

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Thursday, May 19, 2016

Time: 10:00 am

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 S. Wood, Commissioner  
Reynaldo D. Grauly, Commissioner

State Ethics Commission Staff

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 DeGuzman.

Agenda Item No. I: Consideration and Approval of the Minutes of the April 21, 2016, Meeting

Vice Chair O'Neal made and Commissioner Grauly seconded a motion to approve the minutes of the April 21, 2016, Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. II: Consideration and Approval of the Minutes of the April 21, 2016, Executive Session (HSTA vs. Hawaii State Ethics Commission, Civil No. 15-1-2453-12 (RAN))

Commissioner Wood made and Commissioner Grauly seconded a motion to approve the minutes of the April 21, 2016 executive session. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. III: Consideration and Approval of the Minutes of the April 28, 2016, Meeting

Chair DeGuzman referred to the last paragraph on page 19 of the meeting folder, specifically the reference to "Questions No. 5 and 6." Chair DeGuzman suggested that, for purposes of clarification, the phrase "on the application form" be inserted after "6." Therefore, the phrase would read: "Questions No. 5 and 6 on the application form."

Vice Chair O'Neal made and Commissioner Grauly seconded a motion to approve the minutes of the April 28, 2016, meeting, as amended. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item IV: Associate Director's Report

Associate Director Yoza began by acknowledging that this meeting will be Staff Attorney Megan Johnson's last as she moves on to join the State Auditor's Office. The Commission and staff wished her well; she will surely be missed.

1. Update: Financial Disclosure Filings for 2016

Staff Attorney Chang reported that the office has received updates from various agencies and administrators regarding board and commission members and state employees required to file financial disclosures. Notices have been sent to continuing members and employees reminding them to file their financial disclosure forms by the May 31st deadline. Letters will be going out to new board and commission members and employees to inform them they must file their financial disclosure forms within 30 days from the date of their appointment/employment. Staff will be checking with the governor's office for a list of the most recent board and commission members who were confirmed during the last legislative session; similar letters will also be sent out to them regarding financial disclosure filing requirements.

Based on a quick, rough count just prior to the meeting, Staff Attorney Chang reported that approximately 600 individuals have filed financial disclosures since January of this year. She opined that the streamlined process has helped increase filings, and, hopefully, we will have 100% compliance by the deadline. If not, the next stage will be to determine who has not filed and, thereafter, follow up with those individuals and, ultimately, complete the process by the end of the year. Staff will

follow up with the Commission regarding any enforcement prospects.

Vice Chair O'Neal commented that he filed his disclosure using the online process, and, unlike last year, he was happy to report that he had no problems. He thanked everyone for their efforts. Commissioner Tschumy added that "Mac-people" were having problems, but those problems have also seemingly been resolved.

## 2. Update: Electronic Filing Project

Staff Attorney Chang called upon Commission Computer Specialist Patrick Lui to provide the Commission with an update regarding electronic filing of financial disclosure forms. Mr. Lui reported that the current electronic form is better than before and there are more electronic filers; however, there have been a few "flaws," such as filers getting confirmation emails but not the pdf-forms.

He is working with Enterprise Technology Services ("ETS") to get a better version of the form, which he actually got the morning of the meeting, but wants to fully test before launching. Staff Attorney Chang explained that the thought process behind the decision to withhold launching the new form at this time was to avoid implementing a change mid-way through the filing process. Mr. Lui pointed out that the current form is working, and he hopes to launch an application before the next filing period that utilizes the fully-tested form that will serve the financial disclosure process as well as processes involving other forms that are filed with this office.

Mr. Lui further reported that a Memorandum of Understanding has been signed with ETS to subscribe to Office 365, which will allow the office to migrate and upgrade the current SharePoint system in the office to SharePoint online. This process will take some time because ETS is fairly new to SharePoint, and they will have to learn how to migrate the information on our existing system to the new online system. Once that is done, filers will be able to set up an account and file their required disclosure(s). Thereafter, they can just log into their account, access their last disclosure filing, update information, and submit. Filers would not need to retype all their information as they do now.

## 3. Update: HSTA vs. Hawaii State Ethics Commission, Civil No. 15-1-2453-12 (RAN)

Associate Director Yoza stated that the Commission's Answering Brief, prepared by the Attorney General's ("AG's") office, was placed in the meeting folder for the Commissioners' information. She reported that staff had been in communication with the AG's Office about the brief and made some suggestions. The oral arguments on this matter have been scheduled for June 17, 2016, before the Honorable Rhonda Nishimura. Associate Director Yoza indicated that staff will be attending the hearing.

