

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

State of Hawaii

Date: Thursday, April 21, 2016  
Time: 12:15 p.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 S. Wood, Commissioner  
Reynaldo D. Grauly, 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 12:15 p.m. by Chair DeGuzman.

Agenda Item No. I: Consideration and Approval of the Minutes of the  
February 18, 2016, Meeting

Executive Director Kondo discussed non-substantive proposed revisions to the draft minutes of the February 18, 2016, Sunshine Law meeting.

Commissioner Tschumy moved and Commissioner Wood seconded a motion to approve the minutes of the February 18, 2016, Sunshine Law meeting, as amended. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Grauly voting).

Agenda Item No. II: Consideration and Approval of the Minutes of the February 18, 2016, Executive Session (Agenda Item No. VI, Attorney General Opinion Regarding Legislators' "Official Duties")

Executive Director Kondo suggested that the Commission defer consideration of proposed revisions to the draft minutes of the February 18, 2016, Executive Session regarding Agenda Item No. VI, Attorney General Opinion Regarding Legislators' "Official Duties," so that staff can clarify the proposed revisions.

The Commission by consensus deferred the matter for further consideration at a later meeting.

Agenda Item No. III: Consideration and Approval of the Minutes of the February 18, 2016, Executive Session (Agenda Item No. VIII, Commission's Enforcement Procedures)

Executive Director Kondo suggested that the Commission defer consideration of proposed revisions to the draft minutes of the February 18, 2016, Executive Session Agenda Item No. VIII, Commission's Enforcement Procedures, so that staff can clarify the proposed revisions.

The Commission by consensus deferred the matter for further consideration at a later meeting.

Agenda Item No. IV: Consideration and Approval of the Minutes of the February 18, 2016, Executive Session (Agenda Item No. IX, Interpretation of the Lobbyists Law, HRS Chapter 97)

Executive Director Kondo suggested that the Commission defer consideration of proposed revisions to the draft minutes of the February 18, 2016, Executive Session regarding Agenda Item No. IX, Interpretation of the Lobbyists Law, HRS Chapter 97, so that staff can clarify the proposed revisions.

The Commission by consensus deferred the matter for further consideration at a later meeting.

Agenda Item No. V: Consideration and Approval of the Minutes of the March 17, 2016, Meeting

Chair DeGuzman discussed non-substantive proposed revisions to the draft minutes of the March 16, 2016, Sunshine Law meeting.

Commissioner Graulty moved and Commissioner Wood seconded a motion to approve the minutes of the March 16, 2016, Sunshine Law meeting, as amended. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Graulty voting).

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

### 1. Education/Training Report

Executive Director Kondo reported that since the March 16, 2016, Sunshine Law meeting, staff conducted an ethics training session for approximately 35 Hawaii State Judiciary Fiscal Officers.

Executive Director Kondo announced that the next general ethics training session for state employees is scheduled for May 26, 2016, at the City and County of Honolulu's Mission Memorial Auditorium.

Executive Director Kondo stated that it is his understanding that the University of Hawaii President David Lassner has issued a directive to the University of Hawaii's executive managers that they will be required to complete ethics training. Executive Director Kondo stated that it is his impression that the University of Hawaii's Legal Affairs and University General Counsel's Office would appreciate that the ethics training be conducted by the Commission's staff.

### 2. Electronic Filing Update

Executive Director Kondo explained that he had hoped to preview for the Commission a prototype of the electronic filing system which is being developed by the State of Hawaii's Office of Enterprise Technology Services ("ETS"), but that ETS has not yet completed a working prototype. Executive Kondo stated that staff hopes to be able to test a prototype very soon because financial disclosure forms are due on May 31, 2016, and staff would like to have new online financial disclosure forms available for filers to use in the near future.

### 3. March 2016: Guidance and Assignment Statistics

Executive Director Kondo updated the Commission on the office statistics for the month of March 2016. In March, staff received a total of 97 attorney-of-the-day calls, opened 59 new assignments and closed 80 assignments.

### 4. William Eric Boyd vs. Hawaii State Ethics Commission, SCWC-14-0000352

Executive Director Kondo reported that the Hawaii Supreme Court had granted William Eric Boyd's petition for writ of certiorari from the August 19, 2015, opinion of the Hawaii Intermediate Court of Appeals, and that oral arguments were heard on April 7, 2016. Executive Director Kondo stated that Associate Justice Paula Nakayama recused herself for an undisclosed reason. Executive Director Kondo said that he believed Associate Justice Nakayama recused herself because she is married to Honolulu Ethics Commission Executive Director Chuck Totto. Executive Director Kondo said that Circuit Court Judge Gary Chang was assigned as substitute Associate Justice. Executive Director Kondo and Chair DeGuzman, who attended the oral arguments, discussed issues raised by the justices during their questioning of the parties' attorneys.

