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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STEWART NORRIE,
individually and as Trustee of the Stewart Norrie Trust,
Respondent/Appellant-Appellant,

vs.

MAUI COUNTY BOARD OF VARIANCES AND APPEALS;
JACKY TAKAKURA, in her official capacity as Director of the
Department of Planning for the County of Maui;
DEPARTMENT OF PLANNING, COUNTY OF MAUI,
Petitioners/Appellees-Appellees.

SCWC-23-0000668

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-23-0000668; CASE NO. 2CCV-22-0000042)

OCTOBER 14, 2026

DEVENS, C.J., McKENNA, EDDINS, AND GINOZA, JJ., AND CIRCUIT
JUDGE CASTAGNETTI, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY McKENNA, J.

I. Introduction

This is a secondary agency appeal. The Intermediate Court of Appeals ("ICA") reversed a Maui County Board of Variances and

Appeals' ("BVA")¹ decision and order based on the violation of a procedural rule stating that a decision and order, accompanied by findings of fact and conclusions of law, must be rendered within forty-five days of a triggering date.

We hold that the deadline in the rule is directory, not mandatory, and that there was no actual prejudice to appellant's substantial rights. We therefore vacate the ICA's judgment on appeal and reinstate the decisions of the Circuit Court of the Second Circuit ("circuit court").²

The Department of Planning, County of Maui ("Department") revoked Stewart Norrie ("Norrie")'s bed and breakfast ("B&B") permit and imposed a two-year ban on future B&B applications. This decision was sustained by the BVA. At its November 24, 2021 meeting, the BVA stated on the record that it was upholding the Department's decision. The BVA did not vote to adopt the draft findings of fact and conclusions of law ("FOF/COL") until its January 13, 2022 meeting. The actual FOF/COL were not filed until January 31, 2022.

¹ The BVA "[h]ears and determines applications for variances from the strict application of any general plan, zoning, subdivision or building ordinances. Holds public hearing prior to ruling on a variance application and issues findings of fact and conclusions of law on decisions granting or denying variance applications." Board of Variances & Appeals, Cnty. of Maui, <https://www.mauicounty.gov/172/Board-of-Variances-Appeals> [<https://perma.cc/HZB4-ETHL>].

² The Honorable Kelsey T. Kawano presided.

Norrie appealed to the circuit court, arguing in part that BVA Rules of Practice and Procedure ("RPP") § 12-801-60 (eff. 1999) (the "45-day rule") required the BVA to file its FOF/COL within forty-five days of oral argument and that, therefore, the BVA decision and order had to be reversed. RPP § 12-801-60 provides:

A proceeding shall stand submitted for decision by the board after the taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Said proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling which addresses such findings. Such decisions and orders in contested cases shall be rendered within forty-five days from the presentation of oral argument by the parties.

The circuit court affirmed the BVA's decision. On Norrie's appeal to the ICA, the parties repeated the arguments they had made below. In supplemental briefing ordered by the ICA, however, the BVA conceded that RPP § 12-801-60 is "mandatory."

The ICA reversed the circuit court and BVA decisions. See Norrie v. Maui Cnty. Bd. of Variances & Appeals, No. CAAP-23-0000668, 2026 WL 1266063 (Haw. App. May 8, 2026) (SDO). It held that the BVA's violation of its own 45-day rule required reversal of the two-year ban because the FOF/COL were rendered

more than forty-five days after the November 24, 2021 hearing. The ICA also concluded that reversal of the BVA's decision was required due to prejudice to Norrie's substantial right to operate a B&B.

On certiorari, the BVA argues that the ICA erred because it satisfied RPP § 12-801-60 when it orally stated its decision in the record on November 24, 2021. It also argues abrogating an entire administrative proceeding and denying appellate review on the merits because of a short delay in the FOF/COL is unjust.

We are not bound by the BVA's apparent concession of law before the ICA that the 45-day deadline is mandatory. Umberger v. Dep't of Land & Nat. Res., 140 Hawai'i 500, 520 n.38, 403 P.3d 277, 297 n.38 (2017). Under our precedent, administrative rule deadlines are directory, not mandatory, unless a consequence is provided for failure to meet the deadline.

