Office of the Ombudsman
State of Hawaii
Fiscal Year 2010-2011
Report Number 42

As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the legislature. The Ombudsman is empowered to obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations, or statutes.

By law, the Ombudsman cannot investigate actions of the governor, the lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

Kekuanaoa Building, 4th Floor
465 South King Street
Honolulu, HI 96813
Phone: 808-587-0770
Fax: 808-587-0773
TTY: 808-587-0774

Neighbor island residents may call our toll-free numbers.

Hawaii	**974-4000**
Maui	**984-2400**
Kauai	**274-3141**
Molokai, Lanai	**1-800-468-4644**

Telephone extension is 7-0770
Fax extension is 7-0773
TTY extension is 7-0774

email: complaints@ombudsman.hawaii.gov
website: www.ombudsman.hawaii.gov

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2010 - June 30, 2011
Report No. 42

Presented to the Legislature
pursuant to Section 96-16 of
the Hawaii Revised Statutes

December 2011

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2012:

In accordance with Section 96-16, Hawaii Revised Statutes, I am pleased to submit the report of the Office of the Ombudsman for fiscal year 2010-2011. This is the forty-second annual report since the establishment of the office in 1969.

I would like to thank the State Legislature for its support during this period of limited fiscal resources, allowing the Office of the Ombudsman to continue to serve as a link between the people and their government. We remain committed in our efforts to ensure the fair and impartial delivery of government services.

The Office of the Ombudsman would not be able to resolve complaints or bring about administrative improvements without the full cooperation of the executive branches of the State and County governments. For their continued cooperation and assistance, I extend my sincere appreciation to the Governor, the Mayors of the various counties, and the State and County department heads and employees.

Finally, I would like to personally thank First Assistant David Tomatani and the other staff members of the office for their commitment and dedication to the mission and purpose of our office.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2011

TABLE OF CONTENTS

Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2010-2011, the office received a total of 4,686 inquiries. Of these inquiries, 3,399, or 72.5 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 537 non-jurisdictional complaints and 750 requests for information.

The 4,686 inquiries received represent a 5.9 percent decrease from the 4,978 inquiries received the previous fiscal year. There was a decrease in all categories of inquiries.

A comparison of inquiries received in fiscal year 2009-2010 and fiscal year 2010-2011 is presented in the following table.

TWO-YEAR COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2010-2011	4,686	750	537	3,399	1,744	1,655
2009-2010	4,978	882	587	3,509	1,869	1,640
Numerical Change	-292	-132	-50	-110	-125	15
Percentage Change	-5.9%	-15.0%	-8.5%	-3.1%	-6.7%	0.9%

Staff Notes

Fiscal year 2010-11 was full of milestone anniversaries for our office staff. In July 2010, support staff Sue Oshima celebrated 20 years of service with the office. Ms. Oshima is a very energetic worker who keeps things organized, ensuring a smooth operating office. Congratulations and thank you, Ms. Oshima, for your continued dedication and commitment to our office!

Another 20-year service award celebration went to support staff Debbie Goya in October 2010. Ms. Goya is usually the first person greeting our office visitors and her friendly and professional disposition makes her the perfect person for the job. Congratulations and thank you, Ms. Goya, for your outstanding service and support!

Support staff Sheila Alderman celebrated 10 years of service with the office in December 2010. Ms. Alderman is a team player and can be counted on to assist whenever needed. Congratulations and thank you, Ms. Alderman, for your contributions and continued service towards the mission of our office!

Our last service award for the year was celebrated in January 2011 for support staff Edna de la Cruz. Ms. de la Cruz helps to make the office an enjoyable workplace and her 40 years of experience show when she helps a complainant on the phone or greets a visitor. Congratulations and thank you, Ms. de la Cruz, for your witty spirit, great work attitude, and loyalty!

Once again, our office provided the Election Advisory Council (EAC) with a representative to serve as an official observer during the State election. Support staff Sheila Alderman attended several training sessions in order to prepare for her duties. Ms. Alderman experienced firsthand the security and openness of the electoral process. Her participation as an official observer helped ensure the honesty and efficiency that Hawaii's citizens expect from the officials who conduct the elections.

Joining our professional staff as an analyst on November 19, 2010 was Melissa Chee. Ms. Chee transferred from the Department of the Attorney General where she provided general advice and counsel for the charter school system in Hawaii. She is a graduate of Gonzaga University School of Law in Washington and was admitted to the Hawaii State Bar in 2003. Welcome on board Ms. Chee!

At the end of the year, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant David Tomatani; analysts Herbert Almeida, Melissa Chee, Rene Dela Cruz, Alfred Itamura, Yvonne Jinbo, Gansin Li, Dawn Matsuoka, and Marcie McWayne; and support staff Sheila Alderman, Edna de la Cruz, Debbie Goya, Carol Nitta, and Sue Oshima.

Outreach Efforts

Our staff participated in the 26th Annual Hawaii Seniors' Fair – The Good Life Expo held at the Neal Blaisdell Center from September 24-26, 2010. At this fair, we provided seniors with information about our office and gave them the opportunity to ask questions regarding concerns they have about State and County executive branch agencies.

A senior fair sponsored by Representative Blake Oshiro, Representative K. Mark Takai, Representative Roy Takumi, Senator Norman Sakamoto, Senator Donna Mercado Kim, and Senator David Ige was held on October 23, 2010 at Pearlridge Uptown Center Stage. Ombudsman Robin Matsunaga, analyst Gansin Li, and support staff Debbie Goya and Carol Nitta participated and provided information about our office to over 200 shoppers who stopped by our table. Many were not aware of our office's function but left with a better understanding of the services our office provides.

The 2nd Annual Community Health Fair was held on November 20, 2010 at the Wahiawa Hongwanji Mission. Participants from our office were support staff Sue Oshima and Edna de la Cruz. We were able to advertise our office and inform the community of what our office does and the types of services we provide.

On January 19, 2011, Acting Citizens' Advocate Ombudsman Paula Campbell from Lexington, Kentucky, visited our office while on vacation.

In May 2011, Ombudsman Robin Matsunaga, First Assistant David Tomatani, and analysts Alfred Itamura and Rene Dela Cruz visited the Saguaro Correctional Center and Red Rock Correctional Center in Arizona where Hawaii inmates are incarcerated. Also during May and part of June, the Ombudsman and four analysts visited the State correctional facilities on Maui, Kauai, and Hawaii. The purpose of these site visits were to familiarize our staff with the daily activities, conditions, and functions of each State correctional facility and the opportunity to meet and discuss issues with staff members of the facilities. This experience gives our analysts a better understanding when dealing with inmate complaints.

In conjunction with the visits to the neighbor island correctional facilities, the Ombudsman and staff also visited the Mayors' offices on each island. These visits afforded us the opportunity to inform County officials of the function of our office.

Chapter II

STATISTICAL TABLES

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1
NUMBERS AND TYPES OF INQUIRIES
Fiscal Year 2010-2011

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	392	285	41	66
August	385	267	50	68
September	422	313	54	55
October	331	247	37	47
November	334	260	35	39
December	361	249	48	64
January	457	339	51	67
February	397	279	46	72
March	390	275	47	68
April	409	299	38	72
May	375	272	42	61
June	433	314	48	71
TOTAL	4,686	3,399	537	750
% of Total Inquiries	--	72.5%	11.5%	16.0%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2010-2011

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	333	26	24	0	7	2
August	338	28	15	2	1	1
September	365	24	21	2	9	1
October	296	18	10	0	7	0
November	283	28	13	3	6	1
December	334	18	2	3	3	1
January	393	34	28	0	2	0
February	338	28	25	1	5	0
March	353	30	3	1	2	1
April	370	24	11	0	4	0
May	338	15	14	1	7	0
June	397	17	12	1	6	0
TOTAL	4,138	290	178	14	59	7
% of Total Inquiries (4,686)	88.3%	6.2%	3.8%	0.3%	1.3%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2010-2011

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	953,207	70.1%	3,371	71.9%
County of Hawaii	185,079	13.6%	622	13.3%
County of Maui	154,924	11.4%	344	7.3%
County of Kauai	67,091	4.9%	78	1.7%
Out-of-State	--	--	271	5.8%
TOTAL	1,360,301	--	4,686	--

*Source: The State of Hawaii Data Book 2010, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by County: 1990 to 2010.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2010-2011

	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
Residence	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	2,458	72.3%	333	62.0%	580	77.3%
County of Hawaii	463	13.6%	80	14.9%	79	10.5%
County of Maui	260	7.6%	43	8.0%	41	5.5%
County of Kauai	45	1.3%	16	3.0%	17	2.3%
Out-of-State	173	5.1%	65	12.1%	33	4.4%
TOTAL	3,399	--	537	--	750	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2010-2011

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	3,371	3,081	108	109	9	58	6
% of C&C of Honolulu	--	91.4%	3.2%	3.2%	0.3%	1.7%	0.2%
County of Hawaii	622	551	32	32	5	1	1
% of County of Hawaii	--	88.6%	5.1%	5.1%	0.8%	0.2%	0.2%
County of Maui	344	313	18	13	0	0	0
% of County of Maui	--	91.0%	5.2%	3.8%	0.0%	0.0%	0.0%
County of Kauai	78	71	5	2	0	0	0
% of County of Kauai	--	91.0%	6.4%	2.6%	0.0%	0.0%	0.0%
Out-of-State	271	122	127	22	0	0	0
% of Out-of-State	--	45.0%	46.9%	8.1%	0.0%	0.0%	0.0%
TOTAL	4,686	4,138	290	178	14	59	7
% of Total	--	88.3%	6.2%	3.8%	0.3%	1.3%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2010-2011

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	23	0.7%	2	15	1	4	1	0
Agriculture	4	0.1%	1	1	0	0	1	1
Attorney General	107	3.1%	3	28	10	14	48	4
Budget & Finance	153	4.5%	15	49	7	38	42	2
Business, Economic Devel. & Tourism	4	0.1%	1	1	1	1	0	0
Commerce & Consumer Affairs	30	0.9%	3	14	3	4	2	4
Defense	1	0.0%	0	1	0	0	0	0
Education	85	2.5%	9	29	10	27	5	5
Hawaiian Home Lands	9	0.3%	3	1	1	4	0	0
Health	86	2.5%	8	27	6	42	2	1
Human Resources Development	8	0.2%	0	3	1	1	0	3
Human Services	415	12.2%	73	166	41	89	25	21
Labor & Industrial Relations	148	4.4%	13	70	16	32	13	4
Land & Natural Resources	59	1.7%	7	18	15	12	4	3
Office of Hawaiian Affairs	0	0.0%	0	0	0	0	0	0
Public Safety	1,908	56.1%	149	699	107	829	54	70
Taxation	58	1.7%	4	8	2	28	15	1
Transportation	47	1.4%	8	15	3	15	2	4
University of Hawaii	26	0.8%	0	8	2	9	0	7
Other Executive Agencies	6	0.2%	2	2	0	2	0	0
Counties								
City & County of Honolulu	165	4.9%	14	65	13	56	10	7
County of Hawaii	33	1.0%	0	12	5	13	0	3
County of Maui	19	0.6%	1	10	0	7	0	1
County of Kauai	5	0.1%	1	0	2	2	0	0
TOTAL	3,399	--	317	1,242	246	1,229	224	141
% of Total Jurisdictional Complaints	--	--	9.3%	36.5%	7.2%	36.2%	6.6%	4.1%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2010-2011

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments			
Accounting & General Services	2	2	0
Agriculture	1	1	0
Attorney General	3	3	0
Budget & Finance	15	15	0
Business, Economic Devel. & Tourism	1	1	0
Commerce & Consumer Affairs	3	2	1
Defense	0	0	0
Education	9	9	0
Hawaiian Home Lands	3	3	0
Health	8	8	0
Human Resources Development	0	0	0
Human Services	73	68	5
Labor & Industrial Relations	13	12	1
Land & Natural Resources	7	7	0
Office of Hawaiian Affairs	0	0	0
Public Safety	149	145	4
Taxation	4	4	0
Transportation	8	8	0
University of Hawaii	0	0	0
Other Executive Agencies	2	2	0
Counties			
City & County of Honolulu	14	11	3
County of Hawaii	0	0	0
County of Maui	1	1	0
County of Kauai	1	1	0
TOTAL	317	303	14
% of Total Substantiated Jurisdictional Complaints	--	95.6%	4.4%
% of Total Completed Investigations (1,559)	20.3%	19.4%	0.9%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2010-2011

Agency	Information Requests	Percent of Total
State Departments Accounting & General Services	15	2.0%
Agriculture	6	0.8%
Attorney General	30	4.0%
Budget & Finance	28	3.7%
Business, Economic Devel. & Tourism	4	0.5%
Commerce & Consumer Affairs	64	8.5%
Defense	5	0.7%
Education	10	1.3%
Hawaiian Home Lands	0	0.0%
Health	48	6.4%
Human Resources Development	0	0.0%
Human Services	32	4.3%
Labor & Industrial Relations	24	3.2%
Land & Natural Resources	14	1.9%
Office of Hawaiian Affairs	1	0.1%
Public Safety	39	5.2%
Taxation	19	2.5%
Transportation	7	0.9%
University of Hawaii	11	1.5%
Other Executive Agencies	26	3.5%
Counties City & County of Honolulu	86	11.5%
County of Hawaii	12	1.6%
County of Maui	2	0.3%
County of Kauai	3	0.4%
Miscellaneous	264	35.2%
TOTAL	750	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2010-2011

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	34	6.3%
County Councils	4	0.7%
Federal Government	32	6.0%
Governor	4	0.7%
Judiciary	68	12.7%
Legislature	9	1.7%
Lieutenant Governor	0	0.0%
Mayors	1	0.2%
Multi-State Governmental Entity	0	0.0%
Private Transactions	384	71.5%
Miscellaneous	1	0.2%
TOTAL	537	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2010-2011 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2011-2012

Types of Inquiries	Inquiries Carried Over to FY 10-11	Inquiries Carried Over to FY 10-11 and Closed During FY 10-11	Balance of Inquiries Carried Over to FY 10-11	Inquiries Received in FY 10-11 and Pending	Total Inquiries Carried Over to FY 11-12
Non-Jurisdictional Complaints	1	1	0	1	1
Information Requests	1	1	0	1	1
Jurisdictional Complaints	151	146	5	141	146
		Disposition of Closed Complaints: Substantiated 38 Not Substan. 91 Discontinued 17 146			
TOTAL	153	148	5	143	148

Chapter III

SELECTED CASE SUMMARIES

The following are summaries of selected cases investigated by the office. Each case summary is listed under the State government department or the county government involved in the complaint or inquiry. Although some cases involved more than one department or involved both the State and the county, each summary is placed under what we believe to be the most appropriate agency.

