



1 person" includes guardians ad litem, fact finders, child custody  
2 evaluators, therapists, counselors, and social workers.

3 "Covered person" does not include any:

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

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

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

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

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

18 **PART II. CONFLICTS OF INTEREST**

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



1 conflict of interest. A concurrent conflict of interest exists  
2 if:

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

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

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

11 (B) A personal interest of the covered person; or

12 (C) A pecuniary interest of the covered person.

13 (b) Notwithstanding the existence of a concurrent conflict  
14 of interest under subsection (a), a covered person may provide  
15 services to a client if:

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

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



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

5 (4) Each affected person or an appropriate guardian of the  
6 affected person gives consent after consultation,  
7 confirmed in writing.

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

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

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

18 (1) The transaction and terms on which the covered person  
19 acquires the interest are fair and reasonable to the  
20 client and are fully disclosed and transmitted in



- 1 writing that can be reasonably understood by the  
2 client;
- 3 (2) The client is informed in writing of the transaction  
4 and is given a reasonable opportunity to seek the  
5 advice of independent legal counsel in the  
6 transaction; and
- 7 (3) The client consents in writing to the essential terms  
8 of the transaction and the covered person's role in  
9 the transaction.
- 10 (b) A covered person shall not:
- 11 (1) Use information relating to the provision of services  
12 to a client to the disadvantage of the client except  
13 as otherwise permitted or required by law;
- 14 (2) Solicit any substantial gift from a client or any  
15 person involved in a matter related to the client;
- 16 (3) Provide financial assistance to a client or a person  
17 involved in a matter related to the client;
- 18 (4) Accept compensation for the provision of services to a  
19 client from a person other than the client unless:
- 20 (A) The client provides written consent after  
21 consultation;



- 1 (B) There is no interference with the covered  
2 person's independence of professional judgment;  
3 and
- 4 (C) Information relating to the client is protected  
5 as required by this chapter; or
- 6 (5) Have sexual relations with any person involved in a  
7 matter related to a client unless a consensual sexual  
8 relationship existed between them at the time when the  
9 covered person began providing services to the client.
- 10 (c) A covered person who is related to another covered  
11 person as a parent, child, sibling, domestic partner, or spouse  
12 shall not provide services to a client if those services are  
13 directly adverse to the client that the covered person knows is  
14 being provided services by the other covered person, except upon  
15 written consent by the client after consultation regarding the  
16 relationship.
- 17 (d) If multiple covered people are working in the same  
18 firm, a prohibition in this section that affects one covered  
19 person shall apply to any other covered person in the same firm.
- 20 (e) A covered person shall not provide services to a  
21 client in any matter involving a lawyer or law firm with whom



1 the covered person has a personal relationship, unless the  
2 client consents after consultation and confirms consent in  
3 writing.

4       **§ -13 Conflict of interest; former client.** (a) A  
5 covered person who has formerly provided services to a client in  
6 a matter shall not thereafter provide services to another person  
7 in the same or a substantially related matter in which that  
8 person's interests are materially adverse to the interests of  
9 the former client unless the former client consents after  
10 consultation and confirms the consent in writing.

11       (b) A covered person shall not knowingly provide services  
12 to a person in the same or a substantially related matter in  
13 which a firm with which the covered person formerly was  
14 associated had previously provided services to a client:

15       (1) Whose interests are materially adverse to that person;  
16             and

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



1 (c) A covered person who has formerly provided services to  
2 a person in a matter or whose present or former firm has  
3 formerly provided services to a person in a matter shall not  
4 thereafter:

5 (1) Use information relating to the provision of services  
6 to the disadvantage of the person except as permitted  
7 or required by law with respect to that person, or  
8 when the information has become generally known; or

9 (2) Reveal information relating to the services provided  
10 except as permitted or required by law with respect to  
11 that person.

