

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, May 21, 2014  
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  
Cassandra J. Leolani Abdul, Chair  
Edward L. Broglio, Vice Chair  
Susan N. DeGuzman, Commissioner  
Ruth D. Tschumy, Commissioner  
David O'Neal, 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  
Lori S. Nishimura, Staff Attorney

**CALL TO ORDER**

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

**SUNSHINE LAW SESSION**

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the April 16, 2014, Meeting

Commissioner Tschumy made and Commissioner O'Neal seconded a motion to approve the minutes of the April 16, 2014, Sunshine Law meeting as drafted. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

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

1. Financial Disclosure Statement deadline; Lobbying Expenditure Report deadline; Gifts Disclosure Statement deadline

Executive Director Kondo noted that the deadline for filing Financial Disclosure Statements and Lobbying Expenditure Reports is June 2, 2014. The deadline for filing Gift Disclosure Statements is June 30, 2014.

2. Discrimination/Harassment-Free Workplace Policy

Associate Director Yoza said that staff attended a training session on prohibited discrimination and harassment in the workplace. Staff is now drafting a Discrimination/Harassment-Free Workplace policy for the State Ethics Commission. The policy is based on a template that is being used by the legislative agencies and will be applicable to the Commissioners and the staff of the State Ethics Commission.

3. Nominees for State Ethics Commission to fill vacancies created by expiring terms of Chair Cassandra J. Leolani Abdul and Commissioner David O'Neal

Executive Director Kondo reported that the Judicial Council nominations received by the Office of the Governor to fill the vacancies on the State Ethics Commission created by the expiring terms of Chair Abdul and Commissioner O'Neal are currently under review.

4. Subpoena Duces Tecum: Elizabeth Freitas and Freitas & Freitas Investigations LLC vs. Leanne Gillespie, etc., et al. (Civil No. 13-1-0365).

Executive Director Kondo said that a subpoena for records was recently received relating to a lawsuit involving Elizabeth Freitas and Freitas & Freitas Investigations LLC against Leanne Gillespie. The subpoena is for records relating to an issue that the Commission previously dealt with regarding Leanne Gillespie. Executive Director Kondo said that the Department of the Attorney General has been asked to represent the Commission in this matter and to file a motion to quash the subpoena citing the confidentiality provision of Hawaii Revised Statutes section 84-31(b).

## Agenda Item No. III: University of Hawaii Petition for Declaratory Order Re Applicability of Financial Disclosure Filing Requirements to Members of the University of Hawaii Operational and Financial Controls Improvement Advisory Task Group and University of Hawaii Athletic Director Search Committee, GUIDE-13-00224: Consideration of Petition for Declaratory Order Filed by the University of Hawaii

Staff Attorney Neuffer introduced Mr. Presley Pang, Associate General Counsel of the University of Hawaii ("University"), who presented the University's position that the annual financial disclosure filing requirement under HRS section 84-17 do not apply to members of a task group or committee. Mr. Pang said the University petitioned for a

Declaratory Order in this matter as to whether the previous instruction received from the Executive Director to task group members to file a financial disclosure statement is valid or has legal support.

Mr. Pang said the University believes that Act 208, 2012, (“Act 208”) requires task group members to disclose specific conflicts that arise while the task group member is performing the duties as a member of a task group. Mr. Pang said this is a specific narrow disclosure rather than a comprehensive financial disclosure of the type that is filed annually by board and commission members. Mr. Pang noted that Act 208 is unclear and should be amended. He said the University’s petition is based on the assumption that if a task group member has a specific conflict of interest or thinks he may have a conflict of interest, the task group member has a duty to disclose the conflict to fellow task group members.

Executive Director Kondo said that Act 208 was created by the legislature as a result of the Ethics Commission’s interpretation of the term “employee” to apply to the Mortgage Foreclosure Task Force. Act 208 created a definition of task force and they exempted members of task forces from numerous provisions of the state ethics code. Executive Director Kondo said that by defining “task force” and excluding them from portions of the ethics code, it appears that the legislature implicitly agreed with the Ethics Commission’s interpretation of the definition of employee to include task forces.