We hold that because there is no consequence provided in RPP § 12-801-60, the 45-day rule is directory, not mandatory. We also hold that to the extent the ICA based its reversal on Hawai'i Revised Statutes ("HRS") § 91-14(g)(3) (2012 & Supp. 2022), which authorizes reversal for agency decisions made upon unlawful procedure, it also erred. There was no prejudice to Norrie's substantial rights based on the short delay in the BVA's issuance of its FOF/COL.

We therefore vacate the ICA's June 12, 2026 judgment on appeal and affirm the circuit court's September 21, 2023 findings of fact, conclusions of law, and decision and order, as well as its October 6, 2023 final judgment.

II. Background

A. Factual Background

Norrie ran a B&B on Maui since 2015. He last renewed his permit in 2018 with a 2023 expiration date. The B&B permit required the owner to stay on property with guests and to comply with agency and government regulations.

In February 2020, Norrie's neighbor complained to the Department that Norrie was violating his B&B permit by not residing on the property while guests were present and by having guests who did not comply with quiet hour requirements. In March 2020, a neighbor contacted the Maui Police Department ("MPD") to complain about excessive noise from Norrie's B&B.

Norrie responded that the B&B stopped operating in March 2020 due to the COVID-19 pandemic. But on April 6, 2020, a neighbor contacted the MPD regarding a party that was occurring at the B&B in violation of COVID-19 Public Health Emergency Rules. Norrie admitted to police to having "several friends over to his residence for a social gathering."

During its investigation, the Department saw an Expedia.com advertisement and Norrie's comment on his website. In that

comment, Norrie said he owned two homes on Maui and sometimes lived at his second home instead of at the B&B. Norrie did not deny that he made this statement.

On May 8, 2020, the Department issued a notice of warning for violations of Norrie's B&B permit, including the requirement to comply with agency and government regulations. Yet, in June and July of 2020, neighbors continued to contact the MPD to complain about loud music from the B&B.

Hence, on August 5, 2020, the Department issued a "Two-Year Owner Ban and Revocation of a Bed and Breakfast (B&B) Home Permit" ("ban"). The Department concluded that Norrie had violated the following provisions of the Maui County Code ("MCC"):

MCC, Section 19.64.065(A)(1)(c): Evidence of non-responsive management;
MCC, Section 19.64.065(A)(1)(d): Police reports of noise or other disturbances on the property;
MCC, Section 19.64.065(A)(1)(e): Warnings or violations resulting from requests for service;
MCC, Section 19.64.065(A)(1)(t): Neighbor complaints of noise and other disturbances relating to bed and breakfast home operations; provided that the department has received at least three complaints about the bed and breakfast home within a twelve-month period. Complaints must be from property owners or lessees of record located on two or more different lots within a five-hundred-foot radius of the bed and breakfast home;
MCC, Section 19.64.065(A)(1)(g): Noncompliance with permit conditions; and
MCC, Section 19.64.065(A)(1)(h): Noncompliance with this chapter.

MCC § 19.64.065(A)(1) (2018).

On September 3, 2020, Norrie filed an appeal to the BVA.³ The BVA was initially scheduled to hold a hearing on March 11, 2021, but the hearing was rescheduled multiple times at Norrie's request. Then, on August 9, 2021, Norrie filed a motion for automatic reversal based on HRS § 91-13.5 (2012), discussed in Section II.B.2.b below.

On August 12, 2021, the BVA deferred the matter to September 23, 2021, to allow for additional briefing.

On September 23, 2021, the BVA held a contested case hearing. BVA's counsel told the BVA it "would need to render [a] decision within 45 days of the close of oral argument" and stated that the "deadline is important – important to follow, obviously."

Norrie testified that he lived on his property and the majority of the noise complaints occurred after he had stopped operating a B&B due to COVID-19 restrictions. He said he instead began offering the property as a long-term rental.⁴ A

³ Under RPP § 12-801-8 (eff. 1999), the BVA is composed of "nine members, appointed by the mayor and approved by the council." RPP § 12-801-22(a) (eff. 2005) regulates voting of the BVA and requires "an affirmative vote of a majority of the membership to which the board is entitled." RPP § 12-801-11 (eff. 1999) provides that the quorum necessary to transact business is a majority of all members to which the board is entitled; it also provides that the concurrence of a majority of all members to which the board is entitled shall be necessary to take any action. Therefore, five members are required for a quorum and five votes are needed to reach a decision.