LIST OF SUMMARIES

Page

DEPARTMENT OF BUDGET AND FINANCE

(10-00678) Medicare reimbursement required to be deposited into husband's bank account. The wife of a retired State employee complained that the Employer-Union Benefits Trust Fund (EUTF) refused to deposit her Medicare Part B premium reimbursement into her own bank account. Instead, the EUTF required that her reimbursement be deposited into her husband's account because it was the account into which his Medicare Part B reimbursement was deposited.

Section 87A-23, Hawaii Revised Statutes (HRS), titled "Health benefits plan supplemental to medicare," required all State retirees and their spouses who were eligible to enroll in the Medicare Part B plan to enroll in the plan, as a condition for receiving EUTF health care benefits. The complainant had enrolled in Medicare Part B and thus Medicare deducted her premium payments from her Social Security checks every month. EUTF then reimbursed the complainant for the premiums each quarter by making a deposit into her husband's account. The complainant asked the EUTF to allow her reimbursement to be deposited into her own account, but the EUTF maintained that the couple was allowed to designate only one account to receive both of their Medicare Part B reimbursements.

We reviewed Section 87A-23, HRS, which stated in part:

> (2) . . . Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. . . . (Emphasis added.)

It was our opinion that the above-quoted section of the law was ambiguous. One interpretation would allow the retiree (employee-beneficiary) and his or her spouse to designate separate accounts for the deposit of each of their own reimbursements. An alternative interpretation would consider the retiree and his or her spouse to be a single unit and would allow them to collectively designate only a single account for the deposit of both reimbursements.

We reviewed the legislative history of Section 87A-23, HRS, which was amended in 2006 by Act 39, Session Laws of Hawaii. According to the House Labor and Public Employment Standing Committee Report 372-06 on

House Bill 2309, Section 87A-23, HRS, was intended to improve the administrative efficiency of the EUTF by requiring the direct deposit of the reimbursements instead of spending money on the costs of the postage and mailing of reimbursement checks. It was not clear from the legislative history, however, which of the two interpretations of the statute was intended.

We contacted an EUTF supervisor and asked for the EUTF's interpretation of Section 87A-23, HRS. The supervisor acknowledged the ambiguity in the law, but could not adequately explain why the EUTF could not legally allow the designation of more than one account to receive the Medicare Part B reimbursements. Thus, we wrote to the EUTF administrator and suggested that the EUTF seek the advice of the Department of the Attorney General (AG) as to the interpretation of Section 87A-23, HRS.

After consulting the AG, the EUTF informed us that it believed the intent of the amendment in 2006 to Section 87A-23, HRS, was to require the direct deposit of Medicare Part B reimbursements in order to save the EUTF the cost of printing and mailing checks. The EUTF shared with us the confidential opinion it received from the AG and informed us that it would continue to allow only a single bank account to be designated for the receipt of reimbursements for both the retiree and spouse.

We found the EUTF's decision to be reasonable, in consideration of the advice it received from the AG. We inquired, however, whether the EUTF would provide notice to retirees and their spouses that their Medicare Part B premium reimbursements must be deposited in the same bank account, as was suggested by the AG. The EUTF responded that it would include that information in the "question and answer" section of the EUTF quick reference guide and provided us the information that would be included.

(11-02050) Retroactive assessment of medical insurance premiums. A State employee complained in mid-December 2010 that the Employer-Union Health Benefits Trust Fund (EUTF), which administers health care benefit plans of State and County employees and retirees, required that she pay a large sum for medical insurance premiums for the period beginning October 16. She had been hired by the Department of Defense (DOD) on September 22 and had elected to have her medical insurance coverage and premium payments begin on October 16.

The complainant objected to paying the retroactive assessment of the premiums, however, because she had not been enrolled in a medical plan as of October 16. She learned of her non-enrollment when she was unable to obtain medication and was informed by the provider that she was not covered. The complainant also learned that the DOD personnel office

did not submit her enrollment application to the EUTF until December 1. Although the DOD personnel office requested that the EUTF waive the retroactive charge, the EUTF denied the request.

In our investigation, we reviewed the EUTF rules. According to the rules, an employee's enrollment application is deemed to have been filed on the date that the employer receives a properly completed application. In the complainant's case, the DOD personnel office received her application on October 7, but the application was incomplete.

We learned that after receiving the complainant's incomplete enrollment application, the DOD personnel office was unsuccessful in its attempts to contact the complainant. It was not until the complainant contacted the personnel office on December 1 that a completed application was processed to the EUTF.

As the DOD personnel office was unable to contact the complainant, she also was not informed that if a provider rejected her claim of having medical insurance coverage because she was unable to produce a membership card, she should inform the EUTF. The EUTF would then confirm for the provider the complainant's coverage with the medical insurance carrier, and the provider could be assured that she was covered and would provide her with services.

We spoke with the EUTF acting administrator about the complaint. After a review of the complainant's file, the acting administrator approved a change in the effective date of the complainant's enrollment application to December 1. The acting administrator noted that the EUTF had not received the complainant's enrollment application until December 1, and that the complainant had not been informed how to obtain coverage without a membership card. Thus, she had been unable to obtain coverage for medical services during the period for which she had been retroactively assessed the medical insurance premiums.

As a result of the change in the effective date of the complainant's enrollment application to December 1, her medical coverage would begin on that date and she did not have to pay any additional retroactive medical premiums.

The complainant was grateful for the result of our investigation.

(11-03152) Effective date of coverage of health benefits. A woman complained in March 2011 that she was being retroactively charged the premium for three months of health care insurance by the Employer-Union Health Benefits Trust Fund (EUTF). The EUTF administers health care benefit plans for State and County employees and retirees.

The complainant worked at a public high school and had health care insurance through her husband's employer. However, since her husband's insurance was to expire at the end of August 2010, the complainant signed and dated a EUTF EC-1 form, "Enrollment Form for Active Employees," on August 26.

The Department of Education (DOE) employee benefits office received the complainant's EC-1 form on September 17. A personnel clerk noticed that the complainant submitted an outdated version of the EC-1 form and there were also questions about the coverage the complainant selected. Thus, the clerk did not process the complainant's EC-1 form and left messages on September 17 and October 7 for the school administrative services assistant and the complainant to call her.

The complainant called the DOE personnel clerk in the first week of November. The clerk then processed a current EC-1 form, had the complainant sign the form, and sent the form to the EUTF. The EUTF received the form on November 5. The complainant received a notice from the EUTF on November 23 confirming her coverage. The notice stated that the EUTF received the EC-1 form on September 17 and informed her that $559 per month would be deducted from her pay for the months of September, October, and November.

The retroactive collection of the complainant's health care insurance premiums began with her first paycheck in December. The complainant felt it was unfair that she would have to pay for health care insurance from September 1 since she did not receive notice of her coverage until November 23. The complainant filed an appeal with the EUTF, but the EUTF denied her appeal in January 2011.

In our investigation, we reviewed the EUTF rules that specified effective dates of coverages depending on the type of event by which an employee became eligible for coverage. In regard to eligibility due to loss of coverage in a non-EUTF health care plan, Section 5.01(d), titled "Loss of Coverage in a Non-Fund Health Benefit Plan," stated in part:

> The effective date of coverage under Rule 5.01(d) shall be as follows: If a properly completed enrollment application is filed within thirty (30) days of the date that the employee-beneficiary loses coverage . . . the effective date of coverage will be the date of that event. <u>If a properly completed enrollment application is filed more than thirty (30) days after the event, the effective date of coverage will be the first day of the pay period after the enrollment application is received</u>. (Emphasis added.)

In the complainant's case, she lost coverage through her husband's non-EUTF health care plan on August 31. She initially filed her EC-1 form within 30 days of her loss of coverage, but the form was not properly completed. Her properly completed EC-1 form was not received by the EUTF until November 5, more than 30 days after her loss of coverage. Therefore, pursuant to Section 5.01(d) of the EUTF rules, the effective date of her coverage should have been November 16, the first day of the pay period following the EUTF's receipt of her properly completed application on November 5. Accordingly, the complainant should not have been retroactively charged for health care insurance premiums from September 1.

We presented the case to the EUTF administrator. After checking further, the EUTF administrator agreed with our analysis and informed us that she changed the complainant's effective date of coverage from September 1 to November 16. The administrator stated that the complainant would be reimbursed any unwarranted deductions from her paycheck for health care insurance.

We notified the complainant of the action taken by the EUTF.

DEPARTMENT OF EDUCATION

(10-04732) Personal use of State vehicle. A man complained that a State vehicle was suspiciously parked in front of a private home in a residential district during the day. The complainant provided us the license plate number of the vehicle.

In our investigation, we contacted the Department of Accounting and General Services (DAGS), the agency which maintains State vehicles, and learned that the vehicle was assigned to a driver education teacher at a public high school. We inquired with the Department of Education (DOE) driver education program and were informed that because the high school lacked a secure area to park the vehicle, the principal made arrangements to have the vehicle parked at a gasoline station. However, while parked at the station, the vehicle's keys were stolen. Thereafter, to prevent possible theft of the vehicle, the principal orally authorized the driver education teacher to use the vehicle to drive to and from the school and to park it at his residence. We considered this to be a reasonable measure for the security of the vehicle.

In the investigation of a previous complaint, however, we found that State employees were required to obtain permits from the DAGS for the personal use of government vehicles. Section 105-1, Hawaii Revised Statutes (HRS), stated:

> **Government motor vehicles; certain uses prohibited.** Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work. (Emphasis added.)

The exceptions to the restriction on the personal use of State vehicles were listed in Section 105-2, HRS, which stated in part:

> **Exceptions.** Section 105-1 shall not apply to:
>
> . . . .
>
> (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State; . . . (Emphasis added.)

As a result of our investigation in the previous case, the Governor issued Administrative Directive No. 08-02, dated October 30, 2008, which delegated the authority to approve an employee's personal use of a State vehicle to the DAGS comptroller. According to the directive, an employee must apply for a permit authorizing the personal use of a State vehicle by filling out a form titled "Application for Personal Use of State-Owned Vehicle," in accordance with Section 105-2(4), HRS. The DAGS comptroller must approve the application and issue a permit before an employee is allowed to drive a State vehicle for personal use, such as driving to and from the workplace.

Based on the above-quoted sections of the law and the Governor's directive, a school principal does not have the authority to approve an employee's personal use of a State vehicle. In this case, the principal's approval of the driver education teacher's personal use of the State vehicle did not comply with the law.

We brought the matter to the attention of the DOE driver education program, which initially did not believe that approval from the DAGS

comptroller was required. The driver education program felt that it had the authority to allow an employee to take home a State vehicle. However, after we informed the program about the requirements of the law, the driver education teacher in question completed the "Application for Personal Use of State-Owned Vehicle."

We monitored the application until the DAGS comptroller issued a permit, authorizing the driver education teacher to drive the State vehicle to and from home.

We informed the complainant of our follow up and the corrective action taken by the DOE.

(11-00494) School principal did not follow geographical exception rules. A woman complained in August 2010 that the principal of a school did not follow the Department of Education (DOE) rules pertaining to geographical exceptions (GE), which allow a student to attend a school outside of the geographic area in which the student resides. Without a GE, Hawaii law requires a student to attend the school in the geographic area in which the student resides.

The complainant already had a son in the fourth grade at the school as a GE, and in January 2010 she applied for a GE so that her five-year-old son could begin kindergarten at the same school for the school year that would begin in July 2010. The complainant stated that the principal is supposed to respond to a GE application within two weeks after the close of the application period, which was from January 1, 2010 to March 1, 2010. In April 2010, a school newsletter informed parents that the school was not offering any GEs in the kindergarten class for the upcoming school year. The complainant did not consider the newsletter to be proper notification of the denial of her GE application.

The complainant spoke with the complex area superintendent (superintendent), the principal's superior, in June 2010 about the lack of proper notice. In July 2010, the principal notified her that her application for GE for her five-year-old son was denied because the school was filled to capacity. However, the complainant learned that the principal subsequently granted GEs to two students to enter kindergarten for the school year beginning July 2010.