Commissioner Graulty inquired about the cooperation of the AG's office with Commission staff. Associate Director Yoza responded that staff exchanged a series of detailed emails with the AG's office, offering staff's thoughts about the various drafts being generated. The exchange was cordial, and the deputy AG working on the brief accepted and incorporated some of the information and suggestions. Commissioner Wood commented that the brief was very detailed, well-researched, and it appeared that a lot of work went into it.

4. Hawaii State Ethics Commission Financial Report for FY 2015-2016 (Quarter Ending March 31, 2016)

Associate Director Yoza inquired whether the Commission had any questions regarding the financial report for the quarter ending March 31, 2016. The Commissioners had no questions or comments.

5. April 2016: Guidance and Assignment Statistics

Associate Director Yoza called the Commissioners' attention to the guidance and assignment statistics for April 2016, which gives an overview and summary of the kind and amount of work handled by staff during the reporting period. The Commissioners had no questions or comments.

6. The High Road Issue 2016-2

Associate Director Yoza stated that the latest published issue of The High Road was included in the meeting folder for the Commissioners' information. Commissioner Tschumy commented that the issue looks good and provides important information.

Agenda Item No. V: 2016 Legislative Session Recap

Staff Attorney Neuffer stated that, although the staff overview in the meeting folder was self-explanatory, she would discuss particular bills if the Commissioners were so inclined. Staff Attorney Neuffer pointed out that the Commission's package of bills (the first nine listed below), as well as other bills of interest listed below, all "died." A couple bills did get some traction, for example, see comments inserted below regarding Nos. 10, 11, 13, 15, and 16:

1. H.B. No. 180; S.B. No. 443, Relating to Lobbying Contributions and Expenditures Statements
2. H.B. No. 181; S.B. No. 444, Relating to Lobbying Expenditures
3. H.B. No. 182; S.B. No. 445, Relating to Violations of the Lobbyists Law
4. H.B. No. 183; S.B. No. 446, Relating to Mandatory Ethics Training

5. H.B. No. 184; S.B. No. 447, Relating to Advisory Opinions by the State Ethics Commission
6. H.B. No. 185; S.B. No. 448, Relating to the Ethics Code
7. H.B. No. 186; S.B. No. 449, Relating to the Ethics Code
8. H.B. No. 187; S.B. No. 450, Relating to Nepotism
9. H.B. No. 188; S.B. No. 451, Relating to Conflicts of Interest
10. S.B. No. 3024, SD1, HD2, Relating to the State Ethics Commission

Staff Attorney Neuffer reported that this bill related to monies received last year for an electronic filing system. The bill re-appropriated savings from these monies to fund a lobbyist law task force that would examine and make recommendations regarding the lobbyist law to the Legislature. This bill made it to Conference Committee, and there seemed to be support for the bill; however, in the end -- for reasons unknown -- it did not go through.

11. S.B. No. 2940, SD2, Relating to Technology Transfer at the University of Hawaii

Staff Attorney Neuffer stated that this is the tech-transfer bill that would have exempted technology transfer activities in the University of Hawaii (UH) from the ethics code. Tech-transfer involves UH professors and researchers developing technology in their state capacities and then commercializing that technology. This raises all sorts of issues under the ethics code, but it is an activity that the UH and the State encourage. The exemption in the bill raised a number of constitutional issues with regard to the language in the bill. Staff will continue to work with UH to come to some resolution.

12. H.B. No. 1532, HD1, Relating to the University of Hawaii

13. H.B. No. 1713, HD2, SD2, Relating to Ethics

Staff Attorney Neuffer indicated that this is the teacher chaperone bill that provided an exemption from the ethics code for employees engaged in "extracurricular service." This was intended to address the issue of teachers accepting trips from travel agencies. The Commission presented testimony, opining that the bill was unnecessary. Although the bill died in conference, the Legislature made an adjustment to the State budget to allow \$400,000 for student travel.

14. H.B. No. 237, HD1, Relating to Ethics Training
15. H.B. No. 813, HD3, SD1, Relating to the Code of Ethics

Staff Attorney Neuffer reported that this bill would have returned the language in the fair treatment section regarding the exemption for legislators back to its original wording. The Commission strongly supported this bill. There was no testimony in opposition, and the bill should have gone through; however, it seemingly got lost in the shuffle at the end of session. The bill died in conference, but will be re-introduced next session.