⁴ The circuit court later found Norrie's testimony unreliable, particularly as it was contradicted by his written statements about often not being at the B&B.

neighbor testified that he had complained to Norrie several times about the noise and regularly saw large gatherings of people at the B&B.

All five BVA members present voted to deny Norrie's motion for automatic approval based on HRS § 91-13.5, but two of the five voted to grant his appeal. The BVA therefore failed to reach the required five-vote threshold for a decision. The BVA deferred the matter.

On October 28, 2021, the BVA reconvened with six of its nine members, but was again unable to reach a five-vote majority decision. BVA October 28, 2021 Meeting, <https://archive.org/details/211028-bc-bva> [<https://perma.cc/GM2G-99BQ>].⁵ The final vote was 4-2 to deny the appeal. BVA October 28, 2021 Meeting Minutes Summary, https://www.mauicounty.gov/AgendaCenter/ViewFile/Minutes/_10282021-804 [<https://perma.cc/4A7R-PFPP>].

At the end of the October 28, 2021 meeting, the BVA reopened the hearing for additional argument, and Norrie's appeal was deferred to November 10, 2021. The parties were

⁵ Apparently, there was some dispute between the parties about getting all the transcripts included in the record on appeal. Although not part of the record, this court takes judicial notice of the relevant BVA video recordings and meeting minutes summaries. See Hawai'i Rules of Evidence Rule 201(b) (2016) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

ordered to "present closing arguments addressing key concerns, including COVID-19 related operational restrictions and neighbor complaints." BVA October 28, 2021 Meeting Minutes Summary.

On November 8, 2021, Norrie filed another motion for the appeal to be automatically approved under HRS § 91-13.5 as well as RPP § 12-801-60 because forty-five days had passed since the initial oral argument in September. On November 10, 2021, the BVA reconvened and heard additional oral argument, but was still unable to reach a decision and deferred the matter (the final vote was 2-3 to grant the appeal). BVA November 10, 2021

Meeting Minutes Summary,

<https://www.mauicounty.gov/Archive.aspx?AMID=42>

[<https://perma.cc/U9X3-A5ZF>].

The parties filed post-hearing briefs on November 21 and 24, 2021.

On November 24, 2021, the BVA reconvened with seven members for further deliberations. The BVA Chair stated that no additional oral argument would be necessary. BVA November 24, 2021 Meeting, at 17:20-30. After five members finally agreed on a decision, the BVA stated on the record that it was denying Norrie's motion for automatic approval as well as his appeal of the ban (the final vote was 5-2). BVA November 24, 2021 Meeting, at 20:30-26:30, https://archive.org/details/211124-bc-bva_202112 [<https://perma.cc/J3CD-8HNL>].

Also, at the November 24, 2021 meeting, BVA's counsel indicated a draft of the FOF/COL would be provided to the Chair by December 10, 2021. The Chair indicated she would sign it the following week.⁶ BVA November 24, 2021 Meeting, at 24:30-26:00, https://archive.org/details/211124-bc-bva_202112 [<https://perma.cc/YB7T-JUMH>].

The BVA adopted the Department's proposed FOF/COL affirming the two-year ban on January 13, 2021. This is reflected in the BVA's January 13, 2022 meeting minutes. BVA Meeting Minutes Summary January 13, 2022, <https://www.mauicounty.gov/Archive.aspx?AMID=42> [<https://perma.cc/EJ8L-XPG2>].

January 13, 2022, was fifty days from November 24, 2021.

On January 31, 2022, the BVA filed its FOF/COL, affirming the two-year ban. This date was sixty-eight days from November 24, 2021.

B. Appellate Proceedings

1. Circuit Court Proceedings

On February 11, 2022, Norrie appealed the BVA's decision to the circuit court, arguing that the BVA clearly erred and did not issue its decision and order within forty-five days of oral argument as required by HRS § 91-13.5 and § RPP 12-801-60.

⁶ But it appears, based on the January 13, 2022 meeting, that all BVA members voting in the majority had to approve the FOF/COL.

On September 21, 2023, the circuit court issued its decision affirming the BVA. The circuit court determined that Norrie did not comply with the terms of his B&B permit based on numerous complaints against him by neighbors, his failure to reside at the B&B when it was in operation, and his violation of COVID-19 protocols by having friends over at the property. The circuit court concluded that the Department's issuance of a two-year ban was not arbitrary or capricious. The court rejected Norrie's argument based on HRS § 91-13.5 and did not directly address Norrie's argument based on RPP § 12-801-60.

