
A BILL FOR AN ACT

RELATING TO PERSONS WORKING WITH CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 RULES OF ETHICS APPLICABLE TO PERSONS WORKING WITH CHILDREN ON

6 BEHALF OF THE STATE

7 PART I. GENERAL PROVISIONS

8 § -1 **Definitions.** As used in this chapter, unless the
9 context otherwise requires:

10 "Child" means a person less than eighteen years of age.

11 "Client" means any person who receives services by a
12 covered person in any matter involving a child.

13 "Covered person" means any person who is contracted by a
14 state agency to provides services to a child and includes the
15 contracted person's employees or subcontractors. "Covered
16 person" includes guardians ad litem, fact finders, child custody



1 evaluators, therapists, counselors, and social workers.

2 "Covered person" does not include any:

3 (1) Employee of the State or a county; or

4 (2) Person whose duties are primarily teaching or
5 instructing students or who works for an entity whose
6 primary trade or business is education.

7 "Firm" means an entity in which two or more covered persons
8 work as officers, employees, contractors, or subcontractors.

9 "Matter" means any proceeding, application, fact-finding,
10 request for a ruling or other determination, contract, claim,
11 controversy, investigation, charge, accusation, arrest or other
12 particular matter involving a specific party or parties.

13 "State agency" means the executive or judicial branches of
14 state government, including departments, offices, commissions,
15 boards, or other agencies within or attached to those branches.

16 **PART II. CONFLICTS OF INTEREST**

17 § -11 **Conflict of interests; generally.** (a) Except as
18 provided in subsection (b), a covered person shall not provide
19 services to a client if the services involve a concurrent
20 conflict of interest. A concurrent conflict of interest exists
21 if:



1 (1) The services to the client will be directly adverse to
2 another person receiving services from the covered
3 person; or

4 (2) There is a significant risk that the provision of
5 services to the client will be materially limited by:

6 (A) The covered person's responsibilities to another
7 person who is currently receiving or formerly
8 received services from the covered person; or

9 (B) A personal interest of the covered person.

10 (b) Notwithstanding the existence of a concurrent conflict
11 of interest under subsection (a), a covered person may provide
12 services to a client if:

13 (1) The covered person reasonably believes that the
14 covered person will be able to provide competent and
15 diligent services to each affected person who is
16 receiving or previously received services;

17 (2) The provision of services is not prohibited by law;

18 (3) The services do not involve the assertion of a claim
19 by one client against another client to whom the
20 covered person is also providing services in the same
21 proceeding; and



1 (4) Each affected person or an appropriate guardian of the
2 affected person gives consent after consultation,
3 confirmed in writing.

4 (c) When the provision of services to multiple persons in
5 a single matter is contemplated, the consultation shall include
6 an explanation of the implications of the common provision of
7 services, including both the advantages and the risks involved.

8 § -12 **Conflict of interest; prohibited transactions.**

9 (a) A covered person shall not enter into a business
10 transaction with a client or knowingly acquire an ownership,
11 possessory, security or other pecuniary interest adverse to a
12 client or a person connected to a matter related to the client
13 unless:

14 (1) The transaction and terms on which the covered person
15 acquires the interest are fair and reasonable to the
16 client and are fully disclosed and transmitted in
17 writing which can be reasonably understood by the
18 client;

19 (2) The client is advised in writing of the desirability
20 of seeking and is given a reasonable opportunity to



- 1 seek the advice of independent legal counsel in the
2 transaction; and
- 3 (3) The client consents in writing to the essential terms
4 of the transaction and the covered person's role in
5 the transaction.
- 6 (b) A covered person shall not:
- 7 (1) Use information relating to the provision of services
8 to a client to the disadvantage of the client except
9 as otherwise permitted or required by law;
- 10 (2) Solicit any substantial gift from a client or any
11 person involved in a matter related to the client;
- 12 (3) Provide financial assistance to a client or a person
13 involved in a matter related to the client;
- 14 (4) Accept compensation for the provision of services to a
15 client from a person other than the client unless:
- 16 (A) The client consents after consultation;
- 17 (B) There is no interference with the covered
18 person's independence of professional judgment;
- 19 and
- 20 (C) Information relating to the client is protected
21 as required by this chapter; or



1 (5) Have sexual relations with any person involved in a
2 matter related to a client unless a consensual sexual
3 relationship existed between them when the covered
4 person began providing services to the client.

