 REPEALED. [R 11/26/09]

§6-26-15 Computation of age to determine the age reduction penalty. (a) The member's age nearest the year and full months shall be used to determine the factors of actuarial equivalence to be applied in reducing the member's retirement allowance if the member has not reached the prescribed retirement age.

(b) In computing the nearest years and full months of age of a member, any fraction of fifteen or more days shall be considered as the next older month of age.

Example A:

Date of retirement	[2002] <u>2027</u> - 6 - 1
Date of birth	[1947] <u>1972</u> - 6 - 16
Actual age	54 - 11 - 15
Nearest age	55 - 0

Example B:

Date of retirement	[2002] <u>2027</u> - 6 - 1
Date of birth	[1947] <u>1972</u> - 6 - 17
Actual age	54 - 11 - 14
Nearest age	54 - 11

[Eff 2/9/89; am and comp 11/26/09; am and comp
] (Auth: HRS §88-28) (Imp: HRS §§88-
 74, 88-282, 88-332)

§6-26-16 Computation of age to determine the member's age on the date of retirement. The member's actual age in full years shall be used to determine the member's attained age on the date of retirement and shall be the member's age if the member's age is required to meet the retirement eligibility

prerequisites under parts II, VII, and VIII of chapter 88, HRS.

Example A:

Date of retirement	[2008] <u>2027</u> - 7 - 1
Date of birth	[1946] <u>1965</u> - 12 - 31
Actual age	61 - 6 - 0
Nearest age	61

Example B:

Date of retirement	[2008] <u>2027</u> - 12 - 31
Date of birth	[1954] <u>1973</u> - 1 - 1
Actual age	54 - 11 - 30
Nearest age	54

[Eff 11/26/09; am and comp] (Auth: HRS §88-28) (Imp: HRS §§88-73, 88-74, 88-281, 88-282, 88-331, 88-332)

§6-26-17 Thirty-day month. For the purposes of this subchapter, each month will be deemed to have thirty days. [Eff and comp 11/26/09; comp] (Auth: HRS §88-28) (Imp: HRS §§88-74, 88-282, 88-332)

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 29

MISCELLANEOUS ADMINISTRATIVE PROVISIONS

§6-29-1	[Change of address] <u>Address change and account balance</u>
§6-29-2	[Mailing and distribution of semi-monthly checks] <u>RESERVED</u>
§6-29-3	Computation of interest on contributions
§6-29-4	Service while engaged in professional improvement leave with or without pay
§6-29-5	Employee contributions; workers' compensation benefits
<u>§6-29-6</u>	<u>Finalization of retirant's pension benefit; interest payment</u>

§6-29-1 ~~[Change of address.]~~ **Address change and account balance.** A member ~~[or]~~, retirant, beneficiary or alternate payee desiring to change ~~[the member's or retirant's]~~ their mailing address in the records of the system or obtain account balance information may request ~~[the change]~~ these actions by telephone, in writing or by appearing in person at the office of the system.

If the request is made by telephone, the system will require the following information to verify that the caller is the member, retirant, beneficiary or alternate payee:

- (1) Social security number;

- (2) Birth date; and
- (3) Address currently shown in the records of the system.

A retirant desiring a change in the distribution of their pension check, must request the change in writing or by appearing in person at the office of the system. No change in the distribution of their pension check shall be made when requested by telephone. [Eff. 2/9/89; am 1/29/90; am and comp] (Auth: HRS §88-28) (Imp: HRS §88-28)

~~§6-29-2 [Mailing and distribution of semi-monthly pension checks. All semi-monthly pension checks which are to be distributed by mail, including direct deposits to financial institutions, shall be sent on the last working day preceding the fifteenth day and the last day of the month.~~

~~— All semi-monthly pension checks which are to be picked up in person shall be distributed on the fifteenth day or the last day of the month, except that if the fifteenth day or the last day of the month falls on:~~

- ~~(1) A Saturday or Sunday, distribution shall be on the working day immediately preceding the Saturday or Sunday.~~
- ~~(2) A holiday other than the foregoing days of the week, distribution shall be made on the working day immediately preceding the holiday. [Eff 2/9/89; am 6/11/92] (Imp: HRS §88-28)] RESERVED~~

§6-29-3 Computation of interest on contributions. Employee contributions shall be on deposit with the system for one full month before regular interest is credited thereon.

