

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11  
Hawaii Administrative Rules

January 20, 2022

SUMMARY

1. §5-11-1 is amended.
2. A new §5-11-1.5 is added.
3. §§5-11-2 to 5-11-3 are amended.
4. A new §5-11-4.5 is added.
5. §5-11-5 to 5-11-10 are amended.
6. A new §5-11-10.5 is added.
7. §5-11-11 is repealed.
8. §5-11-12 is amended.
9. §§5-11-13 to 5-11-15 are repealed
10. §§5-11-16 to 5-11-23 are amended.
11. §§5-11-32 to 5-11-39 are amended.
12. New §§5-11-40 to 5-11-42 are added.
13. §5-11-46 is amended.
14. §5-11-53 is amended.
15. Subchapter 7, consisting of new §§5-11-61 to 5-11-73, is added.
16. Chapter 11 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 5-11

NOTARIES PUBLIC

Subchapter 1 General provisions

§5-11-1	Purpose
§5-11-1.5	Definitions
§5-11-2	Commission required to act as a notary public
§5-11-3	Conduct
§5-11-4	Powers
§5-11-4.5	Prohibited acts
§5-11-5	Notary seal
§5-11-6	Official signature
§5-11-7	Acceptable forms of identification of signers
§5-11-8	Acknowledgments; jurats
§5-11-9	Journal
§5-11-10	Notification and filing of names, addresses, and changes; failure to notify
§5-11-10.5	Notification of status change
§5-11-11	Repealed
§5-11-12	Term of commission
§5-11-13	Repealed
§5-11-14	Repealed
§5-11-15	Repealed
§5-11-16	Resignation of commission
§5-11-17	Surrender of notary public commission certificate and notary seal;

§5-11-18 retention of journal; failure to comply  
Loss, misplacement, or theft of notary  
public certificate, notary seal, or  
journal

Subchapter 2 Applications

§5-11-21 Application for notary public  
commission  
§5-11-22 Action on application  
§5-11-23 Application for renewal of notary  
public commission

Subchapter 3 Examinations

§5-11-32 Examination  
§5-11-33 Examination subject matter

Subchapter 4 Disciplinary Sanctions

§5-11-39 Grounds for refusal to renew,  
reinstate, or restore, and for  
revocation, suspension, denial, or  
condition of commissions  
§5-11-40 Forfeited commission  
§5-11-41 Suspended commission  
§5-11-42 Revoked commission

Subchapter 5 Fees and Administrative Fines

§5-11-46 Fees and administrative fines

Subchapter 6 Practice and Procedure

§5-11-51 Administrative practice and procedure  
§5-11-52 Notification of denial of application  
for commission or renewal, or of  
proposed disciplinary action  
§5-11-53 Demand for a hearing  
§5-11-54 Proceedings upon demand for a hearing  
§5-11-55 Exceptions

Subchapter 7 Remote Online Notarization

- §5-11-61 Authority to perform remote online notarization
- §5-11-62 Application for a remote online notary public commission
- §5-11-63 Action on application for remote online notary public commission
- §5-11-64 Remote online notary public examination
- §5-11-65 Remote online notary public commission
- §5-11-66 Term of commission as remote online notary public
- §5-11-67 Application for renewal of remote online notary public commission
- §5-11-68 Means of performing a remote online notarial act
- §5-11-69 Identity proofing
- §5-11-70 Other methods of identity verification
- §5-11-71 Standards for communication technology
- §5-11-72 Electronic signature and electronic notary seal; electronic stamping device; electronic notarial certificate
- §5-11-73 Retention and repositories of electronic journal and audiovisual recording

SUBCHAPTER 1

GENERAL PROVISIONS

**§5-11-1 Purpose.** This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the provisions thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-8)

**§5-11-1.5 Definitions.** As used in this chapter, unless the context requires otherwise:

"Affirmation" or "oath" means a solemn pledge made orally or in writing by a person to attest to the truth of the person's statement.