Executive Director Kondo said that HRS section 84-17(c)(9) states that all members of boards and commissions must file a financial disclosure statement. If a task force is the same as a board, commission and committee under the definition of employee, then task force members are required to file a financial disclosure as required under HRS section 84-17(c)(9).

Mr. Pang said that on plain reading of Act 208, a task force is not a board and task force members do not have to file financial disclosure statements. Mr. Pang said that he felt the legislature was trying to expand the obligation of a task force member to disclose specific conflicts of interest to the task group members.

Executive Director Kondo asked how task force members would be captured in the definition of employee if a task force is not considered to be a board, commission or committee.

Mr. Pang said that he felt that Act 208 was enacted by the legislature because of an overbroad reading of the term “employee” by the Ethics Commission. Executive Director Kondo said that if the legislature felt the Commission was overbroad by including task force members within the definition of “employee,” they could have simply determined that task force members are exempt from the definition of “employee” and provided the definition of task force members. Instead the legislature said that task force members are subject to the State Ethics Code except for certain provisions. Executive Director Kondo said that action implicitly confirmed that the definition that the Commission applied to the Mortgage Foreclosure Task Force members was not overbroad.

Mr. Pang said the University respectfully disagrees with the Commission on the legislative intent of Act 208. Mr. Pang said Section 1 of Act 208 allows persons to serve as task force members for a purpose. Mr. Pang provided examples of different types of groups and asked if they would all need to file financial disclosure statements. Executive Director Kondo said that pre-Act 208, the Commission may not have included certain types of groups under the definition of “employee.” Executive Director Kondo said that by enacting Act 208, the legislature, intentionally or unintentionally, expanded the definition of “employee” to include the types of groups Mr. Pang described.

Mr. Pang said he was concerned that if the University follows the Commission’s interpretation of Act 208, members of each of their working groups would need to file a financial disclosure statement if the group meets for more than one year and is not solely advisory. He said it would be extremely difficult for the University to oversee the operational structure of each of these working groups. Mr. Pang said the University would prefer to read the statute the way it is written. If the statute says board or commission, but not committee and task group, then a board or commission member must file a financial disclosure statement, but not members of a committee or a task force. Mr. Pang said committee and task force members should be subject only to the rule regarding disclosure of specific conflicts to the members of the committee or task force.

Chair Abdul asked if anyone else would like to offer testimony on this matter.

Mr. Brian Yamane, Legislative Liaison, Office of the Speaker of the House of Representatives, said that Act 208 was written in response to an assumption or decision by the Ethics Commission that members of the Mortgage Foreclosure Task Force are considered employees and are required to file financial disclosure statements. Mr. Yamane said that Act 208 was not written ideally, but the intent of the legislation was not that task force members be required to file financial disclosure statements.

## **RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION**

At approximately 10:39 a.m., Commissioner O’Neal made and Commissioner DeGuzman seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Haw. Rev. Stat. section 92-5(a)(4) to consult with the Commission’s attorneys on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities.

Mr. Pang requested that the Commission be sensitive to the perhaps retroactive application of the proposed ruling.

The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O’Neal voting).

## **EXECUTIVE SESSION**

The Commission met in Executive Session.

## **ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING**

At approximately 11:33 p.m., Chair Abdul made and Commissioner O'Neal seconded a motion to adjourn the executive session and return to the Sunshine Law meeting. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

Commissioner Broglio made and Commissioner O'Neal seconded a motion to approve Declaratory Order No. 2014-1.

Commissioner DeGuzman recommended that the first paragraph of page 8 of Declaratory Order No. 2014-1 be amended by adding the following as a footnote to the first paragraph:

“Act 208, Section 1 states:

The purpose of the Act is to allow persons with knowledge and expertise necessary to the State to serve as members of a task force that is convened on a temporary basis by the legislative or executive branch to study an issue, make recommendations, or offer advice on a specific subject, by excepting them from some of the requirements, restrictions, and prohibitions of the State's code of ethics.”

