

SUNSHINE LAW MEETING



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

NOTICE OF MEETING OF THE HAWAII STATE ETHICS COMMISSION

Date: April 19, 2018
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 March 29, 2018, Meeting
- II. Consideration and Approval of the Executive Session Minutes of the March 29, 2018, Meeting (Regarding Evaluation of Executive Director Daniel Gluck)

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 an employee.

- III. Executive Director's Report
 1. Education / Training Report
 2. Guidance and Assignment Statistics – March 2018
Attachment 2: 2018 Guidance and Assignment Statistics
 3. Financial Report for FY 2017-2018 (Quarter Ending March 31, 2018)
Attachment 3: Third Quarter Financial Report

4. Miscellaneous Office Projects / Updates

(a) Electronic filing system

(b) 50th Anniversary Events

i. Report on/approval of expenditures

Attachment 4: Expenditure statement

IV. COGEL – Philadelphia, December 9-12, 2018

Discussion of attendance by Commissioners

V. Legislative update

1. Ethics Commission bills (supporting all):

(a) [HB1854](#) / [SB 2142](#) Removing “wilfully” from Lobbyists Law enforcement statute and making language consistent with that of Ethics Code – dead

(b) [SB872](#) Housekeeping measure to allow Ethics Commission to hire its own attorneys – conference committee

2. Other bills

(a) [HB 71](#) Emoluments (support intent) - dead

(b) [SB2609](#) Redacting dollar amounts on public volunteer board/commission members’ disclosure statements (oppose) – conference committee

(c) [HB 2193](#) / [SB 2610](#) Re-defining “employee” to include interns (support intent) – conference committee

(d) [HB 2420](#) Hatch Act (support intent) – dead

(e) [SB 2231](#) Capping fees for late financial disclosures for volunteer board/ commission members (comments) - dead

- (f) [SB 2648](#) Financial disclosure statements for Public Utilities Commission staff (comments) - dead
- (g) [SB2735](#) Changing structure of appointment and salary of Office of Information Practices Executive Director (support additional resources for OIP) - dead
- (h) [SB2996](#) Establishing an airport corporation (comments to clarify that members will be bound by Ethics Code) – conference committee

VI. Administrative Rules

Report from Permitted Interaction Group regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 7-9

VII. Staff Evaluations of Commission

Results of survey of staff members regarding performance of the Commission and Commissioners.

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 an officer of the Commission.

Attachment 5: Summary of Staff Comments Regarding Commissioners

VIII. Adjournment

If you require an accommodation because of a disability, please contact the Hawaii State Ethics Commission by telephone at (808) 587-0460, by facsimile at (808) 587-0470 (fax), or via email at ethics@hawaiiethics.org.

Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. An individual or representative wishing to testify may notify any staff member of the Commission prior to the meeting or, during the meeting itself, may inform a Commissioner or Commission staff of a desire to testify. Testimony must be related to an item that is on the agenda, and the testifier shall identify the agenda item to be addressed by the testimony.

SUNSHINE LAW MEETING
AGENDA ITEM I

MINUTES: CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
MARCH 29, 2018 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the March 29, 2018 Hawaii State
Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, March 29, 2018

Time: 9:30 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

Reynard D. Graulty, Chair
Ruth D. Tschumy, Vice Chair
David O’Neal, 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

Excused: Susan N. DeGuzman, Commissioner

CALL TO ORDER

The meeting was called to order at 9:30 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the February 22, 2018, Meeting

Vice Chair Tschumy made and Commissioner O’Neal seconded a motion to approve the minutes of the February 22, 2018 Sunshine Law meeting. The motion carried unanimously (Graulty, Tschumy, O’Neal, and Wood voting).

