

1 child, including the contracted person's employees or
2 subcontractors. "Covered person" includes guardians ad litem,
3 fact finders, child custody evaluators, therapists, counselors,
4 and social workers. "Covered person" does not include any:

- 5 (1) Employee of the State or a county; or
- 6 (2) Person whose duties are primarily teaching or
7 instructing students or who works for an entity whose
8 primary trade or business is education.

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

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

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

19 **PART II. CONFLICTS OF INTEREST**

20 **§ -11 Conflict of interests; generally.** (a) Except as
21 provided in subsection (b), a covered person shall not provide



1 services to a client if the services involve a concurrent
2 conflict of interest. A concurrent conflict of interest exists
3 if:

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

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

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

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

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

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

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

21 (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 which shall be 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 the 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 formerly associated with the covered person had
14 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 having 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 the
7 matter in which the departed covered person 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 shall 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 consents in writing to the provision of
4 services after consultation and the client consents in
5 writing after consultation.

6 (b) When a covered person is disqualified from providing
7 services under subsection (a), a covered person in a firm with
8 which that covered person is associated shall not 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, which shall be 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 subsection (a),
12 a covered person in a firm with which that covered person is
13 associated shall not 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 in
15 effect through the conclusion of the proceeding and apply even
16 if compliance requires disclosure of information otherwise
17 protected by law.

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

20 **§ -24 Fairness to opposing party.** A covered person
21 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 the 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 codified
16 in chapter 626.

17 (b) A covered person working on a matter involving a
18 child, in which it is reasonably foreseeable that the covered
19 person's work product will be used by a tribunal, child custody
20 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, subcontracted,
8 assigned, delegated, ordered, appointed, or in any
9 other act allowed the covered person to provide
10 services in the matter; and

11 (2) An applicable licensing board, if the covered person
12 is licensed.

13 (b) Each state agency that contracts, subcontracts,
14 assigns, delegates, orders, appoints, or in any other act allows
15 a covered person to provide services in the matter and
16 applicable licensing board shall adopt rules and procedures to
17 receive, investigate, and dispose of complaints.

18 (c) A state agency that contracts, subcontracts, assigns,
19 delegates, orders, appoints, or in any other act allows a
20 covered person to provide services in the matter or an
21 applicable licensing board shall fine a covered person



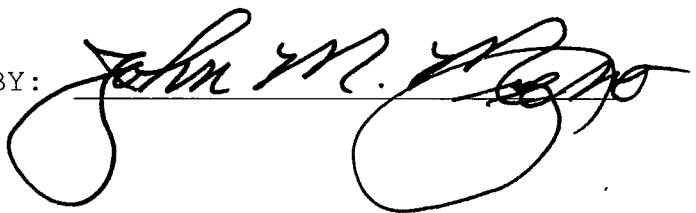
1 § for each violation of this chapter; provided that
2 this penalty shall be in addition to any other penalties or
3 remedies available by law.

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

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

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

13

INTRODUCED BY: 

JAN 20 2023



H.B. NO. 774

Report Title:

Children; Contractors; Ethics; Rules; Penalties

Description:

Establishes rules of ethics applicable to persons who are contracted, subcontracted, assigned, delegated, ordered, appointed, or in any other act allowed by a state agency to work with children. Establishes additional procedures with respect to fees, candor and fairness before a tribunal, standards of proof, and a complaint filing process. Specifies that the contracts of any person who violates the rules of ethics are voidable on behalf of the State.

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