2. ICA Proceedings

a. Supplemental Briefing

Norrie timely appealed to the ICA, raising the same arguments. Before ruling, the ICA directed the parties (1) to show cause as to whether or not the case was moot and (2) to file supplemental briefing on whether the rule was mandatory or directory as to the filing of FOF/COL within forty-five days.

Norrie argued that the case was not moot because he had suffered prejudice and that the rule was mandatory.

The BVA argued the case was moot as the two-year ban had already expired. Its filing regarding the rule stated, "on the plain language of [RPP] § 12-801-60[, the BVA] does not dispute the forty-five-day deadline provided in the rule should be accorded mandatory effect." But the BVA argued that the

mandatory or directory effect of the rule was irrelevant, because it satisfied the rule when it stated its decision on the record on November 24, 2021.

b. Summary Disposition Order

The ICA's summary disposition order rejected Norrie's argument that reversal was required by HRS § 91-13.5 (2012). HRS § 91-13.5 provides, in relevant part:

§ 91-13.5 Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions. (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval[.]

. . . .
(c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved[.]

(d) Notwithstanding any other law to the contrary, any agency that reviews and comments upon an application for a business or development-related permit, license, or approval for a housing project developed under section 201H-38 shall respond within forty-five days of receipt of the application, or the application shall be deemed acceptable as submitted to the agency.

. . . .
(g) For purposes of this section, "application for a business or development-related permit, license, or approval" means any state or county application, petition, permit, license, certificate, or any other form of a request for approval required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise[.]

Norrie, 2026 WL 1266063, at *5 (emphasis added).

The ICA ruled that the statute only provides for automatic approval when certain types of permit applications are not granted by specified deadlines and that the statute does not pertain to appeals of permit revocations. Id. at *4-5. Because

he prevailed on the 45-day rule argument, Norrie did not file a certiorari application, so this ruling is not before this court. But we agree with the circuit court and ICA rulings on the inapplicability of HRS § 91-13.5 to this appeal.

With respect to the issue before us on certiorari, the ICA assumed that the BVA rule's 45-day deadline commenced on November 24, 2021. Id. at *4. It determined that the January 31, 2022 FOF/COL were issued more than forty-five days after this date. Id. The ICA ruled that the BVA therefore did not comply with its own rule. Id.

In so ruling, the ICA cited the BVA's concession that RPP § 12-801-60 is mandatory. Id. at *5. The ICA also referenced Norrie's assertions regarding prejudice to economic interests he allegedly suffered due to the delay. Id. The ICA said Norrie "articulated prejudice to his financial security interests and consequences to his economic livelihood as a result of the BVA's failure to follow its own rule, which the County does not dispute." Id.

To support its crafting of a judicial remedy for the BVA's violation of its own procedural rule, the ICA cited HRS § 91-14(g), which allows a court to "reverse or modify the decision and order" if a petitioner's "substantial rights" are prejudiced, and this court's recent decision in Martell v. Emp. Ret. Sys., 158 Hawai'i 139, 146, 588 P.3d 1153, 1159 (2026), Id.

The ICA recognized that the BVA rules do not specify any consequence for violation, but it relied on RPP § 12-801-4 (eff. 1999), which states that its rules and regulations should be construed to secure “just and efficient determination of proceedings.” Id. Applying this principle, the ICA held that the BVA’s violation did not facilitate its “just and efficient” determination of Norrie’s appeal. Id.

The ICA concluded that reversing the BVA’s decision upholding the two-year ban was warranted because of the rule violation and the prejudice suffered by Norrie. Id.

3. Certiorari Proceedings

In its certiorari application, the BVA maintains it satisfied RPP § 12-801-60 when it stated its decision in the record on November 24, 2021. It also argues that abrogating an administrative proceeding and denying appellate review on the merits because of the timing of the issuance of the FOF/COL is unjust. The BVA also contends Norrie did not suffer prejudice from the delay.

In response, Norrie argues that the ICA’s decision should be affirmed.

