

SUNSHINE LAW MEETING



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

NOTICE OF MEETING OF THE HAWAII STATE ETHICS COMMISSION

Date: May 18, 2017
Time: 10:00 a.m.
Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

A G E N D A

CALL TO ORDER

- I. Consideration and Approval of the Minutes of the April 20, 2017, Meeting

- II. Request for Advisory Opinion

Request for Advisory Opinion as to whether the Fair Treatment law, Hawaii Revised Statutes section 84-13, permits a member of a state board or commission to submit an application to the same board/commission for a government benefit, where issuance of the benefit is not simply ministerial.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes sections 92-5(a)(8) and 84-31(f) to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

III. Executive Director's Report

1. Education / Training Report
2. Guidance and Assignment Statistics
3. 2017 Financial Disclosures
4. Electronic Filing System Update
5. Personnel and Staffing Update (Personnel Evaluations)

The Hawaii State Ethics Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of employees or 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.

6. Miscellaneous Office Projects / Updates

IV. Legislative Update

Update on bills that passed the Legislature, including:

- a. Ethics Commission bills:
 - i. [HB508, HD1, SD1, CD1](#): Increases fines for violations of the ethics code, Hawaii Revised Statutes chapter 84. Clarifies the ethics code's language regarding the assessment of fines in the context of a settlement agreement.
 - ii. [HB511, HD1, SD1, CD1](#): Increases fines for violations of the lobbyists law, Hawaii Revised Statutes chapter 97. Amends the definitions of "expenditure," "lobbyist," and "lobbying." Allows a person who employs a lobbyist to file a notice of termination. Amends reporting requirements for reports covering special sessions of the legislature. Requires that lobbyist registration statements be posted on the state ethics commission's website within a reasonable time after filing and remain on the website for at least 4 years.
 - iii. [HB852, HD2, SD1, CD1](#): Increases fines for failures to timely file financial disclosure statements. Allows the state ethics commission

to use e-mail or first-class mail to notify those individuals who fail to timely file their financial disclosure statements. Allows the commission to publish the names of individuals who fail to file their financial disclosure statements by the statutory deadline.

b. Other bills:

- i. [HB425, HD1, SD3, CD1](#): Makes certain sections of the State Code of Ethics inapplicable to technology transfer activities sponsored by University of Hawaii if the activities comply with the regulatory framework and research compliance program approved by the Board of Regents. Requires the Board of Regents to submit written status reports. Ethics Commission opposes.
- ii. [HB847, HD1, SD1, CD1](#): Establishes the Innovation and Commercialization Initiative Program to expressly give the University of Hawaii the legal authority to create, promote, and participate in new economic enterprises and expand workforce opportunities based on inventions and discoveries generated by or at the University. Ethics Commission submitted comments.
- iii. [HB110, HD1, SD2, CD1](#): Makes appropriation for the public employment cost items of and cost adjustments for employees of the various legislative agencies. Appropriates funds.
- iv. [HB165, HD1, SD2, CD1](#): Relating to Public Meetings. Makes some changes to the Sunshine Law, including requiring board packets to be made available for public inspection prior to board meetings. The Ethics Commission has not testified on this measure, but would be affected if it is signed into law by the Governor. Most of the proposed changes – such as making board packets available in advance to the public – are things the Commission already does.

V. Administrative Rules

A public discussion of how the Commission can best fulfill its mission to promote integrity in state government through administrative rulemaking and/or legislation. The discussion will cover issues pertaining to the Commission's powers and duties under the Hawaii State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84, the Hawaii Lobbyists Law, HRS chapter 97, and/or other issues falling within the Commission's constitutional mandate.

The Commission may discuss whether to draft proposed administrative rules on one or more topics to interpret existing laws, and/or whether the Commission should instead seek legislative changes on particular topics.

