

NO. 23444

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

TOMMY MARTIN, Petitioner-Appellant, v.
WALTER M. OZAWA,¹ Administrative Director of the
Courts, State of Hawaii, Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
HAMAKUA DIVISION
(A.R. NO. 99-2HM)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Petitioner-Appellant Tommy Martin's (Martin's) Hawaii driver's license was revoked by the Administrative Driver's License Revocation Office (ADLRO) pursuant to Hawaii Revised Statutes (HRS) Chapter 286, Part XIV (Administrative Revocation of Driver's License and Motor Vehicle Registration) after his arrest on August 20, 1999, for Driving Under the Influence of Intoxicating Liquor (DUI) pursuant to HRS § 291-4 (Supp. 1999) and Obstructing Traffic pursuant to "CH 24-189(6)." The District Court of the Third Circuit, Hamakua Division (district court) affirmed the revocation.² Martin appeals from the Order

¹Walter M. Ozawa has replaced Michael F. Broderick as Administrative Director of the Courts; pursuant to Hawaii Rules of Appellate Procedure Rule 43(c)(1), Mr. Broderick's name has been replaced with Mr. Ozawa's.

²The Honorable Sandra Pechter Schutte presided.

Affirming Administrative Revocation filed on April 11, 2000, in the district court.

On appeal, Martin lists three points of error: (1) the hearing officer erred in denying three subpoenas; (2) the hearing officer erred in not disqualifying herself from ruling on agency standards; and (3) the hearing officer should have credited the period prior to the hearing toward the one-year license revocation period.

We disagree with Martin's contentions and affirm the April 11, 2000, Order Affirming Administrative Revocation of the District Court of the Third Circuit, Hamakua Division.

I. BACKGROUND

On August 20, 1999, at 10:15 p.m., police officer Garrett Hatada (Officer Hatada) received a report of a suspicious vehicle parked in the middle of the roadway blocking traffic in both directions. The sole occupant, Martin, was sleeping in the driver's seat with the stereo playing loudly. After awakening Martin, Officer Hatada detected a strong odor of an alcoholic beverage on Martin's breath and noticed that Martin had blood-shot eyes and slurred speech. Martin failed the Horizontal Gaze Nystagmus test. No other portions of the Field Sobriety Test were administered as Martin claimed to have an injured foot.

In accordance with HRS § 286-255 (Supp. 1999),³ Martin was required to surrender his Hawai'i driver's license when he refused to take a breath test or blood test. Officer Hatada issued a Notice of Administrative License Revocation (NALR) to Martin at 11:15 p.m. at the Hamakua Police Station. Officer Hatada failed to check off either box stating "This IS NOT a Temporary Driving Permit" or "This IS a Temporary Driving Permit" on the NALR.

Under "This IS NOT a Temporary Driving Permit" on the NALR, the following reasons are listed on the form: "License Expired[,]" "License Suspended/Revoked[,]" and "No license in possession[.]"

³HRS § 286-255 provides in relevant part:

§286-155 Arrest; procedures. (a) Whenever a person is arrested for a violation of section 291-4 [DUI] or 291-4.4 [Habitually driving under the influence of intoxicating liquor or drugs], on a determination by the arresting officer that:

- (1) There was reasonable suspicion to stop the motor vehicle, . . . ; and
- (2) There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;

the arresting officer immediately shall take possession of any license held by the person and request the arrestee to take a test for concentration of alcohol in the blood. The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath or a blood test. Thereafter, the arresting officer shall complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest, the arrestee was unlicensed, the arrestee's license was revoked or suspended, or the arrestee had no license in the arrestee's possession.

Under "This IS a Temporary Driving Permit" on the NALR,
the following explanation is printed:

This Temporary Driving Permit has been issued to you along with a Notice of Administrative License Revocation. It expires thirty days from the issue date/time herein. This Permit is subject to the same restrictions as your driver's license and you are bound by them during the thirty-day period for which it is valid. You must have this permit in your possession at all times when operating a motor vehicle. You may not apply for a new license during this period, during the pendency of the Administrative Revocation proceeding, or during any period of Administrative Revocation which may be imposed.

A Notice of Administrative Review Decision (NARD) was mailed to Martin on August 30, 1999, as required by HRS § 286-258 (1999).⁴ The NARD stated that Martin's license was revoked for

⁴HRS § 286-258 provides in relevant part:

§286-258 Administrative review; procedures. (a) The director shall automatically review the issuance of a notice of administrative revocation, and a written decision administratively revoking the license or rescinding the notice of administrative revocation shall be mailed to the arrestee no later than eight days after the date the notice was issued.