III. Standards of Review

A. Agency Appeal

Our review of a circuit court decision on an HRS § 91-14 agency appeal is a secondary appeal, in which we decide whether

the circuit court was right or wrong, by applying the standards of HRS § 91-14(g) to the BVA's decision and order. Flores v. Bd. of Land & Nat. Res., 143 Hawai'i 114, 120, 424 P.3d 469, 475 (2018). HRS § 91-14(g) provides:

Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

B. Interpretation of Agency Rules

The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

Int'l Bhd. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co., 68 Haw. 316, 323, 713 P.2d 943, 950 (1986).

An agency's interpretation of its own rules is generally entitled to deference. Gillan v. Gov't Emps. Ins. Co., 119 Hawai'i 109, 125, 194 P.3d 1071, 1087 (2008) ("Arguably, where an agency promulgates a rule, we will accord consideration to its interpretation of its own rules." (citation omitted)).

But this court does not defer to agency interpretations that are "plainly erroneous or inconsistent with the underlying legislative purpose." In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 425, 83 P.3d 664, 688 (2004).

IV. Discussion

A. RPP § 12-801-60 generally instructs the BVA to file FOF/COL within 45-days.

Before we address the effect of the rule, we address its interpretation.

1. The 45-day deadline actually began when the case was "submitted for decision" on November 24, 2021.

RPP § 12-801-60 provides:

A proceeding shall stand submitted for decision by the board after the taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Said proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling which addresses such findings. Such decisions and orders in contested cases shall be rendered within forty-five days from the presentation of oral argument by the parties.

(Emphasis added.)

The language in the rule is somewhat confusing, and the parties disagree on whether RPP § 12-801-60's 45-day deadline was triggered on September 20, 2021, or November 24, 2021. The

ICA assumed the clock began running on November 24, 2021, and held that the BVA in any event violated RPP § 12-801-60.

Norrie, 2026 WL 1266063, at *4. Norrie argues that this ruling was incorrect and that the BVA improperly reopened the oral argument on October 28, 2021, so the oral argument on September 20, 2021 triggered the 45-day deadline.

The second paragraph of RPP § 12-801-60 says that FOF/COL must be entered within forty-five days of oral argument. But the first paragraph says that "a proceeding shall stand submitted for decision by the board after the taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed." RPP § 12-801-60. And RPP § 12-801-59 (eff. 1999) empowers the BVA to "reopen the docket and take further evidence or may make other disposition of the case that is necessary under the circumstances."

The rule is confusing as to when the 45-day deadline begins to run. The second paragraph says the 45-day deadline is triggered by oral argument. But the first paragraph says that a matter is not "submitted for decision" until briefing has concluded. As in this case, it is possible for briefing to be concluded after oral arguments. Depending on the complexity of issues before the BVA, post-hearing briefing might even be concluded more than forty-five days after an oral argument. It

would be unworkable and absurd for a 45-day deadline for rendering FOF/COL to be triggered when briefing has not concluded.

We therefore hold that the 45-day deadline under this rule begins to run when the case is "submitted for decision," in other words, when everything applicable to a specific hearing under RPP § 12-801-60 has occurred: the "taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed."

Hence, Norrie's argument that the deadline began on September 20, 2021, is without merit. RPP § 12-801-59 authorized the BVA to reopen the docket, which it did. The BVA initially heard oral argument on September 23, 2021, but it was unable to reach a decision and reopened the matter for additional argument and briefing.

On November 8, 2021, Norrie filed a post-hearing motion requesting automatic approval under RPP § 12-801-60. On November 10, 2021, the BVA was unable to reach a decision, and the parties filed post-hearing briefs on November 21 and 24, 2021.

Because the final brief was filed on November 24, 2021, that is the day the issue was "submitted for decision."

Therefore, we hold that the 45-day deadline began to run on November 24, 2021.⁷

2. The ICA properly held that FOF/COL are part of the decisions and orders.

The BVA argues it did not violate RPP § 12-801-60 because its denial of the appeal was “stated in the record” on November 24, 2021. This argument ignores the rule’s plain language.

The requirement of FOF/COL in RPP § 12-801-60 actually effectuates HRS § 91-12 (2012). That statute requires that an agency decision in a contested case be “accompanied by separate findings of fact and conclusions of law.” Therefore, the statute requires findings of fact and conclusions of law for all agency decisions in contested cases.

