

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Wednesday, December 2, 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  
Susan N. DeGuzman, Chair  
David O'Neal, Vice Chair  
Ruth D. Tschumy, Commissioner  
Melinda Wood, Commissioner  
Reynaldo D. Graulty, 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. Chang, Staff Attorney

**CALL TO ORDER**

The meeting was called to order at approximately 10:05 a.m. by Chair DeGuzman.

Agenda Item No. I: Minutes: Consideration and Approval of the Minutes of the October 29, 2015, meeting

Vice Chair O'Neal made and Commissioner Graulty seconded a motion to approve the minutes of the October 29, 2015, Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. II: Minutes: Consideration and Approval of the Minutes of the October 29, 2015, Executive Session Regarding Agenda Item VII. Peer News LLC, dba Civil Beat, vs. State Ethics Commission; Civil No. 14-1-2022-09 RAN

Commissioner Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the October 29, 2015, Executive Session regarding Agenda Item

VII. Peer News LLC, dba Civil Beat, vs. State Ethics Commission; Civil No. 14-1-2022-09 RAN. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. III: Minutes: Consideration and Approval of the Minutes of the October 29, 2015, Executive Session Regarding Agenda Item IX. Minutes of the September 16, 2015, Executive Session regarding Agenda Item III: Follow-up Discussion Regarding Executive Director's Performance Evaluation and Review of Executive Director's Performance Objectives

Vice Chair O'Neal made and Commissioner Graulty seconded a motion to approve the minutes of the October 29, 2015, Executive Session Regarding Agenda Item IX. Minutes of the September 16, 2015, Executive Session regarding Agenda Item III: Follow-up Discussion Regarding Executive Director's Performance Evaluation and Review of Executive Director's Performance Objectives. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. IV: Minutes: Consideration and Approval of the Minutes of the October 29, 2015, Executive Session Regarding Agenda Item X. Follow-Up Evaluation of Executive Director's Job Performance

Commissioner Wood made and Commissioner Tschumy seconded a motion to approve the minutes of the October 29, 2015, Executive Session Regarding Agenda Item X. Follow-Up Evaluation of Executive Director's Job Performance. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

Agenda Item No. V: 2016 Commission Meeting Schedule

Executive Director Kondo presented two proposed 2016 meeting schedules for the Commission's consideration: a 12-meeting schedule and a 10-meeting schedule. It was the consensus of the Commission that meetings of the Hawaii State Ethics Commission will be held on the third Thursday of each month during 2016.

Chair DeGuzman noted that she will be out of town from March 12 to March 20, 2016, and that Vice Chair O'Neal will be out of town from March 18 to March 27, 2016.

Agenda Item No. VI: Executive Director's Report

1. Education/Training Report

Executive Director Kondo said no new ethics training sessions have been scheduled for the remainder of 2015. Ethics training sessions will be scheduled beginning in early 2016, including mandatory ethics training sessions for new legislators, department heads, etc., and general ethics training sessions for new legislative staff session hires.

## 2. Electronic Filing Update

Executive Director Kondo said that challenges continue with the improvements to our electronic filing system. The statement of work provided by Hawaii Information Consortium (“HIC”), the state’s portal manager, does not present a clear understanding of the final product, and HIC is unable to confirm that they can deliver the requested improvements.

Executive Director Kondo said he contacted Todd Nacapuy, the State Chief Information Officer, for guidance concerning the electronic filing improvement project. Mr. Nacapuy put staff in touch with Derrick Ichiyama, a liaison between state agencies and HIC, who was extremely helpful and arranged for staff to meet with members of the state’s former Information and Communication Services Division (“ICSD”). ICSD provided staff with a mock up of the redesigned system and forms that should successfully improve our electronic filing system. Executive Director Kondo said the new forms would be fillable PDFs that will work with different browsers and that the information submitted would be received directly by our office. ICSD suggested forms which would solve the “front end” issues experienced by filers. However, the “back end” issues to improve staff efficiency with handling and managing the filings have not yet been addressed. Executive Director Kondo noted that the new improved electronic filing system may not be ready by January 1, 2016.

Vice Chair O’Neal asked if the ICSD redesign of the electronic filing system would be provided free of charge. Executive Director Kondo said that although ICSD would not charge for its services, some of the money allocated by the legislature for this project was for the purpose of upgrading and performing maintenance on our computer system. Executive Director Kondo said that a question remains as to what the legislature would want us to do with the remainder of the funds.

Chair DeGuzman asked if the Campaign Spending Commission provided any information about how its electronic filing system is working. Executive Director Kondo said that Campaign Spending has provided a lot of information about its electronic filing system, which was developed by ICSD. However, the electronic filing system used by Campaign Spending is based on older technology and there may be better or different technology in use today.

## 3. October and November 2015: Guidance and Assignment Statistics

Executive Director Kondo updated the Commission on the office statistics for the months of October and November 2015. In October, staff received a total of 51 attorney-of-the-day calls, opened 56 new assignments and closed 43 assignments. In November, staff received 56 attorney-of-the-day calls, opened 43 staff assignments and closed 38 staff assignments.

#### 4. Request to Attorney General for Legal Opinion Regarding Application of Fair Treatment Law, Hawaii Revised Statutes section 84-13, to Legislators

Executive Director Kondo said that staff recently sent a letter to the Attorney General requesting an opinion regarding the duties of a legislator. Executive Director Kondo said that Representative Karl Rhoads posed a similar question to the Legislative Reference Bureau (“LRB”) earlier this year. The LRB’s response to Representative Rhoads referred to the “Hawaii Legislators’ Handbook,” which was created by the LRB and contains a list of a legislator’s duties in addition to lawmaking duties. A copy of the LRB response was provided to the Attorney General.