. . . .

(d) The director shall administratively revoke the arrestee's driver's license if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle, . . . ;
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

the period of September 20, 1999 to September 19, 2000⁵ and that the revocation was based on the following stated reasons:

There existed reasonable suspicion to stop the motor vehicle[.]

. . . .

There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor.

The evidence proves by a preponderance that arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor.

. . . .

The arrestee refused to submit to a breath and/or blood test after being informed of the sanctions.

On September 13, 1999, Martin requested an administrative hearing. At the hearing conducted on October 1, 1999,⁶ Martin testified that he never received the NARD. The hearing was continued to October 15, 1999, and October 21, 1999,⁷ so that Martin could issue subpoenas. Martin requested

⁵HRS § 286-261 (Supp. 1999) provides in pertinent part:

§286-261 Effective date and period of administrative revocation; criteria.

. . . .

(b) The periods of administrative revocation that may be imposed under this part are as follows:

(1) Three months, if the arrestee's driving record shows no prior alcohol enforcement contacts during the five years preceding the date of arrest;

. . . .

(c) The license of an arrestee who refuses to be tested after being informed of the sanctions of this part shall be revoked under subsection (b) (1) . . . for a period of one year[.]

⁶The transcript for the October 1, 1999, hearing is not a part of the record.

⁷Martin's driving permit was extended from October 1 to October 21, 1999.

the following subpoenas for the October 15 hearing, all of which were approved:

1. A person(s) who can explain the attached [ADLRO] form.
2. The person who wrote in 8/26/99 on the "Rev. Dec."
3. The person who wrote the initial 8/26/99 on the "Review Mail Date[.]"
4. The person who whited [sic] out the "Review Mail Date" and wrote in 8/30/99.
5. "Douglas B____(?)", the person who signed the Notice of Administrative Review.
6. The person who allegedly mailed out the review decision.
7. Ronald K. Sakata (Sakata), the person certifying the review decision that went out.
8. The person that stamped the Certificate of Mailing.

Officers Hatada and Tom Wright were also subpoenaed, appeared, and testified for Martin. Ronald Sakata (Sakata) was on vacation on October 15, 1999, and did not appear; Douglas Birge appeared and testified as the designee for ADLRO. At the conclusion of the October 15, 1999 hearing, the hearing officer denied issuance of a subpoena to Sakata for the October 21 hearing on the basis that Sakata's testimony was not necessary.

On October 26, 1999, ADLRO issued the following

Findings of Fact (FOF), Conclusions of Law (COL), and Decision:

LICENSE REVOCATION: ARGUMENTS AND MOTIONS OF COUNSEL
AND FINDINGS OF HEARING OFFICER

. . . .

1. Counsel moved to reverse the revocation of [Martin's] driver's license, arguing that his preliminary prehearing request for subpoena for the Assisting Officer should have been granted. This Hearing Officer finds it has been upheld on appeal that the ADLRO is not required to issue *prehearing* subpoenas for persons other than sworn statement makers. The motion to reverse on this basis is denied.

Moreover, the proper forum for a request is at hearing. This Hearing Officer finds that the request for the Assisting Officer properly was renewed at hearing, and based upon testimony of the Arresting Officer and Counsel's offer of proof, the request was granted. [Martin's] temporary permit was extended to OCTOBER 21, 1999. The motion to reverse on this basis is denied.

2. Counsel objected to the nonissuance of a subpoena for Ronald K. Sakata ("ADLRO Director") at the close of the OCTOBER 15, 1999, hearing and on OCTOBER 21, 1999. This Hearing Officer finds that the record reflects that the ADLRO Director was not personally invlved [sic] at all in the review of [Martin's] case. This Hearing Officer finds that the offers of proof presented on OCTOBER 15, 1999, and OCTOBER 21, 1999, were insufficient. This Hearing Officer further finds that the consequence of the presence of the ADLRO Director *to [Martin's] case* was not clear. Moreover, based upon the testimony presented by DOUGLAS BIRGE ("Witness"), with respect to the certificate of mailing, this Hearing Officer finds that the presence of the ADLRO Director would have been cumulative and a waste of time. Based on the foregoing, the request for the subpoena was denied. Any motion to reverse on this basis is denied.