Anticipated topics may include, but are not limited to, rulemaking relating to the following:

1. Fair treatment law (HRS section 84-13):
 - a. Whether frequent flyer miles accrued by state officials may be used by those officials for personal travel;
 - b. Whether using one's state position to retaliate against another individual (e.g., by denying government services) constitutes a violation of the fair treatment law;
 - c. The circumstances under which state officials may serve as officers, directors, and/or employees of non-profit organizations that are affiliated with (or exist to benefit) the official's state agency;
 - d. Whether the prohibited use of state resources for private business purposes includes campaigning for political office and fundraising, except for state-sponsored fundraising activities.
2. Gifts law (HRS section 84-11) and Gifts reporting law (HRS section 84-11.5):
 - a. Whether lobbyists should be prohibited from offering any gifts to lawmakers (and/or whether legislators should be prohibited from receiving such gifts);
 - b. Whether rules should categorically include (or exclude) certain kinds of gifts or gifts from certain classes of donors;
 - c. Whether there should be guidelines for calculating the value of gifts that are reported on gifts disclosure statements.
3. Conflicts of Interests law (HRS section 84-14):
 - a. Whether the definition of "financial interest" should exclude serving as an unpaid board member of an "affiliated" nonprofit organization in a state official's state capacity.

- b. Whether a state board/commission member who has a job in the private sector is prohibited from taking official action affecting a client.
 - c. Whether the prohibition against assisting or representing others for pay before one's agency precludes an employee from representing her/himself before the employee's agency.
4. Disclosure of Financial Interests (HRS section 84-17):
- a. Guidelines for determining who must file a financial disclosure statement, the filing process, and the enforcement procedures for delinquent or late filers.
 - b. Clarification of certain interests that must be reported on a financial disclosure statement; interests that need not be reported; and reporting periods.
5. Restrictions on Post Employment (HRS section 84-18):
- a. Clarification of the prohibition against representing someone for pay on a matter before "the state agency or subdivision thereof" that a former employee actually served.
 - b. Clarification of the term "represent" under the post employment law.
6. Enforcement proceedings:
- a. Whether the Commission should adopt different procedures for contested case hearings;
 - b. The factors used by the Commission in determining whether a resolution of a case is made public and whether a case should be settled for a particular administrative fine.

*Please note that any individual may submit written testimony in advance of the meeting and/or submit oral testimony at the Commission meeting. Please send written comments to ethics@hawaiiethics.org.

VI. Adjournment

SUNSHINE LAW MEETING
AGENDA ITEM I

MINUTES: CONSIDERATION AND APPROVAL OF THE MINUTES OF THE APRIL
20, 2017 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the April 20, 2017 Hawaii State
Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, April 20, 2017
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

Reynaldo D. Gaulty, Chair
David O'Neal, Vice Chair
Susan N. DeGuzman, Commissioner
Ruth D. Tschumy, Commissioner
Melinda S. Wood, Commissioner

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee M. Campbell, Staff Attorney
Pat Mukai, Secretary

CALL TO ORDER

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

Agenda Item No. I: Consideration and Approval of the Minutes of the March 17, 2017, Meeting

The draft minutes for March 17, 2017, stated that Executive Director Gluck planned to ask the Attorney General's office about guidelines for the censorship of comments posted on a state Facebook page. Commissioner DeGuzman asked Executive Director Gluck whether he contacted the Attorney General's office about this.

Executive Director Gluck replied that he spoke to Deputy Attorney General Robyn Chun, who provided him with the State's social media policy. Commissioner DeGuzman expressed concern about the use of staff resources to maintain a Facebook page in addition to a website. Executive Director Gluck said that he was more inclined to spend staff time working to make our website more helpful.

Commissioner Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the March 17, 2017, Sunshine Law meeting. The motion carried unanimously (Grauly, DeGuzman, Tschumy, and Wood voting; O'Neal abstaining).

Agenda Item No. II: Consideration and Approval of the Executive Session Minutes of the March 17, 2017, Meeting

Commissioner Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the March 17, 2017, Executive Session. The motion carried unanimously (Grauly, DeGuzman, Tschumy, and Wood voting; O'Neal abstaining).