Commissioner DeGuzman said that this footnote would support the conclusion of the Commission that Act 208 implicitly affirmed that the State Ethics Code is applicable to task force members.

Commissioner DeGuzman recommended that line 16 of page 12 of Declaratory Order No. 2014-1 be amended to read as follows:

“14(f) applies to “non-qualified- (c) (9) –members,” that is”

Commissioner DeGuzman recommended that line 21 of page 16 of Declaratory Order No. 2014-1 be amended to read as follows:

“the Committee whose service has exceeded or is expected”

Staff Attorney Neuffer said the Declaratory Order summarizes the financial disclosure requirements for task force members under HRS sections 84-17, 84-14(f) and 84-13. With respect to HRS section 84-17, the Commission construes task force

members as members of board and commissions so that if their service extends for over one year and their functions are not solely advisory they must file an HRS section 84-17 disclosure. HRS section 84-14(f) is an optional filing if the members want to be exempt from the conflicts of interest requirements of HRS section 84-(a), (b), and (d). HRS section 84-13 is a public disclosure if the members have an interest or transaction that may be affected by an action that they take. Executive Director Kondo said that the HRS section 84-14(f) filing is only if you do not already have to file under HRS section 84-17(c)(9). If you are a task force member or a board member whose service extends for more than a year and your role is not solely advisory, you are required to file under HRS section 84-17(c). That will exempt you from HRS section 84-(a), (b), and (d). But if you are not required to file under HRS section 84-17(c), you can still enjoy the exemptions from the conflicts provision by filing the HRS section 84-17 disclosure under HRS section 84-14(f).

Commission DeGuzman made and Commissioner Tschumy seconded a motion to approve Declaratory Order No. 2014-1 as amended with the revision to page 8 regarding reference to Act 208, as well as the corrections on page 12 and on page 16. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

Commissioner Tschumy said she thought her vote was solely to amend Declaratory Order 2014-1 as recommended by Commissioner DeGuzman and she did not understand that she was voting to approve the issuance of Declaratory Order 2014-1 as amended. Executive Director Kondo suggested the Commission rescind the vote on the motion to approve Declaratory Order No. 2014-1 as amended above.

Commissioner DeGuzman made and Commissioner Tschumy seconded a motion to rescind the motion recorded above approving Declaratory Order No. 2014-1 as amended. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

Commissioner DeGuzman made and Commissioner O'Neal seconded a motion to revise Declaratory Order 2014-1 by adding reference to section 1 of Act 208 on page 8 and to make the two corrections on page 12 and page 16. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

Chair Abdul said that Commissioner Broglio's motion to approve Declaratory Order 2014-1 remains on the table to include revisions to Declaratory Order 2014-1 as recommended by Commissioner DeGuzman and approved above by the Commission.

Commissioner Tschumy said she felt that it is important for guidance on specific matters to not be overly broad and she is unclear whether the Commission's interpretation on this matter is overly broad. Chair Abdul said she does not believe that the Commission's interpretation on this matter is overly broad. Chair Abdul said the Commission reviewed the applicable statutes, examined past precedent established by the Commission on similar matters, and considered advice provided by staff counsel. Commissioner Tschumy said her concern is in regard to the Commission's interpretation of "solely advisory." Executive Director Kondo said that the proposed Declaratory Order

quotes the language contained in HRS section 84-17(c)(9) and does not provide a definition of “solely advisory.” Commissioner Tschumy said that she is unclear whether we have an overly broad definition of “solely advisory.” Chair Abdul said that a footnote on page 9 of the proposed Declaratory Order states that “The Commission construes the term “solely advisory” narrowly....”

There being no further discussion, Chair Abdul called for a vote on the motion. The motion carried (Abdul, Broglio, DeGuzman, and O’Neal voting aye; Tschumy abstaining).

