

DEPARTMENT OF BUDGET AND FINANCE

DEFENDER COUNCIL

Adoption of Chapter 6-200

Hawaii Administrative Rules

January 15, 1993

SUMMARY

Chapter 6-200, Hawaii Administrative Rules, entitled "Rules of the Defender Council," is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

DEFENDER COUNCIL

CHAPTER 200

RULES OF THE DEFENDER COUNCIL

Subchapter 1 General Provisions

'6-200-1 Scope

'6-200-2 Definitions

Subchapter 2 Public Records and Information

'6-200-10 Public inspection

'6-200-11 Disclosure of information

'6-200-12 Cost of copies

Subchapter 3 Adoption, Amendment, or Repeal of Rules

'6-200-20 Petition

'6-200-21 Form and content of petition

'6-200-22 Consideration of petition

Subchapter 4 Declaratory Ruling

'6-200-30 Petition

'6-200-31 Form and content of petition

'6-200-32 Consideration and disposition of petition

'6-200-1

Subchapter 5 Rules of Practice and Procedure

'6-200-40 Meetings

'6-200-41 Quorum and voting

'6-200-42 Officers

'6-200-43 Voting

'6-200-44 Disclosure of interest

- '6-200-45 Motions
- '6-200-46 Executive meetings
- '6-200-47 Adjournment
- '6-200-48 Reconsideration
- '6-200-49 Questions of order
- '6-200-50 Parliamentary rules
- '6-200-51 Council agenda
- '6-200-52 Subpoenas, oaths, masters, etc.
- '6-200-53 Severability

SUBCHAPTER 1

GENERAL PROVISIONS

'6-200-1 Scope. The provisions of this chapter shall govern the practices and procedures of the defender council of the State, the governing body of the office of the state public defender, and the office of the state public defender.

[Eff] (Auth: HRS '91-2) (Imp: HRS "802-9, 802-11, 802-12)

'6-200-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Council" means the defender council.

"Meeting" means the convening of the council for which a quorum is required in

order to make a decision or to deliberate toward a decision upon a matter over which the council has supervision, control, jurisdiction, or advisory capacity.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

'6-200-12

"Persons" include individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Public defender" means the public defender appointed by the council pursuant to Section 802-11, Hawaii Revised Statutes. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

SUBCHAPTER 2

PUBLIC RECORDS AND INFORMATION

'6-200-10 Public inspection. All government records to which access is not restricted by law shall be available for inspection at the office of the public defender in Honolulu during regular business hours. Inquiries and requests for information or records may be made in person during regular business hours at, or by submitting a written request to the office of the public defender in Honolulu. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-11 Disclosure of information. Unless expressly permitted by law, information or records not available for public inspection by law may be disclosed only to the person or to a person authorized in writing by that person, or to the executor or administrator of the estate of that person. No information about a person shall be disclosed by telephone. [Eff] (Auth: HRS '92E-10) (Imp: HRS "92E-2, 92E-4)

'6-200-12 Cost of copies. Copies of government records permitted to be disclosed to the public by law shall be made available free of charge upon request by state officers, in the case of a state agency, and county officers in the case of a county agency. Copies will also be made available, free of charge, to organizations representing public employees, to agencies of the federal government or of other states. As to all other persons, the price for a copy shall be \$.25 per

page. [Eff] (Auth: HRS "91-2, 91-5) (Imp: HRS '91-5)

'6-200-20

SUBCHAPTER 3

ADOPTION, AMENDMENT, OR REPEAL OF RULES

'6-200-20 Petition. Any interested person may petition the council for the adoption, amendment, or repeal of any rule of the council. The petition shall be submitted in duplicate and delivered to the office of the public defender in

Honolulu. [Eff] (Auth: HRS "91-2, 91-6)

(Imp: HRS '91-6)

'6-200-21 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.
- (5) The signature of the petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the Council. [Eff] (Auth: HRS "91-2, 91-6) (Imp: HRS '91-6)

'6-200-22 Consideration of petition. Within thirty days after the receipt of the petition, the council 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] (Auth: HRS

"91-2, 91-6) (Imp: HRS '91-6)

SUBCHAPTER 4

DECLARATORY RULING

'6-200-30 Petition. Any interested person may petition the council for a declaratory order as to the applicability of any statutory provision administered by the council or of any rule or order of the council. [Eff] (Auth: HRS "91-2, 91-8) (Imp: HRS '91-8)

'6-200-32

'6-200-31 Form and content of petition. The petition shall be in duplicate and delivered to the office of the public defender in Honolulu. 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 request, 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 interpretation given the statutory provision, rule, or order by the petitioner;

(6) A memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and

(7) The petitioner's signature.

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

[Eff] (Auth: HRS "91-2, 91-8) (Imp: HRS '91-8)

'6-200-32 Consideration and disposition of petition. The council shall, within a reasonable time after the submission of the petition, either deny the petition, stating the reasons therefor, or issue a declaratory ruling. The council may refuse to issue a declaratory ruling where:

(1) 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;

(2) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or

(3) The petition requests a ruling on a statutory provision not administered by the council or the matter is not otherwise within the jurisdiction of the council.

Upon disposition of the petition, the council shall promptly notify the petitioner of the council's ruling and of the petitioner's right to appeal the ruling to the circuit court if the decision is adverse to the petitioner. [Eff] (Auth: HRS "91-2, 91-8) (Imp: HRS '91-8)

SUBCHAPTER 5

RULES OF PRACTICE AND PROCEDURE

'6-200-40 Meetings. The council shall conduct its regular and special meetings at any time and at such location within the State at the call of the chairperson following proper public notice and notice to all council members.