Agenda Item No. III: Executive Director's Report

1. Education / Training Report

Executive Director Gluck said that staff has a very busy training schedule. He referred to upcoming training sessions on the neighbor islands and on Oahu in Kapolei.

2. Guidance and Assignment Statistics

Executive Director Gluck said that staff is busy with requests for guidance and other matters and is also trying to close out many cases.

3. 2017 Financial Disclosures

Executive Director Gluck said that May 31 is the filing deadline for financial disclosure filers (other than legislators). He said about a third of the required disclosure forms have already been received.

4. Financial Report for FY2016-2017 (Third Quarter Ending March 31, 2017)

a. Attachment 1: Fiscal Year 2016-2017 Third Quarter Report

b. Attachment 2: Fiscal Year 2016-2017 Projected Year-End Report

Executive Director Gluck said that the office is well under budget for the current fiscal year due to the following: (1) vacancies for the Executive Director's position for a month and for a staff attorney position for three months; (2) unused interstate travel

funds; (3) less than anticipated office rent; and (4) steps taken by staff to reduce costs for the office where possible. These savings will result in a substantial amount of money that will lapse to the general fund if not used. Executive Director Gluck explained that staff is planning to use some of this money to pay for: (1) new computers; (2) re-cabling work to convert the copy room into an office; (3) office furniture; and (4) airline tickets for the COGEL conference in December. Executive Director Gluck said that even with these expenditures, a substantial amount of unspent money will lapse back to the general fund. Executive Director Gluck said he felt the office should be frugal with the money received from the legislature and should return what is not needed. At the same time, he has asked staff to inform him if there are other things needed for the office that can be purchased now.

Commissioner DeGuzman expressed concern that if budget funds are not spent, it may signal that the Commission does not need the funds it has been given and the legislature may cut the Commission's budget. Executive Director Gluck said that the Commission's budget for the next fiscal year has already been approved by the legislature. He also said that if asked about this at a budget hearing, he will explain that much of the savings was due to staff vacancies and the office is now fully staffed. Commissioner DeGuzman said that if money is available, staff should get whatever is needed now such as upgraded printers, recording devices, and laptop computers. Executive Director Gluck explained that staff has been looking at these needs and is planning to purchase some of these items.

Chair Graulty asked whether money could be used to pay for anticipated neighbor island trips. Executive Director Gluck explained that staff has purchased airline tickets for neighbor island training sessions for the next fiscal year and will be purchasing airline tickets for the COGEL conference. He said that the Commission's budget for the next fiscal year also includes \$12,000 for interstate travel and \$8,500 for intrastate travel. Executive Director Gluck said he felt the Commission has a solid budget for the next fiscal year.

5. Electronic Filing System Update

Executive Director Gluck said that by April 24, 2017, staff should learn which software platform is going to be procured by ETS for its login portal system. The Commission's contractor can then move ahead with any adjustments to meet the new system. Executive Director Gluck said there is still enough money under the Commission's contract to cover this work and staff is trying to move ahead with the project as quickly as possible.

6. Ethics Awards

Executive Director Gluck showed the Commissioners a draft of the award certificate for the House and the Senate. He said he planned to deliver both awards and issue a press release on Monday, April 24, 2017.

Vice Chair O'Neal asked whether any consideration was given to issuing an award certificate to each member of the House and Senate. Executive Director Gluck said that he could provide an individual certificate to any legislator who wants one. He said that similar awards would be given to other state agencies who achieve 100% compliance with the financial disclosure filing requirement and because there are 1,900 filers, he was a little concerned about the administrative burden of issuing individual certificates.

7. Miscellaneous Office Projects / Updates

Executive Director Gluck explained that he was implementing a new office policy to allow a de minimis use of office resources by the attorneys when engaged in pro bono services. He said the policy is modeled on a pro bono policy implemented by the Department of Commerce and Consumer Affairs for its attorneys.