When an employee terminates employment and withdraws the employee's contributions or when an

employee retires, interest shall be credited up to the last full calendar month before the date of withdrawal of contributions or the date of retirement. [Eff 2/9/89; comp] (Auth: HRS §88-28) (Imp: HRS §88-28)

§6-29-4 Service while engaged in professional improvement leave with or without pay. (a) For the purpose of section 88-51(6), HRS, leaves of absence for professional improvement shall include leaves of absence for educational and sabbatical purposes[~~÷ provided that a leave of absence shall not exceed two years and is authorized as an educational or sabbatical leave~~].

(b) Any change of a leave of absence to any of the foregoing types of leave shall be recognized as purchasable service only if approved by the head of the department from which the leave of absence was taken. [Eff 2/9/89; am and comp] (Auth: HRS §§88-28, 88-51, 88-59) (Imp: HRS §§ 88-51, 88-59)

§6-29-5 Employee contributions; workers' compensation benefits. For the purpose of sections 88-45 [~~and~~], 88-46[~~7~~] and 88-325, Hawaii Revised Statutes, during the period that a class A [~~or~~], class B or class H member receives workers' compensation benefits, the member's normal contribution to the annuity savings fund shall be the percentage specified in [~~section~~] sections 88-45[~~7~~] and 88-325, Hawaii Revised Statutes, of the member's regular wage, salary, or compensation. [Eff 2/9/89; am 1/29/90; am and comp] (Auth: HRS § 88-28) (Imp: HRS §§88-45, 88-46, 88-325, 78-25)

§6-29-6 Finalization of retirant's pension benefit; interest payment. (a) The finalized benefit of a retirant will be determined by the system upon recalculation of the retirant's pension with the payroll and personnel information received from the employer(s) within 90 days after the retirant's effective date of retirement or approval for disability retirement. Information received by the system after the retirant's benefit has been finalized, may be considered a post-finalization adjustment and is not subject to the interest specified in subsections (d) and (e).

(b) For regular service retirements, the system shall finalize a retirant's pension benefit within six calendar months following the month of the retirant's retirement when the effective date of retirement is the first day of the month, or within seven calendar months following the retirant's retirement when the effective date of retirement is December 31.

(c) For ordinary and service-connected disability retirements, the system shall finalize a retirant's pension benefit within six calendar months following the month that the member's retirement is approved by the system or the actual retirement date specified by the member, whichever is later.

(d) If the system fails to finalize a retirant's pension benefit within the times specified in subsection (a) or (b), as applicable, the system shall pay an interest payment to the retirant if the finalized pension benefit is in excess of the pension benefit that was paid to the retirant.

(e) The interest shall be calculated on the difference between the finalized pension amount the retirant was entitled to receive and the pension amount the retirant was paid, including any refund of member contributions, prorated from the retirant's retirement date or date of approval of disability retirement, whichever is later, up to the day the interest payment is made to the retirant.

(f) The interest paid shall be simple interest at a rate per year equal to the ninety day or three-month United States treasury bill rate as of the end

of the calendar year prior to the effective date of
the retirant's finalization plus one percent. [Eff
and comp] (Auth: HRS §88-28) (Imp:
HRS §88-74.5)

This document is prepared by:

☐ Attorney for ☐ Plaintiff ☐ Defendant

Name: _____

Address: _____

Telephone: (_____) _____ - _____

STATE OF HAWAII
FAMILY COURT

_____ CIRCUIT

Plaintiff

v.

Defendant

FC-D No. _____

HAWAII DOMESTIC RELATIONS ORDER
FOR THE EMPLOYEES' RETIREMENT
SYSTEM OF THE STATE OF HAWAII
(**PRE-RETIREMENT**)

Judge: _____

**HAWAII DOMESTIC RELATIONS ORDER FOR THE EMPLOYEES'
RETIREMENT SYSTEM OF THE STATE OF HAWAII (PRE-RETIREMENT)**

A hearing was held before the Presiding Judge or the Court waived hearing on the matter.
After full consideration of the evidence,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. This Hawaii Domestic Relations Order for the Employees' Retirement System of the State of Hawaii ("Order") is intended to meet the requirements for a "Hawaii domestic relations order" ("HiDRO") set forth in Section 88-93.5 of the Hawai'i Revised Statutes ("HRS") and Sections 6-40-1, et seq., of the Hawai'i Administrative Rules ("HAR"), and upon determination by the Employees' Retirement System of the State of Hawaii ("ERS" or "System") that this Order meets the requirements for a HiDRO, this Order shall supersede and replace all prior orders between the same parties intended to meet or meeting the requirements for a HiDRO. This Order is an integral part of the Decree of Divorce filed by the court on

_____ (date), ☐ (check if post decree orders/stipulations apply) and
the _____ (name
of post decree order/stipulation) filed by the court on _____ (date).