1 **Agenda Item II: Consideration and Approval of the Executive Session Minutes of**
2 **the February 22, 2018, Meeting (Regarding Evaluation of Executive Director**
3 **Daniel Gluck)**
4

5 Commissioner O'Neal made and Vice Chair Tschumy seconded a motion to
6 approve the minutes of the February 22, 2018 Executive Session. The motion carried
7 unanimously (Grauly, Tschumy, O'Neal, and Wood voting).
8
9

10 **Agenda Item No. III: Executive Director's Report**
11

12 The Commission had no questions regarding the February Education/Training
13 Report or the Guidance and Assignment statistics.
14

15 The Commission discussed expenses for the 50th anniversary events. Chair
16 Grauly stated his belief that the reception to be held at the Capitol following the
17 Proclamation ceremonies should be an official Commission expense and covered by
18 the Commission's budget. Executive Director Gluck stated that the food purchased for
19 the event was quite modest, including sandwiches and a cake from Safeway. He
20 suggested that he and the rest of the staff tally up the total expenses and examine the
21 budget to determine whether the Commission has any funds available to defray some of
22 the expenses, and that the Commission consider the matter at the April meeting.
23
24

25 **Agenda Item No. IV: Legislative Update**
26

27 Executive Director Gluck provided an update on ethics legislation pending at
28 the Legislature.
29
30

31 **Agenda Item No. V: Administrative Rules**
32

- 33 1. Revised proposed amendments to Hawaii Administrative Rules, Title 21,
34 Chapters 1-3
35

36 Associate Director Yoza explained that the current redlined draft of Chapters 1-3
37 represented the last draft reviewed by the Commission with proposed edits by staff.
38

39 Commissioner O'Neal made and Vice Chair Tschumy seconded a motion to
40 approve the revised proposed amendments to Hawaii Administrative Rules, Title 21,
41 Chapters 1-3. The motion carried unanimously (Grauly, Tschumy, O'Neal, and Wood
42 voting).
43

- 44 2. Discussion of Report from Permitted Interaction Group regarding proposed
45 amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6.
46

1 Chair Grauly stated that the only area of concern was the process for
2 Commissioners to agree to, or dissent from, settlement agreements. The Commission
3 discussed the issue, and concluded that the best process would be for one
4 Commissioner (the Chair, Vice Chair, or most senior Commissioner) to sign the
5 settlement agreement, after which the Resolution of Investigation or Resolution of
6 Charge document would be issued without being signed by the Commission.
7

8 Vice Chair Tschumy made and Commissioner O'Neal seconded a motion to
9 approve the report from the Permitted Interaction Group regarding proposed
10 amendments to Hawaii Administrative Rules, Title 21, Chapters 4-6, as amended to
11 include the proposal on settlement agreements discussed above. The motion carried
12 unanimously (Grauly, Tschumy, O'Neal, and Wood voting).
13

14 Chair Grauly also reported that the Permitted Interaction Group ("PIG")
15 completed its review of Chapters 7, 8, and 9, but that this item was not listed on the
16 Sunshine Agenda for this month's meeting. Associate Director Yoza reported that she
17 consulted with the Office of Information Practices ("OIP") as to whether the PIG could
18 present its report to the Commission at this month's meeting, but OIP advised that this
19 item be placed on the agenda for the next Commission meeting.
20
21

22 **Agenda Item No VI: Summary of Staff Evaluation of Executive Director Daniel**
23 **Gluck**
24

25 **RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE**
26 **SESSION**
27

28 At 9:55 a.m., Commissioner Wood made and Vice Chair Tschumy seconded a
29 motion to convene an Executive Session pursuant to Hawaii Revised Statutes section
30 92-5(a)(2) to discuss matters relating to the evaluation of an employee.
31

32 All staff left the meeting at approximately 9:55 a.m.
33

34 The Commission met in Executive Session.
35

36 Vice Chair Tschumy made and Commissioner O'Neal seconded a motion to
37 accept the Summary of Staff Evaluation of Executive Director Daniel Gluck. The motion
38 carried unanimously (Grauly, Tschumy, O'Neal, and Wood voting).
39

40 At 10:02 a.m., Executive Director Gluck entered the Executive Session and met
41 with the Commission.
42

1 **ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW**
2 **MEETING**

3
4 At 10:10 a.m., Commissioner O'Neal made and Vice Chair Tschumy seconded a
5 motion to adjourn the Executive Session and return to the Sunshine Law meeting. The
6 motion carried unanimously (Grauldy, Tschumy, O'Neal, and Wood voting).
7

8 **ADJOURNMENT OF SUNSHINE LAW MEETING**

9
10 At 10:10 a.m., Commissioner O'Neal made and Vice Chair Tschumy seconded a
11 motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Grauldy,
12 Tschumy, O'Neal, and Wood voting).
13

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

15
16
17 Minutes approved on: _____

DRAFT

SUNSHINE LAW MEETING
AGENDA ITEM II

MINUTES: CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
MARCH 29, 2018 EXECUTIVE SESSION

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 an employee.