Executive Director Gluck explained that different types of pro bono cases can be obtained from organizations such as the Legal Aid Society of Hawaii and Volunteer Legal Services Hawaii. Attorneys who take cases from these organizations are covered by the organizations' malpractice policies. He added that the Commission's attorneys would be prohibited from performing pro bono case work that conflicts with the work they perform for the Commission. The attorneys' pro bono work would be done on their own time.

Vice Chair O'Neal asked about the general rule that state resources cannot be used for private business. Executive Director Gluck explained that this is the general rule, but the Hawaii Supreme Court has also adopted a policy encouraging attorneys to engage in pro bono work. Executive Director Gluck said that agencies may allow a de minimis use of state resources by attorneys (such as the use of an office computer after work hours) for pro bono work because facilitating pro bono legal services by attorneys serves an important state purpose.

Executive Director Gluck said that he felt the new office policy on pro bono services was an administrative matter within his purview, but he wanted the Commission to be aware of the policy. Vice Chair O'Neal said that he agreed with having a written policy in place for the Commission's office.

Agenda Item No. IV: Legislative Update

Update on bills upon which the Ethics Commission has testified, including: (a) Bills introduced at the request of the Ethics Commission, and (b) Other bills. (See complete list of bills and their descriptions on the Commission's public meeting agenda for April 20, 2017.)

Executive Director Gluck explained that three of the Commission's substantive bills are still alive: (1) HB 508, which doubles the fines for ethics violations; (2) HB 511, which makes changes to the Lobbyists Law; and (3) HB 852, which makes it easier for the Commission to notify delinquent filers and increases financial disclosure fines. Executive Director Gluck said that HB 852 and HB 110 were scheduled for a conference committee hearing that afternoon. HB 110 provides supplemental funding for the legislative agencies, including the Commission. Staff is waiting for conference committee hearings to be scheduled for HB 508 and HB 511. Executive Director Gluck said that he communicated with the House and Senate Judiciary chairs about the bills and he was cautiously optimistic.

Chair Grauly asked about HB 511 and the number of bills lobbied upon which would trigger the lobbyist registration requirement. Executive Director Gluck replied that the bill does not have a specific number in it, but he informed the committee chairs that we recommend something in the range of three to five bills. He also suggested that if the conference committee cannot agree upon a number, they can excise the provision relating to the number of bills lobbied upon. He said that although he would like to see this provision remain in the bill because it is good public policy, he would rather it be taken out so that the bill can be passed.

Executive Director Gluck also reported on the status of HB 425 and HB 847, relating to UH technology transfer. He said that both bills are still alive and appear to be headed to conference committee.

Finally, Executive Director Gluck discussed HB 165, which makes changes to the Sunshine Law. He said that much of what is required by the bill, such as making board packets available to the public, is already being done by the Commission.

Agenda Item No. V: 2017 COGEL Conference – Toronto, Ontario, Canada

Executive Director Gluck informed the Commission that he, Associate Director Yoza, and Staff Attorneys Chock and Campbell will attend the COGEL conference. He said there is sufficient funding for any interested Commissioners to attend the conference. He asked that Commissioners inform staff if they would like to attend the conference.

Agenda Item No. VI: Agenda topics for May meeting

Executive Director Gluck said that he would like to have a substantive discussion about the Commission's administrative rules at the May meeting. He said that staff has discussed the need for rules relating to gifts, fair treatment, lobbying, and updated contested case hearing procedures. He explained that he will either have a draft set of administrative rules for the Commission's review or he will ask the Commission to have a substantive discussion about the kinds of policies it would like to see in its administrative rules. He said that the Commission will have to hold a public hearing on the proposed rules and the rules will have to be reviewed by the Attorney General's office before they are submitted to the Governor for approval.

Commissioner DeGuzman felt that good administrative rules were needed, especially for the Commission's contested case hearings.