The general principles of construction which apply to statutes also apply to administrative rules. Int’l Bhd. of Elec. Workers, Local 1357, 68 Haw. at 323, 713 P.2d at 950. As in statutory construction, courts look first at an administrative rule’s language. Id. If an administrative rule’s language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule

⁷ The delay in the BVA’s decision was partially attributable to attendance issues. The BVA is not alone as a volunteer board with such issues. See Taylor Nāhuluakeaokalani Cozloff, Missing Members And Muscle, Hawai’i Ethics Board Struggles To Function, Honolulu Civil Beat (Apr. 1, 2026), <https://www.civilbeat.org/2026/04/who-holds-hawaii-county-accountable-not-the-ethics-watchdog/> [https://perma.cc/BL8A-RVX5].

implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning. Id.

Turning to the language of the rule, it expressly provides that "[e]very decision and order . . . shall be accompanied by separate [FOF/COL]." RPP § 12-801-60. Furthermore, the rule states "the board shall incorporate in its decision a ruling which addresses [proposed findings of fact filed by any party]." Id. (emphasis added). Contrary to the BVA's position, FOF/COL are clearly a part of the "decision and order." As "decisions and orders . . . shall be rendered within forty-five days," the plain and unambiguous language requirement is for FOF/COL to also be "rendered" within the 45-day deadline.

HRS § 91-12 only requires that FOF/COL accompanying the decision be made in a reasonable time and does not require a strict deadline. Yet, the BVA clearly had authority to promulgate RPP § 12-801-60.

But, as we discuss in Section IV.B below, the 45-deadline under the rule is not mandatory.

- 3. Although the BVA still did not rule within forty-five days, it did comply on January 13, 2022, through adopting proposed FOF/COL that were part of the record.**

As noted, the BVA's argument that RPP § 12-801-60 only instructed it to "state in the record" its decision within forty-five days is without merit, because FOF/COL were also

required. But this does not mean that the rule was not satisfied until January 31, 2022, when the FOF/COL were separately filed.

This is because on January 13, 2022, the BVA reviewed and revised the "Proposed [FOF/COL,] and Decision & Order" and moved to and then agreed to accept them. The proposed FOF/COL were already part of the record. Therefore, on that date, the BVA "stated in the record" its decision and order "accompanied by separate [FOF/COL]." RPP § 12-801-60. Hence, the rule's requirements were met on January 13, 2022.

We therefore hold that the ICA erred by ruling that the BVA did not satisfy RPP § 12-801-60 until January 31, 2022.

January 13, 2022, is still fifty days after November 24, 2021, but the FOF/COL were five days late, not twenty-three days late.

B. In any event, RPP § 12-801-60 is a directory, not mandatory, rule.

Before the ICA, the BVA said it "does not dispute the 45-day deadline provided in the rule should be accorded mandatory effect." But we are not bound by the BVA's concession or interpretation of law. Umberger, 140 Hawai'i at 520 n.38, 403 P.3d at 297 n.38. "While an agency's interpretation of its own rules is generally entitled to deference, this court does not defer to agency interpretations that are plainly erroneous or

inconsistent with the underlying legislative purpose.” Kaupiko v. Bd. of Land & Nat. Res., 154 Hawai‘i 456, 468-69, 555 P.3d 143, 155-56 (2024) (citation omitted).

In determining whether the language of a rule or regulation is mandatory or directory, common law principles of statutory construction apply.

RPP § 12-801-60 states “decisions and orders . . . shall be rendered within forty-five days.” It is true that, generally, “[w]here the language of a statute is plain and unambiguous that a specific time provision must be met, it is mandatory and not merely directory.” Tataii v. Cronin, 119 Hawai‘i 337, 339, 198 P.3d 124, 126 (2008) (per curiam) (citation omitted). But we have also held that “the use of the word ‘shall’ in [a] statute is not dispositive of the issue of whether the statute is mandatory rather than directory.” Jack Endo Elec., Inc. v. Lear Siegler, Inc., 59 Haw. 612, 616, 585 P.2d 1265, 1269 (1978) (citation omitted). The court explained:

In determining whether a statute is mandatory or directory the intention of the legislature must be ascertained. The legislative intent may be determined from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other. In general, a statute is directory rather than mandatory if the provisions of the statute do not relate to the essence of the thing to be done or where no substantial rights depend on compliance with the particular provisions and no injury can result from ignoring them.