We reviewed Title 8, Chapter 13, Hawaii Administrative Rules, titled "Geographical Exceptions." According to the rules, applicants requesting a GE may receive priority consideration for several reasons, including having a sibling at the school who will continue to be enrolled in the coming school year. Thus, the complainant's five-year-old son qualified for priority consideration. The rules required that for applications received by March 1,

notification of the decision for priority consideration shall be mailed no later than two weeks after March 1. The rules also required the principal to sign the notification and include the effective date of the geographic exception and, in the case of a denial, to explain the reason(s) for the denial and that an appeal may be filed with the superintendent.

The rules further provided that if there are more priority requests than there are available spaces, or if all priority requests are filled and there are still spaces to accommodate some but not all remaining requests, a chance selection process shall be implemented by the school on a day predetermined by the department. The DOE website stated that in such a case, a lottery will be conducted on the first Friday in April.

In response to our inquiry, the superintendent acknowledged that the principal failed to follow the DOE rules regarding notification to the complainant of the denial of her GE application. We also learned that the school received a total of 16 GE applications for the kindergarten grade level. We confirmed that the principal did grant two of the applications the school received after the application filed by the complainant. The superintendent also acknowledged that the principal failed to follow the DOE rules by approving the two applications without holding the required lottery.

The superintendent assured us that the principal would comply with the GE rules in the future. He also informed us that he would grant the GE for the complainant's five-year-old son for the current school year.

When we contacted the complainant, she informed us that the superintendent offered his sincere apology and the GE for her younger son. She informed us that she declined the GE and decided to wait until the following school year to enroll her five-year-old son in the school since the school year was already in its fifth week. She said that the superintendent assured her that the GE application for her younger son would be granted for the next school year.

(11-01463) Interest payment on State contract. In late October 2010, a woman complained that her company did not receive payment for services rendered to the Department of Education (DOE) in July, August, and September 2010. The company had properly submitted invoices for its services in the months in question.

We reviewed Chapter 103, Hawaii Revised Statutes (HRS), titled, "Expenditure of Public Money and Public Contracts." Section 103-10, HRS, generally established a 30-day time limit for payment and provided that interest was owed for late payments under certain circumstances. Section 103-10(a), HRS, stated in part:

> **Payment for goods and services.** (a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid . . . .

Section 103-10(b), HRS, specified circumstances in which interest was not owed, and stated in part:

> Where the time of payment is contingent upon the receipt of federal funds, or federal approval, the solicitation of bids for contracts shall clearly state that payment is contingent upon those conditions. If the solicitation for bids contains the warning and a contract is awarded in response to the solicitation then interest shall not begin to accrue upon any unpaid voucher until the thirtieth day following receipt by the State or county of the contractor's statement or the thirtieth day following receipt of the federal funds or approval, whichever occurs later, and shall end as of the date of the check. (Emphasis added.)

We contacted the DOE special education staff member who was assigned to process payments on the complainant's contract. The staff member informed us that payment was not made because the department was waiting to receive Federal funds in order to pay the invoices. However, the department had recently received the Federal funds so a check to pay the complainant for the months in question was ready to be issued to the complainant.

We asked the staff member if the payment included interest that was owed the company, in accordance with Chapter 103-10, HRS. The staff member informed us that although she was not familiar with the law, she did not believe the company was due any interest because the terms of the contract did not cite any penalty for late payments. We informed the staff member that we believed the company was owed interest payment unless the late payment was due to one of the exceptions in Section 103-10(b), HRS.

We reviewed the solicitation of bids for this particular contract. In a section titled, "Availability of Funds" the solicitation stated, "The award of a contract and any allowed renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to

Chapter 37, HRS, and subject to the availability of State and/or Federal funds." We did not find any other provision in the solicitation of bids that made payment to the contractor contingent on the DOE's receipt of Federal funds.

Although the solicitation of bids stated that the award of the contract was contingent on Federal funding, it did not state that payment on the contract was subject to receipt of Federal funds. Therefore, we concluded that the late payment to the complainant did not meet the requirement of the above-quoted portion of Section 103-10(b), HRS, in order to be exempted from payment of interest.

As such, we recommended that the DOE pay the complainant interest for any invoice that had not been paid within 30 days of receipt by the department. After consulting with the DOE accounting office, the special education staff agreed to inform the complainant that her company was entitled to interest on the late payment and to explain the procedures by which the complainant could claim the interest.

The complainant informed us that she was unaware that she was entitled to the interest payment and was appreciative of our assistance.

DEPARTMENT OF HAWAIIAN HOME LANDS

(10-02196) Responsible for mortgage for a house in which she is not allowed to reside. After a man was awarded a Department of Hawaiian Home Lands (DHHL) residential lease, he and his wife obtained a mortgage from a bank to build a house on the lot. The lessee and his wife subsequently divorced, and the lessee passed away several years later without having named a successor to the lease. His ex-wife did not meet the Native Hawaiian blood quantum qualification requirements for succession to the lease, and after the lessee's death his relatives, not his ex-wife, resided in the house.

Although the lessee's ex-wife did not reside in the house, the bank held her responsible for payment of the $83,000 remaining on the mortgage since she was one of the borrowers. She was having difficulty keeping up with the mortgage payments and was concerned she would face foreclosure. She complained to our office that the DHHL refused to buy the mortgage from her.

We reviewed the Hawaiian Homes Commission Act and the DHHL's administrative rules. We learned that upon the death of a lessee, the lessee's interest in the lot and the improvements on the lot vest in the

relatives of the lessee as provided by law. If the lessee failed to name a successor to the lease as approved by the DHHL, the department selects a successor from qualified relatives of the decedent. The department is required to publish a public notice in a newspaper of general circulation in Hawaii at least once in each of four successive weeks, stating that all persons claiming to be relatives of the deceased lessee and who are qualified to succeed to the lease shall present themselves at the department with proof of their qualifications within four months from the first day of publication of the notice or be forever barred from succeeding to the lease.

In our investigation, DHHL staff informed us that a relative of the decedent responded to the public notice. The staff also explained that the DHHL was not required by law to buy back a mortgage if the department was not involved in obtaining the loan, as in this case. The staff further explained that the successor lessee was not required by law to pay off the complainant's mortgage.

We informed the department that we believed it was unfair to require the complainant to pay off the mortgage, as she did not reside in the house and would never be qualified to become the lessee. The department staff stated that the complainant should have known the risks when she obtained the loan. However, the department subsequently informed the complainant that it would recommend to the Hawaiian Homes Commission that the designated successor lessee pay off the existing mortgage as a condition for succeeding to the lease. We inquired with department staff about the change in its position. The staff informed us that the department recognized there would be an "unjust enrichment" to the successor lessee if the complainant was required to pay off the mortgage on the house in which the successor lessee would reside.

We monitored the case until the successor lessee qualified for a loan and paid off the complainant's mortgage. The complainant was grateful for our assistance.

(11-01605) Illegal stopping by driver of State vehicle. A man complained about what he believed was an illegal stop by the driver of a State van.

The complainant was driving his vehicle on Queen Emma Street in downtown Honolulu at 4:50 p.m. during the afternoon rush hour traffic. According to the complainant, he and the State van were traveling in a *mauka* direction and approaching the Vineyard Boulevard intersection, which is controlled by traffic signal lights. The State van then came to a sudden stop along the curb, just before the crosswalk at the intersection, even though the traffic signal light for vehicles on Queen Emma Street was green. A passenger exited the State van and the van then drove away. The

complainant provided us the license plate number of the State van in question and said it was the second time that he witnessed a State van stop and drop off a passenger at the same location.

We made a visit to the area and found that there were several metered parking stalls in the right lane on Queen Emma Street, but there were signs posted indicating that the entire curbside was a tow-away zone between the hours of 3:30 p.m. and 6:30 p.m., except for weekends and holidays. In addition, we noted several public and private driveways, several crosswalks, and two bus stops.

We reviewed Chapter 15, Revised Ordinances of Honolulu (ROH), titled "Traffic Code." Section 15-14.1, ROH, titled "Stopping, standing or parking prohibited in specified places- No signs required," stated in part:

> (a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic control device, in any of the following places:
>
> . . . .
>
> (2) In front of a public or private driveway or within four feet of either side of a public or private driveway;
>
> (3) Within an intersection, along the edges or curbsides around corners and in channelized areas of any two intersecting streets;
>
> . . . .
>
> (5) On a crosswalk;
>
> (6) Within 20 feet of a crosswalk at an intersection or within 20 feet upon the approach to any midblock crosswalk;
>
> . . . .
>
> (8) Within 75 feet upon the approach to any traffic control signal;
>
> . . . .

(16) Any place where official signs prohibit stopping; . . .

Based on our observations during our site visit and our review of the ordinance, we determined that there were very few places along that section of Queen Emma Street to legally stop, stand, or park a vehicle during most hours of the day, and no place to do so between the hours of 3:30 p.m. to 6:30 p.m. on a workday. Thus, we agreed with the complainant that the stop by the State van was illegal.

We provided the Department of Accounting and General Services (DAGS), the agency which maintains State vehicles, with the license plate number of the State van and asked to which department the van was assigned. The DAGS informed us that the State van was assigned to the Department of Hawaiian Homelands (DHHL).

We reported the complaint to the DHHL administrative services officer (ASO) and asked that he look into the matter. In investigating the complaint, the ASO discovered that while returning from daily mail delivery routes, the driver of the State van had been making a detour to drop off DHHL employees on Queen Emma Street near their bus stop. The ASO issued an email notice to all of the DHHL drivers informing them that effective immediately the only approved passenger drop-off locations were the State motor pool parking lots where the vehicles were stored.

We reported our findings to the complainant, who was pleased with the outcome. We asked the complainant to contact us again should he observe a reoccurrence of the illegal stopping.

DEPARTMENT OF HEALTH

(11-00179) Conflict between administrative rule and grievance procedure. A mental health patient at the Hawaii State Hospital (HSH) complained that nothing was done when he filed a grievance concerning a staff member who allegedly screamed at him and attempted to intimidate and provoke him. According to HSH policy and procedure, patients who have complaints about the hospital and its staff are allowed to file grievances.

We inquired with the HSH patient rights advocate and learned the complainant's grievance was still under investigation. The advocate informed the complainant of the status of his grievance. The complainant was satisfied that his grievance was still under investigation and informed us that he would await the outcome.

In the course of our investigation, we found that the HSH grievance procedure stated that if a grievance is not resolved within 48 hours, the grievance is to be forwarded to the patient's primary nurse for processing with the patient and the treatment team within 10 working days. An administrative rule, however, required that the patient be informed in writing of the progress and results of an investigation of a grievance, including any remedial actions taken, within 15 working days of receipt of the grievance and every 15 working days thereafter, until the grievance is resolved.

We brought the rule to the attention of the HSH patient rights advocate. We noted that the HSH grievance procedure was dated February 15, 1991, long before the administrative rule was promulgated on October 19, 2007. We pointed out to the advocate that the administrative rule carried the force and effect of law.

The advocate agreed that HSH staff was required to follow the rule, and stated that the HSH grievance procedure would be updated to reflect the requirements of the rule. The advocate further informed us that most patient grievances are resolved within 15 working days of receipt of the grievance.

(11-01520) Nonacceptance of Certificate of Vendor Compliance. State law requires that upon award of a government contract to a vendor, the vendor must furnish proof of compliance with certain State laws. Specifically, vendors who are awarded State or County contracts pursuant to competitive sealed bidding, competitive sealed proposals, procurement of professional services, and sole source procurements must furnish proof of compliance with statutory requirements pertaining to general excise taxes, unemployment benefits, workers' compensation, temporary disability insurance, and prepaid health care. Proof of compliance may also be required before final payment is made to a contracted vendor.

In order to prove compliance, vendors were previously required to obtain certification from the various departments involved, such as the Department of Commerce and Consumer Affairs, Department of Labor and Industrial Relations, Department of Taxation, and the Internal Revenue Service. The need to obtain certification from each of the departments was found to be time-consuming for the vendors and delayed the procurement process.

In order to streamline the process for vendors and government agencies, the State developed the Hawaii Compliance Express (HCE), an online electronic process that provides a simpler and faster method for vendors to satisfy the compliance requirements. The HCE saves time by providing qualified vendors an online "Certificate of Vendor Compliance" (Certificate) for their companies, which eliminates the need to obtain certification from the individual departments. The HCE service includes

real time monitoring of the vendors' status of compliance with the statutory requirements and the vendors are automatically notified by email anytime their compliance status is changed. According to the law, all State and County agencies are required to accept the Certificate as proof of a vendor's compliance with statutory requirements.

A woman informed us that in lieu of a tax clearance she submitted her company's Certificate, which reflected "compliant" status, to a Department of Health (DOH) agency in order to receive final payment on a contract that she had with the DOH. She complained that a DOH employee advised her that the DOH administrative services office (ASO) will not accept the Certificate as proof of compliance. As a result, final payment on her contract was being withheld from her. The complainant sought clarification on the use of the Certificate as it had been accepted by another State agency, and she wondered if acceptance of the Certificate was left to the discretion of each State department.

We reviewed the State statutes and administrative rules regarding the Certificate and spoke with the employee who received the complainant's Certificate. The employee stated that she did not inform the complainant that the ASO would not accept the Certificate, but she did warn the complainant that the ASO might reject the Certificate as the ASO has specific procedures to follow regarding tax clearances.