For the Commissioners' information only, Executive Director Gluck showed the Commission a new quick guide on gifts that staff drafted. Commissioners Wood and DeGuzman both complimented the new guide. Executive Director Gluck said that the guide is still in draft form and he will be going over the language to make sure it is sufficiently clear, especially with respect to the \$200 threshold for the gifts reporting requirement.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 10:29 a.m., Commissioner Tschumy made and Vice Chair O'Neal seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Grauly, O'Neal, DeGuzman, Tschumy, and Wood voting).

The meeting was adjourned at 10:29 a.m.

Minutes approved on: _____

SUNSHINE MEETING
AGENDA ITEM III
EXECUTIVE DIRECTOR'S REPORT
May 18, 2017

I. Education / Training Report

a. Recently held trainings:

i. General Ethics Training

Department of Agriculture
May 10, 2017
1:30 – 3:00 p.m.
33 attendees

ii. General Ethics Training

Department of Agriculture
May 17, 2017
1:30 – 3:00 p.m.
16 attendees (anticipated)

b. Upcoming trainings:

i. General Ethics Training

Hale Pono (DHHL), Kapolei
May 24, 2017
10:00 – 11:30 a.m.

Second session:
1:00 – 2:30 p.m.

ii. General Ethics Training

University of Hawaii at Hilo, UCB 100
May 25, 2017
10:00 – 11:30 a.m.

iii. General Ethics Training

Department of Agriculture
June 2, 2017
1:30 – 3:00 p.m.

iv. Mandatory Ethics Training

Ethics Commission Conference Room
1001 Bishop St., Suite 970
June 7, 2017
12:00 – 2:00 p.m.

v. General Ethics Training

University of Hawaii Maui College
June 9, 2017
10:00 – 11:30 a.m.

vi. General Ethics Training

Kalanimoku Building
June 19, 2017
1:00 – 2:30 p.m.

vii. General Ethics Training

Kauai – Fifth Circuit Courthouse
June 30, 2017
10:00 – 11:30 a.m.

II. Guidance and Assignment Statistics – April 2017

a. Attorney-of-the-Day Type Inquiries: 68

b. New Assignment Statistics

Complaint	9
Gifts/Invitations/Travel	13
Guidance	8
Judicial Selection Comm'n	1
Project	1
Record Request	3
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Total New Assignments	35

c. Closed Assignment Statistics

Complaint	8
Gifts/Invitations/Travel	7
Guidance	7
Record Request	1
Other	1
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Total Closed Assignments	25

III. 2017 Financial Disclosures

Deadline to file: May 31. Numbers current as of May 8.

- a. Board/Commission members: 448 received (out of 838 total)
- b. Public state officials (excluding legislators): 47 received (out of 84 total)
- c. Confidential state officials: 517 received (out of 795 total)

IV. Electronic Filing System Update

Staff Attorney Chang, Computer Specialist Lui, and Executive Director Gluck continue to work with our contractor, IWMENTOR, and with the Office of Enterprise Technology Services (“ETS”) to complete this project expeditiously. ETS is still finalizing the procurement process with the chosen vendor, but IWMENTOR has already begun transitioning the forms to the new system and has provided Commission staff with a beta version of the gifts disclosure form for testing.

V. Personnel and Staffing Update

Executive Director Gluck and Associate Director Yoza are in the process of conducting evaluations of Commission staff members. Executive Director Gluck will discuss the process with the Commission and will seek the Commission’s feedback regarding the process for staff salary changes and the process for evaluating the Executive Director.

VI. Miscellaneous office projects/updates

- a. We are in the process of procuring new furniture for the Investigator’s office; the copier will be removed shortly.
- b. The Commission’s new Gifts Guide (similar in format to the new 1-page guide for new employees) has been finalized and is now available on the Commission website.
- c. Commission staff continues to add new material to the Commission website and to send out educational materials via Twitter.
- d. Executive Director Gluck has requested final approval for the Commission’s records retention policy from the Speaker of the House and Senate President.
- e. New issue of “The High Road” published April 26.