5. Lobbyist and Organization Reporting

6. Grants in Aid Lobbying FAQs

Executive Director Kondo stated that he would discuss lobbyist and organization reporting and Grants-in-Aid lobbying FAQs agenda items together.

Executive Director Kondo reported that staff conducted a Lobbyists Law training session on March 15, 2016.

Executive Director Kondo also reported that staff disseminated information to Grants-in-Aid (“GIA”) applicants to educate them about the Lobbyists Law.

Associate Director Yoza discussed the March 28, 2016, memorandum regarding registration and reporting requirements of the State Lobbyists Law and the March 28, 2016, FAQs for organizations applying for GIAs that were disseminated to all GIA applicants.

Agenda Item No. VII: 2016 Legislative Session/Bills

Executive Director Kondo discussed the status of S.B. No. 3024, which reduces the appropriation for an electronic filing system and reappropriates some of the funds for a task force to examine the Lobbyists Law.

Executive Director Kondo reported that H.B. No. 1713, which exempts employees engaging in “extracurricular service” from the State Ethics Code under certain conditions, was being heard in a conference committee on April 21, 2016. Executive Director Kondo explained that H.B. No. 1713 passed out of the Senate, the Senate passed the bill out in an amended form, and the House re-referred the bill to add the House Committee on Finance. Executive Director Kondo, Commissioner Graulty, and a member of the audience, Mr. Brian Yamane, Legislative Liaison for the House, commented on the status of the bill.

Executive Director Kondo discussed the status of H.B. No. 813, which restores the exception for legislators in the fair treatment law to the pre-2012 amendment language. Executive Director Kondo reported that the bill is awaiting assignment to a conference committee.

Executive Director Kondo discussed the status of S.B. No. 2940, relating to technology transfer at the University of Hawaii. Executive Director Kondo reported that staff has been working with the University of Hawaii on this bill and has continued to work with the University of Hawaii and Office of the Attorney General on acceptable language to keep the bill alive.

Agenda Item No. VIII: Financial Disclosure Statements: Reporting Interest in Personal Residence

***[Deferred from March 17, 2016, Meeting]***

Executive Director Kondo discussed staff's recommendation that was deferred from the March 16, 2016, Sunshine Law meeting, for the Commission to amend its interpretation of HRS section 84-17(f)(5) and require reporting of: (1) the value of the consideration received to transfer a filer's personal residence or paid to acquire a filer's personal residence; and (2) the name of the person receiving or furnishing the compensation relating to the acquisition and sale of a filer's personal residence on financial interests disclosure statements.

Commissioner Tschumy asked why staff believes this additional information must be reported.

Executive Director Kondo stated that the financial disclosure law only exempts from disclosure the street address and tax map key number of a filer's personal residence(s). Executive Director Kondo expressed his opinion that the Commission is exempting disclosure of information that is not expressly exempted in the financial disclosure law and that he does not believe that the Commission has the authority to create exceptions to the disclosure requirements that are not articulated in the statute. Executive Director Kondo stated that reporting the consideration and the names of the buyer and seller is consistent with the purpose of the financial disclosure requirement, to provide transparency into a filer's financial interests so that public confidence in state government is maintained.

Commissioner Tschumy expressed her belief that requiring reporting of such additional information is overreaching and unnecessarily intrusive.

Executive Director Kondo reiterated his opinion that the Commission is responsible for interpreting and administering the financial disclosure law and did not have the authority to create exceptions to the disclosure requirements that are not stated in the statute. Executive Director Kondo stated that if the Commission, or someone else, believes that the sales price and the names of the seller and purchaser of a filer's personal residence(s) should also be exempted in the financial disclosure law, the Commission, or someone else, should introduce legislation to create such an exemption.

Vice Chair O'Neal asked why the Commission has not required reporting of the sales price and the names of the seller and purchaser of a filer's personal residence.

Executive Director Kondo responded that he does not know why the Commission has not been requiring reporting of the sales price and the names of the seller and purchaser of a filer's personal residence, but that perhaps it is because the Commission has interpreted the exemption from reporting the street address and tax map key number of a filer's personal residence to generally exempt from disclosure any information pertaining to a filer's personal residence(s).

Associate Director Yoza stated that, historically, staff's interpretation of the intent of the statute was to exempt from disclosure any information pertaining to a filer's personal residence.

Chair DeGuzman noted that the language of the financial disclosure law does not expressly exclude from reporting the sales price and the names of the seller and purchaser of a filer's personal residence. Chair DeGuzman asked Executive Director Kondo to confirm that he recommends that the Commission amend the financial disclosure forms and instructions to be consistent with the language of the statute.