We contacted the ASO chief regarding the complaint. The ASO chief was not certain that her office would accept the Certificate in lieu of a tax clearance that was previously submitted as proof of compliance with tax laws. However, after further consideration, the ASO chief accepted the Certificate and the complainant received her final payment under the contract.

The complainant noted, however, that email messages between the ASO staff and her indicated that some of the ASO staff members were uncertain as to whether a Certificate should be accepted in lieu of a tax clearance. She was concerned that the problem she encountered would reoccur in the future.

We followed up further with the ASO chief, who assured us that she would clarify for her staff members that a Certificate was acceptable proof of compliance, and that the office would revise its employee procedures to include information about the Certificate.

(11-04258) Website contained incomplete information about divorce records. A woman complained that she was inconvenienced because the Department of Health (DOH) website contained incomplete information concerning divorce certificates. She explained that she

downloaded a form titled "Request for Certified Copy of Divorce Record" from the DOH website. She completed the form and went to the DOH vital records office to obtain a certified copy of her divorce certificate. She paid for parking and stood in line for over 30 minutes before it was her turn at the counter. She was then informed that the DOH did not have her divorce certificate and that she would have to contact the court to obtain it. The complainant sought to have the DOH website corrected so that other people would not be similarly inconvenienced.

In our investigation, we reviewed Chapter 338, Hawaii Revised Statutes (HRS), titled "Vital Statistics." We learned Section 338-29, HRS, had previously stated the following:

> **Registration of divorces and annulments.** Before any decree of divorce or annulment of marriage is signed, the person applying therefor shall prepare a certificate, on a form to be approved by the department of health, and file it with the clerk of the court. The certificate shall contain such items of information as are recommended by the National Center of Health Statistics and approved by the department. Within ten days after the final decree of divorce or annulment of marriage is granted, the clerk of the court shall endorse upon the certificate the date of the decree and shall forward the certificate to the department. (Emphasis added.)

The above-quoted section, which had taken effect on July 1, 1951, had been repealed effective January 1, 2003. Since the court clerk was no longer required to forward divorce certificates to the DOH after January 1, 2003, the DOH no longer maintained records of divorces that occurred after that date. Thus the only divorce records maintained by the DOH were those that had been granted by the court between July 1, 1951 and December 31, 2002.

We downloaded the form titled "Request for Certified Copy of Divorce Record" from the DOH website and noticed that printed directly below the title of the form was the following notice: "IMPORTANT! THIS OFFICE ONLY HAS DIVORCE RECORDS FROM July 1951 TO December 2002. ALL OTHER DIVORCE RECORDS ARE KEPT IN THE COURT WHERE THE DIVORCE TOOK PLACE." The complainant apparently had not read this notice on the request form.

In our review of the DOH website, however, we found that other pages titled "About Vital Records" and "How to Apply for Certified Copies of Vital Records" contained information about obtaining divorce certificates but failed to mention that the DOH only maintains records of divorces that were

granted by the court from July 1951 to December 2002. Thus, if someone missed the notice on the "Request for Certified Copy of Divorce Record," he or she would not be aware that divorce records were available from the DOH only for the period from July 1951 to December 2002.

We brought the matter to the attention of the DOH registrar and suggested that the DOH amend the web pages titled "About Vital Records" and "How to Apply for Certified Copies of Vital Records" to include notification that the DOH only maintains records of divorces that were granted by the court from July 1951 to December 2002 and that the records for all other divorces would need to be obtained from the court where the divorce took place. The registrar agreed with our suggestion and informed us that he would arrange for the web pages to be amended. We monitored the DOH website until the amendments were made two weeks later.

We informed the complainant of the outcome of our investigation.

(11-04502) Not allowed to cancel employee health insurance. An employee at a State hospital complained that her personnel office informed her that she was not allowed to cancel her health insurance until the next open enrollment period. An open enrollment period is a designated period during which State employees are allowed to make certain changes in their health insurance, such as enrolling in a health plan, changing from one plan to another, or changing the levels of coverage. The complainant believed that she should be allowed to cancel her health insurance at any time.

The health plans for State and County employees are administered by the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). We reviewed the EUTF Administrative Rules and found that Section 4.12 stated in part:

> **Cancellation of Enrollment; Effective Dates of Cancellation**
>
> (a) Voluntary Cancellation Requested by the Employee-Beneficiary. An employee-beneficiary may voluntarily cancel enrollment in a Fund benefit plan *at any time* by filing an enrollment application requesting cancellation with the employee-beneficiary's employer or, if none, directly with the Fund. . . . (Emphasis italicized.)

We attempted to speak with the hospital staff member who informed the complainant that she was not allowed to cancel her health insurance, but that staff member no longer worked at the hospital. We spoke with the staff member's replacement, who believed that an employee could cancel their health insurance only during an open enrollment period or after a "qualifying event." We informed the staff member that "qualifying events" such as

marriage, divorce, birth of a child, or death of a spouse were necessary in order to make certain non-open enrollment changes to an employee's health plan, but were not necessary for the cancellation of a health plan. The staff member then referred us to her supervisor.

We contacted the supervisor, who was also of the understanding that an employee is only allowed to cancel health insurance during an open enrollment period or after a "qualifying event." We informed the supervisor that the EUTF rule states that an employee may voluntarily cancel enrollment in a health plan at any time. As the supervisor was unfamiliar with the rule, he decided to consult the EUTF.

Subsequently, the supervisor informed us that the EUTF verified that an employee is allowed to voluntarily cancel his or her health insurance at any time. Thus, the complainant would be allowed to cancel her health insurance even though it was not an open enrollment period. The supervisor shared the information he obtained from the EUTF with the hospital's personnel office staff.

The EUTF cautioned the supervisor that even if an employee is allowed to cancel his or her health insurance, cancellation of enrollment in the Premium Conversion Plan (PCP) may not be allowed. Under the PCP, an employee may elect to authorize the reduction of his or her gross pay by the amount of the health insurance premium before Federal, State, and FICA taxes are calculated. After the health insurance premium is deducted, Federal, State, and FICA taxes are calculated on the reduced gross pay, resulting in lower tax withholdings and an increase in the employee's net pay. Under the Internal Revenue Code, however, an employee's cancellation of enrollment in the PCP is allowed only during an open enrollment period unless certain limited circumstances apply. If an employee does not qualify for the PCP cancellation outside of an open enrollment period, the deductions from the employee's pay will continue until the employee is able to cancel the PCP at the next open enrollment period, and the employee will forfeit the deducted amounts during the interim.

When we informed the complainant of our follow up, she informed us that hospital staff gave her the form to apply for the immediate cancellation of her health plan. The complainant also informed us that she was not enrolled in the PCP, so the termination of the health premium deductions from her pay would not have to wait until the next open enrollment period.

(11-00617) Denial of request for copy of birth certificate from case file. A welfare recipient complained that his caseworker denied his request for a copy of his birth certificate which he had previously submitted when he applied for assistance. The complainant needed a copy of his birth certificate by the following week in order to qualify for housing assistance. He informed us that he had contacted the Department of Health (DOH), which may issue to authorized recipients copies of birth certificates of people born in Hawaii. However, he was informed that the DOH would take about a month to issue a copy of his birth certificate to him.

We contacted the caseworker and were informed that the welfare office no longer provided welfare recipients with copies of documents from their case files. The caseworker stated that the welfare office was not a repository of records for recipients.

We thereafter spoke with the caseworker's supervisor, who informed us that it was too costly for the welfare office to provide welfare recipients with copies of documents from their files. We asked the supervisor to inform us of the legal basis that authorized the office to deny a request by a recipient for a copy of a document from his or her own case record.

The supervisor consulted her superior and then referred us to the rules of the Department of Human Services, in particular Title 17, Chapter 601, Hawaii Administrative Rules (HAR), titled "Confidentiality." We reviewed the chapter and found that Section 17-601-4, HAR, titled "Disclosure of information to applicants or recipients," stated in part:

> (c) Information from records shall be released to the applicant, recipient, authorized representative of the applicant or recipient, or legal guardian of the applicant or recipient upon the individual's request provided that a signed and dated written request is received stating specifically:
>
> (1) What information is desired; and
>
> (2) Whether the information is desired verbally, through review, or by receipt of reproduced copies of the information requested at a cost related to the cost of reproduction and postage, if any. . . .

> (d) DHS-BESSD shall permit the applicant, recipient, or legal guardian of the applicant or recipient to review the record or receive a copy of the information requested within ten working days of the date the written request is received. . . .

We again contacted the supervisor and asked what part of Chapter 601, HAR, prohibited her office from providing the complainant a copy of his birth certificate. We referred her to Section 17-601-4, HAR, and noted that it appeared to require the welfare office to provide the complainant a copy of his birth certificate from his case file. We also noted that the rule authorized the welfare office to charge a fee for the cost of reproduction and postage.

The supervisor said she would again consult her superior. Subsequently, the supervisor reported that arrangements were made to allow the complainant to pick up a copy of his birth certificate at the welfare office the following day.

On the second day after he had contacted our office, we confirmed with the complainant that he was able to receive a copy of his birth certificate from his case file in time for his housing assistance application.

(11-00639) Nonreceipt of child support payment. In order to receive financial assistance from the Department of Human Services (DHS), an individual is required to assign to the State any rights the individual may have to receive child support payments. Thereafter, when the Child Support Enforcement Agency (CSEA) collects child support on behalf of a person receiving financial assistance from the DHS, the amount collected is sent to the DHS.

A woman complained that due to miscommunication between the DHS and the CSEA, she was informed that she would not receive any child support payment for August 2010 even though she would not receive financial assistance for that month. The complainant was receiving financial assistance from the DHS but was informed that her assistance would stop on July 31. Since she would not receive financial assistance for August, she believed that she should receive her child support payment for August. However, the CSEA informed her that according to the DHS, her financial assistance would not stop until September 1, so the CSEA would not send her any child support payment collected for August.

The complainant contacted supervisors at both the CSEA and the DHS and was informed that the agencies share databases. When a DHS caseworker enters information in the DHS database, the system updates the information in the CSEA database. The CSEA supervisor suggested that the

complainant confirm with the DHS the date that her financial assistance actually ended. When the complainant contacted the DHS supervisor, she was informed that she was ineligible for financial assistance as of July 31. The DHS supervisor was unable to explain why the CSEA database showed September 1 as her closure date and referred the complainant to our office.

We spoke with the CSEA supervisor who confirmed that the CSEA database showed that the complainant's financial assistance from the DHS did not expire until September 1. He informed us that since it appeared the complainant would receive financial assistance in August, the CSEA would not send the complainant any child support payment that it collected for August. Thus, the CSEA sent the complainant's child support payment for August to the DHS.

We then contacted the DHS program office to inquire about the discrepancy in the DHS and CSEA databases regarding the termination date of the complainant's financial assistance. After investigating the matter, the DHS program office informed us that the complainant's DHS caseworker entered the complainant's closure information into the database on July 26. However, July 25 was the deadline to enter such information in order to reflect a closing date of August 1. Because the deadline was missed, the database showed the complainant's closure date as September 1, when in actuality her closure date was August 1.

As it was confirmed that the complainant would not receive financial assistance from the DHS in August, the DHS returned the complainant's August child support payment to the CSEA. The complainant subsequently received her August child support payment from the CSEA at the end of August.

(11-00902) Notification of interview mailed to the wrong address. A woman from Maui applied for and was approved for financial assistance, food stamps, and medical assistance. Subsequently, her financial assistance and food stamps were terminated because she failed to attend her semi-annual redetermination interview. She complained that even though she had informed the welfare office of her post office address, the notice of the interview was sent to a general delivery address and she did not receive it.

We reviewed the rules of the Department of Human Services, Title 17, Chapter 648, Hawaii Administrative Rules (HAR), titled "Eligibility Redetermination." According to the rules, since the application of the complainant's household was jointly processed for financial assistance and food stamps and the complainant had a six-month food stamp certification, the department was required to redetermine the complainant's eligibility semi-annually.

The complainant's worker was on a vacation, so we spoke with her supervisor who confirmed that the notice for the redetermination interview was sent to a general delivery address. We informed the supervisor that the complainant claimed she had provided the welfare office with her post office address. The supervisor checked the complainant's file and verified that the complainant had in fact provided the welfare office with written notification of her post office address. The supervisor reported that the caseworker changed the complainant's mailing address to the general delivery address, but the supervisor could not find documentation of the reason that the worker made the address change.

As there was no explanation for the address change, the supervisor determined that the notice for the redetermination interview should have been sent to the complainant's post office address. Since the welfare office had erred, the supervisor reopened the complainant's case and reinstated her assistance and the complainant's redetermination interview was rescheduled.

We informed the complainant of the action taken by the worker's supervisor.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

(10-04055) Inclusion of social security numbers on mailed unemployment documents. In April 2010, a woman who had filed a claim for unemployment insurance benefits complained that the Unemployment Insurance Division (UID) had sent her a benefit check with an attached receipt that included her entire social security number. The complainant later withdrew her complaint after she contacted the UID and received what she thought to be a satisfactory response. However, we remained concerned about the UID's inclusion of a claimant's entire social security number on documents that are mailed, so we decided to investigate on our own motion.

We reviewed Chapter 487J, Hawaii Revised Statutes (HRS), titled "Social Security Number Protection." Section 487J-2, HRS, stated in part:

> (a) Except as otherwise provided in subsection (b), a business or government agency may not do any of the following:
>
> . . . .