5 (c) A covered person who is related to another covered
6 person as a parent, child, sibling, domestic partner, or spouse
7 shall not provide services to a person if those services are
8 directly adverse to a person that the covered person knows is
9 being provided services by the other covered person, except upon
10 consent by the affected person after consultation regarding the
11 relationship.

12 (d) If multiple covered people are working in the same
13 firm, a prohibition in this section that affects one covered
14 person shall apply to any other covered person in the same firm.

15 § -13 **Conflict of interest; former client.** (a) A
16 covered person who has formerly provided services to a client in
17 a matter shall not thereafter provide services to another person
18 in the same or a substantially related matter in which that
19 person's interests are materially adverse to the interests of
20 the former client unless the former client consents after
21 consultation and confirms the consent in writing.



1 (b) A covered person shall not knowingly provide services
2 to a person in the same or a substantially related matter in
3 which a firm with which the covered person formerly was
4 associated had previously provided services to a client:

5 (1) Whose interests are materially adverse to that person;
6 and

7 (2) About whom the covered person had acquired information
8 protected by subsection (c) that is material to the
9 matter; unless the former client consents after
10 consultation and confirms the consent in writing.

11 (c) A covered person who has formerly provided services to
12 a person in a matter or whose present or former firm has
13 formerly provided services to a person in a matter shall not
14 thereafter:

15 (1) Use information relating to the provision of services
16 to the disadvantage of the person except as permitted
17 or required by law with respect to that person, or
18 when the information has become generally known; or

19 (2) Reveal information relating to the services provided
20 except as permitted or required by law with respect to
21 that person.



1 § -14 **Imputation of conflicts of interests; generally.**

2 (a) While covered persons are associated in a firm, none of
3 them shall knowingly provide services to a person when any one
4 of them providing services alone would be prohibited from doing
5 so by section -11 or -13, unless the prohibition is based
6 on a personal interest of the covered person and does not
7 present a significant risk of materially limiting the provision
8 of services to a client by the remaining covered persons in the
9 firm.

10 (b) When a covered person has terminated an association
11 with a firm, the former firm is not prohibited from thereafter
12 providing services a new client with interests materially
13 adverse to those of a client who was provided services by the
14 departed covered person, unless:

15 (1) The matter is the same or substantially related to
16 that in which the departed covered person who provided
17 services to the original client; and

18 (2) Any covered person remaining in the firm has
19 information protected by section -13(c) that is
20 material to the matter.



1 (c) When a covered person becomes associated with a firm
2 and is prohibited from providing services to a client because
3 the covered person's former firm has provided services to a
4 person whose interests are materially adverse to that client in
5 the same or a substantially related matter, other covered
6 persons in the firm may not thereafter provide services to the
7 client unless:

8 (1) The disqualified covered person did not participate in
9 the matter and has no confidential information
10 regarding the matter;

11 (2) The disqualified covered person is timely screened
12 from any participation in the matter and is
13 apportioned no part of the fee therefrom; and

14 (3) Written notice is promptly given to any affected
15 former client to enable it to ascertain compliance
16 with the provisions of this section.

17 (d) A disqualification of an individual covered person
18 prescribed by this section may be waived by the affected client
19 under the conditions stated in section -11.



1 (e) The disqualifications of covered persons associated in
2 a firm with former or current government covered persons is
3 governed by section -15.

4 **§ -15 Special conflicts of interest for former**

5 **government officers and employees.** (a) Except as law may
6 otherwise expressly permit, a covered person who has formerly
7 served as a public officer or employee of the government:

8 (1) Is subject to section -13(c); and

9 (2) Shall not otherwise provide services to a client in
10 connection with a matter in which the covered person
11 participated personally and substantially as a public
12 officer or employee, unless the appropriate government
13 agency gives its consent to the provision of services,
14 confirmed in writing after consultation.