Attachment 1: Minutes of the March 29, 2018 Executive Session

EXECUTIVE SESSION
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, March 29, 2018

Time: 9:55 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

Reynard D. Graulty, Chair
Ruth D. Tschumy, Vice Chair
David O’Neal, 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

Excused: Susan N. DeGuzman, Commissioner

Agenda Item No. VI: Summary of Staff Evaluation of Executive Director Daniel Gluck

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At 9:55 a.m., Commissioner Wood made and Vice Chair Tschumy seconded a motion to convene an Executive Session pursuant to Hawaii Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

1 All staff left the meeting at approximately 9:55 a.m.

2
3 The Commission met in Executive Session and discussed the staff's evaluations
4 of Executive Director Gluck. Vice Chair Tschumy reported that the staff were very
5 happy now. Commissioner Wood likewise reported that the staff feel supported and the
6 climate of the office has improved.

7
8 Vice Chair Tschumy made and Commissioner O'Neal seconded a motion to
9 accept the Summary of Staff Evaluation of Executive Director Daniel Gluck. The motion
10 carried unanimously (Graulty, Tschumy, O'Neal, and Wood voting).

11
12 At 10:02 a.m., Executive Director Gluck entered the Executive Session. The
13 Commission provided Executive Director Gluck with the Summary of Staff Evaluation.
14 Vice Chair Tschumy also asked Executive Director Gluck whether the Commissioners
15 could receive feedback from the staff as to how the Commissioners can improve their
16 service. Executive Director Gluck proposed that he survey the staff and compile a
17 report for the Commissioners.

18
19 Vice Chair Tschumy suggested that Executive Director Gluck share the
20 Summary of Staff Evaluation with staff, though it was his choice as to whether to do so;
21 Executive Director Gluck said he would.

22
23 *Note: The Summary of Staff Evaluation is attached to these Minutes.*

24
25
26 **ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO THE SUNSHINE LAW**
27 **MEETING**

28
29 At 10:10 a.m., Commissioner O'Neal made and Vice Chair Tschumy seconded a
30 motion to adjourn the Executive Session and return to Sunshine Law meeting. The
31 motion carried unanimously (Graulty, Tschumy, O'Neal, and Wood voting).

32
33 The Commission adjourned the Executive Session and returned to the Sunshine
34 Law meeting.

35
36
37 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM III

EXECUTIVE DIRECTOR'S REPORT

- Attachment 1: Executive Director's Report
- Attachment 2: 2018 Guidance and Assignment Statistics
- Attachment 3: Third Quarter Financial Report
- Attachment 4: Expenditure Statement

SUNSHINE MEETING
AGENDA ITEM II
EXECUTIVE DIRECTOR'S REPORT
April 19, 2018

1. Education / Training Report

a. Recently held trainings/presentations:

No trainings held since last meeting (March 29).

b. Upcoming trainings/presentations:

Department of Health; State Laboratories and
Hazard Evaluation and Emergency Response (HEER) Office
Thursday, April 26, 2018
10:00 a.m. – 11:30 a.m.
State Laboratories Division - Auditorium
2725 Waimano Home Road
Pearl City, Hawaii

General Ethics Training – Kapolei
Thursday, May 3, 2018
10:00 a.m. – 11:30 a.m.
Leeward Community College
ED 201 A/B Lecture Hall
96-045 Ala Ike
Pearl City, Hawaii