(5) Print an individual's entire social security number on any materials that are mailed to the individual, unless the materials are employer-to-employee communications, or where specifically requested by the individual.

Section 487J-2(b), HRS, listed specific exceptions in which the printing of entire social security numbers on mailed materials was permissible, but the mailing of UID documents to claimants was not one of the listed exceptions. Thus, we concluded that pursuant to Section 487J-2(a)(5), the UID was not permitted to print a claimant's entire social security number on materials mailed to the claimant.

We contacted the UID program office and were informed that fourteen different documents that the UID mailed to claimants contained the claimant's entire social security number. The UID informed us that it had already begun work on a change to its computer system that would limit the printing of social security numbers on mailed documents to only the last four digits. However, the UID also informed us that its main priority at that time was to upgrade its computer system to allow claimants to file for benefits online. In the meantime, the UID attempted to reduce visibility of social security numbers in mailed envelopes by folding the documents over the social security numbers and by mailing the documents in security envelopes.

We monitored the UID's progress on modifications to its computer system to truncate social security numbers on mailed documents. Five months after we received the complaint, the modifications to the computer system were completed. Thereafter only the last four digits of claimants' social security numbers would be included on mailed documents.

(11-01904) Procurement law not followed. In the course of investigating a complaint against the Department of Labor and Industrial Relations (DLIR) concerning the award of a contract for security services, an employee informed us that the opening of sealed bids is done in one of two ways:

1. Bids that are hand-delivered to the office are opened in the presence of the delivery person who is then provided with a date-stamped document; and

2. Bids that are delivered by mail are opened in the presence of a staff witness.

We reviewed the rules of the State Procurement Policy Board, in particular Title 3, Chapter 122, Hawaii Administrative Rules (HAR), titled "Source Selection and Contract Formation." Section 3-122-30, HAR, stated in part:

> Receipt, opening, and recording of bids. (a) **Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place by the procurement officer until the time and date set for opening.** Purchasing agencies may use other methods of receipt when approved by the procurement officer.
>
> **(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the invitation for bids.**
>
> (1) The name of each bidder, the bid price(s), and other information as is deemed appropriate by the procurement officer or the procurement officer's designated representative, shall be read aloud or otherwise made available. If practicable, the information shall also be recorded at the time of opening; that is, the bids shall be tabulated or a bid abstract made;
>
> (2) The name(s) and address(es) of the required witnesses shall also be recorded at the opening.
>
> (c) The opened bids shall be available for public inspection at the time of opening . . . . (Emphasis added.)

We also reviewed the Invitation For Bids (IFB) for the DLIR security services contract. The IFB stated that sealed bids would be received up to and opened at 2 p.m. Hawaii Standard Time on November 24, 2010 at the DLIR Administrative Services Office.

The process as explained to us by the DLIR employee did not comport with the above-cited rule. The bids were not kept in a secure place nor were the bids opened publicly on the date, time, and place which were indicated on the IFB.

We spoke with a DLIR supervisor, who initially informed us that the process as explained to us by the DLIR employee was sanctioned by the

State Procurement Office (SPO). However, when we contacted the SPO, we were informed that the SPO did not approve of the process as described by the DLIR employee.

We informed the DLIR supervisor what the SPO had informed us. The supervisor assured us that the DLIR would henceforth comply with the bid opening provisions of Section 3-122-30, HAR.

DEPARTMENT OF LAND AND NATURAL RESOURCES

(11-00244 and 11-00245) Improper use of State land. In July 2010, as part of our investigation of several complaints we received, two of our staff members conducted a site inspection of a small boat harbor under the jurisdiction of the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources. During the course of our inspection of the harbor premises, we noticed two lots whose use appeared questionable.

On the first lot (hereafter referred to as Lot 1), carnival ride equipment and a car were stored behind a locked fence. Judging from the overgrowth of weeds and grass, it appeared that the items were stored there for quite some time.

On the second lot (hereafter referred to as Lot 2), we observed three men working amidst boats, lift trucks, dumpsters, and other material. One of the men approached and informed us that he had an agreement with the harbor agent that allowed him to work on the lot in exchange for his demolition of boats impounded by the State.

Before leaving the harbor, we inquired with the harbor agent about the ownership and use of Lots 1 and 2. The harbor agent confirmed that both lots were within the harbor boundaries and were owned by the State. She indicated that she did not know much about the use of Lot 1, as she inherited the situation when she took over the position of harbor agent from her predecessor, who was promoted and was her supervisor. The harbor agent informed us that Lot 2 was the lot where impounded boats were stored prior to demolition.

We later contacted the harbor agent again and inquired further about the use of the two lots, at which time the harbor agent referred us to her supervisor.

When we contacted the supervisor, he informed us that the DOBOR had written agreements for the use of Lots 1 and 2. The supervisor stated

that the DOBOR had an agreement with a company to store their property on Lot 1 for a monthly rent of $480. The company's owner previously lived aboard a vessel moored in the harbor and needed a place to store his equipment. Since the lot was vacant, he was allowed to use it for storage purposes. The supervisor stated that the agreement was in place since the late 1990s, and that the rent collected was deposited in the DOBOR Special Boating Fund. The supervisor further stated that another agreement allowed the man, whom we met at Lot 2, to work on the lot in exchange for his demolition of boats impounded by the State and no rent was charged.

In August 2010, we requested from the supervisor a copy of the agreements pertaining to the use of Lots 1 and 2. Despite our repeated requests, the supervisor failed to provide us with the agreements. Therefore, in October 2010 we wrote to an administrator at the DOBOR and requested his assistance in obtaining the agreements.

In late November 2010, the administrator responded that the agreements pertaining to the use of Lots 1 and 2 had expired and provided us with copies of the expired agreements. He informed us that the DOBOR decided to have the company vacate Lot 1 because there were plans to develop that area for harbor use. He also informed us that the DOBOR was in the process of renewing the agreement for the use of Lot 2.

We reviewed the agreements that we received from the DOBOR. There were ten separate annual agreements pertaining to Lot 1 between the company and the DOBOR covering the period from May 2000 to May 2010. The agreements allowed the company to use an assigned area of the harbor for dry storage in exchange for a fee of $250 per month.

There were nine separate annual agreements pertaining to Lot 2 covering the period from January 2001 to March 2010. The agreements from January 2001 to January 2006 were between the DOBOR and a company, and was not with the man whom we met at Lot 2. The agreements allowed the company to use an assigned area of the harbor for dry storage in exchange for a fee of $250 per month. Subsequently, from March 2006 to March 2010, the agreements were between the DOBOR and the man we met at Lot 2 and allowed the man to use an assigned area of the harbor for dry storage and repair in exchange for service in kind.

We contacted the supervisor to inquire about the discrepancy between the monthly storage fees contained in the agreements and what he previously told us; the change of permittees in the agreements for the use of Lot 2; and the lack of an agreement for use of Lot 2 between January and March 2006. The supervisor claimed that he misspoke when he told us previously that the monthly fee was $480 for Lot 1 and that there was no monthly fee for Lot 2. The supervisor also stated that the company that had the agreement with the DOBOR for Lot 2 from January 2001 to January 2006

was owned by the man whom we met at Lot 2. The man later changed the name of his company to that of his own name as was reflected in the agreements from March 2006 to March 2010. The supervisor further stated that between January and March 2006 there was no agreement.

We monitored the actions of the DOBOR regarding the vacating of Lot 1 and the renewal of the agreement for the use of Lot 2. However, the supervisor again failed to provide us with requested information. Thus, we contacted the harbor district manager and learned that the supervisor had resigned. In the supervisor's absence, the district manager agreed to follow up on our inquiry.

Thereafter, the district manager informed us that she discovered that there were no written agreements pertaining to Lots 1 and 2 and that the DOBOR did not issue permits or collect monthly fees for either lot. Thus, in addition to having the company vacate Lot 1, the DOBOR decided to have the man vacate Lot 2 since his use of the lot was not marine-related and involved the recycling of metals.

Over the next two months, the DOBOR took the necessary steps to have Lots 1 and 2 vacated. By the beginning of June 2011, we confirmed that the lots were vacated and secured by the DOBOR.

OFFICE OF THE LIEUTENANT GOVERNOR

(11-01798) Delay in the processing of a name change petition. One of the ways for a person in Hawaii to legally change his or her name is by an order of the Lieutenant Governor (LG).

A man complained in late November 2010, after the General Election, that an order for his change of name was being delayed. The staff of the outgoing LG informed the complainant that his name change would not be processed because they were working on the transition of LG operations to the staff of the newly elected LG. Thus, he was told he would need to wait for the incoming LG staff to complete the processing of his name change. The complainant was anxious to finalize his name change, however, in order to provide his new employer with identification and social security cards in his new name.

Chapter 574, Hawaii Revised Statutes, titled "Names," authorized the LG to order a change of name upon petition of a person who wishes to change his or her name. In addition, Title 2, Chapter 2, Hawaii Administrative Rules (HAR), titled "Change of Name," stated in Section 2-2-4, HAR, in part:

> Order of change of name. The petition for the change of name shall contain an order of the change of name in the form prescribed by the lieutenant governor. . . .

Section 2-2-5, HAR, stated in part:

> Procedure following approval by the lieutenant governor.
> (a) Once the petition has been approved a notice of change of name signed by the lieutenant governor shall be mailed to the petitioner.
>
> (b) The petitioner shall have published the notice of change of name in a newspaper of general circulation in the State within sixty days of the signing of the notice by the lieutenant governor and shall deposit the original affidavit in the prescribed form with the office. . . .

Section 2-2-1, HAR, stated in part:

> Definitions. As used in this chapter, unless otherwise specifically indicated:
>
> "Affidavit" means the affidavit of publication executed by the officer of the newspaper stating that the notice has been published.

The complainant had submitted a name change petition to the LG in early October 2010. The petition contained an order of the change of name, as required by Section 2-2-4, HAR. In mid-October 2010, the complainant received the notice of change of name signed by the LG and he made arrangements for the notice to be published in the newspaper in early November 2010. The complainant submitted the required affidavit of publication to the LG in mid-November 2010 and the LG staff confirmed its receipt of the affidavit. At that time, the complainant was told that the order would be processed within a week, but he was subsequently informed that his final name change order would not be issued until after the newly elected LG took office in December 2010.

We contacted the outgoing LG staff and were informed that beginning mid-November 2010 petitions for changes of names were not being processed because the staff needed the time to clean the office and pack their belongings before the newly elected LG took office. The outgoing LG staff would also have to train the incoming LG staff in office procedures.

We informed the outgoing LG staff that the complainant's petition had been submitted in early October 2010 and that the LG had already received

the affidavit of publication. We suggested that since the only remaining matter was for the LG to sign and mail the order to the complainant, the order could be quickly processed by the outgoing LG staff rather than asking the complainant to wait until the newly elected LG took office. The outgoing LG staff agreed to look into the matter.

In early December 2010, the outgoing LG staff informed us that the process was completed and the name change order was mailed to the complainant. We informed the complainant, who was very appreciative of being able to use his new name.

DEPARTMENT OF PUBLIC SAFETY

(11-00147) Inmate found guilty of duplicate misconduct charges. An inmate complained that a facility adjustment committee (committee) had erroneously found him guilty of misconduct. The complainant told us that he orally confronted another inmate who had taken more than his share of food. The other inmate became upset and punched a nearby door, injuring his hand. The complainant informed us that the adult corrections officer (ACO) who charged him with misconduct was unable to see everything that happened because the ACO was in the control station behind a window during the incident.

The committee found the complainant guilty of three charges for violating the following sections of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

> **4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS**
>
> . . . .
>
> .2 Greatest Misconduct Violations (6).
>
> a. . . . .
>
> 6 (3) Assaulting any person, with or without a dangerous instrument, causing bodily injury.
>
> . . . .

.3 High Misconduct Violations (7).

a. 7 (1) Fighting with another person.

. . . .

.4 Moderate Misconduct Violations (8).

a. . . . .

8 (11) Refusing to obey an order of any staff member, which may include violations in the low moderate category.

We reviewed the staff investigation report. According to a statement signed by the complainant, the other inmate "got in my face and I pushed him back," contrary to his statement to us that he had only orally confronted the other inmate. However, the complainant denied that he struck the other inmate. In his statement, the other inmate did not claim that the complainant hit him. In his Incident Report, the ACO who charged the complainant with misconduct stated that he saw both inmates facing each other in a threatening manner so he tapped on the control station window to get their attention. The ACO stated he was ignored, so he radioed a second ACO in the vicinity to respond to the situation. The first ACO stated that shortly thereafter he saw the complainant punch the other inmate in the face and then saw the other inmate punch the door. In his report, the second ACO stated that he only saw the other inmate punch the door.

A nurse who examined both inmates in the medical unit after the incident reported that there were no visible injuries on the complainant and that the other inmate was treated only for abrasions on the knuckles of his right hand. According to the nurse's report, the other inmate did not report being struck by the complainant but did admit that he punched the door.

We contacted the facility warden and questioned the basis for finding the complainant guilty of both assault and fighting. We also questioned the basis of the guilty finding for refusing to obey an order when it appeared that the complainant did not hear the ACO in the control room tap on the window to get his attention.

The warden agreed to have staff reinterview the complainant and the other inmate. Based on the subsequent interviews, the staff determined that the complainant had pushed the other inmate but did not strike him.