15 (b) When a covered person is disqualified from providing
16 services under paragraph (a), no covered person in a firm with
17 which that covered person is associated may knowingly undertake
18 or continue providing services in such a matter unless:

19 (1) The disqualified covered person is timely screened
20 from any participation in the matter and is
21 apportioned no part of the fee therefrom; and



1 (2) Written notice is promptly given to the appropriate
2 government agency to enable it to ascertain compliance
3 with the provisions of this section.

4 (c) Except as expressly permitted by law, a covered person
5 having information that the covered person knows is confidential
6 government information about another person, acquired when the
7 covered person was a public officer or employee, shall not
8 provide services to a client whose interests are adverse to that
9 person in a matter in which the information could be used to the
10 material disadvantage of that person. A firm with which the
11 covered person is associated may provide services in the matter
12 only if the disqualified covered person is timely screened from
13 any participation in the matter and is apportioned no part of
14 the fee therefrom.

15 (d) As used in this section:

16 "Confidential government information" means information
17 that has been obtained under governmental authority and which,
18 at the time this section is applied, the government is
19 prohibited by law from disclosing to the public or has a legal
20 privilege not to disclose and which is not otherwise available
21 to the public.



1 "Matter" includes any matter covered by the conflict of
2 interest rules of the appropriate government agency.

3 § -16 **Former third-party neutrals.** (a) A covered
4 person shall not provide services to anyone in the same or
5 substantially related matter in which the covered person
6 participated personally and substantially as a judge,
7 adjudicative officer, arbitrator, mediator, or other third-party
8 neutral, unless all parties to the proceeding consent after
9 disclosure, confirmed in writing.

10 (b) A covered person shall not negotiate for employment
11 with any person who is involved as a party or as a covered
12 person for a party in a matter in which the covered person is
13 participating personally and substantially as a judge or other
14 adjudicative officer, or arbitrator, mediator, or other
15 third-party neutral.

16 (c) If a covered person is disqualified by paragraph (a),
17 no covered person in a firm with which that covered person is
18 associated may knowingly undertake or continue to provide
19 services in the matter unless:



1 (1) The disqualified covered person is screened from any
2 participation in the matter and is apportioned no part
3 of the fee therefrom; and

4 (2) Written notice is promptly given to the parties and
5 any appropriate tribunal to enable them to ascertain
6 compliance with the provisions of this section.

7 **PART III. OTHER PROVISIONS**

8 **§ -21 Reasonableness of fees.** A covered person shall
9 not make an agreement for, charge, or collect an unreasonable
10 fee or an unreasonable amount for expenses. The factors to be
11 considered in determining the reasonableness of a fee include:

- 12 (1) The time and labor required;
- 13 (2) The likelihood, if apparent to the client, that the
14 acceptance of the particular employment will preclude
15 other employment by the covered person;
- 16 (3) The fee customarily charged in the locality for
17 similar services;
- 18 (4) Any time limitations imposed by the client or by the
19 circumstances;
- 20 (5) The nature and length of the professional relationship
21 with the client; and



1 (6) The experience, reputation, and ability of the covered
2 person performing the services.

3 § -22 **Expediting services.** A covered person shall make
4 reasonable efforts to expedite services consistent with the
5 legitimate interests of the client.

6 § -23 **Candor before a tribunal.** (a) A covered person
7 shall not knowingly:

8 (1) Make a false statement of material fact or law to a
9 tribunal;

10 (2) Fail to disclose a material fact to a tribunal when
11 disclosure is necessary to avoid assisting a criminal
12 or fraudulent act by the client; or

13 (3) Offer evidence that the covered person knows to be
14 false. If a covered person has offered material
15 evidence and comes to know of its falsity, the covered
16 person shall take remedial measures to the extent
17 reasonably necessary to rectify the consequences.