This Hearing Officer separately and independently finds that Counsel's argument that fraud was perpetrated in the processing of [Martin's] case is unfounded, unsupported by the record, and without merit. This Hearing Officer finds that the record reflects that the Witness is a staff member at the ADLRO who is designated by the ADLRO Director to perform certain functions on behalf of the ADLRO Director. This Hearing Officer finds that record reflects that the Witness performed the functions as designated by the ADLRO Director. Any motion to reverse on this basis is denied.

3. This Hearing Officer finds that the ADLRO extended substantial courtesy to Counsel with respect to the issuance of subpoenas. With respect to the hearing

scheduled on OCTOBER 1, 1999, this Hearing Officer finds that Counsel was informed of the ADLRO procedures. . . . This Hearing Officer finds that the procedure for the submission of subpoenas was not followed. This Hearing Officer further finds that Counsel apparently declined to submit the requests for subpoenas that had been granted at the October 1, 1999, hearing. This Hearing Officer recognizes that Counsel was not required to request the subpoenas granted. It was baffling, however, that Counsel instead chose to request a number of subpoenas that had not been requested or granted. Furthermore, the requests for the subpoenas were not in proper format. Nonetheless, the ADLRO accommodated the unusual requests and accommodated the submissions as if they had been properly requested and submitted. Discretion was so exercised at the direction of this Hearing Officer to limit any delay in concluding this matter. Any motion to reverse with respect to the issuance of subpoenas in this matter is denied.

4. Counsel argued that the ADLRO did not mail the review decision. First, this Hearing Officer finds that [Martin's] testimony that he did not receive his review decision to be unreliable and not credible. Any motion to reverse on this basis is denied.

In the course of his testimony, [Martin] testified that other people also receive mail at the designated post office box. Each person has a key to the box and mail is picked up by the post office box users at different times. This Hearing Officer separately and independently finds that if [Martin] did not receive the review decision, it is reasonable to conclude that the review decision was picked up inadvertently or mislaid by another box user. Any motion to reverse on this basis is denied.

This Hearing Officer finds that the record reflects that the Witness testified directly and credible [sic] about the ADLRO clerical process and in particular, the handling of [Martin's] review decision. This Hearing Officer finds that the Witness prepared [Martin's] review decision for mailing. This Hearing Officer further finds that the Witness checked the mail area before he left the ADLRO office and noted that the mail had been taken. This Hearing Officer finds that the review decision was not returned to the ADLRO. This Hearing Officer finds Counsel was allowed ample scope of examination and that nothing in the record reflects that the ADLRO did not mail the review decision. This Hearing Officer finds that the record reflects by a preponderance that the ADLRO mailed [Martin's] review

decision in accordance with HRS § 286-258(f).⁸ Any motion to reverse on this basis is denied.

5. Counsel argued that there were fraudulent practices at the ADLRO. Notwithstanding Counsel's characterization of the process as fraudulent, this Hearing Officer finds that the argument is entirely without merit. Any motion to reverse on this basis is denied.

6. On OCTOBER 21, 1999, Counsel objected to this Hearing Officer continuing to hear this matter because Mr. Birge ("Witness") is a staff person at the ADLRO and this Hearing Officer would not be able to objectively weigh the Witness's testimony. This Hearing Officer finds that acceptance of this argument would effectively disqualify any ADLRO hearing officer from conducting [Martin's] hearing. This Hearing Officer finds that the request for the testimony and evidence was obtained at the request of Counsel. Counsel's argument at this juncture is without merit. Any motion to reverse on this basis is denied.

7. Counsel objected to the denial of the subpoena for Ronald K. Sakata, the ADLRO Director. This Hearing Officer finds that the Witness testified that the Director did not personally participate in the handling of [Martin's] review decision. The Witness credibly testified that he conducted the review of the police documentation, drafted the review decision (form), signed the review decision, put it into the envelope with the certificate of mailing for the date of mailing, affixed the postage on the envelope, placed in the mailing box, and noted that the mail had been taken before he left the office. This Hearing Officer finds that the record reflects that the Witness performed the duties set forth in HRS § 296-258 with respect to the issuance of [Martin's] review decision on behalf of the Director. This Hearing Officer finds that the Director is not required to personally execute the duties set forth in Chapter 286, HRS.