General Ethics Training - Hilo
Monday, May 14, 2018
10:00 a.m. – 11:30 a.m.
University of Hawaii at Hilo, UCB 100
200 W. Kāwili Street
Hilo, Hawaii

General Ethics Training – Maui
Tuesday, May 22, 2018
10:00 a.m. – 11:30 a.m.
University of Hawaii Maui College
Ka‘a‘ike Building, Room 105BCD
Kahului, Hawaii

with video conference:

Molokai Ed Center
UH Maui College
375 Kamehameha V Highway
Kaunakakai, Hawaii

Lanai Ed Center
UH Maui College
329 7th Street
Lanai City, Hawaii

General Ethics Training – Kauai
Friday, May 25, 2018
10:00 a.m. – 11:30 a.m.
Kauai Community College
Cafeteria
3-1901 Kaumuali‘i Highway
Lihue, Hawaii

1:30 p.m. – 3:00 p.m.
Kauai Fifth Circuit
Pu‘uhonua Kaulike Building
Multipurpose Room, First Floor
3970 Ka‘ana Street
Lihue, Hawaii

Ethics CLE for Department of the Attorney General
Friday, June 1, 2018
1:30 p.m.-2:30 p.m.
DLIR Training Room
Honolulu, Hawaii

General Ethics Training – Kona
Friday, June 8, 2018
10:00 a.m. – 11:30 a.m.
Natural Energy Laboratory of Hawaii Authority (NELHA)
Hale Iako Training Classroom, Room #119
74-4460 Queen Kaahumanu Highway, #101
Kailua-Kona, Hawaii

University of Hawaii at Manoa
Tuesday, August 28, 2018
10:00 a.m. – 11:30 a.m.
Kuykendall Auditorium
1733 University Avenue
Honolulu, Hawaii

General Ethics Training – Oahu
Tuesday, October 23, 2018
9:30 a.m. – 11:00 a.m.
Mission Memorial Auditorium
550 South King Street
Honolulu, Hawaii

Ethics Training for State Government Attorneys
Monday, December 3, 2018
9:30 a.m. – 11:00 a.m.
State Capitol Auditorium
415 South Beretania Street
Honolulu, Hawaii

2. Guidance and Assignment Statistics – March 2018

Attachment 2: 2018 guidance and assignment statistics

3. Financial Report for FY 2017-2018 (Quarter Ending March 31, 2018)

Attachment 3: Third Quarter Financial Report

4. Miscellaneous Office Projects / Updates

- a. Electronic filing system
- b. 50th anniversary Events
 - i. Report on/approval of expenditures

Attachment 4: Expenditure Statement

2018	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of Trainings	3	1	4										8
# of People Trained	75	6	197										278
Attorney of the Day	128	61	74										263
New assignments													
Advisory Opinion	1	0	0										1
Complaint	5	10	8										23
Gifts/Invitations/Travel	13	13	9										35
Guidance	11	7	3										21
Judicial Selection Comm'n	3	5	3										11
Training Request	0	4	1										5
Record Request	1	2	0										3
Project/Other	4	2	1										7
Total	38	43	25	0	106								
Closed Assignments													
Advisory Opinion	0	1	0										1
Complaint	4	2	9										15
Gifts/Invitations/Travel	16	7	3										26
Guidance	5	5	3										13
Judicial Selection Comm'n	0	0	0										0
Training Request	0	0	1										1
Record Request	0	2	1										3
Project/Other	6	2	2										10
Total	31	19	19	0	69								

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT

FY 2017-2018 (QUARTER ENDING: March 31, 2018)

