

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, March 18, 2015

Time: 10:00 a.m.

Place: Hawaii State Ethics Commission Conference Room  
American Savings Bank Tower  
1001 Bishop Street, Suite 960  
Honolulu, Hawaii 96813

Present: State Ethics Commission Members  
Edward L. Broglio, Chair  
David O'Neal, Vice Chair  
Susan N. DeGuzman, Commissioner  
Ruth D. Tschumy, Commissioner  
Melinda Wood, Commissioner

State Ethics Commission Staff  
Leslie H. Kondo, Executive Director  
Susan D. Yoza, Associate Director  
Nancy C. Neuffer, Staff Attorney  
Virginia M. Chock, Staff Attorney  
Megan Y. S. Johnson, Staff Attorney  
Bonita Y. M. Chang, Staff Attorney

**CALL TO ORDER**

The meeting was called to order at approximately 10:00 a.m. by Chair Broglio.

**SUNSHINE LAW SESSION**

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the February 18, 2015, Meeting

Commissioner Tschumy moved and Commissioner Wood seconded a motion to approve the minutes of the February 18, 2015, Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

## Agenda Item No. II: Executive Director's Report

### 1. Education/Training

Executive Director Kondo reported that, at the invitation of Ruth Silverstein, the Honolulu Complex (McKinley, Roosevelt, Kaimuki) Area Superintendent, he conducted ethics training for the principals of the schools in the Honolulu Complex Area on March 2, 2015. Executive Director Kondo said that the ethics training session for the Hawaii Health Systems Corporation Corporate Board was postponed and will be rescheduled after the 2015 legislative session.

Executive Director Kondo reported that Sharon Ibarra, Director of the Governor's Boards and Commissions Office, expressed an interest in including ethics training as part of a new board and commission member orientation. Executive Director Kondo said that the office will participate if there is an opportunity.

### 2. Miscellaneous Correspondence

Executive Director Kondo discussed a February 20, 2015, letter from Kathryn Matayoshi, Superintendent, Department of Education ("DOE"), requesting clarification of the Ethics Commission's position regarding third-party fundraising activities in DOE schools. Executive Director Kondo said that staff responded to Superintendent Matayoshi advising her that the Commission had considered the additional issues regarding a selection process for nonprofit organizations and ensuring there is no coercion of students.

Executive Director Kondo discussed a February 26, 2015, email to the Commission from a member of the public regarding a complaint made on behalf of individuals who wished to remain anonymous. Executive Director Kondo said that staff is continuing its review of the anonymous complaint in order to determine whether an investigation should be initiated by the Commission.

Executive Director Kondo discussed a March 10, 2015, email addressed to the Commission requesting review of a proposed invitation to elected officials to attend a March 13-15, 2015, auto show at the Hawaii Convention Center. Executive Director Kondo said that staff responds to this type of request on behalf of the Commission because the event will be held prior to the next scheduled Ethics Commission meeting.

### 3. Update on Electronic Filing Issues and Proposals to Develop Alternative E-File System

Executive Director Kondo said that a service level agreement was signed with Hawaii Information Consortium ("HIC"), the state's portal manager and that he expects HIC to submit a scope of work later this week. Executive Director Kondo reported that he was informed that HIC has begun work on a fix to address the Americans with Disability Act issue and the challenges filers have experienced with electronically submitting a document to our office.

#### 4. Hawaii State Teachers Association Campaign Flyers

Executive Director Kondo said staff received an inquiry from the DOE Maui Complex Area office concerning teachers' use of school mailboxes to distribute materials soliciting support for their candidacy in an upcoming Hawaii State Teachers Association ("HSTA") election.

Executive Director Kondo said that the fair treatment provision of the State Ethics Code prohibits an employee from using his position to give himself or someone else an unwarranted advantage and specifically prohibits the use of state resources for private business purposes. Executive Director Kondo said that in the past, the Commission has looked at political campaign activity as a private business activity and has applied this provision to prohibit state employees from using state resources for political activities. Executive Director Kondo said that staff recognizes that the HSTA election is distinguishable from election to state or county office; however, he said that staff considers the teacher-candidate's distribution of his campaign material to be similar. Executive Director Kondo said that staff construed the individual teacher's use of the school mailboxes to solicit support for his campaign to be distinguishable from HSTA's use of the school resource.

Executive Director Kondo said that staff spoke with the teacher who initiated the inquiry, the Maui HSTA Representative, Susan Bitler (the HSTA Interim Deputy Executive Director), and James Halvorson, Esq. (Deputy Attorney General and Supervisor of the Employment Law Division of the Department of the Attorney General) regarding the use of school mailboxes in connection with HSTA elections. Staff also reviewed the HSTA internal rules relating to election campaigning, the HSTA collective bargaining agreement, and Hawaii Revised Statutes ("HRS") section 84-13, the fair treatment provision of the State Ethics Code.

Executive Director Kondo said that, in staff's opinion, it was inappropriate for the school to allow the teacher-candidate to use the school mailboxes to distribute his campaign materials. Executive Director Kondo explained staff's reasoning in reaching that opinion, including a 2007 Hawaii Supreme Court opinion that Executive Director Kondo suggested supports staff's position.