SUNSHINE LAW MEETING
AGENDA ITEM V

ADMINISTRATIVE RULES

A public discussion of how the Commission can best fulfill its mission to promote integrity in state government through administrative rulemaking and/or legislation. The discussion will cover issues pertaining to the Commission's powers and duties under the Hawaii State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84, the Hawaii Lobbyists Law, HRS chapter 97, and/or other issues falling within the Commission's constitutional mandate.

Attachment 1: Discussion Regarding Proposed Administrative Rules

Agenda Item V: Discussion Regarding Proposed Administrative Rules
May 18, 2017

The following notes are intended to highlight certain areas for discussion during the May 18, 2017 Commission meeting. These notes represent the staff's recommendations for issues that the Commission may wish to consider as it contemplates the promulgation of administrative rules; each issue represents a possible rule (or series of rules) that the Commission could consider proposing for inclusion. Inclusion of an item below does not signify that the enabling statutes and/or existing administrative rules are vague or otherwise unlawful, but merely indicates the staff's suggestion that the Commission consider discussing the issue.

I. Rules relating to HRS § 84-3, Definitions.

- A. Rule addressing the definition of "employee": how to address individuals working pursuant to contracts with the State.

I. Rules relating to HRS § 84-11, Gifts

- A. Rule setting forth the general framework for determining whether a gift is allowable. Factors:

1. Donor's relationship to recipient
2. Value
3. State Purpose

- B. Rule setting forth categories of gifts / donor relationships that are nearly always prohibited. Some possibilities:

1. Gifts from a party (or party's agent) to an agency that is hearing, has recently heard, or will hear a case involving that party/agent.
2. Gifts from a party (or party's agent) to an employee of a regulating agency or agency issuing a permit
3. Gifts from a state vendor or contractor to an employee of an agency who procures goods or services from, or otherwise takes official action affecting, that vendor or contractor.
4. Gifts from a lobbyist (or entity represented by lobbyist) – essentially any individual or entity required to file an expenditure report under HRS § 97-3 – to any employee of the legislature or an agency employee/official engaged in rulemaking.

- i. Exceptions? Gift or lei on opening day, if value in 2017 is less than \$25?

- C. Rule setting forth categories of gifts / donor relationships that are nearly always allowable (under both gifts law and fair treatment law) because they are permissible or do not constitute a “gift.” Some possibilities:
1. Gifts from the federal government, including payment of travel expenses and events sponsored by the federal government.
 2. Gifts from membership organizations where State of Hawaii is a member and pays membership dues, and membership organization offers travel to state officials.
 3. Gifts from organizations where State has agreed to accept a grant from the organization or where State has a contractual relationship with the organization and the grant/contract specifically includes travel paid for by grantor/contractor.
 4. Travel expenses for chaperones on school trips.
 5. Modest amounts of food and beverage at a one-time (or infrequent) event sponsored by another government entity, where state official attends as a protocol function.
 6. Gifts from family members/long time personal friends if they have no business before an employee’s state agency?
 7. Gifts of aloha?

II. Rules relating to HRS § 84-11.5, Reporting of gifts.

- A. Rule setting forth categories of items that do not need to be reported as gifts, including those listed above.
- B. Rule allowing for electronic submission of forms.
- C. Rule specifying that gift disclosures are all public, but filer’s personal contact information would not be made public.
- D. Rule setting forth guidelines for how to calculate the value of the gift. One possibility: value of gift received based on either the face value or the market value, whichever is higher. (Face value for tickets to events, unless sought-after performance where market value is higher.) Similarly, value of item received is full price, even if the recipient doesn’t take full advantage of the gift (e.g., if someone goes to an event and doesn’t eat, value is still the full ticket price).