Vice Chair O’Neal asked when staff thought they would receive a response to their request for an opinion from the Attorney General. Executive Director Kondo said that he did not know when to expect a response, but that staff will follow up with the Attorney General if it becomes critical that staff needs the opinion.

#### 5. Delinquent Lobbyists and Lobbying Organizations

Executive Director Kondo said that staff is in the process of following up with the individuals and organizations that we are aware of that have not filed their most recent lobbying reports.

Executive Director Kondo said he would like to add an additional item to the Executive Director’s Report. Executive Director Kondo said that, for purposes of the Sunshine Law, he believed this matter could be added to the agenda for the meeting because he did not believe it is Commission business, meaning that it is not something that the Commission is going to consider or take action on now.

#### William Eric Boyd, vs. Hawaii State Ethics Commission

Executive Director Kondo said that staff received a copy of William Eric Boyd’s Application for Writ of Certiorari from the August 19, 2015, Opinion of the Hawaii Intermediate Court of Appeals (“Application”), along with a copy of the Attorney General’s response to Boyd’s Application. Staff Attorney Neuffer said that staff previously received the Intermediate Court of Appeals (“ICA”) Opinion on the Boyd case and noted that the Commission basically won on the ICA Opinion. Boyd has now filed an Application arguing that he did not know the law, that the ICA misinterpreted the Tangen case, and that the Commission did not properly schedule his hearing. Staff Attorney Neuffer said that Boyd’s attorney has seven days in which to answer the Attorney General’s response to the Application, and that the Hawaii Supreme Court will decide within 30 days whether or not it will hear the matter.

Executive Director Kondo said that Boyd’s Application asks the Hawaii Supreme Court to take another look at the ICA’s opinion. He noted that the Hawaii Supreme Court has the discretion to accept or decline a request for an appeal.

## Agenda Item No. VII: 2015 Financial Disclosure Statements

### Discussion regarding employees and board members who have not filed their 2015 Financial Disclosure Statements; Consideration of administrative action.

Staff Attorney Chang said that there are four delinquent filers who have been sent late fine notices and are accruing daily monetary penalties. Staff will continue its follow up efforts with the four delinquent filers and will determine whether to recommend further enforcement action be taken by the Commission at its meeting in January 2016.

Staff Attorney Chang said that there are several new filers that have been sent an initial warning letter and staff will also follow up with these individuals.

Vice Chair O'Neal asked if any of the four delinquent filers accruing fines have spoken with staff and offered a reason for not filing. Staff Attorney Chang said none of the four delinquent filers had offered a reason for not filing and two are chronic delinquent filers since 2014. Executive Director Kondo said that the clerical staff should be credited for their work which resulted in having only four delinquent filers to date for 2015.

## Agenda Item No. VIII: 2016 Legislative Proposals

### Discussion of policy initiatives and other amendments relating to the State Ethics Code, Hawaii Revised Statutes chapter 84, and/or the State Lobbyists Law, Hawaii Revised Statutes chapter 97, for the 2016 Legislative Session.

Associate Director Yoza reviewed a Civil Beat article reporting that Hawaii earned a D+ for anti-corruption laws this year from the Center for Public Integrity. She said that as a result of the Civil Beat article, Commissioner Wood asked if staff would be contemplating any additional changes to our lobbying law.

Associate Director Yoza said that the Commission has a number of bills that were introduced in 2015 that will be carried over to 2016, and that three of those bills pertain to lobbying. Associate Director Yoza noted that if the lobbying bills are passed by the legislature, it would be a big step in terms of improving lobbying disclosure.

Associate Director Yoza said that the Executive Director recently met with Senator Keith-Agaran, Chair of the Senate Judiciary Committee, who indicated he was interested in assembling and possibly funding a group to review and overhaul the lobbying law. Associate Director Yoza said if this happens, the Commission would then be in a good position to review Chapter 97 in its entirety.

Staff Attorney Neuffer reviewed a proposed bill to allow state employees to sit on the boards of directors of non-profit organizations in their state capacity without running afoul of our conflicts of interest law. Executive Director Kondo said that staff is aware of certain other bills that are likely to be introduced or are being carried over to 2016 that staff is preparing to address, i.e., a bill to address the teacher chaperone issue and a bill regarding the UH "tech transfer" issues. Executive Director Kondo said that staff will

meet with the various state departments and/or legislators introducing these bills to explain any State Ethics Code concerns that may affect proposed legislation.

Agenda Item No. IX: Legislators' Discretionary Allowance

Discussion regarding legislators' use of 2015 discretionary allowance accounts; Consideration of Commission action with respect to expenditures and disbursements that appear to be contrary to the Guidelines on the Use of Legislators' Annual Allowance.

Staff Attorney Chang said that the House Clerk's Office provided the requested backup documentation for select claims, and staff is in the process of reviewing the information. Staff is awaiting the requested documentation from the Senate. Staff Attorney Chang said that staff will provide the Commission with a more comprehensive status report at its meeting in January 2016.

Vice Chair O'Neal asked if the additional information received from the House Clerk's Office indicates that the expenses were valid. Staff Attorney Chang said that a brief staff review of the information provided reflects that most of the working meals appear to be valid because they were for some type of legislative business. She said that in some cases, follow up calls, reminder notices or publishing clarification of our guidelines might be considered.

Executive Director Kondo said he expects that follow up may be needed for individual legislators when the backup information provided does not clarify the disbursement. He said that the House Clerk and House leadership, as well as the Senate Clerk and Senate leadership, have been extremely cooperative in providing the requested documentation.

**ADJOURNMENT**

At approximately 10:45 a.m., Vice Chair O'Neal moved and Commissioner Gaulty seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Gaulty voting).

The meeting was adjourned at approximately 10:45 a.m.

Minutes approved on \_\_\_\_\_.