59 Haw. at 617, 585 P.2d at 1269 (cleaned up) (emphasis added).

Critically, this court has held that "when a statute specifies what result will ensue if its terms are not complied with, the statute is deemed mandatory . . . Conversely, when a statute merely requires certain things to be done and nowhere prescribes the results that shall follow if such things are not done, the statute is merely directory." Narmore v. Kawafuchi, 112 Hawai'i 69, 82, 143 P.3d 1271, 1284 (2006) (internal quotations and citation omitted); see also Perry v. Planning Comm'n of Hawaii County, 62 Haw. 666, 676, 619 P.2d 95, 103 (1980) ("Seemingly absolute time periods for administrative action . . . are often considered mere guides for the conduct of business with dispatch and for orderly procedure. They have generally been characterized as directory[.]" (citation omitted)).

Stated differently, a statute specifying a time within which public officials are required to perform an act is directory unless the statute denies the exercise of power after such time, or the nature of the act or the statutory language indicates that the time was intended to be a limitation.

Malahoff v. Saito, 111 Hawai'i 168, 192, 140 P.3d 401, 425 (2006).

While RPP § 12-801-60 states "decisions and orders . . . shall be rendered within forty-five days," the rule does not contain any consequences for non-compliance. In contrast with the clear consequences within HRS § 91-13.5, which was addressed and properly distinguished by the ICA, the rule does not provide

that an appeal must be approved if a decision is not issued within forty-five days.

Further, in Narmore, this court identified several circumstances in which the word "shall" is construed as directory:

First, "shall" can be read in a nonmandatory sense when a statute's purpose confutes the probability of a compulsory statutory design. Second, "shall" will not be read as mandatory when unjust consequences result. Third, the word "shall" may be held to be merely directory, when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to the individual, by giving it that construction.

112 Hawai'i at 83, 143 P.3d at 1285 (cleaned up).

Applying Narmore, first, the lack of a consequence in the rule supports an interpretation that it is directory. In addition, the legislative purpose behind HRS § 91-12 supports an interpretation that the rule is directory. The statute, which mandated the rule, only requires that parties be informed of decisions "within a reasonable time." HRS § 91-12. The statute does not impose a requirement that the decision be issued within forty-five days.

Second, a mandatory reading of the 45-day deadline would lead to unjust consequences. A BVA decision involving multiple hearing dates and significant witness testimony would have to be reversed if FOF/COL are not issued within forty-five days.

Third, Norrie did not lose any advantage, suffer destruction of rights, or sacrifice any benefits. As further

discussed below, the five-day delay did not prejudice Norrie. The merits of his appeal have been addressed by the BVA and the courts.

For all these reasons, we hold that the 45-day deadline in RPP § 12-801-60 is directory, not mandatory.

But our holding that RPP § 12-801-60 is directory does not mean that the BVA is free to disregard the 45-day deadline. The 45-day deadline is "directory" insofar as the non-compliance does not automatically require reversal of the BVA's decision and order. But an appellant can still challenge a delay by the BVA on HRS § 91-14(g) (3) grounds, as discussed in the following section.

C. Norrie also does not prevail under HRS § 91-14(g) and Martell.

Even if a procedural rule is directory and not mandatory, HRS § 91-14(g) permits the court to "reverse or modify the decision and order" if a petitioner's "substantial rights" are prejudiced. The ICA cited HRS § 91-14(g) and this court's recent decision in Martell, which held that "[w]here an administrative agency, by failure to follow its rules, prejudices the substantial rights of a party before it, it may be necessary for the court, under the power to modify the decision and order of the agency, to fashion relief appropriately remedying the prejudice caused." Norrie, 2026 WL

1266063, at *5 (quoting Martell, 158 Hawai'i at 146, 588 P.3d at 1159).

Martell pointed out that HRS § 91-14(g)(3) "authorizes reversal for decisions made upon unlawful procedure." 158 Hawai'i at 142, 588 P.3d at 1155. A reversal under HRS § 91-14(g)(3) requires "prejudices [to] the substantial rights of a party[.]" Martell, 158 Hawai'i 139 at 146, 588 P.3d 1152 at 1159. Martell also noted that where there is a procedural violation, Nakamine v. Emps.' Ret. Sys., controls as to the remedy. Martell, 158 Hawai'i at 146, 588 P.3d at 1159 (citing Nakamine, 65 Haw. 251, 255, 649 P.2d 1162, 1165 (1982)).