III. Rules relating to HRS § 84-13, Fair treatment.

- A. Rule clarifying that gifts rules are still restricted by fair treatment law. In other words, notwithstanding rules above on gifts that are presumptively allowable, the Fair Treatment law continues to prohibit solicitation or acceptance of gifts where value is excessive and the gift was awarded because of an employee's state position.
- B. Rules clarifying the meaning of "unwarranted benefit." Should the Fair treatment law prohibit:
 - 1. Using one's state position to deny government services, or to make government services more difficult to access, without a legal basis, in retaliation against a member of the public? Other reasons?
 - 2. Personal use of frequent flyer miles accrued on state business where those frequent flyer miles cannot otherwise be used for state business?
 - 3. Receiving an honorarium for speaking (or otherwise performing some official act) in one's official capacity.
 - 4. Receiving a door prize or some other item of more than nominal value (e.g. iPad, but not a tote bag), provided that the item may be accepted on behalf of the State and given over to the State.
- C. Rules clarifying state officials' service to an affiliated non-profit organization. One possibility: where a state official serves as an officer, director, or volunteer of a non-profit whose sole purpose is to assist that official's state agency (e.g., Friends of the Library, Friends of the Waikiki Aquarium), the Fair Treatment law allows the state official to take action affecting both the non-profit and the agency so long as the official receives no salary for the official's work with the non-profit agency.
- D. Rule clarifying that requesting a gift, special treatment, etc. and receiving that gift, special treatment, etc. are separate violations.
- E. Rule clarifying that for HRS § 84-13(3), private business purpose includes campaigning for political office and fundraising, but exception for state-sponsored fundraising activities (e.g., AUW).

IV. Rules relating to HRS § 84-14, Conflicts of interests.

- A. Define "financial interest" – should it exclude a board position in an "affiliated" non-profit organization, where state official sits on the board in her/his state capacity and isn't paid for the work with the non-profit?
- B. Clarify HRS § 84-14(a):
 - 1. whether a board/commission member who has a job in the private sector (e.g., as an attorney, architect, accountant, etc.) is prohibited from taking official action affecting a client.

2. Whether under HRS § 84-14(a), an employee or board member with a professional license or certification (i.e., law license, accountant certification, architect license) is prohibited from taking action in their state employment affecting their profession as a whole.
- C. Clarify HRS § 84-14(b) – meaning of “reason to believe”
- D. Clarify HRS § 84-14(d) – “assist or represent” means assisting or representing someone other than yourself; representation rule does not preclude an individual from representing her/himself (or a company s/he controls) before the agency (e.g., by contracting with the agency).

V. Rules Relating to HRS § 84-15, Contracts.

- A. Rules defining who is responsible for violations of this law.
- B. Rules clarifying what it means to participate in the contracting matter.

VI. Rules relating to HRS § 84-17, Requirements of disclosure (financial disclosure statements).

- A. Rule setting forth guidelines for determining who has to file, filing process (e-filing), and enforcement process for late filers.
- B. Rule clarifying HRS § 84-17(f)(2): rules regarding ownership interests in businesses, stocks/mutual funds.
- C. Rule clarifying that there is no need to re-file disclosure statement if state official is simply changing positions within the state unless the individual goes from being a private filer to a public filer.
- D. Remove unconstitutional language re: requesting documents, and update language to track more recent statutory language.
- E. Rule providing that contact information – home address, etc. – remains confidential, even for “public” filers.
- F. Rule clarifying that filer need not disclose retirement accounts, social security, tax deferred compensation, or tax-deferred educational savings accounts, such as 529, and-or tax-deferred health savings account (“HSA”).
- G. Rule clarifying that, while filer does not need to disclose the street address of personal residence, filer does need to disclose the fact of ownership (see HRS § 84-17(f)(5)).

- H. Rule regarding whether a department head (who already is required to file a disclosure) must also file a disclosure if serving ex officio on a state board/commission.
- I. Rules regarding items in a trust (whether items within the trust must be reported), rental income (whether rental income is for services rendered).
- J. Rules regarding sole proprietorship (whether individual must disclose all income to the sole proprietorship or only what the owner took in income).
- K. Rules clarifying reporting periods, including rule clarifying the time period covered for reporting income (previous calendar year) vs. time period covering all other categories.