2. This Order creates or recognizes the right of the alternate payee identified in Paragraph 4 below ("Alternate Payee"), or assigns to the Alternate Payee, to receive a portion of the benefits

payable with respect to the member, a former member with vested benefit status, or retirant identified in Paragraph 3 below ("Member") under the System.

3. The MEMBER of the System is:

☐ Plaintiff ☐ Defendant (check one)

Name: _____

Mailing address: _____

Telephone: (_____) _____ - _____

Social Security No: XXX – XX - _____

Employer: _____

Employer's address: _____

4. The ALTERNATE PAYEE (spouse or former spouse) is:

☐ Plaintiff ☐ Defendant (check one)

Name: _____

Mailing address: _____

Telephone: (_____) _____ - _____

Social Security No: XXX – XX - _____

5. Member and Alternate Payee were married on _____ (date).

6. RETIREMENT BENEFITS. As part of the division of the property of the parties, the Alternate Payee is awarded a portion of retirement benefits made by the System pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336, if and at the time the retirement benefits become payable to the Member, as provided by and subject to the System's governing laws and rules, and Paragraphs 8 and 9 below.

A. Monthly Retirement Allowance. The Alternate Payee's portion of the Member's monthly retirement allowance under the retirement allowance payment option elected by the Member and remaining after payments required to be paid to other alternate payees pursuant to earlier HiDROs, shall be (check one):

☐ **1.** A percentage determined by the following formula:

$$\frac{\text{_____\% (fractional marital property interest)}}{\text{Months of service credits the System determines has been credited to the Member from _____ (date of marriage) through _____ (date of divorce)}} \times \text{Total months of service credit the System determines has been credited to the Member upon retirement}$$

☐ **2.** A percentage determined by the following formula:

$$\frac{\text{_____ \% (fractional marital property interest)}}{\text{_____ \% (fractional marital property interest)}} \times \frac{\text{Months of service credits the System determines has been credited to the Member from _____ (date) through _____ (date)}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **3.** A percentage determined by the following formula:

$$\frac{\text{_____ \% (fractional marital property interest)}}{\text{_____ \% (fractional marital property interest)}} \times \frac{\text{_____ (number) of months of service credits, or the total months of service credits the System determines has been credited to the Member, whichever is less}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **4.** _____ (numerical percentage) %.

☐ **5.** \$ _____ (numerical dollar amount), or the total distribution payable to the Member, whichever is less.

☐ **6.** None.

B. Refund of Accumulated Contributions. The Alternate Payee's portion of the Member's refund of accumulated contributions under the retirement allowance option providing for the refund of accumulated contributions elected by the Member, if any, and remaining after payments required to be paid to other alternate payees pursuant to earlier HiDROs, shall be (check one):

☐ **1.** A percentage determined by the following formula:

$$\frac{\text{_____ \% (fractional marital property interest)}}{\text{_____ \% (fractional marital property interest)}} \times \frac{\text{Months of service credits the System determines has been credited to the Member from _____ (date of marriage) through _____ (date of divorce)}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **2.** A percentage determined by the following formula:

$$\frac{\text{(fractional marital property interest)} \times \text{Months of service credits the System determines has been credited to the Member from } \underline{\hspace{10em}} \text{ (date) through } \underline{\hspace{10em}} \text{ (date)}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **3.** A percentage determined by the following formula:

$$\frac{\text{(fractional marital property interest)} \times \text{(number) of months of service credits, or the total months of service credits the System determines has been credited to the Member, whichever is less}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **4.** _____ (numerical percentage) %.

☐ **5.** \$_____ (numerical dollar amount), or the total distribution payable to the Member, whichever is less.

☐ **6.** None.