"Appear personally" means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange proof of the signer's signature and identity with that person; or
- (2) Interacting with a remotely located individual by means of communication technology that complies with the provisions of section 456-23, HRS, and this chapter.

"Conviction" means a formal judgment entered by a court based on a verdict or plea of guilty or a plea of nolo contendere.

"Department" means the department of the attorney general.

"Electronic notary seal" or "electronic seal" means an electronic image that contains information

attached to or logically associated with an electronic record and that contains the notary public's name, the notary public's commission number, and the words

"notary public" and "State of Hawaii".

"Electronic signature" has the same meaning as in section 456-1.6, HRS.

"Identity proofing" has the same meaning as in section 456-23, HRS.

"Notarial act" has the same meaning as in section 456-1.6, HRS.

"Notary public" has the same meaning as in section 456-1.6, HRS.

"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Remote online notary public" has the same meaning as in section 456-23, HRS.

"Signature" has the same meaning as in section 456-1.6, HRS.

"Stamping device" has the same meaning as in section 456-1.6, HRS. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-2, 456-13, 456-22, 456-23, 456-24, 456-25)

**§5-11-2 Commission required to act as a notary public.** No person shall act as a notary public, advertise or represent oneself as a notary public, or perform notarial acts, without a current commission obtained from the attorney general. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-26)

§5-11-3

**§5-11-3 Conduct.** Every notary public shall perform notarial acts in accordance with chapter 456, HRS, this chapter, other laws in Hawaii, and official guidelines (e.g., Notary Manual) that pertain to notarial acts and shall follow recognized industry best practice standards that do not conflict with Hawaii law. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-7)

**§5-11-4 Powers.** Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff 5/5/08; comp 3/12/15; comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19, 456-23)

**§5-11-4.5 Prohibited acts.** (a) A notary public shall not do any of the following:

- (1) Refuse to perform a lawful and proper notarial act because of the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (2) Base the charging of a fee for performing a notarial act or the amount of the fee on the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability,

including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;

- (3) Notarize the notary public's own signature;
- (4) Perform a notarial act if the notary public has an actual and apparent conflict of interest regarding the transaction in question;
- (5) Deliver a signed notarial certificate to another person and authorize that person to attach the certificate to a document outside of the notary public's presence; or
- (6) Provide legal advice, unless the notary public is an attorney licensed to practice law in this State.

(b) Nothing contained in this section shall be construed to limit or deny the enforcement of any provision of chapters 456 and 502, HRS, or this chapter.

(c) Nothing contained in subsection (a)(2) shall be construed to prohibit reducing or waiving a fee at the notary public's discretion, provided that doing so is not done for an unlawful or discriminatory purpose. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-1.5, 456-2, 456-9, 456-17, 456-22, 456-23, 456-24, 456-26)

**§5-11-5 Notary seal.** (a) A notary public shall obtain and keep a rubber stamp notary seal that, when stamped or impressed upon a tangible document, shall clearly show the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii". The notary public shall not possess more than one rubber stamp notary seal at a time.

(b) The notary public shall authenticate all of the notary public's notarial acts, attestations, certifications, and instruments with the notary

§5-11-5

public's notary seal contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) The rubber stamp notary seal of every notary public shall be a circular, rubber stamping device with a serrated or milled edge border between one inch and two inches in diameter and shall include the required wording and information specified in subsection (a).

(d) The notary public shall safeguard and maintain sole control of the notary seal.

(e) The notary public shall surrender the rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal. Failure to comply with this requirement may result in an administrative fine of \$200. [Eff 5/5/08; am and comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-23)

**§5-11-6 Official signature.** (a) A notary public shall sign on every notarial certificate, at the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's notary seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-3, 456-23)

**§5-11-7 Acceptable forms of identification of signers.** A notary public shall not perform a notarial act unless there is proof of the signer's signature and identity as defined in section 456-1.6, HRS, or as otherwise provided in sections 5-11-69 and 5-11-70.

[Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-15, 456-20, 456-22)

**§5-11-8 Acknowledgments; jurats.** Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the expiration date, the notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed.

[Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

**§5-11-9 Journal.** (a) A notary public shall create, maintain, and retain a journal in which the notary public chronicles all notarial acts performed by the notary public in accordance with the requirements of section 456-15, HRS, and this chapter.

(b) The tangible journal shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the tangible journal shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each tangible journal the notary public's name, business address, commission number, commission expiration date, journal

§5-11-9

number, and the beginning and ending dates of the notarial acts recorded in that journal.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each tangible journal.

(f) The notary public shall retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the journal upon resignation from, or revocation, abandonment, or suspension of the notary public's commission, or the expiration of a commission without renewal. At any time, the journal shall be subject to an audit pursuant to section 456-15, HRS. Failure to comply with this requirement may result in an administrative fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-15)

**§5-11-10 Notification and filing of names, addresses, and changes; failure to notify.** (a) Each notary public shall file with the attorney general the notary public's name, employer, residence and business addresses, telephone numbers, email address, and occupation and shall notify the attorney general of any change, in writing, within thirty days of the change.

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and

new addresses of the notary public's residence, if there is a change in the notary public's residence address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change.

(d) Failure to provide timely written notification to the attorney general of any change shall subject the notary public to a \$25 administrative fine. Failure to provide timely written notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary public to a \$50 administrative fine. [Eff 5/5/08; am and comp 3/12/15; am and comp

FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

**§5-11-10.5 Notification of status change. (a)**

Each notary public or the notary public's representative or guardian shall notify the attorney general in writing of an adjudication of the notary public's incompetency within thirty days of the adjudication.

(b) Each notary public shall notify the attorney general in writing of a criminal conviction against the notary public of any felony, or a misdemeanor related to the qualifications, functions, or duties of the notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.

(c) Each notary public shall notify the attorney general in writing of any professional disciplinary decision issued against the notary public in this or another jurisdiction within thirty days of the disciplinary decision.

(d) Failure to provide timely written notification to the attorney general of any change, as

§5-11-10.5

prescribed under this section, shall subject the notary public to an administrative fine of \$25 per violation. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

§5-11-11 REPEALED. [Eff 5/5/08; comp 03/12/15; R FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-12 Term of commission. The term of commission of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of commission, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24, 456-26)

§5-11-13 REPEALED. [Eff 5/5/08; comp 03/12/15] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-14 REPEALED. [Eff 5/5/08; comp 03/12/15] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

**§5-11-15 REPEALED.** [Eff 5/5/08; comp 03/12/15]  
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

**§5-11-16 Resignation of commission.** (a) A notary public may resign the notary public's commission, and shall:

(1) Surrender the notary public's commission certificate and rubber stamp notary seal as provided in sections 5-11-5(e) and 5-11-17(a) and provide to the attorney general the location of the journal as provided in section 5-11-9(f); and

(2) Cease conducting all notarial services.

(b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.

(c) A person may obtain a new commission by successfully applying as a new applicant should the person desire to engage in any notarial services.

[Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022  
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)  
(Imp: HRS §§456-1, 456-3, 456-15, 456-24)

**§5-11-17 Surrender of notary public commission certificate and notary seal; retention of journal; failure to comply.** (a) Within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the notary public shall:

(1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;

§5-11-17

- (2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and
- (3) Retain, or cause to be retained, the notary public's journal and inform the attorney general of the location of the journal.

(b) Upon the death of a current notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection (a)(1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

(d) Failure to comply with subsection (a)(2) may result in an administrative fine of not more than \$200. Failure to comply with subsection (a)(3) or (c) may result in an administrative fine of no less than \$50 and no more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission.

[Eff. 5/5/08; am and comp 3/12/15; am and comp  
FEB 27 2024 (Auth: HRS §§28-10.8, 456-1.5, 456-8,  
456-23) (Imp: HRS §§456-1, 456-3, 456-7, 456-15,  
456-24)

§5-11-18 Loss, misplacement, or theft of notary public certificate, notary seal, or journal. Within ten days after loss, misplacement, or theft of the notary public's notary seal or journal or both, a notary public shall transmit written notification to the attorney general of the loss, misplacement, or

theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. Failure to comply with this section shall result in an administrative fine of \$20. [Eff 5/5/08; am and comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-9, 456-15)

SUBCHAPTER 2

APPLICATIONS

**§5-11-21 Application for notary public**

**commission.** (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
- (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
- (3) A letter of justification from the applicant's employer or, if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought.