Appropriation Symbol: G-18-393-Y6**

	Amount Appropriated FY 2017-2018	Expenditures for Qtr. End 9/30/2017	Expenditures for Qtr. End 12/31/2017	Expenditures for Qtr. End 3/31/2018	Expenditures for Qtr. End 6/30/2018	Year-To-Date Expenditures Totals	% of Budget Expended
A. PERSONAL SERVICES							
Staff Salaries	\$ 944,402.00	\$ 235,140.61	\$ 234,043.50	\$ 234,043.50	\$ 0.00	703,227.61	74.5%
Vacation Payout***	\$ 16,553.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.0%
Total Personal Services	\$ 944,402.00	\$ 235,140.61	\$ 234,043.50	\$ 234,043.50	\$ 0.00	\$ 703,227.61	74.5%
B. OTHER CURRENT EXPENSES							
Office Expenses	15,950.00	6,160.40	3,758.53	3,398.52	0.00	13,317.45	83.5%
Intrastate Transportation and Travel	8,500.00	2,591.48	1,270.31	1,415.80	0.00	5,277.59	62.1%
Out-of-State Travel	12,660.00	823.52	4,864.31	66.42	0.00	5,754.25	45.5%
Equipment Rental and Maintenance	10,985.00	5,163.67	2,294.73	1,812.16	0.00	9,270.56	84.4%
Dues, Subscriptions, Training	14,140.00	6,502.95	1,526.94	4,547.68	0.00	12,577.57	89.0%
Newspaper Advertisements	1,600.00	0.00	0.00	0.00	0.00	0.00	0.0%
Comm'n Mtgs, Investigations, Hrgs	9,400.00	225.41	923.81	743.80	0.00	1,893.02	20.1%
Consulting Services	10,258.00	773.63	0.00	0.00	0.00	773.63	7.5%
Office Rent	98,000.00	139.96	23,602.41	22,494.88	0.00	46,237.25	47.2%
Total Other Current Expenses	\$ 181,493.00	\$ 22,381.02	\$ 38,241.04	\$ 34,479.26	\$ 0.00	\$ 95,101.32	52.4%
C. CAPITAL OUTLAY							
Office Furniture and Equipment	11,000.00	3,221.00	31.85	0.00	0.00	3,252.85	29.6%
Total Capital Outlay	\$ 11,000.00	\$ 3,221.00	\$ 31.85	\$ 0.00	\$ 0.00	\$ 3,252.85	29.6%
GRAND TOTAL (A+B+C)	\$ 1,136,895.00	\$ 260,742.63	\$ 272,316.39	\$ 268,522.76	\$ 0.00	\$ 801,581.78	70.5%
VACATION	\$ 16,553.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.0%

General Fund Allocation	\$ 1,136,895.00
Total Expenditures as of March 31, 2018	\$ 801,581.78
Balance as of March 31, 2018	\$ 335,313.22

**includes Act 1 and Act 21

Act 1- Appropriation 393- \$1,112,093

Act 21- Appropriation 395- \$24,802

*** vacation payout not included in total for App 393

G:Share/Budget/Reports/2017-18

50th Anniversary Budget						
Vendor	Food/Paper Goods	Size	Feeds (ppl)	Price	Amount	SubTotal
Chun Wah Kam	Mini Manapua	Mini		1.25	60	78.54
Chun Wah Kam	Peking Buns with Roast Duck			1.5	60	94.23
				Chun Wah Kam Total		\$ 172.77
Safeway	Mini Croissant Sandwiches	Large	16-30	54.99	2	121.44
Safeway	Fruit Platter	Large	12-16	49.99	2	104.7
Safeway	Cake	1/2 sheet		42.99	1	45.01
				Safeway Total		\$ 271.15
Sam's Club	Paper Goods*					65
	Spinach Dip					25
				Sam's (paper goods) Total		\$ 90.00
Sam's Club	Aloha Drinks*	Case	24	10.10	1	10.10
Sam's Club	Water*	Case	40	11.65	1	11.65
Safeway	Ice	small bag		2.99	2	6.26
Safeway	Ice	Large Bag		4.99	2	10.45
				Sam's (drinks) Total		\$ 38.46
Costco	Vegetables					28.75
Costco	Hummus and Pretzels					15.06
Walmart	Food Containers					9.95
				Costco/Walmart Total		\$ 53.76
TOTAL OF ALL FOOD AND PAPER GOODS						\$ 626.14
TOTAL PROPOSED CONTRIBUTIONS (COMMISSIONERS, ED, AD)						\$ (140.00)
NET TOTAL FOR ALL FOOD/DRINKS/PAPER GOODS						\$ 486.14

* Purchased items also to be used for commission meetings.