12 **§ -14 Imputation of conflicts of interests; generally.**

13 (a) While covered persons are associated in a firm, none of the  
14 covered persons shall knowingly provide services to a person  
15 when any one of the covered persons providing services alone  
16 would be prohibited from doing so by section -11 or -13,  
17 unless the prohibition is based on a personal interest of the  
18 covered person and does not present a significant risk of  
19 materially limiting the provision of services to a client by the  
20 remaining covered persons in the firm.





1 (b) When a covered person has terminated an association  
2 with a firm, the former firm is not prohibited from thereafter  
3 providing services to a new client with interests materially  
4 adverse to those of a client who was provided services by the  
5 departed covered person, unless:

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

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

12 (c) When a covered person becomes associated with a firm  
13 and is prohibited from providing services to a client because  
14 the covered person's former firm has provided services to a  
15 person whose interests are materially adverse to that client in  
16 the same or a substantially related matter, other covered  
17 persons in the firm may not thereafter provide services to the  
18 client unless:

19 (1) The disqualified covered person did not participate in  
20 the matter and has no confidential information  
21 regarding the matter;



1           (2) The disqualified covered person is timely screened  
2           from any participation in the matter and is  
3           apportioned no part of the fee from the matter; and  
4           (3) Written notice is promptly given to any affected  
5           former client to enable the former client to ascertain  
6           compliance with the provisions of this section.  
7           (d) A disqualification of an individual covered person  
8           prescribed by this section may be waived by the affected client  
9           under the conditions stated in section     -11.  
10          (e) The disqualifications of covered persons associated in  
11          a firm with former or current government covered persons shall  
12          be governed by section     -15.  
13          §   -15   **Special conflicts of interest for former**  
14          **government officers and employees.** (a) Except as law may  
15          otherwise expressly permit, in addition to the existing  
16          restrictions in post-employment as stated in chapter 84, a  
17          covered person who has formerly served as a public officer or  
18          employee of the government:  
19               (1) Is subject to section     -13(c); and  
20               (2) Shall not otherwise provide services to a client in  
21               connection with a matter in which the covered person



1 participated personally and substantially as a public  
2 officer or employee, unless the appropriate government  
3 agency gives its consent to the provision of services,  
4 confirmed in writing after consultation and the client  
5 consents in writing after consultation.

6 (b) When a covered person is disqualified from providing  
7 services under paragraph (a), no covered person in a firm with  
8 which that covered person is associated shall knowingly  
9 undertake or continue providing services in such a matter  
10 unless:

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

14 (2) Written notice is promptly given to the appropriate  
15 government agency to enable the government agency to  
16 ascertain compliance with the provisions of this  
17 section and the client consents in writing after  
18 consultation.

19 (c) Except as expressly permitted by law, a covered person  
20 having information that the covered person knows is confidential  
21 government information about another person, acquired when the



1 covered person was a public officer or employee, shall not  
2 provide services to a client whose interests are adverse to that  
3 person in a matter in which the information could be used to the  
4 material disadvantage of that person. A firm with which the  
5 covered person is associated may provide services in the matter  
6 only if the disqualified covered person is timely screened from  
7 any participation in the matter and is apportioned no part of,  
8 the fee from the matter and the client gives written consent  
9 after consultation with an attorney.

10 (d) As used in this section:

11 "Confidential government information" means information  
12 that has been obtained under governmental authority and which,  
13 at the time this section is applied, the government is  
14 prohibited by law from disclosing to the public or has a legal  
15 privilege not to disclose and which is not otherwise available  
16 to the public.

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

19 § -16 **Former third-party neutrals.** (a) A covered  
20 person shall not provide services to anyone in the same or  
21 substantially related matter in which the covered person



1 participated personally and substantially as a judge,  
2 adjudicative officer, arbitrator, mediator, or other third-party  
3 neutral, unless all parties to the proceeding consent after  
4 disclosure, confirmed in writing.

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

11 (c) If a covered person is disqualified by paragraph (a),  
12 no covered person in a firm with which that covered person is  
13 associated may knowingly undertake or continue to provide  
14 services in the matter unless:

15 (1) The disqualified covered person is screened from any  
16 participation in the matter and is apportioned no part  
17 of the fee from the matter; and

18 (2) Written notice is promptly given to the parties and  
19 any appropriate tribunal to enable the parties to  
20 ascertain compliance with the provisions of this  
21 section.