16. S.B. No. 2442, SD1, Relating to Children and Youth Day

Staff Attorney Neuffer stated that this bill recognizes activities of Children and Youth Day as an official state event. Commission staff had earlier provided advice that, because Children and Youth Day was not a recognized state event, using State capitol resources to support it raised issues under the ethics code. The bill got a hearing in the Senate but not in the House and, therefore, died.

With respect to S.B. No. 3024, Chair DeGuzman asked what would happen to the appropriated monies now that the lobbyist task force will not be formed. Associate Director Yoza explained that monies are still available for the current fiscal year. Any unused portion of the appropriation will lapse at the end of June. Consequently, staff is looking at all the anticipated expenditures for the electronic filing project and intends to use or encumber funds for those expenditures. Staff will be meeting with ETS next week to talk about the expenditures.

With respect to H.B. 1713, Chair DeGuzman asked about whether the \$400,000 appropriation for student travel was for the purpose of paying for teachers. Staff Attorney Neuffer explained that the adjustment in the State budget simply says "student travel," and it popped up at the last minute. There was no explanation behind it and staff could not find one. In fact, it was just listed as a line item, and the Department of Education ("DOE") alerted Commission staff to it.

Commissioner Graulty inquired whether the appropriation was in response to the Board of Education's ("BOE") position that it was a procurement type situation that would free the teachers from the conflict. Staff Attorney Chock stated she was not sure what the appropriation was in response to. Basically, the BOE created two categories. Either the trips are private OR they are school-sponsored. Commissioner Graulty commented that \$400,000 is not going to buy a lot of trips.

Agenda Item No. VI: Stipends Offered to Department of Education Teachers by Non-Department of Education Entities

Staff Attorney Chock stated that staff continues to work collaboratively with the DOE and hopes to have the guidelines prepared for the Commission's review at the next regular meeting. She explained that she has had, and continues to have, discussions with the Senior Advisor to the Superintendent (Carla Nishimoto) and the Director of the Office of Curriculum, Instruction and Student Support (Sandy Goya).

Staff has discussed the sampling of cases received from the DOE and pointed out the issues. The DOE has offered suggestions as to how the guidelines could be made meaningful and helpful to them.

Agenda Item No. VII: Appointment of an Interim Executive Director of the Hawaii State Ethics Commission

Chair DeGuzman explained that this matter was placed on the agenda for the Commission's consideration because, even though Susan Yoza is the Associate Director, she believed it would be important and appropriate to designate an Interim Executive Director for purposes that might require, for example, a formal response on behalf of the office that should be done by the Executive Director, or any documents that might require the Executive Director's signature. The appointment of an Interim Executive Director serves that purpose. Therefore, Chair DeGuzman suggested that the Commission appoint Susan Yoza as the Interim Executive Director. Additionally, Chair DeGuzman suggested that, because she will be required to take on all the additional responsibilities of the Executive Director, Susan Yoza be given a temporary salary assignment as the Executive Director such that the differential would be paid to compensate her for the additional work.

Commissioner Grauly stated that he would support the Chair's suggestion.

Vice Chair O'Neal stated that, if possible, he would like to make the temporary salary assignment retroactively effective as of May 1, 2016, because that is when Associate Director Yoza took on the duties of the Executive Director.

Commissioner Grauly made and Vice Chair O'Neal seconded a motion to appoint Associate Director Susan Yoza as Interim Executive Director and that she be given a temporary salary assignment as Executive Director, effective May 1, 2016. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. VIII: Approval of Process to Select and Hire an Executive Director of the Hawaii State Ethics Commission

Interim Executive Director Yoza provided the Commission with an update in terms of the process. The application process was opened on May 3, 2016, with the posting of the position and application packet on the Commission's website. Also, a news release was issued on the same day. The recruitment publication began on May 8, 2016, in the newspaper. The application deadline is May 31, 2016. To date, no applications have been received. Therefore, the Commission may need to consider extending the application deadline, which Interim Executive Director Yoza recommended be a minimum of two additional weeks.

Interim Executive Director Yoza requested guidance from the Commission with regard to the fast-approaching submission deadline. She indicated that next week is

the last full week when applications will be accepted. If it appears at the end of the week that there is an insufficient pool of qualified applicants, Interim Executive Director Yoza suggested that the Commission authorize her to take the necessary steps to extend the application deadline, which would probably entail issuing another news release and, perhaps, running another ad in the paper with the new application deadline. If, instead, a good number of qualified applications are received next week, then the extension issue would be moot.