Vendor		Lei	Price	Amount	Total
Cindys Lei	CJ & Governor	Ti Leaf with White Orchid (open)	25	2	\$ 50.00
Cindys Lei	Sen Ihara and Sen Pres Kouchi	Cigar Lei with Kukui	20	2	40.00
Cindys Lei	Dan/Rey/Dave	Ti Leaf with Mock Orange Kukui	12.5	3	37.50
Cindys Lei	Ruth/Susan Y./Melinda	White orchid with pink rose	10	3	30.00
Cindys Lei	Extra	White orchid with yellow rose	10	2	20.00
				12	\$ 177.50
				Tax	\$ 8.36
				Total	\$ 185.86

4/13/2018

SUNSHINE LAW MEETING
AGENDA ITEM IV

COGEL – PHILADELPHIA, DECEMBER 9-12, 2018

Discussion of attendance by Commissioners

No attachments

SUNSHINE LAW MEETING
AGENDA ITEM V

LEGISLATIVE UPDATE

No attachments

SUNSHINE LAW MEETING
AGENDA ITEM VI

ADMINISTRATIVE RULES

Report from Permitted Interaction Group regarding proposed amendments to
Hawaii Administrative Rules, Title 21, Chapters 7 - 9

Attachment 1: Staff Overview

Attachment 2: Permitted Interaction Group Report and Hawaii Administrative
Rules, Title 21, Chapters 7 - 9

ADMINISTRATIVE RULES

Report from Permitted Interaction Group regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 7 - 9

STAFF OVERVIEW

The State Ethics Commission formed a permitted interaction group (“PIG”) on January 18, 2018, to review proposed amendments to the Commission’s administrative rules, Hawaii Administrative Rules Title 21. The PIG recently completed its review of Chapters 7 - 9 of the proposed rules. The PIG’s report and Chapters 7 – 9 are attached.

In accordance with Hawaii Revised Statutes § 92-2.5 (part of the Sunshine Law) the Commission cannot discuss or act on the PIG’s report at this meeting. Discussion of the report and Chapters 7 - 9 will be scheduled for the Commission’s next public meeting in May.

Recommendation

Accept the permitted interaction group’s report for Chapters 7 – 9 of the Commission’s administrative rules.

SDY/pm

**Permitted Interaction Group Report:
Proposed Amendments to Hawaii Administrative Rules Title 21,
Chapters 7 – 9**

(Submitted by Chair Reynard Gaulty and Commissioner David O’Neal)

April 19, 2018

On January 18, 2018, the State Ethics Commission (“Commission”) formed a permitted interaction group (“PIG”) to review proposed amendments to the Commission’s administrative rules, Hawaii Administrative Rules (“HAR”) Title 21. Chair Gaulty and Commissioner O’Neal were appointed to serve as members of the PIG.

The PIG has completed its review of the following chapters of the proposed rules:

Chapter 7: Gifts and Fair Treatment

Chapter 8: Conflicts of Interests

Chapter 9: Post-Employment Restrictions and Contracts

The PIG determined that no further changes are needed to these proposed amendments. Therefore, the PIG recommends that the Commission consider for approval HAR Title 21, Chapters 7 – 9 (attached to this report) as drafted by the Commission’s staff.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Adoption of Chapter 21-7
Hawaii Administrative Rules

Month, Day, 2018

SUMMARY

Chapter 21-7, Hawaii Administrative Rules, entitled “Gifts and Fair Treatment”, is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 7

STATE ETHICS COMMISSION

GIFTS AND FAIR TREATMENT

21-7-1	Definitions
21-7-2	Prohibited gifts
21-7-3	Acceptable items
21-7-4	Offers of travel
21-7-5	Valuation of gifts
21-7-6	Imputing gifts to others
21-7-7	Submission of gifts disclosure statement
21-7-8	Public information
21-7-9	Fair Treatment

§21-7-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Charitable organization” means an organization organized under section 501(c)(3) of the Internal Revenue Code;

“Gift” means anything of value and includes, but is not limited to, money, gift cards, food, services, loans, travel, lodging, training, entertainment, hospitality, things, gratuities, favors, or discounts;

“State purpose” means for a purpose reasonably related to conducting one’s official state duties;

“State resources” means state time, equipment, facilities, money, electronic mail, letterhead, and other assets and resources, including state personnel.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-2 Prohibited gifts. (a) A state employee or legislator shall not solicit, accept, or receive any gift, directly or indirectly, if a reasonable person may conclude that the gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient’s state duties.