(b) The application may require the applicant to provide the following:

- (1) The applicant's legal name;
- (2) Verification that the applicant is at least eighteen years of age;

- (3) The applicant's current residence, business, mailing, and email addresses;
- (4) The date and place of a conviction of any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;
- (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States;
- (6) Proof of the applicant's identity by a current government-issued photo identification; and
- (7) Proof that the applicant is a resident of the State;
- (8) Proof that the applicant has executed an official surety bond that has been approved by a judge of the circuit court;
- (9) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-2, 456-5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-18, 456-24)

**§5-11-22 Action on application.** (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general.

[Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022  
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-22) (Imp: HRS §§28-10.8, 91-13.5, 456-8, 456-24)

**§5-11-23 Application for renewal of notary public commission.** (a) Each notary public shall be responsible for timely renewing the notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal

§5-11-23

application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited. [Eff 5/5/08; comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

### SUBCHAPTER 3

### EXAMINATIONS

**§5-11-32 Examination.** (a) No notary public commission shall be issued to any person unless the person pays the examination fee and takes and passes a written examination as prescribed by the attorney general. The minimum passing score is eighty per cent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary public examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to

reschedule less than forty-eight hours before the examination.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a reexamination without submitting a new application, provided that the applicant requests, pays the examination fee, and reschedules a reexamination within fourteen calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to request, pay for, and reschedule a reexamination within the fourteen calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission. [Eff 5/5/08; am and comp 3/12/15; am and comp

**FEB 27 2022** ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

**§5-11-33 Examination subject matter.** The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notarial acts, and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff 5/5/08; comp 3/12/15; am and comp

**FEB 27 2022** ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, or deny a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and may seek administrative fines for each occurrence or otherwise discipline a former or current notary public for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;
- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in

- false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
  - (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
  - (9) Procuring a commission through fraud, misrepresentation, or deceit;
  - (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
  - (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
  - (12) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
  - (13) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a notary public commission to be unfit or an improper person to hold a commission;
  - (14) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
  - (15) Criminal conviction, whether by nolo contendere or otherwise, of any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving theft, fraud, dishonesty, or false statement;

§5-11-39

- (16) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in this jurisdiction or another jurisdiction within thirty days of the disciplinary decision; and
- (17) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff 5/5/08; am and comp 3/12/15; am and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-40 Forfeited commission.** (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-41 Suspended commission.** A notary public commission may be suspended by the attorney general for a period not exceeding ten years. A person whose commission has been suspended pursuant to section 5-11-39 may apply for reinstatement of the commission upon strict compliance with all terms and conditions

imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-42 Revoked commission.** A person whose commission is revoked pursuant to section 5-11-39 may apply for a new commission, unless the revocation is permanent, after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

## SUBCHAPTER 5

### FEES AND ADMINISTRATIVE FINES

**§5-11-46 Fees and administrative fines.** (a) Pursuant to section 456-9, HRS, the attorney general shall charge and collect the following fees, which shall be nonrefundable:

- (1) Application for notary public commission, \$20;
- (2) Application for renewal of notary public commission, \$20;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;

§5-11-46

- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue notary public journals, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or business address, telephone number, or judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5 if the manual is to be mailed;
- (12) Certification of each notarial transaction from a notary public's journal in the disposition of the attorney general, \$5 per notarial transaction;
- (13) Copying, per printed page, 25 cents;
- (14) Replacement commission certificate, \$10;
- (15) Request to reschedule examination more than forty-eight hours before the examination, \$15;
- (16) Request to reschedule examination less than forty-eight hours before the examination, \$20;
- (17) Administrative fee to process returned documents from the court, \$15;
- (18) Application for remote online notary public commission, \$20;
- (19) Application for renewal of remote online notary public commission, \$20;
- (20) Issuance of remote online notary public commission, \$100;
- (21) Renewal of remote online notary public commission, \$100;
- (22) Administrative fee to process and catalogue audiovisual recordings, \$10; and
- (23) Any other fees or charges referenced in chapter 456, HRS, or this chapter.