[Eff] (Auth: HRS '91-2) (Imp: HRS "91-2, 92-7, 92-41)

'6-200-41 Quorum and voting. A majority of the council members authorized by chapter 802, Hawaii Revised Statutes shall constitute a quorum to meet and conduct business. An affirmative vote of the majority shall consist of a majority of the council members authorized by chapter 802, Hawaii Revised Statutes. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2, 92-15)

'6-200-42 Officers. (a) Council members shall nominate at least two of their members for the position of chairperson and at least two of their members for the position of vice-chairperson to be elected by closed ballot at a duly convened meeting of the council. Terms of office shall coincide with their respective terms of appointment as members of the council.

(b) Should the position of the chairperson or vice-chairperson become vacant prior to expiration of their term of office, the council shall hold an election pursuant to the above provisions at the next scheduled meeting to fill the vacant position(s) for the remainder of that term.

'6-200-45

(c) The chairperson shall act as presiding officer at meetings of the council. In the absence or disability of the chairperson and the vice-chairperson, a presiding officer pro tem shall be elected by the appointed members present, provided they constitute a quorum.

(d) The duties of the presiding officer shall include:

(1) Call meetings to order at the appointed hour and place.

(2) Call for approval of minutes of preceding meetings if a quorum is present.

(3) Maintain order.

(4) Announce business before the council.

(5) Receive and submit proper matters brought before the council, call for votes, and announce results.

(6) Appoint committees from among the members of the council as necessary to conduct business.

(7) Make known rules or order upon request, and decide questions of order without debate subject to an appeal to the council.

(8) Perform other duties which may be required by law or properly appertain to the office.

[Eff] (Auth: HRS '91-2) (Imp: HRS "91-2, 802-9)

'6-200-43 Voting. All members may vote. Voting may be by a show of hands or by ballot. Votes shall be recorded by name except for election of officers. [Eff]
(Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-44 Disclosure of interest. A member's disclosure of interest in any pending action shall be in writing, filed and be a part of the minutes. Such disclosure applies to all subsequent actions related to the same subject matter. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-45 Motions. A motion can be considered only when seconded. A motion may be withdrawn by a movant with consent of the second to that motion at any time prior to action being taken on the motion or amendment made to it. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-46

'6-200-46 Executive meetings. The council may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the council is entitled. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. A meeting closed to the public shall be limited to the following matters exempted by section 92-5, Hawaii Revised Statutes:

(1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(2) To deliberate concerning the authority of persons designated by the public defender and/or the council to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(3) To consult with the council's attorney on questions and issues pertaining to the council's powers, duties, privileges, immunities, and liabilities;

(4) To investigate proceedings regarding criminal misconduct relating to the office of the public defender; and

(5) To consider sensitive matters related to public safety or security.

[Eff] (Auth: HRS '91-2) (Imp: HRS

'91-2, 92-4, 92-5)

'6-200-47 Adjournment. Adjournment motions are always in order and shall be decided without debate. One motion to adjourn shall not follow another without intervening business. Unless otherwise specified in the motion, every adjournment of a regular meeting shall be deemed to be to the next regular meeting. [Eff] (Auth: HRS '91-2) (Imp:

HRS '91-2)

'6-200-52

'6-200-48 Reconsideration. Whenever any action fails to get either an affirmative or negative vote equal to a majority of the entire membership, that matter shall be included as "unfinished business" on the agenda for the next regular meeting. If a majority vote is still not possible, the council shall vote a "no recommendation" on the action, which shall be counted as a denial of the requested action. In any council proceeding, failure of any request to receive three affirmative votes constitutes denial of the request. Only a member voting with the majority may move at the same meeting or at the next regular meeting to reconsider a motion. A motion to reconsider takes precedence over all other questions except a motion to adjourn. [Eff] (Auth: HRS '91-2)

(Imp: HRS '91-2)

'6-200-49 Questions of order. A question of order may be raised at any time. [Eff] (Auth: HRS

'91-2) (Imp: HRS '91-2)

'6-200-50 Parliamentary rules. Robert's Rules of Order, Revised, shall govern the council's meetings when not inconsistent with these rules. [Eff]

(Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-51 Council agenda. The agenda for each meeting or hearing shall be prepared and distributed by the office of the public defender. A majority vote of the members of the council personally present at a previous meeting is required in order to have any item included on the agenda. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

'6-200-52 Subpoenas, oaths, masters, etc. The council, pursuant to chapter 92, Hawaii Revised Statutes, through subpoena signed by its presiding officer, may subpoena witnesses to testify at any duly noticed meeting of the Council. The presiding officer shall have the authority to administer oaths to witnesses and require their testimony on matters germane to the subject under inquiry at the hearing. The presiding officer may, by written resolution adopted by vote of a majority of the council, appoint a master or masters not members of the council to hold a hearing, with full powers

'6-200-52

to conduct the hearing, take testimony and report to the council with the master's

findings and recommendations and to otherwise act upon direction from the council. The council shall have the authority to authorize payment of subpoena fees, master's fees and other expenses in connection with the hearings payable out of funds available to the council through the office of the public defender. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2, 92-16)

'6-200-53 Severability. If any section or provision of these rules is held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining sections or provisions of these rules which can be given effect without the invalid section or provision. [Eff] (Auth: HRS '91-2) (Imp: HRS '91-2)

DEPARTMENT OF BUDGET AND FINANCE

Chapter 6-200, Hawaii Administrative Rules, on the Summary Page dated January 15, 1993, was adopted on January 15, 1993, following a public hearing held on January 15, 1993, after public notice was given in the Honolulu Advertiser, Hawaii Tribune-Herald, Maui News and the Garden Island on December 11, 1992.

The adoption of Chapter 6-200 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Yukio Takemoto

Director of Finance

Steven S.C. Lim, Chairperson

Defender Council

John Waihee

Governor

State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed: _____