C. Commencement and Termination of Payment. Payments to the Alternate Payee shall be effective as of the same date that benefit payments are available to the Member. Payments of the portion awarded to the Alternate Payee, subject to Paragraphs 6(D), 7, 8 and 9 below, shall terminate upon the death of the Retirant, or upon the death of the Alternate Payee, whichever is earlier.

D. Payment Upon the Death of the Retirant or Alternate Payee. When the System receives a certified copy of this Order prior to the Retirant's retirement, and if this Order is determined to be a HiDRO, the portion awarded to the Alternate Payee by the Order shall be paid as a portion of the retirement benefit the Retirant is receiving pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336 as follows:

1. If the alternate payee will be named beneficiary under any option elected by the Retirant at retirement, upon the death of the Retirant or the alternate payee, the benefit amount to be paid to the survivor shall be the amount

required under the option elected by the Retirant at retirement, as though no HiDRO had existed; or

2. If the alternate payee will not be a named beneficiary under the option elected by the Retirant at retirement, and the Retirant predeceases the alternate payee, payments to the alternate payee shall cease and payments to the Retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the Retirant at retirement, as though no HiDRO had existed. If the alternate payee will not be a named beneficiary under the option elected by the Retirant at retirement, and the alternate payee predeceases the Retirant, the benefit then being paid to the Retirant shall be increased by the amount of the benefit that was being paid to the alternate payee at time of death.

7. TERMINATION DISTRIBUTIONS. As part of the division of the property of the parties, the Alternate Payee is awarded a portion of the distribution of accumulated contributions and/or hypothetical account balances made by the System pursuant to HRS §§ 88-96 and/or 88-341, if and at the time they are withdrawn by the Member as provided by and subject to the System's governing laws and rules, and subject to Paragraphs 8 and 9 below. The Alternate Payee's portion of the Member's distribution of accumulated contributions and/or hypothetical account balances, if any, remaining after payments required to be paid to other alternate payees pursuant to earlier HiDROs, shall be (check one):

- ☐ **A.** A percentage determined by the following formula:

$$\frac{\begin{array}{l} \text{_____ \%} \\ \text{(fractional} \\ \text{marital} \\ \text{property} \\ \text{interest)} \end{array}}{\text{X}} \frac{\begin{array}{l} \text{Months of service credits the System determines} \\ \text{has been credited to the Member from} \\ \text{_____ (date of marriage)} \\ \text{through _____ (date of divorce)} \end{array}}{\text{Total months of service credit the System determines has been} \\ \text{credited to the Member upon retirement}}$$

- ☐ **B.** A percentage determined by the following formula:

$$\frac{\begin{array}{l} \text{_____ \%} \\ \text{(fractional} \\ \text{marital} \\ \text{property} \\ \text{interest)} \end{array}}{\text{X}} \frac{\begin{array}{l} \text{Months of service credits the System determines} \\ \text{has been credited to the Member from} \\ \text{_____ (date)} \\ \text{through _____ (date)} \end{array}}{\text{Total months of service credit the System determines has been} \\ \text{credited to the Member upon retirement}}$$

☐ **C.** A percentage determined by the following formula:

$$\frac{\text{(fractional marital property interest)}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}} \times \frac{\text{(number) of months of service credits, the total months of service credits the System determines has been credited to the Member, whichever is less}}{\text{Total months of service credit the System determines has been credited to the Member upon retirement}}$$

☐ **D.** _____ (numerical percentage) %.

☐ **E.** \$_____ (numerical dollar amount), or the total distribution payable to the Member, whichever is less.

☐ **F.** None.

When the System receives a certified copy of this Order prior to the Member's termination of membership, if this Order is determined to be a HiDRO, and if the Member terminates membership in the System by withdrawal of contributions and/or hypothetical account balance pursuant to HRS §§ 88-96 and/or 88-341, the System, except as provided in Paragraphs 8 and 9 below, shall pay the Alternate Payee at the time contributions and/or hypothetical account balance are withdrawn, the portion that is awarded to the Alternate Payee in the form of a lump sum.

8. When the System has not yet begun to make payment to the Alternate Payee under this Order and is provided with proof of the death of the Alternate Payee, benefits payable with respect to the Member shall be paid without regard to this Order.

