

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of the Chairperson
Honolulu, Hawaii 96813

July 22, 2009

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

REQUEST FOR APPROVAL TO APPOINT THOMAS P. RACK AND BIN C. LI
AS ADMINISTRATIVE HEARINGS OFFICERS FOR THE CIVIL RESOURCE
VIOLATIONS SYSTEM OF THE DEPARTMENT FOR A TERM OF TWO YEARS

I. ACTION REQUESTED:

The Department of Land and Natural Resources (hereinafter the "Department"), Office of the Chairperson, hereby submits a request for the approval by the Board of Land and Natural Resources (hereinafter the "Board") to appoint Mr. Thomas P. Rack and Mr. Bin C. Li as Administrative Hearings Officers for the Civil Resource Violations System (CRVS) of the Department for a term of two years, effective from July 22, 2009 through July 21, 2011, pursuant to §13-1-57, Hawaii Administrative Rules (HAR).

II. BACKGROUND AND DISCUSSION:

The Department formally launched the CRVS in March 2009. For the purpose of implementing Chapter 199D, Hawaii Revised Statutes, and Chapter 13-1, Subchapter 7, HAR – laws relating to the CRVS, the Board adopted an Administrative Sanctions Schedule at its meeting on March 13, 2009 (03/13/2009, H-1). This schedule provides penalty guidelines for certain violations of the laws administered by the Division of Aquatic Resources and the Division of Boating and Ocean Recreation.

With this guideline, the Department has announced and is implementing civil enforcement actions against those Commercial Marine License holders who are delinquent in filing their monthly catch reports, starting in June 2009. As the CRVS continues to deploy in the coming months and other divisions phase into the system, the Department foresees that there will be a number of contested cases and the need to appoint CRVS hearings officers for holding contested case hearings and mitigation examinations.

To respond to this need, the Department proposes to appoint Mr. Rack and Mr. Li as hearings officers, and authorize them to conduct contested case hearings and mitigation request examinations under the CRVS.

Appointment of a CRVS hearings officer must be conducted by the Board at its meeting. The relevant CRVS rule, §13-1-57, HAR, provides that

“Administrative hearing officers serving under this subchapter shall be nominated by the chairperson and appointed by the board at its meetings for a term of up to two years and may be removed with or without cause in the same manner or by expiration of appointment.”

By approving this submittal, the Chairperson hereby nominates Mr. Rack and Mr. Li as Administrative Hearing Officers for the CRVS for a two year term effective immediately upon approval by the Board.

Staff also requests that the Chairperson and, if the Chairperson is not available, the First Deputy be given the authority to extend the appointment(s) of Mr. Rack and/or Mr. Li at the end of this two year term for consecutive two year terms without further approval by the Board, pursuant to §171-6(8), Hawaii Revised Statutes.

III. CANDIDATES FOR APPOINTMENT:

A. Mr. Thomas P. Rack

Mr. Rack has been in law practice in Hawaii since 1987, and possesses extensive experience in different government entities and in private law practice. Mr. Rack is currently a Departmental Hearings Officer of the Department of Health and has served on that position since February 2004.

On June 27, 2008, the Board appointed Mr. Rack as an Administrative Hearings Officer of the Department for a one-year term that ended on June 30, 2009. In effect, Mr. Rack serves both the Department of Health and the Department of Land and Natural Resources concurrently for their contested case needs. This measure has been fruitful and resulted in improved efficiency and fiscal savings.

Since the appointment by the Board, Mr. Rack has been assigned three DLNR contested cases – DLNR vs. Larry Dodge, et al. (MA-09-01), DLNR vs. Ralph Chun, et al. (MA-09-02), and DLNR vs. Michael Kop, et al. (MA-09-03). All these three cases are ongoing beyond June 30, 2009 – the expiration day of the original appointment term.

The Department intends to extend his appointment as a hearing officer for the Department in the Board-approved contested cases. This submittal is to retain him as a hearings officer specifically for the CRVS.

B. Mr. Bin C. Li

Mr. Li is a graduate of the University of Hawaii William S. Richardson School of Law, and an attorney at law licensed by the Hawaii State Supreme Court. He has been employed by the Department as its Administrative Proceedings Coordinator since May 2007. On his current post, he has been responsible for the formation and operation of the CRVS, as well as the conduct of the Department's other administrative and rulemaking proceedings.

Prior to this appointment, he was a Contract Specialist of the Department from January 2006 through April 2007. Before joining the Department, he had over four years of experience in civil litigation and administrative proceedings. He also serves as an Arbitrator under the Court Annexed Arbitration Program, appointed by the Hawaii State Supreme Court in 2004.

III. RECOMMENDATION:

“That the Board of Land and Natural Resources

1. Appoint Mr. Thomas P. Rack as Administrative Hearing Officer for the Civil Resource Violations System of the Department for a term of two years, effective from July 22, 2009 through July 21, 2011;
2. Appoint Mr. Bin C. Li as Administrative Hearing Officer for the Civil Resource Violations System of the Department for a term of two years, effective from July 22, 2009 through July 21, 2011; and
3. Delegate to the Chairperson and, if the Chairperson is not available, the First Deputy the authority to extend the appointment(s) of Mr. Rack and/or Mr. Li at the end of this initial two year term for consecutive two year terms.”

Respectfully submitted,



BIN C. LI
Administrative Proceedings Coordinator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson
Board of Land and Natural Resources