(b) The attorney general may impose and collect the following administrative fines for each occurrence of the following:

- (1) Failure to timely notify the attorney general of change of any item specified in section 5-11-10, \$25 per occurrence;
- (2) Failure to timely notify the attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
- (3) Failure to timely notify the attorney general of loss, misplacement, or theft of the notary public's notary seal or journal, \$20;
- (4) Failure to appear at the examination without request or notification to reschedule examination received prior to the time of the examination, \$25;
- (5) Failure to pick up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
- (6) Failure to surrender the notary public's rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (7) Failure to surrender the notary public's commission certificate to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (8) Failure to destroy or disable the remote online notary public's electronic stamping device and to submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal that the electronic stamping device was destroyed or disabled, \$200;
- (9) Possessing more than one rubber stamp notary seal at a time, \$200;

- (10) Failure to retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal, no less than \$50 and no more than \$500;
- (11) Failure to comply with the audit or inspection of the notary public's journal by the attorney general, no less than \$50 and no more than \$500;
- (12) Failure to inform the attorney general of the location of the notary public's journal, no less than \$50 and no more than \$500;
- (13) Failure to transmit the notary public's journal to the attorney general or a repository approved by the attorney general upon the notary public's death, no less than \$50 and no more than \$500;
- (14) Failure to timely notify the attorney general of the notary public's status change as required by section 5-11-10.5, \$25; and
- (15) Any other administrative fines referenced in chapter 456, HRS, or this chapter.

(c) All fees and administrative fines prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.

(d) All unpaid fees and administrative fines shall constitute a debt due and owing to the State.

[Eff 5/5/08; am and comp 3/12/15; am and comp  
FEB 27 2022] (Auth: HRS §§28-10.8, 456-1.5, 456-  
8, 456-23) (Imp: HRS §§456-9, 456-24)

## SUBCHAPTER 6

## PRACTICE AND PROCEDURE

**§5-11-51 Administrative practice and procedure.**

The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff 5/5/08; comp 3/12/15; comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-1)

**§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action.** In the event an application for commission or renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff 5/5/08; comp 3/12/15; comp FEB 27 2022 ] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-53 Demand for a hearing.** Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with the attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff 5/5/08; comp

§5-11-53

3/12/15; am and comp FEB 27 2022 ] (Auth: HRS  
§§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS  
§§456-1, 456-24)

**§5-11-54 Proceedings upon demand for a hearing.**

If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff 5/5/08; comp 3/12/15; comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§91-13.1, 456-1, 456-24)

**§5-11-55 Exceptions.** If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an exception to that requirement if the attorney general determines such action to be in the best interest of the State. [Eff 3/12/15; comp 3/12/15; comp

FEB 27 2022 ] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-24)

SUBCHAPTER 7

REMOTE ONLINE NOTARIZATION

**§5-11-61 Authority to perform remote online notarization.** No person shall perform notarial acts for remotely located individuals or advertise or represent oneself as a notary public who is able to do so, without a current commission as a remote online

notary public obtained from the attorney general.  
[Eff and comp FEB 27 2022 ] (Auth: HRS §§28-  
10.88, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-62 Application for a remote online notary public commission.** (a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under section 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant intends to use to perform remote online notarization;
- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.

§5-11-62

(c) If, during the term of a remote online notary public's commission, the remote online notary public intends to use the technologies or devices of a vendor or person other than those identified in the application submitted under subsection (b), the remote online notary public shall notify the attorney general identifying such other business or other person as required by this section. [Eff and comp

FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

**§5-11-63 Action on application for remote online notary public commission.** (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission as an online notary public:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application and the abandoned application may be destroyed by the attorney general.

[Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-64 Remote online notary public examination.** No remote online notary public commission shall be issued to any notary public unless the notary public pays the examination fee and takes and passes an examination specific to notarization of remotely located individuals as prescribed by the attorney general and pursuant to the requirements of section 5-11-32. [Eff and comp FEB 27 2022 ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-65 Remote online notary public commission.** The attorney general shall commission a notary public to perform remote online notarization, provided that no remote online notary public commission shall be in effect, nor shall a notary public perform remote online notarization unless, in addition to the requirements of sections 5-11-62 and 5-11-64, the notary public:

- (1) Files a literal or photostatic copy of the notary public's remote online notary public commission issued by the attorney general with the clerk of the circuit court of the circuit in which the remote online notary public resides within thirty days of the receipt of the commission; and
- (2) Submits to the attorney general a tangible copy of the notary public's electronic seal and electronic signature. [Eff and comp FEB 27 2022 ] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-66 Term of commission as remote online notary public.** A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission.

§5-11-66

[Eff and comp **FEB 27 2022** ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-67 Application for renewal of remote online notary public commission.** (a) Each remote online notary public shall be responsible for timely renewing the remote online notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application to perform remote online notarial acts received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal as a remote online notary public, each remote online notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission as a remote online notary public, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited. [Eff and comp

**FEB 27 2022** ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

**§5-11-68 Means of performing a remote online notarial act.** (a) A remote online notary public located in the State may perform a notarial act for remotely located individuals only if the remotely located individual personally appears before the remote online notary public at the time of the notarization.

(b) A remotely located individual may comply with the requirement to appear personally before a remote online notary public by appearing before the

remote online notary public by means of communication technology. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §465-23)

**§5-11-69 Identity proofing.** (a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the remotely located individual's identity credential against trusted third-person data sources, bind the remotely located individual's identity to the remotely located individual following successful knowledge-based authentication, and permit the remote online notary public visually to compare the identity credential and the remotely located individual.

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

(1) **Credential analysis.** The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:

(A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;

(B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to

- confirm that the identity credential is not fraudulent or inappropriately modified;
- (C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
  - (D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and
- (2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:
- (A) The remotely located individual shall answer a quiz consisting of a minimum of five questions related to the remotely located individual's personal history or identity formulated from public or private data sources;
  - (B) Each question shall have a minimum of five possible answer choices;
  - (C) At least eighty per cent of the questions shall be answered correctly;
  - (D) All questions shall be answered within two minutes;
  - (E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four hours;
  - (F) During a retake of the quiz, a minimum of forty per cent of the prior questions shall be replaced;
  - (G) If the remotely located individual fails the second attempt, the remotely

located individual is not allowed to retry with the same remote online notary public within twenty-four hours of the second failed attempt; and

- (H) The remote online notary public shall not be able to see or record the questions or answers. [Eff and comp  
FEB 27 2022 1 (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

**§5-11-70 Other methods of identity verification.**

A remote online notary public has satisfactory evidence of the identity of a remotely located individual if the remote online notary public has personal knowledge, as defined in paragraph (1), of the identity of the remotely located individual or if the remote online notary public has satisfactory evidence of the identity of the remotely located individual by oath or affirmation of a credible witness, as defined in paragraph (2), appearing before the remote online notary public.

- (1) Personal knowledge. A remote online notary public has personal knowledge of the identity of the remotely located individual appearing before the remote online notary public if the remotely located individual is personally known to the remote online notary public through dealings sufficient to provide reasonable certainty that the remotely located individual has the identity claimed; or
- (2) Credible witness. To be a credible witness, the witness shall have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The remote online notary public shall have personal knowledge of the credible witness or shall have verified the

identity of the credible witness under section 5-11-69. A credible witness may be a remotely located individual if the remote online notary public, credible witness, and remotely located individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. [Eff and comp FEB 27 2022 ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