Additionally, Interim Executive Director Yoza said that there were previous discussions regarding the formation of a permitted interaction group (“PIG”); however some Commissioners have expressed reservations about forming a PIG. Therefore, the Commission’s discussion today should include whether to form a PIG and what authority it would have. By way of history, the Commission in 2010 set up a PIG, which was authorized to screen all applications and select a number of them for interviews. The then-Chair took the lead in preparing interview questions and scoring sheets (samples of which have been provided to this Commission). The 2010-Commission then conducted two rounds of interviews. The first round involved interviews of the top four applicants, followed by a second interview of the three finalists. Thereafter, the 2010-Commission voted and unanimously selected Les Kondo as the new Executive Director.

Interim Executive Director Yoza suggested that the Commission discuss today the procedure to follow in terms of screening, interviewing, and selection criteria.

Commissioner Gaulty opined that it seemed “clumsy” to have a deadline and then leave it to one person to decide whether it should be extended. He believed that if there are no applications, then it should be a vote of the Commission that extends the deadline. He indicated that applying for the Executive Director’s position is a career-impacting decision and applicants are not going to rush into it.

In response to a question by Commissioner Gaulty regarding telephone inquiries about the position, Interim Executive Director Yoza stated that there have been a couple of calls from people asking about the position and indicating they may be interested in submitting an application. Commissioner Gaulty indicated that he, too, has received some phone calls from people who wanted to know more. He believed that the Commission should stick to the deadline and, if there is a need for an extension, so be it, but he was hopeful that there will be people who will see this position as one that is important and one they would like to serve in.

Commissioner Gaulty also offered comments regarding the formation of a PIG. He stated that the Commission is a small, cohesive body – most of the members are retired. He indicated that he would not have any problem attending additional meetings for the purpose of being able to screen the applicants. He believed that giving the authority to screen applicants to two people bestows upon them more authority than everybody else, which makes him uncomfortable.



Commissioner Tschumy indicated her agreement with Commissioner Graulty. Vice Chair O'Neal also agreed with Commissioner Graulty on both points. Vice Chair O'Neal said that, during discussions regarding the last hiring process, it was pointed out that a lot of applications came in that final week. He acknowledged that as a Commissioner with a full-time job, he cannot attend meetings three times a week, but the choice of whether to attend is his to make. He believed that there would be at least three Commissioners each time a special meeting is called, and he would have the option to attend depending on his circumstances.

There was discussion regarding Vice Chair O'Neal's participation by speaker phone or Skype. Interim Executive Director Yoza pointed out that the Sunshine Law might have certain requirements that would apply to that scenario, one of them being that the location at which Vice Chair O'Neal is physically situated when participating via phone or Skype must be made accessible to the public.

In response to a question from Vice Chair O'Neal, Interim Executive Director Yoza explained that a Sunshine Law meeting notice is required for a meeting by the full Commission, including a meeting where the Commission will be conducting interviews of applicants; however, the interviews will likely be conducted in executive session.

Chair DeGuzman stated that, for purposes of clarification, it appears the Commissioners are in agreement that: (1) the Commission does not need a PIG and the entire body would be participating in all aspects of the selection process; and (2) the Commission will wait until the expiration of the May 31st deadline to see where things are at. Then, if necessary, a special meeting will be scheduled. No comments or objections were made.

Vice Chair O'Neal inquired whether the posting on the Judiciary website or with the state bar garnered any responses. Interim Director Yoza stated that the office missed the publication deadline for the HSBA Bar Journal and, although the Judiciary allowed the posting of the 2010 announcement, this time they took the position that the Judiciary's website was only for positions within the Judiciary. Rather than argue the point, staff did not pursue trying to post on their website. Staff also tried to get a posting on the website for the Department of Human Resources and Development ("DHRD"). Ultimately, those efforts were also abandoned because DHRD website notices are for executive branch positions, and DHRD requires certain strict standard language which must be included and cannot be changed, such as the position being within the executive branch and the possibility that the position may be a temporary position. Due to concerns that a DHRD-posting would cause too much confusion, the idea of such posting was dropped.