Agenda Item No. IV: 2014 Legislative Session: Recap of 2014 Legislative Session; Review of bills passed by the 2014 legislature:

1. S.B. No. 2629, S.D. 1, H.D. 1, Relating to Lobbyists.
2. S.B. No. 2634, S.D. 1, H.D. 2, Relating to Lobbyists.
3. S.B. No. 2682, S.D. 1, H.D. 2, Relating to Financial Disclosure Statements.

Executive Director Kondo said that the above bills had each passed out of the legislature. S.B. No. 2629, S.D. 1, H.D. 1, requires all lobbyists and lobbying organizations to file lobbying expenditures reports within 30 days after the close of a special session. Executive Director Kondo said he hoped the legislature will amend this bill during the next legislative session to require only those lobbyists and lobbying organizations who lobby during a special session to file lobbying expenditure reports within 30 days after the close of a special session.

S.B. No. 2634, S.D. 1, H.D. 2, requires the reporting of certain categories of specific lobbying expenditures. Previously, the reporting of these categories of specific lobbying expenditures was voluntary. This bill now makes the reporting of these categories mandatory.

S.B. No. 2682, S.D. 1, H.D. 2, requires the filing of public financial disclosure statements by members of certain boards and commissions, including members of the State Ethics Commission. Executive Director Kondo said that bills similar to this measure were vetoed by two previous governors.

Agenda Item No. V: Legislative Allowances: Update on status of staff recommendation regarding application of the State Ethics Code to the types of expenditures and disbursements through legislative allowance funds; consideration of legislative leadership’s position regarding State Ethics Commission’s authority to apply State Ethics Code to use of the legislative allowance funds.

Staff Attorney Nishimura said that staff continues to wait for information from the legislature on various issues. Staff requested additional legislative allowance information by legislators for the period of October 2013 to the present. Staff Attorney Nishimura said that staff is also requesting clarification from the legislature regarding certain types

of expenditures that appear to come from a different allowance fund. Staff Attorney Nishimura said that this clarification may impact staff's recommendation regarding the application of the State Ethics Code to the types of expenditures and disbursements made through legislative allowance funds.

Staff Attorney Nishimura noted that the Commission has previously issued advice on legislative expenses. The Commission issued Advisory Opinion 93-6 regarding a legislator's use of the allowance to purchase non-perishable equipment and what happened to the equipment after the legislator left office. The Commission advised the legislator that it would be a violation of HRS 84-13 if the legislator used the allowance for the purchase of equipment but converted the equipment for personal use.

Staff Attorney Nishimura also noted that the staff has issued advice regarding the application of the State Ethics Code to the use of legislative allowance funds. Executive Director Kondo said that he is hopeful the legislature will provide the requested information in the near future in order that staff can present its findings and recommendations to the Commission by June.

Agenda Item No. VI: State Agency Fundraising: Update on status of staff review and anticipated timeline for Commission consideration.

Staff Attorney Johnson said that given that staff has received many complaints and questions relating to fundraising and other charitable activities in public schools and in other state offices, staff has recommended that the Commission comprehensively consider the application of the State Ethics Code to fundraising and other charitable activities in public schools and in other state offices and issue general guidance on the matter. Staff Attorney Johnson said that staff has been researching how other jurisdictions address fundraising and is attempting to schedule a series of meetings with representatives from various state agencies and other interested parties in the community to solicit varying viewpoints regarding these issues. Staff Attorney Johnson said that staff anticipates presenting its findings and recommendations to the Commission for consideration in the fall.

Executive Director Kondo said that members of the Department of Education, representatives from other state agencies and legislators, as well as individuals from the private sector, will be invited to attend meetings with staff to discuss various perspectives, which will hopefully assist staff with developing a thoughtful recommendation to present to the Commission.

Commissioner Broglio asked if staff will take into consideration how other states and the federal government address fundraising, and requested that staff establish a timeline for staff to present its findings and recommendations to the Commission for consideration.