Executive Director Kondo stated that he recommends that the Commission amend its interpretation of HRS section 84-17(f)(5) to require reporting of: (1) the value of the consideration received to transfer a filer's personal residence(s) or paid to acquire a filer's personal residence(s); and (2) the name of the person receiving or furnishing the compensation relating to the acquisition and sale of a filer's personal residence(s) on financial disclosure forms, and to amend the financial disclosure forms and instructions accordingly.

Vice Chair O'Neal asked how the amendments to the financial disclosure forms will be communicated to filers.

Executive Director Kondo stated that staff would amend the financial disclosure forms and instructions. Discussion held by staff and Commission regarding the timing of amending the financial disclosure forms and how to notify filers of the amendments to the forms.

Commissioner Wood moved to amend the Commission's interpretation of HRS section 84-17(f)(5) to require reporting of: (1) the value of the consideration received to transfer a filer's personal residence(s) or paid to acquire a filer's personal residence(s); and (2) the name of the person receiving or furnishing the compensation relating to the acquisition and sale of a filer's personal residence(s) on financial interests disclosure statements. Executive Director Kondo recommended that the motion be restated to amend the Commission's interpretation of HRS section 84-17(f)(5) to only exclude from reporting the street address and tax map key number of a filer's personal residence(s). Commissioner Graulty seconded with the amendment that prior notice be given to filers that the Commission will be amending its interpretation of HRS section 84-17(f)(5) and that the financial disclosure forms will be amended accordingly.

Commissioner Wood withdrew her motion.

Commissioner Wood moved and Commissioner Graulty seconded a motion to amend the Commission's interpretation of HRS section 84-17(f)(5) to require reporting, with respect to a filer's personal residence(s), all information specified in HRS section 84-17(f)(5), and to only exclude from reporting the street address and tax map key number of a filer's personal residence(s), effective as of the date notice is provided to filers. The motion carried (DeGuzman, O'Neal, Wood, and Graulty voting aye; Tschumy voting nay).

Agenda Item No. IX: Stipends Paid to Department of Education Teachers from Non-Department of Education Entities

***[Deferred from October 29, 2015, Meeting]***

Staff Attorney Chock stated that staff has been working with the Department of Education (“DOE”) to obtain additional information regarding different types of stipends teachers receive. The goal is to provide guidelines to the DOE regarding the application of the State Ethics Code and alert the DOE to specific ethics problems that may arise in situations involving stipends.

Staff Attorney Chock discussed examples of stipends and the ethics issues, i.e., whether the acceptance of a stipend may be a prohibited gift, an unwarranted benefit, prohibited “additional compensation” for performing one’s official duties, or a conflict of interest. In staff’s view, the matter of when a teacher performs a particular activity for which a stipend is paid is not necessarily relevant in determining whether acceptance of the stipend is consistent with the State Ethics Code.

Staff Attorney Chock stated that staff planned to meet with the DOE in the next week and would present draft guidelines at the next Commission meeting.

Commissioner Tschumy moved and Commissioner Gaulty seconded a motion to amend the Sunshine Law meeting agenda pursuant to Hawaii Revised Statutes section 92-7(d) by adding a discussion of the Hawaii State Teachers Association’s appeal to the Circuit Court of the Commission’s Order Denying Hawaii State Teachers Association’s Petition for Declaratory Order or Alternatively for a Contested Case for the purpose of updating the Commission on the status of HSTA vs. Hawaii State Ethics Commission, Civil No. 15-1-2453-12 (RAN). The item was not of reasonably major importance and no action by the Commission was requested. The motion carried unanimously (DeGuzman, O’Neal, Tschumy, Wood, and Gaulty voting).

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

At approximately 1:40 p.m., Vice Chair O’Neal moved and Commissioner Gaulty seconded a motion to recess the Sunshine Law meeting and to convene an executive session pursuant to Hawaii Revised Statutes 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. The motion carried unanimously (DeGuzman, O’Neal, Tschumy, Wood, and Gaulty voting).

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

The Commission met in Executive Session.

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

At approximately 1:55 p.m., Vice Chair O'Neal moved and Commissioner Tschumy seconded a motion to adjourn the executive session and return to the Sunshine Law meeting. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Gaulty voting).

Agenda Item No. X: Executive Director's Performance Evaluation

Commissioner Gaulty moved and Commissioner Tschumy seconded a motion to defer discussion regarding the criteria and process to evaluate the Executive Director's job performance, including the possible consideration of a permitted interaction group pursuant to section 92-2.5(b) to facilitate the Commission's evaluation. The motion carried unanimously (DeGuzman, O'Neal, Tschumy, Wood, and Gaulty voting).

Agenda Item No. XI: Adjournment

At approximately 1:58 p.m., Commissioner Gaulty moved 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 approximately 1:58 p.m.

Minutes approved on May 19, 2016.