There was a posting on the COGEL website; there also were articles published in the newspaper. A Star-Advertiser reporter had indicated that her Editorial Board may run an editorial talking about the Executive Director position and the current efforts of the Commission to fill the position. Interim Executive Director Yoza indicated her

willingness to contact the reporter again and see if there would be some mention in the newspaper.

Commissioner Grauly believed that the situation is a little different than the last time, due to Les Kondo's well-published appointment as the new State Auditor. The availability of the Executive Director's position has been on KHON-TV and a lot of other different places. The eligible community out there is aware; it is just a matter of whether potential candidates want to make a career change.

Chair DeGuzman asked for clarification regarding the interview questions provided to the Commission that were prepared by the 2010-Commission, specifically, the two-page set of questions on page 90 of the meeting folder. Interim Director Yoza clarified that she believed the two-page set at page 90 were the optional questions the Commission could ask. The "core questions" start on page 85. The "Suggested Interview Questions for November 17, 2010" (at page 92) appear to be the questions used for the second round of interviews for the finalist.

Commissioner Tschumy stated that she would definitely like to hear from the staff as to what characteristics and skills they would like to see in a new Executive Director. Interim Executive Director Yoza pointed out that, during the 2010 selection process, "meet-and-greet" sessions were scheduled with staff and the finalists. The process involved each finalist coming to the office at separate times; the staff attorneys met with them and talked about "a day in the life of the Ethics Commission Office." It gave the staff attorneys the opportunity to interact with the finalists and assess "the fit" for the office. Thereafter, staff provided feedback to the Commission as they considered the final selection.

In response to a question by Vice Chair O'Neal about how the feedback was provided, Interim Executive Director Yoza explained that the staff met with the Commission as a group and each provided their impressions.

Commissioner Tschumy asked whether the "meet-and-greet" was conducted after the 2010-Commission had already selected the finalists, which Interim Executive Director Yoza confirmed was the case. Commissioner Tschumy clarified that her previous comment was intended to focus on what characteristics and skills are important to staff early on in the process. Interim Executive Director Yoza stated that, based on her best recollection, for the first round of interviews, she and Staff Attorney Neuffer sat in on the interviews and observed. Afterwards, the Commissioners talked amongst themselves, but they also asked staff for their thoughts and whatever weight they decided to give to staff's input was in their discretion. Also, when the PIG was actually screening the applications, Interim Executive Director Yoza and Staff Attorney Neuffer had discussions with the Chair about their impressions of some of the written applications prior to selecting candidates for interviews.

Commissioner Wood asked about the interview questions, specifically whether staff had any input in creating the questions. Interim Executive Director Yoza

explained that the Chair took the lead and compiled a list of questions based on suggestions given to her by other Commissioners. The Chair did ask staff for input, but Interim Executive Director Yoza could not recall if any staff suggested questions made it into the final list of questions. Also, the prior Commission used a scoring sheet that was developed by the Chair.

Vice Chair O'Neal pointed out that the agenda item specifically states: "Approval of Process to Select and Hire an Executive Director of the Hawaii State Ethics Commission," and asked if this meant the Commission actually had to approve the process at this meeting. Interim Executive Director Yoza suggested that the Commission could defer action at this point, by consensus. Chair DeGuzman indicated that the Commission will defer agenda item VIII, with no objections by the Commissioners. A discussion then ensued about "timing" of the next meeting.

Some Commissioners believed that by Friday, May 27, 2016, staff should have a pretty good indication whether an extension of the application deadline was needed. Others believed that a majority of the applications would be filed on May 31st. It was also pointed out that applicants making submission "online" would technically have up to midnight on May 31st and still meet the deadline. Therefore, the actual "count" cannot be definitively established until June 1, 2016.

Discussion was also had regarding the 6-day notice requirement imposed by the Sunshine Law. Waiting until June 1st to issue a notice would mean the earliest possible special meeting date would be June 8th. Chair DeGuzman suggested issuing the notice on May 27, 2016, for a meeting on Thursday, June 2, 2016. At that meeting, the Commission would be considering either (a) an extension of the application deadline or, (b) if sufficient applications are received, then conducting an application-screening meeting. The Commissioners agreed, therefore, that a special meeting will be held on Thursday, June 2, 2016, commencing at 10:00 a.m. Interim Executive Director Yoza will consult with the Office of Information Practices regarding the wording of the agenda and will issue the notice in a timely manner.

#### Agenda Item No. VI

There being no further business, Commissioner Gaulty made and Commissioner Wood 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 10:42 a.m.

Minutes approved on June 16, 2016.