9. If the Member retires or withdraws accumulated contributions and/or hypothetical account balances after this Order is determined to be a HiDRO, and subsequently returns to employment requiring active membership in the System:

- A. Payments to the Alternate Payee pursuant to the Order shall not be suspended; and
- B. The System shall pay to the Alternate Payee no portion of any benefits payable to the Member that result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during marriage.

10. Any amount payable by the ERS, other than those payable to the Alternate Payee under Paragraphs 6 and 7 above, shall be payable directly to the Member, the Member's beneficiaries, or the estate, heirs, or legatees of either, in accordance with the System's laws and rules. If the Member, or the beneficiary or estate of either, receives the amount of any distribution that has

been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the person to whom the amount should have been paid. If the Alternate Payee, or the estate, heirs, or legatees of the Alternate Payee receive any amount of a distribution that has not been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the Member, or other person to whom the amount should have been paid. If the Member, Member's beneficiary, Alternate Payee, or their estate, heirs, or legatees, receives any amount that should not have been paid by the System, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the System.

11. The Alternate Payee is ordered to report any payments received from the System on any applicable income tax return in accordance with the Internal Revenue Code provisions or regulations in effect at the time any payments are issued by the ERS. The System is authorized to issue a Form 1099R, or other applicable form on any direct payment made to the Alternate Payee.

12. The Alternate Payee is ordered to provide the System with prompt notification of any changes in the Alternate Payee's direct deposit and mailing address. The System shall not be liable for failing to make payments to the Alternate Payee if the System does not have current direct deposit information for the Alternate Payee at the time of payment. Nor is the System liable for the non-receipt of a Form 1099R if the ERS does not have current mailing address information at the time of issue.

13. The Member or the Alternate Payee shall furnish an original certified copy of this Order to the ERS. The Order is not a qualified HiDRO until an original copy is received by the ERS and is thereafter so deemed pursuant to HRS § 88-93.5, as revised, and HAR § 6-40-1, et seq.

14. This Order shall not be interpreted in any way to:

- A. Require the designation by the Member of a particular person as the recipient of benefits upon the death of the Member;
- B. Require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the Member may select;
- C. Require any action on the part of the System contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to the Alternate Payee;
- D. Award the Alternate Payee an interest that is contingent on any condition other than those conditions resulting in the liability of the System for payment under its plan provisions;

- E. Give to someone other than the Member the right to designate a beneficiary or to choose any retirement plan or option available from the System;
- F. Attach a lien to any part of amounts payable with respect to the Member;
- G. Require the System to make a lump sum payment of the awarded portion of the benefits to the Alternate Payee that are not otherwise payable in a lump sum;
- H. Require the System to terminate the Member from membership or employment, to refund contributions, or to retire the Member;
- I. Provide any type or form of benefit, or any option, not otherwise provided by the System;
- J. Provide increased benefits, determined on the basis of actuarial value; or
- K. Require the System to provide benefits or refunds to the Alternate Payee that are required to be paid to other alternate payees pursuant to earlier HiDROs.

15. This Court does not have jurisdiction over the System with respect to this divorce action, and the System shall not and has not been made a party to this divorce action and any other judicial proceeding herein. A determination by the System that this Order is not a HiDRO shall be subject to review as provided in HRS chapter 91, and the System's rules relating to contested cases. Any party to this divorce action who attempts to make the System a party to this divorce action shall be liable to the System for the System's costs and attorneys' fees, including attorneys' fees and costs for obtaining a dismissal.

16. The Court retains jurisdiction to amend this Order so that it will constitute a qualified HiDRO under the System's governing laws and rules even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the System, or any other circumstances make it impossible to calculate the portion of a distribution awarded to the Alternate Payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

DATED: _____ (city), Hawai'i, _____, 20____.

Judge _____

This document is prepared by:

☐ Attorney for ☐ Plaintiff ☐ Defendant

Name: _____

Address: _____

Telephone: (_____) _____ - _____

STATE OF HAWAII
FAMILY COURT

_____ CIRCUIT

Plaintiff

v.