1                                   **PART III. OTHER PROVISIONS**

2           **§ -21 Reasonableness of fees.** A covered person shall  
3 not make an agreement for, charge, or collect an unreasonable  
4 fee or an unreasonable amount for expenses. The factors to be  
5 considered in determining the reasonableness of a fee shall  
6 include:

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

19           **§ -22 Expediting services.** A covered person shall make  
20 reasonable efforts to expedite services consistent with the  
21 legitimate interests of the client.



1           §   -23   **Candor before a tribunal.**   (a)   A covered person  
2 shall not knowingly:

3           (1)   Make a false statement of material fact or law to a  
4                tribunal;

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

8           (3)   Offer evidence that the covered person knows to be  
9                false; provided that if a covered person has offered  
10               material evidence and comes to know of its falsity,  
11               the covered person shall take remedial measures to the  
12               extent reasonably necessary to rectify the  
13               consequences.

14           (b)   The duties stated in subsection (a) shall continue to  
15               the conclusion of the proceeding and apply even if compliance  
16               requires disclosure of information otherwise protected by law.

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

19           §   -24   **Fairness to opposing party.**   A covered person  
20 shall not:



- 1           (1) Unlawfully obstruct, or counsel or assist another  
2           person to unlawfully obstruct, another party's access  
3           to evidence or unlawfully alter, destroy or conceal a  
4           document or other material having potential  
5           evidentiary value;
- 6           (2) Falsify or omit evidence, or counsel or assist a  
7           witness to testify falsely;
- 8           (3) Offer an inducement that is prohibited by law or pay,  
9           offer to pay, or acquiesce in the payment of  
10          compensation to a witness contingent upon the content  
11          of the witness' testimony or the outcome of the case;
- 12          (4) Knowingly disobey an obligation under the rules of a  
13          tribunal except for an open refusal based on an  
14          assertion that no valid obligation exists; or
- 15          (5) Request a person other than a client to refrain from  
16          voluntarily giving relevant information to another  
17          party unless:
- 18               (A) The person is a relative or an employee or other  
19               agent of a client; and





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

4 § -25 **Truthfulness in statements to others.** In the  
5 course of providing services to a client, a covered person shall  
6 not knowingly:

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

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

12 § -26 **Factual findings; standard of proof.** (a) A  
13 covered person making a recommendation to a tribunal shall base  
14 any and all recommendations on the relevant evidence standard,  
15 as defined in rule 401 of the Hawaii Rules of Evidence.

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



1                                   **PART IV. COMPLAINTS; PENALTIES**

2           **§ -31 Complaints.** (a) Any person aggrieved by the  
3 violation of this chapter by a covered person may file a  
4 complaint with:

- 5           (1) The state agency that contracted or subcontracted with  
6           the covered person; and  
7           (2) An applicable licensing board, if the covered person  
8           is licensed.

9           (b) Each state agency that contracts with a covered person  
10 and applicable licensing board shall adopt rules and procedures  
11 to receive, investigate, and dispose of complaints.

12           (c) A state agency that contracts with a covered person or  
13 an applicable licensing board shall fine a covered person  
14 §           for each violation of this chapter; provided that  
15 this penalty shall be in addition to any other penalties or  
16 remedies available by law.

17           **§ -32 Contracts voidable.** Notwithstanding any other law  
18 to the contrary, if a state agency determines that a covered  
19 person has violated a provision of this chapter, any contract  
20 the State has with that covered person shall be voidable on  
21 behalf of the State."



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

4 SECTION 3. This Act shall take effect on July 1, 2112.

5



# H.B. NO. 1933 H.D. 1

**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. Establishes additional procedures for persons contracted by the State to provide services to children, including fees, candor and fairness before a tribunal, standards of proof, and a process for filing complaints. Specifies that the contracts of any person who violates the rules of ethics are voidable on behalf of the State. Effective 7/1/2112. (HD1)

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