⁸HRS § 286-258(f) (1999) reads as follows:

§286-258 Administrative review; procedures.

(f) . . . If the director administratively revokes the arrestee's driver's license, the director shall mail to the arrestee a written decision stating the reasons for the administrative revocation. The decision shall also indicate that the arrestee has six days from the date the decision is mailed to request an administrative hearing to review the director's decision. The decision shall also explain the procedure by which to request an administrative hearing, and shall be accompanied by a form, postage prepaid, which the arrestee may fill out and mail in order to request an administrative hearing. The decision shall also inform the arrestee of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing. Further, the decision shall state that the arrestee may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

This Hearing Officer finds that the designation of staff to carry out the responsibilities of a government agency (or any office for that matter) on behalf of the Director is reasonable and appropriate. There is no evidence that the Witness acted outside the scope of his responsibilities. Any motion to reverse on this basis is denied.

8. Counsel argued that [Martin's] Notice of License Revocation ("NOLR") had not been marked "Temporary permit". [sic] Failure to check off the box does not warrant reversal. This had repeatedly been held to be a mere oversight. Moreover, the burden to read through the NOLR (which indicates when a temporary permit is given) is on [Martin]. The motion to reverse on this basis is denied.

9. Counsel argued that [Martin] had not been stopped by the officers. This Hearing Officer finds that the Arresting Officer and Assisting Officer had been dispatched to investigate the report of a vehicle blocking the roadway with its radio blasting. This Hearing Officer finds that [Martin's] vehicle was in the middle of the roadway block [sic] traffic in both directions. This Hearing Officer finds that [Martin] was asleep and seated in the driver's seat of the vehicle. This Hearing Officer finds that the headlights of the vehicle were turned on, the radio was blasting, and the keys were in the ignition. Based on the foregoing, this Hearing Officer finds that [Martin] was in actual physical control of the motor vehicle while under the influence of intoxicating liquor. The motion to reverse on this basis is denied.

10. No argument or evidence disputing [Martin's] refusal to take an alcohol concentration test was presented.

11. This Hearing Officer found the testimony of the Arresting Officer and Assisting Officer to be very credible, reliable, and trustworthy. This Hearing Officer finds that although [Martin] did not testify with respect to events surrounding his arrest and detention, through the testimony of both officers, [Martin] appeared to vehemently disagree with the version of events presented. This Hearing Officer was not persuaded that the officers were not credible. Any motion to reverse based upon the circumstances of [Martin's] arrest is denied.

. . . .

DECISION RELATING TO LICENSE REVOCATION

The original revocation period, SEPTEMBER 20, 1999, through to and including SEPTEMBER 19, 2000, is amended to reflect the granting of a Director's continuance.

It is the decision of the Director, by the undersigned Hearing Officer, that the driver's license of the Arrestee, TOMMY G. MARTIN, is REVOKED and the amended revocation

period is *SEPTEMBER 20, 1999, through to and including
OCTOBER 10, 2000.*

(Citations and footnotes in original omitted.)

On November 24, 1999, pursuant to HRS § 286-260 (1993 & Supp. 1999),⁹ Martin filed a Petition for Judicial Review in the district court. On January 4, 2000, Martin filed his Petitioner's Brief in which he posed the following arguments: (1) the Certificate of Mailing for the NARD was intentionally misleading and deceptive; (2) the hearing officer should not have canceled the subpoenas for (a) the person who filled out the Certificate of Mailing, (b) the person who mailed out the NARD, and (c) Ronald Sakata; (3) the hearing officer should have disqualified herself when the credibility of a co-worker and the

⁹ **§286-260 Judicial review; procedure.** (a) If the director sustains the administrative revocation after administrative hearing, the arrestee may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the offense occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director exceeded constitutional or statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious manner, committed an abuse of discretion, or made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order.

issue of office procedure arose; (4) the arresting officer did not issue a temporary license as required by HRS §§ 286-254 and 286-255; and (5) administrative revocation of a driver's license does not apply if the vehicle is not stopped.

The hearing on the Petition for Judicial Review was held on January 20, 2000. The district court issued its Order Affirming Administrative Revocation on April 11, 2000. Martin filed his Notice of Appeal on May 10, 2000.

II. STANDARDS OF REVIEW

A. Subpoenas

"The failure to issue a subpoena for a witness who possesses relevant evidence would constitute an abuse of discretion." Voellmy v. Broderick, 91 Hawai'i 125, 128, 980 P.2d 999, 1002 (App. 1999).