However, the warden informed us that pushing another inmate in the chest, even if it does not cause bodily injury, was still considered to be a form of assault.

As a result, the warden expunged the guilty findings on the charges of fighting and refusing to obey an order of a staff member. In addition, the warden reduced the severity of the assault charge by finding the complainant guilty of violating PSD Policy No. COR.13.03, Section 4.0.3a.7(3), for assaulting any person without weapon or dangerous instrument, essentially finding that the complainant had not caused bodily injury to the other inmate.

The warden provided the complainant with a written statement of the committee's findings and the complainant was grateful for the outcome of our investigation.

(11-00353) Improper withholding of Federal tax refund. An inmate complained in June 2010 that the business office of the correctional facility where she was housed improperly withheld her 2009 Federal income tax refund of $999.

The complainant informed us that in 2009 she was on work furlough and held several regular jobs in the community through which she earned income. Her employers withheld taxes from her paychecks and in 2010 sent her the W-2 forms, "Wage and Tax Statement," which she filed with her Federal tax return. The complainant expected to receive a refund but instead was informed by the facility that her refund was being withheld due to an investigation by the Internal Revenue Service (IRS) of fraudulent returns filed by inmates.

We contacted the Mainland Branch (MB), Department of Public Safety (PSD), which was the lead agency that assisted the IRS in its investigation of potentially fraudulent tax returns. The MB informed us that the IRS determined that inmates who were incarcerated during 2009 would not have earned any income so they would not be entitled to tax refunds. Thus, the MB requested that PSD correctional facilities send the MB the tax refunds of these inmates so that they could be returned to the IRS. The MB informed us that the IRS determined that the complainant had been incarcerated since 2005 so she was not entitled to a refund for 2009.

We inquired as to whether the IRS was aware that inmates who are on work furlough earn wages from private employers, who withhold Federal and State taxes from their paychecks. The MB checked with the IRS and thereafter informed us in August 2010 that the complainant's tax return was

in fact proper and the IRS would reissue the tax refund to her. The MB thereafter provided the IRS with a list of names of other inmates who were on work furlough in 2009.

The complainant was thankful that she would receive her tax refund.

(11-00586) Failure to transfer inmate's funds. An inmate complained that the Women's Community Correctional Center (WCCC) had not transferred her funds to the Federal Detention Center Honolulu (FDC) two months after she was transferred to the FDC.

In our investigation, we learned that when an inmate is transferred to the FDC from any Department of Public Safety facility, the inmate's funds are transferred to the FDC through the Oahu Community Correctional Center (OCCC). The OCCC business office is responsible for maintaining the inmate's restricted funds, which are held until the inmate's release, and for forwarding the inmate's spendable funds to the FDC.

In this case, the WCCC had timely sent the complainant's funds to the OCCC. However, the OCCC business office was not aware that the complainant had transferred to the FDC. Based on our inquiry, the business office sent the complainant's spendable funds to the FDC. We subsequently notified the complainant, who was thankful that her funds were transferred.

We remained concerned about the lack of communication between the WCCC and the OCCC regarding the transfer of inmates to the FDC. We contacted the WCCC records office and inquired about the notification process. We learned that when an inmate is approved for transfer to the FDC, an email is sent to all relevant sections of the WCCC (records, intake, medical, and business office) notifying staff of the transfer. It is then the responsibility of each WCCC section to communicate with its counterpart at the OCCC. Thus, the WCCC business office was responsible for notifying the OCCC business office that the inmate is being transferred to the FDC, and the OCCC business office was responsible for transferring the inmate's spendable funds to the FDC.

We discussed this matter with the WCCC warden and recommended that a reminder be issued to the staff regarding proper notification to the OCCC business office when the WCCC transfers inmates to the FDC. The warden agreed and issued a memo reminding the WCCC business office staff that in cases where inmates are being transferred to the FDC, notification of the names of these inmates must be provided to the OCCC business office so that their funds will be transferred to the FDC without undue delay.

(11-00904) Inmates not provided with store order receipt. An inmate complained that the facility's business office was not providing inmates with receipts for their purchases from the inmate store. Without a receipt, the complainant was not able to determine how much he was charged for each item because the prices of the items were not printed on the form which was used to place store orders.

We reviewed Department of Public Safety Policy No. COR.02.01, titled "Inmate Store." The policy did not address how inmates were to be informed of prices and whether inmates would be provided with purchase receipts.

We contacted the facility's business office and were informed that the facility contracted with a private vendor to provide the store items. The store order form did not list the price of each item because the prices changed often and the business office was unable to update the form to keep pace with the price changes.

The business office stated that inmates were informed of the price of each item they purchased because the vendor provided a receipt to the facility for each inmate's purchase. The receipt contained the price of each item the inmate ordered, and the inmate signed the receipt to verify that he or she received the items. We noted, however, that the business office thereafter kept the receipt for its records and the inmate did not have the opportunity to study the receipt to determine the price of each item.

Since the store order form did not include prices of the items, we recommended to the business office that the inmates be provided with a copy of the purchase receipt.

The business office concurred and asked the vendor if it would provide two receipts, one for the inmate and one for the business office. The vendor agreed and thereafter provided the business office with duplicate receipts, one of which was given to each inmate who made a store order purchase.

The complainant subsequently confirmed that he was provided with a receipt after he received his latest store order.

(11-01109) Inmates not provided with account ledgers. In the course of investigating a complaint, we learned from the business office staff at a correctional facility that it was not providing inmates with a ledger that showed all deposits and debits from their accounts under the control of the Department of Public Safety (PSD). The staff informed us that it provided inmates with receipts when money was received for the inmates

from an outside party. The staff also provided inmates with the balance in their accounts when the inmates asked for that information. However, the staff did not automatically provide inmates with a ledger of their accounts on a periodic basis.

According to Section 353-20, Hawaii Revised Statutes, titled "Custody of moneys; accounts for committed persons, etc.," the PSD "shall provide quarterly accounting statements to all committed persons held in custody for over one quarter of the year." Additionally, PSD Policy No. COR.02.12, titled "Inmate Trust Accounts," allowed inmates to request a copy of their account ledgers at anytime between the quarterly periods, but not more than once a month.

We informed the business office staff of the law and the PSD policy. Initially, the staff was reluctant to provide account ledgers to inmates in accordance with the law due to the additional work, as the office was short staffed. We noted that other correctional facilities were providing inmates with their account ledgers, however, and that this was a requirement of the law.

Subsequently, the business office staff researched which inmates at the facility were held in custody for more than one quarter of the year and were thus eligible to receive an account ledger under the law. The staff then began providing the eligible inmates with their account ledgers on a quarterly basis.

(11-01485) Duplicate misconduct charges. An inmate complained that he was erroneously found guilty of multiple misconduct charges that stemmed from an incident that occurred while he was on extended furlough from a correctional facility. While on extended furlough, an inmate reports back to the facility periodically, not on a daily basis.

According to the incident reports by staff members of the facility, the complainant was observed by staff driving a vehicle that belonged to a female inmate. The complainant did not possess a driver's license and according to his furlough agreement he was not allowed to drive. A few days later, the complainant drove to the facility, was questioned by an adult corrections officer (ACO), and admitted that he had been driving. The ACO then informed the complainant that his furlough was revoked and ordered the complainant to accompany him back into the facility.

Instead of complying with the ACO's order, the complainant became verbally abusive and briefly walked off the facility grounds. He then returned to the facility but failed to comply with several orders by the ACOs to accompany them into the facility. At one point the female inmate whose car the complainant had been driving was waiting at the guard house to be

released and the complainant asked to speak with her. However, when an ACO informed the complainant that mechanical restraints would be placed on his legs, the complainant ran to the guard house, spoke with the female inmate, and then ran away and did not return. The complainant was then reported to the police as an escapee.

The facility adjustment committee (committee) found the complainant guilty of violating the following sections of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

> **4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS**
>
> . . . .
>
> .3 High Misconduct Violations (7).
>
> a. . . . .
>
> 7 (4) Escape from an open institution or program, conditional release center, work release center or work release furlough, which does not involve the use or threat of violence.
>
> 7 (5) Attempting, planning, aiding or abetting and [sic] escape, including creating or possessing a dummy or dummy-like object.
>
> . . . .
>
> 7 (16) Any deviation from the following: date of validity, time expiration, destination, and purpose/intent of any furlough pass.
>
> . . . .
>
> .4 Moderate Misconduct Violations (8).
>
> a. . . . .
>
> 8 (11) Refusing to obey an order of any staff member, which may include violations in the low moderate category.

Based on the staff incident reports, we found there was a reasonable basis for the committee to find the complainant guilty of escape from work release furlough, deviation from his furlough pass, and refusing to obey an order. However, since the complainant was found guilty of escape, we did not believe that he should have also been found guilty of attempted escape on the basis of the same factual circumstance.

We discussed our concern with the committee chairperson, who stated that he believed the complainant had attempted and planned the escape by discussing the plan with another inmate. However, when the chairperson could not find information in the staff reports to support his position, he stated that the complainant's demeanor that day indicated he was planning to escape. The chairperson stood by the guilty finding on the attempted escape charge.

We thereafter explained our findings to the facility warden and recommended that the guilty finding on attempted escape charge be overturned and expunged from the record. After reviewing the case, the warden agreed with our findings and he expunged the guilty finding on the attempted escape charge from the complainant's institutional file. In addition, the facility security staff held a meeting of its ranking officers to remind them of the proper application of the escape and attempted escape charges.

We notified the complainant of our findings and the action taken by the facility warden. The inmate was appreciative of our assistance.

(11-01635) Duplicate misconduct charges. An inmate complained that a correctional facility adjustment committee (committee) found him guilty of violating the following sections of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

. . . .

.4 Moderate Misconduct Violations (8).

a. . . . .

. . . .

8 (10) Possession of anything not authorized for retention or receipt by the inmate/

detainee and not issued to the inmate/ detainee through regular institutional channels.

8 (11) Refusing to obey an order of any staff member, which may include violations in the low moderate category.

We reviewed the correctional facility staff reports, which indicated that the staff conducted a search of the complainant's cell and found various unauthorized items. On that basis, we found that there was sufficient evidence to support the guilty finding for violating 8 (10). However, there was no indication in the reports that the complainant refused to obey an order of a staff member, so we questioned the guilty finding for violating 8 (11).

We discussed our concern with the committee chairperson, who informed us that the complainant was found guilty of refusing to obey an order because he possessed the unauthorized items. We informed the chairperson that we found it unfair to find the complainant guilty of two charges that are based on the same conduct, i.e., the possession of unauthorized items. The chairperson argued that it was analogous to running a red light, as motorists should know they are not to run a red light. We pointed out, however, that a motorist who runs a red light is cited only for running a red light and not for "refusing to obey the traffic code." We also pointed out to the chairperson that if his rationale was consistently followed, every time an inmate was found guilty of any rule violation the inmate would also be guilty of violating 8 (11) for refusing to obey an order. However, the chairperson declined to amend the committee's decision.

We then discussed our concern with the facility warden. We explained to the warden that we believed the charge of refusing to obey an order should not be based on an inmate's violation of another rule, but instead it should be reserved for those instances in which an inmate refuses to obey a direct order given by a staff member. Otherwise, the charge of refusing to obey an order loses its effectiveness as a tool for the control of inmate conduct. The warden initially stated that we raised a good point, but after reviewing the matter further, he informed us that his staff was opposed to our analysis, and he declined to amend the committee's decision. We informed the warden that we would seek his superior's review.

We subsequently wrote to the institutions division administrator and presented our findings. The administrator agreed with our findings and concluded that the charge for refusing to obey an order was misapplied. The administrator issued a written directive to expunge the guilty finding for 8 (11) from the complainant's record and stated that the warden shall assure that facility records were corrected to reflect the expungement.

We contacted the warden and verified that the facility records were corrected.

Thereafter, we notified the complainant of our findings and the action taken by the institutions division administrator.

(11-01747) Untimely hearing by the Hawaii Paroling Authority. In mid-November 2010, an inmate who was sentenced by the court in mid-May 2010 to an indeterminate term of five years imprisonment complained that the Hawaii Paroling Authority (HPA) had not held a hearing to set his minimum term of imprisonment. The complainant stated that the HPA was required to hold the hearing no later than six months after his sentencing date.

Section 706-669(1), Hawaii Revised Statutes, stated in part:

> **Procedure for determining minimum term of imprisonment.** (1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling authority shall, as soon as practicable but no later than six months after commitment to the custody of the director of the department of [public safety] hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.

We contacted a staff member at the HPA who explained that the scheduling of a hearing to set an inmate's minimum term of imprisonment is triggered by the HPA's receipt of a copy of the sentencing order (order) from either the sentencing court or from the correctional facility where the inmate is held. On November 22, 2010, the HPA learned that it had not received the order for the complainant and staff then requested a copy of the order from the facility. After receiving the order, the HPA staff scheduled the hearing to set the complainant's minimum term at the earliest available date, which was in February 2011.

We brought this delay to the attention of the HPA administrator, who agreed to review the HPA procedures to avoid future delays in the scheduling of hearings to set minimum terms of imprisonment.