**§5-11-71 Standards for communication technology.**

- (a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:
- (1) Provides continuous synchronous audiovisual feeds;
  - (2) Provides sufficient video resolution and audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;
  - (3) Provides sufficient captured-image resolution for identity proofing;
  - (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
  - (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
  - (6) Ensures that any change to or tampering with an electronic record is evident after the electronic notary signature and notary seal have been affixed and the remote online notarial act has been;

- (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
  - (8) Provides the notary public with a means of electronically affixing the notary public's notary seal, signature, and notarial certificate to the notarized document based on an electronic technology standard that utilizes public key infrastructure (PKI) technology from a PKI service provider that is X.509 compliant;
  - (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
  - (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process under section 5-11-69 or 5-11-70 from the beginning; and
  - (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
    - (A) The live transmission of the audiovisual communication;
    - (B) A recording of the audiovisual communication;
    - (C) The verification methods and credentials used in the identity proofing procedure;
    - (D) The electronic records presented for online notarization; and
    - (E) Any personally identifiable information used in the identity proofing.
- (b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:
- (1) The technology no longer permits the remote online notary public to meet the

§5-11-71

requirements of chapter 456, HRS, or this chapter;

- (2) The vendor ceases to provide the technology, which met the requirements of this section;
- (3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS, this chapter, or any other laws in Hawaii; or
- (4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law. [Eff and comp FEB 27 2022 ] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-23, 456-25)

**§5-11-72 Electronic signature and electronic notary seal; electronic stamping device; electronic notarial certificate.** (a) In addition to the rubber stamp notary seal required for all notaries public pursuant to section 456-3, HRS, and section 5-11-5, a remote online notary public shall obtain and keep one or more electronic stamping devices. An electronic stamping device shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union. A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to an electronic document that is the subject of a notarial act for a remotely located individual by use of a digital certificate. A remote online notary public may not perform a notarial act for a remotely located individual if the digital certificate:

- (1) Has expired;
- (2) Does not comply with section 5-11-71;
- (3) Is invalid; or
- (4) Is incapable of authentication at the time the notarial act is performed.

(b) Prior to the application of a digital certificate on an electronic document, the remote online notary public shall apply their electronic signature, notarial certificate, and electronic notary seal, that, when logically associated with an electronic document, shall contain the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii".

(c) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic stamping device, electronic signature, electronic notary seal, and electronic notarial certificate.

(d) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(e) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(f) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping

§5-11-72

device was disabled. Failure to comply with this section may result in an administrative fine of \$200. [Eff and comp FEB 27 2022 ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

**§5-11-73 Retention and repositories of electronic journal and audiovisual recording.** (a) In addition to the tangible journal required of all notaries public pursuant to section 456-15, HRS, a remote online notary public shall retain an electronic journal as required under section 456-15, HRS, and this chapter and any audiovisual recording created under section 456-23, HRS, in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software. An electronic journal kept by the remote online notary public and the audiovisual recording created pursuant to this subchapter are not subject to the requirements of section 5-11-9.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements of chapter 456, HRS, and this chapter and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without

the need for additional software or password or cryptographic process.

(d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository under chapter 456, HRS. The contract shall:

- (1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements of chapter 456, HRS, and this chapter, even if the contract is terminated; or
- (2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.

(e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department as required under section 456-15, HRS.

(f) The remote online notary public shall retain the remote online notary public's electronic journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

(g) The failure to comply with this section may result in an administrative fine of no less than \$50 and no more than \$500." [Eff and comp FEB 27 2022

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-23, 456-24)

Amendments to and compilation of chapter 5-11, Hawaii Administrative Rules, on the Summary page dated October 26, 2021, were adopted on October 26, 2021, following a public hearing held on July 29, 2021, after public notices are given in The Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, Maui News, and The Garden Island on June 24, 2021.

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

LIEUTENANT GOVERNOR'S  
OFFICE

'22 FEB 17 P 2:55



HOLLY T. SHIKADA  
Attorney General

APPROVED:



DAVID Y. IGE  
Governor  
State of Hawaii

Date: 2/17/2022

APPROVED AS TO FORM:



Deputy Attorney General

Filed