

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

February 24, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Appoint A Hearing Officer And Delegate To The Chairperson The Authority To Select A
Hearing Officer To Conduct All Hearings For One (1) Contested Case Hearing Regarding An
Enforcement Action Located At The Ahu O Laka Safety Zone

Background:

An administrative enforcement action under Citation No. 1 AI-OA-JBY191 was issued to Charles Stone on September 4, 2011 under Hawaii Administrative Rule (HAR) Section 13-256-73.13, "Ahu O Laka Safety Zone". HAR section 13-256-73.13 is an emergency rule adopted by the Board at its June 23, 2011 meeting, and signed and filed with the Office of the Lieutenant Governor on the same date. Under subsection 13-256-73.13(b), HAR, the following actions are prohibited in the Ahu O Laka Safety Zone between the hours of 12:00 am and 11:59 pm of any day of a three-day weekend involving a state holiday. Infractions shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes (HRS).

1. Consumption, use, or possession of alcohol.
2. Entering or remaining in area while under the influence of alcohol, narcotics, or drugs.
3. Disorderly conduct, per section 711-1101, HRS.

On or about 1500 hours, Sunday, September 4, 2011, Mr. Charles Stone was cited for consuming, using, or possessing alcohol within Ahu O Laka safety zone, thereby committing an administrative infraction in violation of HAR section 13-256-73.13(b)(1). The alleged violator was observed in possession of alcohol by Division of Conservation and Resources Enforcement (DOCARE) officer. The Board of Land and Natural Resources (Board), at its October 28, 2011 meeting, issued a fine in the amount of \$300.00 to Mr. Charles Stone.

Authority for Designating Hearing Officers:

Hawaii Administrative Rules (HAR), §13-1-32(d) provides that the Board may conduct the contested case hearing, or at its discretion, may appoint a hearing officer to conduct the hearing.

Additionally, Hawaii Revised Statutes (HRS), §92-16 and §171-6 also provide that the Board may delegate to the Chairperson the authority to select the Hearing Officer to conduct a contested case hearing.

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Item J-2

Basis for Designating Hearing Officers:

Conducting a contested case hearing may involve giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing. History suggests that designating a hearing officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

Discussion:

The petitioner faxed in a written petition dated November 4, 2011 and is within the required time frame of not more than ten (10) days after the close of the Board action date. The instructions provided on the form allowed the petitioner to deliver, mail or fax the form. The petitioner also orally requested a contested case hearing at the meeting.

By designating a hearing officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. As indicated above, the determinations of standing have not yet been made. Staff believes that the preliminary hearing on standing should also be conducted by the Hearing Officer rather, than the full Board. After the hearing officer conducts the preliminary hearing on standing, the Board would still retain its discretion in issuing Orders on this matter of standing. Further, should standing be granted, at the conclusion of the case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

Recommendation:

1. Appoint a hearings officer and delegate to the Chairperson the authority to select said hearings officer to conduct all hearings for one (1) contested case hearing.

Respectfully submitted,



Edward R. Underwood
Administrator

Approved For Submittal



William J. Aila, Jr., Chairperson