B. Disqualification

"Decisions on recusal or disqualification present perhaps the ultimate test of judicial discretion and should thus lie undisturbed absent a showing of abuse of that discretion." TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 252, 990 P.2d 713, 722 (1999) (quoting State v. Ross, 89 Hawai'i 371, 375, 974 P.2d 11, 15 (1998)).

C. Period of Revocation

"Review of a decision made by a court upon its review of an administrative decision is an secondary appeal. The

standard of review is one in which this court must determine whether the court under review was right or wrong in its decision." Gray v. Admin. Director of the Court, State of Hawai'i, 84 Hawai'i 138, 144, 931 P.2d 580, 586 (1997) (internal quotation marks and brackets omitted).

III. DISCUSSION

A. The Subpoenas

Martin argues that because he did not receive the NARD, whether and when it was mailed were in issue. He contends the hearing officer erred in canceling subpoenas for: (1) the person who filled out the Certificate of Mailing, (2) the person who mailed out the Review Decision, and (3) Ronald Sakata, Director of the ADLRO.

[T]he issuance of subpoenas other than those required under HRS § 286-259(g) [10] is left to the discretion of the director. In order to ensure that an arrestee's rights are adequately protected, the director should issue all requested subpoenas unless the witness does not possess any relevant evidence or the subpoena request is otherwise deficient. If a proper request is made for a subpoena for a relevant witness, the refusal to issue the subpoena would constitute an abuse of discretion.

Biscoe v. Tanaka, 76 Hawai'i 380, 385, 878 P.2d 719, 724 (1994)

(emphasis and footnote added).

¹⁰HRS § 286-259(g) (Supp. 1999) provides in pertinent part:

Upon notice to the director no later than five days prior to the hearing that the arrestee wishes to examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official may at the discretion of the director testify by telephone.

The hearing officer initially approved the eight requested subpoenas (including a subpoena for Sakata) for the October 15, 1999 hearing. At the close of the October 15, 1999, hearing and after the testimony of Douglas Birge, the hearing officer asked for a further offer of proof on the subpoena for Sakata. After Martin's counsel offered his proof, the hearing officer denied the subpoena request for Sakata. At the October 21, 1999, hearing, Martin again asked that the subpoenas be enforced for Sakata, the person who stamped the certificate of mailing, and the person who originally mailed out the review decision. The hearing officer denied these subpoenas.

In her Findings of Fact, the hearing officer states:

7. Counsel objected to the denial of the subpoena for Ronald K. Sakata, the ADLRO Director. This Hearing Officer finds that the Witness [Birge] testified that the Director did not personally participate in the handling of [Martin's] review decision. . . . This Hearing Officer finds that the record reflects that the Witness performed the duties set forth in HRS §296-258 [sic, presumably 286-258] with respect to the issuance of [Martin's] review decision on behalf of the Director. This Hearing Officer finds that the Director is not required to personally execute the duties set forth in Chapter 286, HRS. This Hearing Officer finds that the designation of staff to carry out the responsibilities of a government agency (or any office for that matter) on behalf of the Director is reasonable and appropriate. There is no evidence that the Witness acted outside the scope of his responsibilities. Any motion to reverse on this basis is denied.

The hearing officer further found that "nothing in the record reflects that the ADLRO did not mail the review decision . . . [and] that the record reflects by a preponderance that the ADLRO mailed [Martin's] review decision in accordance with HRS §286-258(f)." The hearing officer's findings of fact that Sakata

did not personally participate in Martin's review decision (a finding not challenged on appeal) indicated that Sakata did not possess any relevant evidence on whether Martin's NARD was mailed. The subpoenas of the other two unnamed persons were deficient. The subpoenas did not identify either individual by name or title. The hearing officer exercised proper discretion in refusing the subpoena requests.

Additionally, Martin does not challenge the hearing officer's findings that:

[Martin's] testimony that he did not receive his review decision [was] unreliable and not credible.

. . . [Martin] testified that other people also receive mail at the designated post office box. Each person has a key to the box and mail is picked up by the post office box users at different times. This Hearing Officer separately and independently finds that if [Martin] did not receive the review decision, it is reasonable to conclude that the review decision was picked up inadvertently or mislaid by another box user.

