

## RULE 7. CONTESTED CASES

**7-1. Contested cases; notice; hearing; record.** In any contested case under these rules, all parties shall be afforded an opportunity for a hearing, consistent with the provisions of Sections 91-9 through 91-15, Hawaii Revised Statutes.

- a. All parties shall be afforded an opportunity for hearing after reasonable notice.
- b. Notice shall include a statement of:
  - 1) The date, time, place, and nature of hearing;
  - 2) The legal authority under which the hearing is to be held;
  - 3) The particular sections of the statutes and rules involved;
  - 4) An explicit statement in plain language of the issues involved and the facts alleged by the Chief of Police in support thereof; provided, that if the Chief of Police is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished;
  - 5) The fact that any party may retain counsel if he so desires.
- c. All parties shall be given an opportunity to present evidence and argument on all issues involved.
- d. Parties may stipulate to a modification or waiver of any procedure in a contested case and informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.
- e. For the purpose and the decisions of the Chief of Police, the record shall include, when existent:
  - 1) All pleadings, motions, intermediate rulings;
  - 2) Evidence received or considered, including oral testimony, exhibits and a statement of matters officially noticed;
  - 3) Offers of proof and rulings thereon;
  - 4) Proposed findings and exceptions;
  - 5) Report of the officer who presided at the hearing;
  - 6) Staff memoranda submitted to the Chief of Police in connection with his consideration of the case.
- f. The record need not be transcribed unless requested for purposes of rehearing or court review.
- g. No matters outside the record shall be considered by the Chief of Police in making his decision except as provided herein.

**7-2. Petition for hearing.** The petition for hearing of contested case shall be filed at the Office of the Chief of Police at ~~Pawaa Annex at 1455 South Beretania Street, Honolulu, Hawaii 96814.~~ The petition shall be typewritten on 8-1/2" x 11" white paper and shall include:

- a. The name, address and telephone number of the petitioner.
- b. A statement of the nature of the petitioner's interest, including reasons for the submission of the petition.
- c. A designation of the specific provision, rule or order being contested.
- d. A complete statement of facts.

- e. A statement of the position or contention of the petitioner.
- f. A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

**7-3. Hearing officer.** The hearing officer shall be designated by the Chief of Police and shall comply with the requirements of Sections 91-9 through 91-15, Hawaii Revised Statutes, and the Rules of the Chief of Police, Honolulu Police Department, City and County of Honolulu, State of Hawaii.

**7-4. Fees.** There shall be no fee for filing a petition to contest the denial of a permit under these rules.

**7-5. Notification of hearing; service.**

- a. All parties shall be given written notice of hearing by registered or certified mail with return receipt requested at east twenty (20) working days before the hearing.
- b. Unless otherwise provided for herein, if service b registered or certified mail is not made because of the refusal to accept service or the Chief of Police or his agents are unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. In no case shall the party be given less than fifteen (15) days notice of such hearing.

**7-6. Rules of evidence; participation at hearing.**

- a. The following rules of evidence shall apply in all contested cases:
  - 1) Any oral or documentary evidence may be received, but the hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule of order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as consistently supported by reliable, probative and substantive evidence. All rules or privilege provided by law are hereby recognized.
  - 2) Documentary evidence may be received in the form of copies or excerpts if the original is not available. Parties shall be given an opportunity to compare the copy with the original upon request.
  - 3) Parties shall have a right to cross-examination and a right to submit rebuttal evidence.
  - 4) The hearing officer may take notice of judicially recognized facts and technical or scientific facts which are generally recognized. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and shall be afforded an opportunity to contest the facts so noticed.
  - 5) Unless otherwise provided herein, the burden of proof rests with the party initiating the proceeding, including the burden of producing evidence and the burden of persuasion. The quantum or degree of proof shall be a preponderance of the evidence.

- 6) A party may present its case to the hearing officer either on its own behalf or through an authorized representative.
- b. The hearing officer may exclude witnesses in the contested case from the hearing room during the presentation of evidence.
- c. Whenever in a contested case the final decision makers have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the Chief of Police, shall not be made until a proposal for decision containing a statement of reasons and including determination of each legal or factual issue necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the decision makers, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

**7-7. Decision and orders of hearing officer.** Every decision and order adverse to a party, rendered by the hearing officer in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so rendered. Parties to the proceeding shall be notified in writing of the decision and order and accompanying findings and conclusions within thirty (30) days of the conclusion of the hearing.

**7-8. Appeal to the Chief of Police.** Any petitioner aggrieved by the decision of the hearing officer may appeal to the Chief of Police for review. Such review shall be subject to the following:

- a. The appeal must be in writing on the form provided under Rule 7-2.
- b. The appeal must be filed with the Office of the Chief of Police within fifteen (15) days of the receipt of the decision from the hearing officer.
- c. The review by the Chief of Police may be based on the record of the hearing officer or upon a rehearing of the evidence. Such review shall be subject to Section 91-13, Hawaii Revised Statutes.
- d. Upon a rehearing the Chief of Police shall give notice to the affected parties pursuant to the notice requirements of Rule 7-5.
- e. The decision of the Chief of Police shall be in accordance with Section 91-12, Hawaii Revised Statutes, and shall be rendered within thirty (30) days of the close of the rehearing or review, but in no case longer than sixty (60) days from the date of the filing by the aggrieved petitioner.

**7-9. Judicial review in contested cases.** Any party aggrieved by a final decision and order by the Chief of Police in a contested case, is entitled, by law, to judicial review thereof. Procedures shall be in accordance with Section 91-14, Hawaii Revised Statutes.

## Rules of the Chief of Police

**§15-28 Appeal procedures.** (a) If an applicant for a license or instructor verification objects to a denial or revocation of a License or instructor verification, the applicant may request a hearing. A Detective Agency or Guard Agency may request a hearing on behalf of its employees.

(b) Hearings shall be held in accordance with Rule 7, provided that the applicant shall request the hearing in writing no later than 45 days after the date of the decision letter. The request shall be deemed untimely, and no action will be taken thereon, unless the request is received by the Honolulu Police Department no later than the close of business on the 45<sup>th</sup> day after the date of the decision letter. In the event the 45<sup>th</sup> day falls on a weekend or holiday, the deadline shall be the close of business on the previous business day.

(c) The hearing shall constitute a contested case hearing for purposes of HRS §91-14 and the applicant or Agency shall be entitled to judicial review under that section. [Eff and comp Nov. 20, 2022] (Auth: HRS §134-9; RCH §6-1604(d)) (Imp: HRS §§91-14, 134-9)