The HPA administrator subsequently issued instructions to the HPA staff to immediately fax a written request to the courts whenever they become aware that sentencing documents have not been received. The HPA staff will verify a court's receipt of the request no later than two working

days after sending the request. If the HPA does not receive the documents within ten days thereafter, the HPA administrator will follow up with the sentencing judge. At the same time, the HPA staff will seek assistance from the correctional facility where the inmate is held in an effort to obtain the sentencing documents from the inmate's institutional file.

In our investigation, we found that the law did not specify a consequence if a hearing is not held within six months from the date the inmate is sentenced to imprisonment. Court decisions that we reviewed suggested that an inmate is not entitled to relief for the HPA's failure to hold the hearing within six months unless the record shows that the failure to comply was (1) unreasonable and (2) caused actual prejudice to the inmate. The presumption is that the failure to comply with the law is unreasonable and it is the State's burden to rebut this claim, but it is the petitioner's burden to prove actual prejudice.

We informed the complainant that a hearing to set his minimum term had been scheduled by the HPA for February 2011 and that this was the earliest available date after the HPA discovered that his hearing had not been held. We suggested that he consult an attorney if he wished to pursue any relief for the delay.

(11-01806) Delay in processing visitation list. Two inmates who were transferred from one correctional facility to another complained that their visitation lists were not processed at their new facility. A visitation list contains the names of persons who are approved to visit an inmate.

During our investigation of this complaint, we reviewed Department of Public Safety (PSD) Policy No. COR.15.04, titled "Visitation," which stated in part:

> **3.0 <u>POLICY</u>**
>
> . . . .
>
> .7 Transfers of Visitation Privileges
>
> When an inmate is transferred to another facility, the inmate's approved visitation list at the former facility shall be transferred to the receiving facility. The receiving facility shall accept the approved visitation list to allow visitors from the list. However, this does not preclude the receiving

> facility from conducting their own verification of those on the list as changes to the visitor's criminal history or other concerns may have changed.
>
> The receiving facility Warden or designee shall be responsible for approving any new names the inmate wishes to add to the visitation list after transfer or to delete names as may be appropriate.

We inquired with the visitation officer at the receiving facility and were informed that the former facility did not transfer the complainants' lists.

We thereafter contacted the visitation officer at the complainants' former facility, who informed us that although he prepares the visitation lists, the facility's records office was responsible for transferring the lists when inmates were transferred to another facility. When we contacted the facility's records office, however, we learned that the visitation officer was not inputting the names of approved visitors into the PSD's statewide computer tracking system. Since all PSD facilities had access to the computer tracking system, the entry of the names of approved visitors into the system by one facility would eliminate the need to transfer an actual copy of an inmate's visitation list when the inmate was transferred, as the inmate's new facility would be able to access the inmate's approved visitation list on the computer tracking system. Thus, the policy requirement became unnecessary due to the improved technology.

When we spoke to the visitation officer again, he confirmed that he had not inputted names of approved visitors into the computer tracking system and said it was because he was too busy with his other duties. The officer informed us that he had asked his supervisor for help, but none was forthcoming.

We contacted the facility's chief of security and informed him of the problem. The chief of security reviewed the matter and thereafter assigned another staff member to assist the visitation officer.

We monitored the situation until the visitation officer was able to reduce the backlog of visitation requests and input the names of approved visitors into the computer tracking system.

(11-02089) Procedural flaws in parole hearing. After the Hawaii Paroling Authority (HPA) denied his release on parole, an inmate complained that the HPA had failed to notify him of the date of the parole hearing, which was held only one week before the expiration of his minimum term of

imprisonment. He also complained that he was not able to meet with his legal counsel prior to the hearing. The complainant contended that he should be afforded another hearing.

We reviewed Chapter 706, Hawaii Revised Statutes, titled "Disposition of Convicted Defendants." The pertinent statute stated in part:

> **§706-670 Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.** (1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment . . . .
>
> . . . .
>
> (3) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of the prisoner's parole hearing . . . In addition, the prisoner shall:
>
> (a) Be permitted to consult with any persons whose assistance the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for a hearing before the authority; . . .

It appeared the HPA failed to meet statutory requirements by not providing the complainant with notice of his parole hearing, not holding the hearing at least a month prior to the expiration of his minimum term, and not affording him the opportunity to consult with his legal counsel to prepare for the hearing.

We contacted the HPA regarding the complaint. The HPA informed us that when a parole hearing is scheduled, a parole officer serves the inmate with a notice of the hearing, which includes the date and time of the hearing, the place of the hearing, and the inmate's right to representation and assistance by legal counsel. We asked the HPA to provide us with a copy of the notice of the parole hearing that was served on the complainant.

The HPA subsequently informed us that it was unable to locate the notice of the hearing in the complainant's case. Thus, the HPA rescinded the denial of parole release for the complainant and granted the complainant a new parole hearing.

We informed the complainant of our follow up and the corrective action to be taken by the HPA.

(11-02099) Indigent inmate assessed for postage costs. In order to ease overcrowding in Hawaii's correctional facilities, the Department of Public Safety (PSD) contracted the operator of private correctional facilities in Arizona to house Hawaii inmates. The PSD Mainland Branch (MB) staff monitored the Arizona facilities for compliance with the contract.

An inmate at a contracted Arizona facility complained that $12.32 was erroneously deducted from his account to cover the cost of 28 postage stamps. During the period from October 1, 2009 to February 15, 2010, he had only 9 cents in his account and was considered to be indigent, so the facility did not charge him for stamps that he needed for his outgoing mail. On February 15, 2010, his sister deposited $100 into his account and the facility then deducted $12.32 from his account.

The complainant maintained that the facility's policy did not permit the facility to recover the $12.32 from his account. After exhausting the facility's grievance process, the complainant wrote to the MB. The MB thereafter informed the complainant that the facility was allowed to recover the cost of postage when money was subsequently deposited into his account.

We contacted the MB and were informed that pursuant to a provision in the PSD contract with the Arizona facility, a PSD policy pertaining to inmate accounts was applicable to the accounts of inmates held at the facility. We reviewed the contract and confirmed that the PSD policy did apply to Hawaii inmates at the Arizona facility. We reviewed the PSD policy and found it provided that when an inmate did not have sufficient funds for the cost of postage relating to litigation purposes, the inmate's account shall be debited when funds became available in the inmate's account at a later time.

Since the PSD policy allowed only the cost of "postage relating to litigation purposes" to be recovered from an inmate's account, we asked the MB whether the entire $12.32 that was recovered from the complainant's account was for postage related to litigation. The MB explained that the facility would not know with certainty whether a particular piece of correspondence was related to a court case. However, if the indigent inmate requested postage for "legal mail," it would be reasonable for the Arizona facility to consider the correspondence to be related to litigation and to debit the complainant's account.

The MB met with the staff at the Arizona facility and thereafter provided us with documentation listing the addressees of each of the 28 pieces of correspondence. Of the 28 pieces of correspondence, 5 were identified as "legal mail," with the remaining correspondence considered to be "personal mail." Based on the documented record and in accordance with

the PSD policy, the Arizona facility was authorized to charge the complainant the cost of 5 postage stamps, amounting to $2.20. Consequently, the facility reimbursed the complainant $10.12.

The complainant stated that $10.12 was a small amount to people outside of prison, but it was a lot to him and he was appreciative of our investigation.

(11-02287) Adjustment committee hearings for moderate misconducts. In the course of investigating a complaint, we learned that a correctional facility was not providing adjustment committee (committee) hearings to inmates who were charged with rule violations of moderate severity, although the hearings were required by department policy.

According to Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations," inmate rule violations are categorized at five levels of severity--minor, low moderate, moderate, high, and greatest. The severity of the sanctions that may be imposed, which range from loss of privileges to disciplinary segregation for up to 60 days, increase in accordance with the severity of the rule violation.

The PSD policy defined a "serious misconduct" as a violation of moderate, high, or greatest severity and required that a serious misconduct be addressed through an adjustment hearing process. The hearing process afforded an inmate certain minimum due process safeguards, such as written notice of the charge not less than 24 hours prior to the hearing; a brief statement of the facts supporting the charge; an opportunity to be heard before a committee composed of staff members who are not biased against the inmate; representation at the hearing by counsel substitute; the opportunity to call witnesses and present evidence as long as it will not be unduly hazardous to institutional safety and correctional goals; and a written summary of the committee findings and disposition. In contrast, a "minor misconduct" was defined as a violation of low moderate or minor severity for which a written finding and disposition was rendered by a staff member who had met with the inmate, informed the inmate of the charge, and provided the inmate a brief opportunity to respond.

We brought the facility's noncompliance with the policy to the attention of the acting warden, who was not aware that the policy required moderate misconducts to be addressed through the adjustment hearing process. Instead, he was of the understanding that moderate misconducts were addressed through the minor misconduct process.

We therefore elevated our concern to the attention of a PSD administrator. The administrator inquired with other PSD facilities and

informed us that due to a lack of staff and time, a majority of the facilities did not provide adjustment hearings to inmates charged with moderate misconducts on a consistent basis. The administrator subsequently drafted an amendment to PSD Policy No. COR.13.03 so that it would no longer require an adjustment hearing for some moderate misconduct charges. After reviewing the draft amendment, we asked the administrator to consult with the PSD's legal counsel due to our concern that the amendment may not comply with the requirements in W*olff v. McDonnell*, 418 U.S. 539 (1974).

In *Wolff*, Nebraska prison inmates alleged that disciplinary proceedings violated minimum due process requirements. The United States Supreme Court held that a prisoner is not wholly stripped of constitutional protections and although prison disciplinary proceedings do not require the full array of rights due a defendant in a criminal prosecution, disciplinary proceedings must be governed by a mutual accommodation between institutional needs and generally applicable constitutional requirements. The Supreme Court reasoned that since the Nebraska prisoners may lose "good time credits" if they were guilty of serious misconducts, the procedure for determining whether such misconduct occurred must observe the following minimal due process requirements: (1) advance written notice of charges must be given to the inmate, no less than 24 hours before the inmate's appearance before the disciplinary committee; (2) there must be a written statement by the fact finders as to the evidence relied on and reasons for the disciplinary action; and (3) the inmate should be allowed to call witnesses and present documentary evidence in his defense if permitting him to do so will not jeopardize institutional safety or correctional goals.

The administrator agreed to consult the department's legal counsel. Thereafter, he informed us that he was advised by counsel not to amend PSD Policy No. COR.13.03. Instead, the administrator issued a memorandum to the wardens of all facilities requiring them to comply with the provisions of the policy and provide adjustment hearings to inmates who were charged with moderate misconducts. We inquired with the facilities and confirmed that each had received the administrator's memorandum and understood its requirement.

UNIVERSITY OF HAWAII

(10-04918) Collection of an eleven-year-old tuition debt. A man complained to us in June 2010 that the University of Hawaii Maui College (UHMC) was holding him responsible for an unpaid tuition bill of $261 for a class he took in Summer 1999.

The complainant explained that according to a workers' compensation settlement agreement, his employer's insurance company was obligated to pay for tuition for the class in 1999. The complainant first learned of the $261 unpaid tuition in December 2006 when he received an invoice from the UHMC business office. At that time, he wrote a letter to the insurance company and sent a copy to the UHMC. The insurance company responded that it had never received the invoice from the UHMC, so the complainant asked the UHMC business office to contact the insurance company. According to the complainant, it was his understanding at that time that the payment of the bill was resolved.

In May 2010, however, the UHMC business office notified him that there was a hold on his student account because of the $261 unpaid tuition bill, which may prevent him from registering and/or making changes to his registration and requesting transcripts.

We contacted the UHMC business office, which stated that it had sent an invoice to the insurance company in 1999 but did not receive a response. Subsequent invoices were sent in 2001 and 2005, but still there was no response. In October 2006, the business office sent a final letter requesting payment to the company and when there was no response, the business office sent the $261 invoice to the complainant in December 2006. According to the business office, the complainant then wrote to the insurance company and informed the business office in December 2006 that the insurance company informed him that it would pay the invoice. However, the business office was subsequently notified by the insurance company that it had no record of the complainant as a policyholder. The business office informed us that a student was ultimately responsible for an invoice that was unpaid by a third party.

We inquired as to why the UHMC business office had waited so long to attempt to collect the unpaid tuition from the complainant. The business office informed us that it changed its registration system six years earlier and students' outstanding balances were still being transferred from the old system into the new system.

Based on our inquiry, the UHMC business office followed up further on the complainant's invoice. The office found that it had billed the wrong insurance company over the years, and the insurance company which the business office should have billed had since gone out of business. The business office took responsibility for the billing error and waived the complainant's debt, removed the hold on the complainant's account, and sent the complainant a letter of apology.

The complainant expressed gratitude for the outcome of our investigation.

(10-04901) New name in divorce decree not allowed on driver's license. An attorney petitioned the family court to include a name change in the divorce decree of her client so that her client could avoid having to go through the name change procedure with the Office of the Lieutenant Governor (LG). The new name requested in the divorce decree had personal significance to the client, but was not a name she had previously used. The court granted the request and authorized the name change in the divorce decree.

Shortly thereafter, the client's driver's license was to expire and she wanted the name in her divorce decree to be the name on her new license. However, when she presented her expiring driver's license and divorce decree to the Motor Vehicle, Licensing and Permits Division (MVLPD), Customer Services Department, City and County of Honolulu, she was informed that her driver's license could be issued only in her maiden name or her married name, and not the name stated in the divorce decree.