Defendant

FC-D No. _____

HAWAII DOMESTIC RELATIONS ORDER
FOR THE EMPLOYEES' RETIREMENT
SYSTEM OF THE STATE OF HAWAII
(**POST-RETIREMENT**)

Judge: _____

**HAWAII DOMESTIC RELATIONS ORDER FOR THE EMPLOYEES'
RETIREMENT SYSTEM OF THE STATE OF HAWAII (POST-RETIREMENT)**

A hearing was held before the Presiding Judge or the Court waived hearing on the matter.
After full consideration of the evidence,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. This Hawaii Domestic Relations Order for the Employees' Retirement System of the State of Hawaii ("Order") is intended to meet the requirements for a "Hawaii domestic relations order" ("HiDRO") set forth in Section 88-93.5 of the Hawai'i Revised Statutes ("HRS") and Sections 6-40-1, et seq., of the Hawai'i Administrative Rules ("HAR"), and upon determination by the Employees' Retirement System of the State of Hawaii ("ERS" or "System") that this Order meets the requirements for a HiDRO, this Order shall supersede and replace all prior orders between the same parties intended to meet or meeting the requirements for a HiDRO. This Order is an integral part of the Decree of Divorce filed by the court on

_____ (date), ☐ (check if post decree orders/stipulations apply) and
the _____ (name
of post decree order/stipulation) filed by the court on _____ (date).

2. This Order creates or recognizes the right of the alternate payee identified in Paragraph 4 below ("Alternate Payee"), or assigns to the Alternate Payee, to receive a portion of the benefits

payable with respect to the member or retirant identified in Paragraph 3 below ("Retirant") under the System.

3. The RETIRANT of the System is:

☐ Plaintiff ☐ Defendant (check one)

Name: _____

Mailing address: _____

Telephone: (_____) _____ - _____

Social Security No: XXX – XX - _____

Former Employer: _____

Former Employer's address: _____

4. The ALTERNATE PAYEE (spouse or former spouse) is:

☐ Plaintiff ☐ Defendant (check one)

Name: _____

Mailing address: _____

Telephone: (_____) _____ - _____

Social Security No: XXX – XX - _____

5. Retirant and Alternate Payee wre married on _____ (date).

6. RETIREMENT BENEFITS. As part of the division of the property of the parties, the Alternate Payee is awarded a portion of each distribution of retirement benefits made by the System pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336, if and at the time the retirement benefits become payable to the Retirant, as provided by and subject to the System's governing laws and rules, and Paragraphs 7, 8 and 9 below. The Alternate Payee's portion of the Retirant's monthly retirement allowance under the retirement allowance payment option elected by the Retirant and remaining after payments required to be paid to other alternate payees pursuant to earlier HiDROs, shall be (check one):

☐ **A.** A percentage determined by the following formula:

$$\frac{\begin{array}{l} \text{_____\%} \\ \text{(fractional} \\ \text{marital} \\ \text{property} \\ \text{interest)} \end{array}}{\text{X}} \frac{\begin{array}{l} \text{Months of service credits the System determines} \\ \text{has been credited to the Retirant from} \\ \text{_____ (date of marriage)} \\ \text{through _____ (date of divorce)} \end{array}}{\begin{array}{l} \text{Total months of service credit the System determines has been} \\ \text{credited to the Retirant upon retirement} \end{array}}$$

☐ **B.** A percentage determined by the following formula:

$$\frac{\text{(fractional marital property interest)}}{\text{Total months of service credit the System determines has been credited to the Retirant upon retirement}} \times \frac{\text{Months of service credits the System determines has been credited to the Retirant from } \underline{\hspace{2cm}} \text{ (date) through } \underline{\hspace{2cm}} \text{ (date)}}{\text{Total months of service credit the System determines has been credited to the Retirant upon retirement}}$$

☐ **C.** A percentage determined by the following formula:

$$\frac{\text{(fractional marital property interest)}}{\text{Total months of service credit the System determines has been credited to the Retirant upon retirement}} \times \frac{\text{(number) of months of service credits, or the total months of service credits the System determines has been credited to the Retirant, whichever is less}}{\text{Total months of service credit the System determines has been credited to the Retirant upon retirement}}$$

☐ **D.** _____ (numerical percentage) %.

☐ **E.** \$_____ (numerical dollar amount), or the total distribution payable to the Retirant, whichever is less.

☐ **F.** None.

Payments to the Alternate Payee, subject to Paragraphs 7, 8 and 9 below, shall commence as of the first day of the month following the date upon which the Order is determined to be a HiDRO. Payments to the Alternate Payee, subject to Paragraphs 7, 8 and 9 below, shall terminate upon the death of the Retirant, or upon the death of the Alternate Payee, whichever is earlier.