Executive Director Kondo said that staff had advised the Complex Area office as well as the teacher, HSTA representatives and the Superintendent of its position.

Executive Director Kondo reported that he received a call yesterday from Colleen Hanabusa, who represents HSTA. Ms. Hanabusa requested ethics staff withdraw its opinion and keep the status quo on this matter through the current HSTA election period.

At the request of Executive Director Kondo, the Commission took a recess from approximately 10:36 a.m. to approximately 10:37 a.m.

Vice Chair O'Neal disclosed that his wife is a school teacher, is employed by the DOE and is an HSTA member.

Chair Broglio asked if the Commission wanted to schedule another Sunshine Law meeting to further consider and possibly take action regarding the use of the school mailboxes by HSTA candidates. It was the consensus of the Commission that no further meeting regarding this matter be scheduled at this time.

5. Recruitment of State Ethics Commissioner Applicants

Executive Director Kondo reported that the Judicial Council extended the deadline to apply for appointment to the Commission to March 31, 2015. Executive Director Kondo said he extended an offer to the Judicial Council to hold an informational session for interested applicants to assist the Council in their recruitment efforts.

Agenda Item No. III: 2015 Legislative Session: Discussion of Legislative Proposals

Chair Broglio asked for public testimony on this agenda item. There was no public testimony offered at this time.

Executive Director Kondo presented a summary of the legislature's upcoming deadlines, along with a spreadsheet listing the bills being tracked through the legislature by staff. Executive Director Kondo reviewed the bills that are currently active and proceeding through the legislature.

Agenda Item No. IV: Incorporation by Reference of "Long Form" Financial Disclosure Statement filed Prior to July 8, 2014; Public Access to Same; Discussion and consideration of staff recommendation to require public disclosure of "long form" financial disclosure statements filed before July 8, 2014, by public filers who complete their annual disclosure statement using the "short form;" consideration of draft staff memorandum to public filers explaining same.

Chair Broglio asked for public testimony on this agenda item. There was no public testimony offered at this time.

Executive Director Kondo said that HRS section 84-17(h) provides that financial disclosure filers are to file a long form of disclosure on even numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

Executive Director Kondo said that it is staff's opinion that a public filer who files a short form of disclosure incorporates by reference the filer's preceding financial disclosure statement, and therefore, it is appropriate to allow public access to the filer's preceding year's financial disclosure statement.

Executive Director Kondo said staff recommends that the Commission inform members of boards and commissions identified by Act 230 who filed their respective financial disclosure statements prior to July 8, 2014, that, if they file a short form of disclosure in 2015, the Commission will allow public access to the member's prior year's filing, notwithstanding that it was filed before the Act's effective date. Executive Director Kondo said that board and commission members may, in the alternative, choose to file a long form for 2015, and the Commission would continue to deny public access to any financial disclosure statements that may have been filed by those members prior to July 8, 2014.

Executive Director Kondo discussed the draft memorandum that staff intends to send to those board and commission members. Executive Director Kondo said the draft memo had been reviewed by the Department of the Attorney General ("AG") and the AG offered only non-substantive suggestions to the draft memorandum.

Agenda Item No. V: Delinquent Filers: 2014 Disclosure of Financial Interests: Discussion and consideration of state employees' and state board members' requests to waive the statutory fine assessed for their failure to timely file their financial disclosure statements.

Executive Director Kondo said that legislators, certain state employees, and board and commission members are required by statute to file disclosure forms annually. Individuals who fail to file disclosure of financial interests statements can be assessed an administrative fine of \$50 and those individuals who do not file within 10 days after receiving written notification are subject to an additional penalty of \$10 for each day that the disclosure statement remains unfiled. Executive Director Kondo said that HRS section 84-17(i) authorizes the Commission to waive any administrative fines assessed for "good cause shown."

Executive Director Kondo said that fine notices have been issued to 45 delinquent 2014 financial disclosure filers. Staff Attorney Chang said that 15 delinquent filers have filed their 2014 filing and either paid their administrative fine or resigned. Staff Attorney Chang said that staff is continuing to follow up with an additional 10 delinquent filers who have either requested an extension or are in the process of submitting their 2014 filing, and that staff has received a total of nine waiver requests from individual delinquent filers. Staff Attorney Chang said that 11 delinquent filers have not yet responded to the written notification.

Executive Director Kondo noted that a number of delinquent filers said they had attempted to file electronically and staff did not assess an administrative fine for these individuals upon receipt of their 2014 filing.

Staff Attorney Chang reviewed the requests for waivers, which were based on various grounds including personal or family care-giving duties, inaccurate information given by other state agency employees regarding the filing requirements, and difficulties

with the electronic filing system. Staff Attorney Chang said that staff recommends granting all the waiver requests.