The client's attorney thereafter complained to our office that the name on her client's divorce decree should be allowed on the driver's license. Since we generally do not accept secondhand complaints, we spoke with the attorney's client, who confirmed that she wanted to file a complaint with our office. As the client was now the complainant, we informed her that we would thereafter report our findings to her and not her attorney.

We reviewed Chapter 574, Hawaii Revised Statutes (HRS), titled "Names." Section 574-5, HRS, stated in part:

> **Change of name: procedure.** (a) It shall be unlawful to change any name adopted or conferred under this chapter, except:
>
> (1) Upon an order of the lieutenant governor;
>
> (2) By a final order, decree, or judgment of the family court issued as follows:
>
> . . . .
>
> (B) When in a divorce proceeding either party to the proceeding requests to resume the middle name or names and the last name used by the party prior to the marriage or a middle name

> or names and last name declared and used during any prior marriage and the court includes the change of names in the divorce decree; or . . . .

We interpreted the law to mean that a name change entered in a divorce decree is a legal name change only if the party making the request had used that particular name prior to the marriage or during a prior marriage. Since the complainant had never used the name requested in her divorce decree, it did not appear that the law allowed the name change she sought.

We also reviewed Chapter 286, HRS, titled "Highway Safety." Section 286-116.5, HRS, stated in part:

> **Notice of change of address or name; penalty.** . . .
>
> (b) If the name of an applicant for, or a holder of, a driver's license is changed from that shown on the applicant's or holder's application or license, the person shall, within thirty days after the change of name, notify the examiner of drivers in writing of the person's former name and the new name and of the number of any permit or license then held by the person. The examiner of drivers may require the person to file satisfactory proof of the change of name.

We contacted the MVLPD administrator to determine the agency's rationale for its decision to not issue the driver's license in the name that the complainant requested. The administrator concurred with our interpretation of Section 574-5, HRS, and informed us that if the complainant had not provided satisfactory proof of a legal name change, then his staff's decision was correct.

We explained to the complainant that we believed that the MVLPD staff had taken appropriate action by denying her request for her driver's license to be issued in the name listed in her divorce decree. The complainant informed us that she had renewed her driver's license in her married name and was planning to seek a legal name change through the LG.

We also notified an attorney with the family court of the name change that appeared to be improperly authorized in the complainant's divorce decree. We informed her that Section 574-5, HRS, appeared to allow a name change in a divorce decree only if the party requesting the change had used the requested name prior to the marriage or during a prior marriage. The attorney responded that Section 574-5, HRS, appeared to be the applicable statute and said that she would review the complainant's

divorce decree. We did not inquire further as to what action would be taken by the family court attorney since our office does not have jurisdiction over the judiciary and its staff.

(11-02025) Property owner billed for unauthorized use of water. A man complained on behalf of his mother that the Board of Water Supply (BWS) billed her $400 for unauthorized use of water on a commercial property that she owned. It was the complainant's understanding that his mother's former tenant failed to pay his water bill and had twice illegally restored water service to the property after the BWS had terminated the service. The complainant learned of the difficulties the BWS had with the former tenant only after the tenant was evicted from the property for nonpayment of rent.

The BWS informed the complainant that it was unable to collect payment for the unauthorized use of water from the former tenant. Therefore, it was passing the bill to his mother because she and her subsequent tenants would benefit from the restoration of water service to the property.

We inquired with the BWS, which confirmed that water service was terminated because the former tenant did not pay his water bill. The former tenant managed to illegally restore the water service. The BWS terminated water service again, but the former tenant illegally restored the service a second time. The BWS then secured the water meter so that water service could not be illegally restored again. The BWS informed us that there is a $200 charge for each incident of unauthorized water usage for which the property owner was billed.

We contacted a BWS supervisor and asked why the property owner, not the former tenant, was being held responsible for the charges for the unauthorized water usage. The supervisor informed us that the former tenant was no longer at the property so the property owner was responsible for the bill.

We informed the BWS supervisor of the provisions of the following section of Chapter 269, Hawaii Revised Statues (HRS), titled "Public Utilities Commission":

> **[§269-71] Meter tampering.** Any person who, without permission or authorization from a utility tampers with, damages, destroys, removes, connects, causes to connect, . . . any wire, cable, conductor, gas pipe, billing or collection equipment, or device on any meter, line, conduit, property, or facilities of a utility for the purpose of using unmetered services, in addition to any other penalty authorized by law, shall be liable to the utility for treble

the amount of the value of the utility services used and damages or loss of any equipment, property, or facilities of a utility.

It appeared that Section 269-71, HRS, held the individual who tampered with the water meter responsible for the violation. Furthermore, the BWS supervisor was unable to cite any legal authority for holding the property owner responsible. Thus, we asked the BWS supervisor to reconsider the BWS's billing of the property owner for the charges incurred by the actions of her former tenant. The supervisor agreed to discuss the matter further with the BWS legal counsel.

Subsequently, the BWS supervisor reported that the BWS decided not to charge the property owner for the unauthorized water usage. The BWS restored water service to the property on the condition that the account would be under the name of the property owner, not her tenants. Water service was restored to the property two days after we contacted the BWS.

We informed the complainant who was grateful for the corrective action taken by the BWS.

(11-02660) Expiration of driver's license. A man complained that the Motor Vehicle, Licensing and Permits Division (MVLPD), City and County of Honolulu, deemed his driver's license to be invalid and required him to apply for a new license.

The complainant's driver's license expired on February 1, 2010. He claimed that MVLPD staff informed him at the time his license expired that he had one year from the expiration date to renew his license and he would only need to pay a reactivation fee of $5 for each month after the month his license expired. He complained that when he contacted the MVLPD on January 31, 2011, however, he was told that because he failed to renew his license within 90 days of its expiration, he would be treated as a new applicant for a license and would need to pass a written examination and a road test.

We reviewed Chapter 286, Hawaii Revised Statutes (HRS), titled "Highway Safety." The law provided that an expired driver's license may be renewed within 90 days after the date of expiration, or may be reactivated within one year after the expiration date. When the complainant failed to renew his license within 90 days after the expiration date, the following HRS sections pertaining to reactivation of licenses were applicable for one year after the date of expiration.

> **§286-107 License renewals; procedures and requirements.** . . .
>
> . . . .
>
> (b) . . . [A]n applicant for . . . the reactivation of an expired license under section 286-107.5(a), shall appear in person before the examiner of drivers and the examiner of drivers shall administer such physical examinations as the state director of transportation deems necessary to determine the applicant's fitness to continue to operate a motor vehicle.
>
> . . . .
>
> **[§286-107.5] Reactivation of expired license; fees; road test waived.** (a) Unless revoked or suspended, and except as provided in subsection (b), all drivers' licenses expired under section 286-106 may be reactivated by the licensee in accordance with the requirements and procedures set forth for the renewal of licenses under section 286-107(b). No person seeking reactivation of an expired license under this subsection shall be required to undergo reexamination of the person's driving skills under section 286-108. The examiner of drivers shall require the holder of an expired license to pay a reactivation fee of $5 for each thirty-day period, or fraction thereof, that has elapsed after the ninety-day grace period.
>
> (b) Any driver's license not reactivated under subsection (a) within one year of the indicated date of expiration shall be invalid. . . . (Emphasis added.)

We contacted the MVLPD, which was unable to confirm that any MVLPD staff member had told the complainant that he had one year to renew his license. According to the MVLPD staff, the complainant initially wished to apply for renewal of his driver's license by mail, so the MVLPD sent him a renewal packet in January 2010, before his license expired. The complainant took no action for a year, however, before finally sending a check for $84 in an envelope that was postmarked on February 1, 2011 and that was received by the MVLPD on February 4, 2011. Since the complainant failed to complete the requirements to reactivate his license by February 1, 2011 (one year after the expiration of his license), his license was deemed invalid as of that date and he was required to apply for a new license. The MVLPD returned the $84 check to the complainant.

We concluded that the MVLPD had acted in accordance with the law in denying the complainant's application to reactivate his driver's license and

to require that he be treated as a new applicant. We notified the complainant of the requirements of the law and informed him that the MVLPD's actions in his case were in accordance with the law.

HAWAII COUNTY

(11-01609) Service dog not permitted at county swimming pool. A woman complained that staff at a county swimming pool refused to allow her small dog onto the premises even though she disclosed a note from her therapist to verify that it was an "emotional support dog." The complainant informed the staff that her dog would remain in its enclosed carrier while she swam, but the staff still refused to allow the dog on the premises.

We reviewed the Americans with Disabilities Act (ADA), which provides comprehensive civil rights protections to individuals with disabilities in employment, public accommodations, State and local government services, and telecommunications. We also reviewed Title 28, Chapter I, Part 35, of the Code of Federal Regulations (CFR), pertaining to "Nondiscrimination on the Basis of Disability in State and Local Government Services," which implemented the ADA.

In defining a service animal, the CFR appeared to exclude a dog that provides only emotional support, well-being, comfort, or companionship, as it stated in part:

> **§ 35.104 Definitions.**
>
> For purposes of this part, the term—
>
> . . . .
>
> *Service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. . . . Examples of work or tasks include, but are not limited to, . . . helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. . . . the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. (Emphasis added.)

The CFR also limited the inquiries that could be made of a person who seeks access to a public facility with a service animal, as it stated in part:

§ 35.136 Service animals.

. . . .

(f) *Inquiries*. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. . . .

We contacted the ADA coordinator for the Department of Parks and Recreation (DPR), which operates the county swimming pools. The coordinator reported that she had trained DPR staff to comply with the CFR. She informed us that when the complainant attempted to enter the swimming pool facility with her dog, the staff asked her what task the dog was trained to perform. The complainant replied that her dog did not have any specialized training to assist with her disability and as it appeared that the dog provided only emotional support, the staff determined that the dog did not meet the ADA definition of a service animal. Therefore, the staff informed the complainant that her dog would not be allowed onto the premises.

We thereafter contacted the county's Equal Opportunity (EO) officer, who informed us that if the complainant was a "qualified individual with a disability," meaning someone with an impairment that substantially limited a major life activity, she could make an ADA request for modification of services as a means of gaining, using, or improving her access to the county's facilities with her dog. The EO officer stated that if the request for modification of services were granted, the county would allow the complainant to enter any of the department's facilities with her dog, even if it were not a service animal as defined by the CFR.

We notified the complainant that after reviewing the ADA and the CFR, we believed the DPR staff acted in accordance with the law in inquiring about her dog's training as a service animal, and that based on her response it was reasonable for the staff to have determined that her dog did not meet the ADA's definition of a service animal. We advised the complainant that she could submit a request to the EO officer for modification of services in order to obtain access to the pool with her dog.

The EO officer subsequently reported that she received a request from the complainant for modification of services and that she would meet with the complainant to review her request. A week later, the EO officer informed us that at the meeting, the complainant provided new information

regarding tasks that her dog performed that mitigated the impact of the complainant's disability. On the basis of the new information, the EO officer concluded that the complainant's dog did in fact meet the ADA's definition of a service animal. Thus, the EO officer issued a memo to all county employees stating that in accordance with the CFR, the complainant was entitled access to all county facilities, programs, and services with her service dog.

MAUI COUNTY

(11-01130) Denial of application for renewal of driver's license. A woman complained that the County of Maui driver licensing office denied her application to renew her driver's license because the last name on her social security card did not match the last name on her driver's license. The complainant explained that her driver's license displayed her married last name while her social security card displayed her birth last name.

According to the complainant, she went to the Social Security Administration (SSA) office to change her birth name to her married name on her social security card. The SSA required her marriage certificate and a valid photo identification in order to change her name on her social security card. As she did not have her marriage certificate, she mailed an application for a certified copy. However, while waiting to receive the marriage certificate, her driver's license expired and it was the only photo identification that she had. As she was unable to provide a valid photo identification together with her marriage certificate, the SSA declined to issue a social security card in her married name.

We recognized the complainant's dilemma of not being able to renew her driver's license without an updated social security card, but also not being able to update her social security card because her only photo identification, her driver's license, had expired.

We reviewed the rules of the State Department of Transportation, in particular Title 19, Chapter 122, Hawaii Administrative Rules (HAR), titled "Rules Relating to the Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver's Licenses and Instruction Permits." Section 19-122-1, HAR, stated in part:

> Issuance of Hawaii driver's license. (a) No Hawaii driver's license shall be issued unless the applicant:
>
> . . . .

(2) . . . .

. . . .

(C) Presents proof of name and date of birth;

(D) Presents social security card unless the examiner of drivers receives verification from the United States Social Security Administration stating the applicant is ineligible for a social security number; . . .

We noted that all of the conditions under Section 19-122-1(a)(2), HAR, needed to be met before a Hawaii driver's license could be issued. Although the complainant's certified copy of her birth certificate proved her birth date, the certificate was in her birth name and not her married name. The complainant needed to prove that her married name was her legal name.

We spoke with the administrator of the driver licensing office. The administrator informed us that the office had online access to certain types of information contained in the SSA database and he was thus able to verify that the complainant had a social security card in her birth name. In order to resolve the dilemma, the administrator accepted the complainant's birth certificate and marriage certificate as proof of her identity and issued her a driver's license on the condition that she contact the SSA thereafter to change her birth name to her married name in the SSA database.

We found the administrator's actions to be reasonable and so informed the complainant.

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

To view a cumulative index of all selected case summaries that appeared in our Annual Report Nos. 1 through 42, please visit our website at www.ombudsman.hawaii.gov and select the “Annual Reports” link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.