18 (b) The duties stated in paragraph (a) continue to the
19 conclusion of the proceeding and apply even if compliance
20 requires disclosure of information otherwise protected by law.



1 (c) A covered person shall present all evidence to a court
2 or other tribunal.

3 § -24 **Fairness to opposing party.** A covered person
4 shall not:

5 (1) Unlawfully obstruct, or counsel or assist another
6 person to unlawfully obstruct, another party's access
7 to evidence or unlawfully alter, destroy or conceal a
8 document or other material having potential
9 evidentiary value;

10 (2) Falsify evidence or counsel or assist a witness to
11 testify falsely;

12 (3) Offer an inducement that is prohibited by law or pay,
13 offer to pay, or acquiesce in the payment of
14 compensation to a witness contingent upon the content
15 of the witness' testimony or the outcome of the case;

16 (4) Knowingly disobey an obligation under the rules of a
17 tribunal except for an open refusal based on an
18 assertion that no valid obligation exists; or

19 (5) Request a person other than a client to refrain from
20 voluntarily giving relevant information to another
21 party unless:



1 (A) The person is a relative or an employee or other
2 agent of a client; and

3 (B) The covered person reasonably believes that the
4 person's interests will not be adversely affected
5 by refraining from giving such information.

6 § -25 **Truthfulness in statements to others.** In the
7 course of providing services to a client, a covered person shall
8 not knowingly:

9 (1) Make a false statement of material fact or law to a
10 third person; or

11 (2) Fail to disclose a material fact to a third person
12 when disclosure is necessary to avoid assisting a
13 criminal or fraudulent act by a client.

14 § -26 **Factual findings; standard of proof.** (a) A
15 covered person making a recommendation to a tribunal shall base
16 any factual findings on the relevant legal standard of proof
17 appropriate to the matter.

18 (b) A covered person working on a matter involving a
19 child, in which it is reasonably foreseeable that the covered
20 person's work product will be used by a tribunal, child custody
21 evaluator, or other fact finder, shall keep reasonably detailed



1 records that the tribunal, child custody evaluator, or other
2 fact finder can use for their purposes.

3 **PART IV. COMPLAINTS; PENALTIES**

4 **§ -31 Complaints.** (a) Any person aggrieved by the
5 violation of this chapter by a covered person may file a
6 complaint with:

7 (1) The state agency that contracted or subcontracted with
8 the covered person; and

9 (2) An applicable licensing board, if the covered person
10 is licensed.

11 (b) Each:

12 (1) State agency that contracts with a covered person; and

13 (2) Applicable licensing board,

14 shall adopt rules and procedures to receive, investigate, and
15 dispose of complaints.

16 (c) A state agency that contracts with a covered person or
17 an applicable licensing board shall fine a covered person

18 \$ for each violation of this chapter; provided that this
19 penalty shall be in addition to any other penalties or remedies
20 available by law.



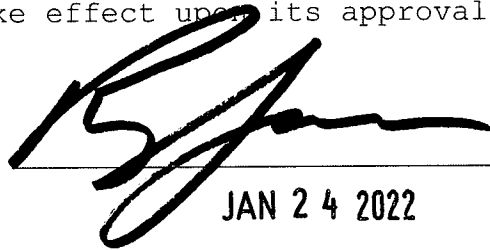
1 § -32 **Contracts voidable.** Notwithstanding any other law
2 to the contrary, if a state agency that determines that a
3 covered person has violated a provision of this chapter, any
4 contract the State has with that covered person shall be
5 voidable on behalf of the State."

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 3. This Act shall take effect upon its approval.

10

INTRODUCED BY:



JAN 24 2022



H.B. NO. 1933

Report Title:

Children; Contractors; Ethics; Rules; Penalties

Description:

Establishes rules of ethics applicable to persons who work with children pursuant to a contract with the State. Requires recommendations made to tribunals to base any factual findings on the relevant legal standard of proof applicable to the matter. Provides that the contracts of any person who violates the rules of ethics are voidable on behalf of the State.

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