Vice Chair O'Neal asked if the statute requires Commission action in order to waive the administrative fines for delinquent financial disclosure filers and recommended that staff be authorized to handle the waiver of administrative fines for delinquent financial disclosure filers. Commissioner Wood said that she would like to be kept informed of any administrative fines assessed by staff. Commissioner DeGuzman asked if the statute allows the Commission to delegate to staff the authority to waive administrative fines for delinquent financial disclosures. Executive Director Kondo said that if staff is authorized to waive the financial disclosure administrative fines, any dispute of waiver denials by staff could be brought to the Commissioners for resolution. Executive Director Kondo said that if the Commission would like to be kept informed of administrative fines assessed by staff, it would be best for the Commission to continue to take action regarding waiver requests. The Commission agreed by consensus.

Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion to waive, for good cause shown, the administrative fines assessed for the following individuals:

- a. Noa Emmett Aluli, Member of the Kaho`olawe Island Reserve Commission
- b. Oliver English, Member of the Soil and Water Conservation District (Hawaii-Puna)
- c. Albert Kauai, Member of the Hawaii State Emergency Response Commission
- d. Lu Ann Lankford-Faborito, Member of the King Kamehameha Celebration Commission
- e. Sharon Nomura, Financial Services Mgr. II, Hawaii Health Systems Corporation
- f. Kawika Riley, Chief Advocate, Office of Hawaiian Affairs
- g. Yvonne Taylor, Sr. Contracts Mgr., Hawaii Health Systems Corporation
- h. Mark Wong, Member of the Enhanced 911 Board
- i. Gennaro Zarro, Member of the Board of Registration (Maui)

The motion carried unanimously (Broglia, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. VI: Executive Director's Performance Evaluation Criteria; Discussion and consideration of the Permitted Interaction Group's recommendation regarding the criteria for the Executive Director's performance evaluation; Establishment of criteria for the Executive Director's performance evaluation.

Chair Broglia asked for public testimony on this agenda item. There was no public testimony offered at this time.

Chair Broglia presented for the Commission's consideration the proposed Executive Director's Performance Goals and two options for an "Executive Director Evaluation Tool" incorporating elements from the Executive Director's Position

Description and the prior evaluation instrument utilized in the Executive Director's 2011 evaluation.

Vice Chair O'Neal moved and Commissioner DeGuzman seconded a motion to accept Proposed Executive Director's Evaluation (Option 1) as the evaluation tool for the Executive Director's Evaluation. The motion carried (Broglia, O'Neal, DeGuzman, and Wood voting aye; Tschumy voting nay).

Chair Broglia suggested a new Permitted Interaction Group (PIG) be established to conduct 360-interviews with the Commission staff and incorporate the results of the 360-interviews into the Executive Director's performance evaluation system.

Commissioner Wood moved and Chair O'Neal seconded a motion that the currently established PIG continue with developing the 360-interview component of the Executive Director's Evaluation. Chair O'Neal asked if the first step of the new PIG would be to set the criteria for how the PIG meets with staff, and how the results of the meetings are reported to the Commission. Chair Broglia said the PIG will develop a set of questions for staff and present staff's input to the Commission regarding the Director's performance.

Commissioner Tschumy said she felt other Commissioners should be involved in the 360-interview process and suggested Vice Chair O'Neal participate in the second phase of the PIG. Chair Broglia suggested the membership of the new PIG consist of Vice Chair O'Neal and Commissioner DeGuzman. Commissioner DeGuzman expressed concern that during preliminary meetings with staff regarding the 360-interview process, staff indicated they were comfortable speaking with Chair Broglia and herself. Commissioner DeGuzman said she is uncertain whether a new PIG would require holding another preliminary meeting with staff to determine their comfort level with speaking with new PIG members. There were concerns from staff and Commissioners regarding anonymity. Chair Broglia said that the format would provide for anonymity. Vice Chair O'Neal declined to be involved in the PIG because of his work obligations.

Vice Chair O'Neal asked how a meeting of the Commissioners could not be considered confidential, but that meetings between members of the PIG and staff can be confidential. Executive Director Kondo said that the Sunshine Law applies to the Commissioners' discussion and deliberations about a matter that is Commission business. Executive Director Kondo said that the PIG is an exception to the Sunshine Law requirement where you can have less than a quorum of Commissioners specifically tasked to do specific work on behalf of the Commission. Executive Director Kondo said that rather than voting to extend the existing PIG, the Commission should form a new PIG to develop and conduct the 360 degree review.

Commissioner Wood amended her previous motion. Commissioner Wood moved and Vice Chair O'Neal seconded a motion to establish a new PIG consisting of Chair Broglia and Commissioner DeGuzman to conduct a 360 degree review of the Executive Director for the current evaluation period. The motion carried unanimously (Broglia, O'Neal, DeGuzman, Tschumy, and Wood voting).

Agenda Item No. VII: Peer News LLC, dba Civil Beat, vs. State Ethics Commission; Civil No. 14-1-2022-09 RAN; Motion for Preliminary Injunction; Discussion regarding status of lawsuit and procedural options.

Executive Director Kondo said there is no new information to report on this matter.

## **ADJOURNMENT**

At approximately 11:46 a.m., Commissioner Tschumy moved and Vice Chair O'Neal seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Broglio, O'Neal, DeGuzman, Tschumy, and Wood voting).

The meeting was adjourned at approximately 11:46 a.m.

Minutes approved on April 15, 2015.