VII. Rules relating to HRS § 84-17.5, Disclosure files; disposition.

- A. Rules implementing statutory requirement that financial disclosures be destroyed six years after the individual leaves office. If that individual comes back to state office, does the six-year clock start over again (such that the earlier records are destroyed after the person leaves office the first time)?

VIII. Rules relating to HRS § 84-18, Restrictions on post employment.

- A. Rule clarifying HRS § 84-18(c) – “agency or subdivision thereof” – whether to interpret statutory language to mean that the Commission must take into account the individual’s position and extent to which they interact(ed) with other portions of agency.
- B. Rule clarifying “represent” in HRS § 84-18(f) – representing someone other than yourself; representation rule does not preclude an individual from representing her/himself (or a company s/he controls) before the agency (e.g., by contracting with the agency).

IX. Rules relating to HRS § 84-31, Duties of commission; complaint, hearing, determination.

- A. Rules clarifying process for issuing and adjudicating charges: filing/service rules, procedural rules. Possible issues to address:
 - 1. Rule allowing for delegation of fact-finding to a hearings officer in contested cases.
 - 2. Rule setting forth discovery procedures, including sanctions for non-compliance with commission orders.
 - 3. Rule clarifying what material Respondent is/is not entitled to receive during investigative phase of a case (e.g., interview recordings, transcripts)
 - 4. Maintain the rule requiring the reading of the charge at the start of the hearing?
- B. Rules clarifying process for issuing Advisory Opinions, Informal Advisory Opinions, and Petitions for Declaratory Orders.
- C. Rule setting forth a process for settling cases.
- D. Rule setting forth factors for determining how to separate actions into discrete charges.
- E. Rule regarding staff's authority to grant extensions of time for filings.

X. Rules relating to HRS § 84-39, Administrative fines

- A. Factors for determining fines and/or for determining whether a settlement agreement is made public.
 - 1. Resolutions are presumptively public? Always public if the individual must file a public financial disclosure?
 - 2. Possible factors to consider for when they ought to be kept confidential:
 - i. Severity of violation
 - ii. Sophistication of violator (i.e., whether the respondent is a manager or a line-level employee)
 - iii. Number of previous violations
 - iv. How case was brought to the Commission's attention
 - v. Level of cooperation during our investigation
 - vi. Acknowledgement of wrongdoing
 - vii. Commitment to avoid future wrongdoing

XI. Rules relating to HRS § 97-1, Definitions (Lobbyists Law).

- A. Rule clarifying what constitutes lobbying. Rules might address whether to include or exclude time spent:
 - 1. waiting to testify;
 - 2. engaged in internal meetings (if directed at specific legislation or if directed at more generic policy proposals);
 - 3. preparing testimony;
 - 4. engaged in grassroots lobbying (communication with public for the purpose of having them contact their representatives on a specific issue);
 - 5. engaged in “goodwill” lobbying.
- B. Rule clarifying what is “for pay or other consideration”? Could include anyone who owns (or is employed by) a business and who testifies on proposed legislation that would affect their business.

XII. Rules relating to HRS § 97-3, Contributions and expenditures, statement.

- A. Rule clarifying whether lobbying reports should reflect cash basis or accrual basis for expenditures.
- B. Rule clarifying that the Commission may create electronic filing mechanisms that allow for single report to be filed by multiple entities.
- C. Rule clarifying what expenditures must be reported.
- D. Rule clarifying what donations for the purpose of lobbying must be reported.
- E. Rule clarifying reporting requirements when a lobbyist is hired by a group of organizations (such as a trade association).

XIII. Rules relating to HRS § 97-4, Manner of filing; public records (lobbying expenditure reports).

- A. Rule clarifying that the Commission may create electronic filing mechanisms.
- B. Rule allowing staff to grant extensions for filing (similar to extensions for filing financial disclosure statements).

XIV. Rules relating to HRS § 97-6, Administration.

See Section VIII, above.

XV. Rules relating to HRS § 97-7, Penalties; administrative fines.

See Section X, above.