Staff Attorney Johnson confirmed that staff has been researching how other states and the federal government address fundraising. Executive Director Kondo said that it

may be difficult to provide a specific date by which staff will be able to present its recommendations regarding this matter to the Commission. Executive Director Kondo said that if the initial advisory group meeting is productive, the group may meet multiple times, which would cause a delay in staff being able to present its recommendations to the Commission. Executive Director Kondo said that he will provide a timeline regarding the projected completion of this matter at the June 18, 2014, Sunshine Law meeting. Chair Abdul said that she has concerns with the significant amount of staff work that will be required to prepare for the Commission's hearing scheduled for October 2014. Commissioner Broglio requested that staff's plan of action for this matter, and an update regarding the actions that staff has taken in the intervening month, be presented to the Commission at the June 18, 2014, Sunshine Law meeting.

Agenda Item No. VII: Complaint by Ted H. S. Hong, Esq. Against Executive Director Leslie H. Kondo: Consideration of the allegations of misconduct raised by Ted H. S. Hong, Esq. regarding Executive Director Leslie H. Kondo

Commissioner Tschumy recused herself from Agenda Item Nos. VII and VIII. Commissioner Tschumy explained that, with respect to Agenda Item No. VII, matters may be discussed that were brought up in Agenda Item No. VIII, William Eric Boyd vs. Hawaii State Ethics Commission, from which she had recused herself. Commissioner Tschumy left the meeting at approximately 12:12 p.m.

## **RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION**

At approximately 12:13 p.m., Commissioner DeGuzman made and Commissioner O'Neal seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Haw. Rev. Stat. section 92-5(a)(2) to consider personnel issues affecting personal privacy, and Haw. Rev. Stat. section 92-5(a)(4) to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. The motion carried unanimously (Abdul, Broglio, DeGuzman, and O'Neal voting).

The Executive Director and all staff with the exception of the Associate Director left the meeting at approximately 12:14 p.m. The Commission took a short recess from 12:14 p.m. to 12:22 p.m.

## **EXECUTIVE SESSION**

The Commission met in Executive Session.

## **ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW MEETING**

At approximately 12:51 p.m., Commissioner DeGuzman made and Commissioner O'Neal seconded a motion to adjourn the executive session and return to the Sunshine Law meeting. The motion carried unanimously (Abdul, Broglio, DeGuzman, and O'Neal voting).

The Executive Director and Staff Attorneys Chock and Nishimura returned to the Commission meeting at approximately 12:52 p.m. The Commission took a short recess from 12:52 p.m. to 12:58 p.m.

Commissioner O'Neal moved and Commissioner DeGuzman seconded a motion that, having reviewed the complaint by Ted Hong against Executive Director Kondo, the Commission finds there is no reasonable basis for a formal investigation or any further action by the Commission, and directs staff to draft a letter for the Chair's signature to inform Mr. Hong of the Commission's decision. The motion carried unanimously (Abdul, Broglio, DeGuzman, and O'Neal voting).

### Agenda Item No. VIII: William Eric Boyd vs. Hawaii State Ethics Commission: Civil No. 13-1-000115 (Agency Appeal)

Associate Director Yoza said that staff is in the process of reviewing the Commission's opening brief in this appeal and that it will be submitted by the Attorney General's Office next week.

Commissioner Tschumy returned to the Commission meeting at approximately 1:00 p.m.

### Agenda Item No. IX: Executive Session Minutes: Consideration and approval of the minutes of the April 16, 2014 Executive Session.

Commissioner O'Neal made and Commissioner DeGuzman seconded a motion to approve the minutes of the April 16, 2014, Executive Session as drafted. The motion carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

## **ADJOURNMENT**

At approximately 1:02 p.m., Commissioner DeGuzman made a motion to adjourn the Sunshine Law meeting. The motion was seconded, and carried unanimously (Abdul, Broglio, DeGuzman, Tschumy, and O'Neal voting).

The meeting was adjourned at approximately 1:02 p.m.

Minutes approved on June 18, 2014.