With respect to remedies, Nakamine focused on the "prejudice to substantial rights" requirement. Nakamine was an appeal of a circuit court order reversing the Employees' Retirement System's ("ERS") denial of the claimant's retirement benefits based on HRS § 91-14(g)(3) because the ERS had violated its own procedural rules. 65 Haw. at 254, 649 P.2d at 1164. This court vacated⁸ and remanded because the circuit court had

⁸ This 1982 opinion used the term "reversed" instead of "vacated." Nakamine, 65 Haw. at 255, 649 P.2d at 1165. The opinion was issued before Hawai'i Rules of Appellate Procedure ("HRAP") Rule 35 was amended; HRAP Rule 35(e) now provides:

(e) **Terminology.** When used in an opinion or dispositional order, the word "reverse" ends litigation on the merits, and the phrase "vacate and remand" indicates the litigation continues in the court or agency in accordance with the appellate court's instruction. HRAP Rule 35(e) (eff. 2008).

reversed the denial solely based on procedural irregularities without addressing whether the claimant's substantial rights had been prejudiced. 65 Haw. at 255, 649 P.2d at 1165.

This court held that courts may reverse or modify agency decisions based on HRS § 91-14(g), but only if a claimant's substantial rights have been prejudiced by the procedural error. 65 Haw. at 255, 649 P.2d at 1165. This holding is consistent with HRS § 91-14(g)(3), which provides: "Upon review of the record the court may . . . reverse or modify the decision . . . if the substantial rights of the petitioners may have been prejudiced because the . . . decision[] [is] (3) [m]ade upon unlawful procedure[.]"

Norrie's reliance on Martell is misplaced. Martell held that the unlawful procedure engaged in by the ERS, improper rulemaking, substantially prejudiced the petitioner "by yank[ing] her benefits by memorandum." 158 Hawai'i at 147, 588 P.3d at 1160. These were benefits to which the retiree had been entitled until the memorandum's improper issuance.

In contrast, the procedural irregularity in Norrie's case did not result in prejudice to his substantial rights. The ICA did not order an automatic reversal based on the delay in the issuance of the FOF/COL. It instead addressed the prejudice alleged by Norrie. Norrie, 2026 WL 1266063, at *4-5. The ICA said Norrie "articulated prejudice to his financial security

interests and consequences to his economic livelihood as a result of the BVA's failure to follow its own rule, which the County does not dispute." Id. at *5. Therefore, although the ICA deemed the 45-day deadline to be "mandatory," it actually treated it as "directory." In other words, the ICA applied HRS § 91-14(g) (3).

But the ICA erred with respect to how "prejudice to substantial rights" is to be analyzed and measured. The question is not whether Norrie was prejudiced because his permit was revoked, as the ICA reasoned. The issue is whether his "substantial rights" were prejudiced because of the procedural error. In other words, the question is whether Norrie's substantial rights were prejudiced due to the five-day delay in the FOF/COL (or twenty-three days, under the ICA's analysis).

Whether the delay was five or twenty-three days, Norrie did not suffer prejudice to his substantial rights from the procedural error. The ICA indicated that a remedy should be provided to Norrie based on RPP § 12-801-4, which states that rules and regulations should be construed to secure "just and efficient determination of proceedings." But Norrie does not assert any "prejudice to substantial rights" other than having lost his B&B permit. This was not due to the procedural error. This was because he violated requirements of his B&B permit.

The five-day delay in the rendering of the FOF/COL did not prejudice Norrie's substantial rights.

Norrie's appeal fails on the merits. The record strongly supports the Department's revocation of Norrie's B&B permit and imposition of a two-year ban. It would not be "just" to reverse the ban and revocation based on a five-day delay in the BVA's issuance of its FOF/COL.

Therefore, Norrie also does not prevail under HRS § 91-14(g) (3) and Martell.

V. Conclusion

For these reasons, we reverse the ICA's June 12, 2026 judgment on appeal and affirm the circuit court's September 21, 2023 findings of fact, conclusions of law, and decision and order, as well as its October 6, 2023 final judgment.

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