B. The Motion for Disqualification

Martin next argues that because the hearing officer works in the ADLRO and uses the same certificate of mailing procedure used by the review officer, there was (1) an appearance of impropriety or (2) personal knowledge of disputed evidentiary facts by the hearing officer. Martin thus asserts that the hearing officer erred in not disqualifying herself.

Our Code of Judicial Conduct applies to administrative agencies which adjudicate, as well as to courts. Sussel v. City and County of Honolulu Civil Service Comm'n, 71 Haw. 101, 107-

109, 784 P.2d 867, 870-71 (1989). The Hawai'i Code of Judicial Conduct, Canon 3 (1992) provides in pertinent part:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

In this case, Martin failed to show that the hearing officer had a personal bias or prejudice toward Martin or his counsel, or personal knowledge of the disputed evidentiary facts as to whether Martin's review decision was mailed. The mere fact that the hearing officer has general knowledge of ADLRO procedures and personnel, without more, is not cause for disqualification.

Furthermore, the procedures used by ADLRO, including the use of hearing officers to review revocation decisions, have been found to comport with due process. The Hawai'i Supreme Court has described the procedure as follows:

The administrative review and hearing processes minimize the chance of an erroneous deprivation by providing meaningful opportunities to correct errors and dispose of challenges, helping to insure a reliable result. Finally, the governmental interest in public safety and curbing drunk driving is an important interest properly advanced by the Administrative Revocation Program.

Kernan v. Tanaka, 75 Haw. 1, 30, 856 P.2d 1207, 1222 (1993).

Thus, the hearing officer acted within her allowable discretion in denying the motion for disqualification.

C. The Period of Revocation

Because he had no license from August 20, 1999 (his arrest date) to October 10, 2000 (the end of his revocation period), Martin contends that his license was revoked for a period longer than required by statute. Martin argues that because the arresting officer did not issue a temporary permit to Martin when Martin surrendered his driver's license, the hearing officer should have credited the period of August 20 to September 19, 1999 (the thirty-day period during which he should have been issued the temporary permit) to the one-year revocation period.

Hawaii Revised Statutes § 286-255(a) states, in relevant part, "the arresting officer shall complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit." (Emphasis added.) Martin cites Voellmy for the proposition that "[t]he grant by the administrative director of the courts of a credit for driving privileges to reduce the period of license suspension is an appropriate remedy for a violation of HRS § 286-255." Id. at 126, 980 P.2d at 1000 at 126. In Voellmy, the arresting officer incorrectly marked the box indicating the notice was NOT a temporary driving permit. Because of the error, the hearing officer gave Voellmy a credit

for the period during which his driving privileges had been improperly withheld.

In this case, the improper box was not checked off and Martin's driving privileges were not "improperly withheld." The hearing officer found that the failure to check off the box is a mere oversight and the burden to read the NALR is on the arrestee. See FOF 8.

By its printed terms, the NALR served as a thirty-day temporary driving permit. The NALR stated in bold lettering, "[p]ursuant to Part XIV Chapter 286, Hawai'i Revised Statutes ("HRS"), your privilege to operate a motor vehicle in the State of Hawai'i is revoked effective thirty (30) days from the issue date/time herein." The failure of the arresting officer to mark off the "Temporary Permit" box was harmless. This is especially true in light of our holding in Voellmy:

[A]n arresting officer's error in failing to so mark the notice does not warrant a reversal of a license revocation in light of the policy objective of HRS chapter 286, Part XIV (1993 and Supp. 1998) to decrease death and injury caused by DUI incidents.

Id. at 126, 980 P.2d at 1000.

Furthermore, none of the three reasons listed under the box for "This IS NOT a Temporary Driving Permit" apply to Martin. Additionally, Martin has failed to show prejudice resulting from the failure to check the "This IS a Temporary Driving Permit" box. There is no record that Martin attempted to clarify his permit status, that he did not drive, or that he was unable to

find alternate transportation. The district court properly refused to credit the initial thirty-day temporary permit period toward the one-year revocation period.

IV. CONCLUSION

The April 11, 2000, Order Affirming Administrative Revocation of the District Court of the Third Circuit, Hamakua Division, is affirmed.

DATED: Honolulu, Hawai'i, December 14, 2001.

On the briefs:

Christopher J. Roehrig
for petitioner-appellant.

Chief Judge

Laurence K. Lau,
Deputy Attorney General,
for respondent-appellee.

Associate Judge

Associate Judge