7. When the System receives a certified copy of this Order subsequent to the Retirant's retirement, and if this Order is determined to be a HiDRO, the portion awarded to the Alternate Payee by the Order shall be paid as a portion of the retirement benefit the Retirant is receiving pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336 as follows:

- A. If the Alternate Payee is already a named beneficiary under any option elected by the Retirant at retirement, the benefit to which the Retirant is entitled, without regard to the Order, shall be apportioned between the Retirant and the Alternate Payee according to the terms of the Order. Upon the death of the Retirant or the Alternate Payee, the benefit amount to be paid to the survivor shall be the amount

required under the option elected by the Retirant at retirement, as though this Order had not existed; or

- B. If the Alternate Payee is not a named beneficiary under the option elected by the Retirant at retirement, the benefit to which the Retirant is entitled without regard to the Order, shall be apportioned between the Retirant and the Alternate Payee according to the terms of the Order. If the Retirant predeceases the Alternate Payee, payments to the Alternate Payee shall cease and payments to the Retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the Retirant at retirement, as though this Order had not existed. If the Alternate Payee predeceases the Retirant, the benefit then being paid to the Retirant shall be increased by the amount of the benefit that was being paid to the Alternate Payee at time of death.
- 8.** When the System has not yet begun to make payment to the Alternate Payee under this Order and is provided with proof of the death of the Alternate Payee, benefits payable with respect to the Retiree shall be paid without regard to this Order.
- 9.** If the Retirant returns to employment requiring active membership in the System:
- A. Payments to the Alternate Payee pursuant to the Order shall not be suspended; and
 - B. The System shall pay to the Alternate Payee no portion of any benefits payable to the Retirant that result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during marriage.
- 10.** Any amount payable by the ERS, other than those payable to the Alternate Payee under Paragraph 6 above, shall be payable directly to the Retirant, the Retirant's beneficiaries, or the estate, heirs, or legatees of either, in accordance with the System's laws and rules. If the Retirant, or the beneficiary or estate of either, receives the amount of any distribution that has been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the person to whom the amount should have been paid. If the Alternate Payee, or the estate, heirs, or legatees of the Alternate Payee receive any amount of a distribution that has not been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the Retirant or other person to whom the amount should have been paid. If the Retirant, Retirant's beneficiary, Alternate Payee, or their estate, heirs, or legatees, receives any amount that should not have been paid by the System, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the System.
- 11.** The Alternate Payee is ordered to report any payments received from the System on any applicable income tax return in accordance with the Internal Revenue Code provisions or regulations in effect at the time any payments are issued by the ERS. The System is authorized to

issue a Form 1099R, or other applicable form on any direct payment made to the Alternate Payee.

12. The Alternate Payee is ordered to provide the System with prompt notification of any changes in the Alternate Payee's direct deposit and mailing address. The System shall not be liable for failing to make payments to the Alternate Payee if the System does not have current direct deposit information for the Alternate Payee at the time of payment. Nor is the System liable for the non-receipt of a Form 1099R if the ERS does not have current mailing address information at the time of issue.

13. The Retirant or the Alternate Payee shall furnish an original certified copy of this Order to the ERS. The Order is not a qualified HiDRO until an original copy is received by the ERS and is thereafter so deemed pursuant to HRS § 88-93.5, as revised, and HAR § 6-40-1, et seq.

14. This Order shall not be interpreted in any way to:

- A. Require the designation by the Retirant of a particular person as the recipient of benefits upon the death of the Retirant;
- B. Require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the Retirant may select;
- C. Require any action on the part of the System contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to the Alternate Payee;
- D. Award the Alternate Payee an interest that is contingent on any condition other than those conditions resulting in the liability of the System for payment under its plan provisions;
- E. Give to someone other than the Retirant the right to designate a beneficiary or to choose any retirement plan or option available from the System;
- F. Attach a lien to any part of amounts payable with respect to the Retirant;
- G. Require the System to make a lump sum payment of the awarded portion of the benefits to the Alternate Payee that are not otherwise payable in a lump sum;
- H. Require the System to terminate the Retirant from membership or employment, to refund contributions, or to retire the Retirant;
- I. Provide any type or form of benefit, or any option, not otherwise provided by the System;
- J. Provide increased benefits, determined on the basis of actuarial value; or