(b) In determining whether a gift is prohibited, the commission shall examine the circumstances surrounding the offer of the gift and consider:

- (1) the donor’s relationship to the recipient. Generally, a gift is prohibited where the recipient is in a position to take official action specifically affecting the donor, such as where the donor is a party to a contested case hearing before the recipient, regulated by the recipient, involved in procurement with the recipient, or a lobbyist seeking legislative or administrative action;
- (2) the value of the gift. Generally, the higher the value of the gift, the more likely the gift is prohibited; and
- (3) whether the gift supports a state purpose. Generally, cash, gift cards, and complimentary admission to events or venues that are primarily intended as entertainment, such as concerts, movies, sporting events, or golf tournaments, do not serve any state purpose and are more likely to be prohibited.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

§21-7-3 Acceptable items. (a) The following items generally may be accepted and need not be reported on a gifts disclosure statement:

- (1) A lei offered in connection with a celebration, commemoration, or event;
- (2) Discounts, services, or other benefits offered to the public at large. This may include discounts, services, or other benefits offered to government employees as a group, provided that the same discounts, services, or other benefits are offered on similar terms to other large groups of employees;
- (3) Bona fide competitively awarded grants or scholarships;
- (4) Promotional items having no resale value, such as branded pens, calendars, hats, or tote bags;
- (5) Rewards or prizes given to competitors in contests or events, including random drawings, offered to the public or a segment thereof, where the legislator or employee receiving the reward or prize does not attend the contest or event in an official capacity, unless a reasonable person would conclude that the reward or prize was offered to the legislator or employee because of the legislator's or employee's state position;
- (6) A gift provided by any other state, a political subdivision of any other state, or the United States, provided that the gift serves a bona fide state purpose and that tangible and durable items of more than nominal value, such as artwork or jewelry, shall belong to the State rather than the individual recipient;
- (7) Modestly priced awards, plaques, and other ceremonial items of the type customarily bestowed in connection with bona fide ceremonies and otherwise reasonable under the circumstances;
- (8) Gifts received by a spouse or dependent child of the legislator or employee solely because of the spouse's or child's own employment, volunteer activities, or personal relationships, where a reasonable person would not believe that the gift was intended to influence the legislator or employee;
- (9) An unsolicited gift of nominal value given as a token of appreciation to a teacher, medical professional, or similar kind of service provider, such as a holiday gift given to a teacher by a student or guardian, where the gift is offered by an individual in the individual's personal capacity, and the gift is given under circumstances in which no reasonable person would conclude that

the gift was given to influence the recipient's state duties with respect to the offeror; and

- (10) Gifts given under circumstances in which no reasonable person would conclude that the gift was being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties.

(b) An individual who represents the State for protocol purposes, such as the governor, lieutenant governor, legislator, president of the University of Hawaii, department director, or deputy director, may generally accept an unsolicited offer of complimentary attendance to attend an event organized with the principal objective of raising money for or awareness of a charitable organization, provided that:

- (1) the individual's attendance at the event is paid for by the charitable organization itself;
- (2) the non-tax-deductible value of attendance is less than \$75, unless the commission finds that the would-be recipient has demonstrated a special need to exceed this limit;
- (3) the recipient does not accept more than \$300 in cumulative non-tax-deductible value in any calendar year, unless the commission finds that the would-be recipient has demonstrated a special need to exceed this limit; and

(4) the individual's attendance at the event serves a state purpose. The commission shall revise the dollar amounts in this subpart in January of each even-numbered year to reflect changes in the Consumer Price Index, and shall publicize these values on its website.

(c) For purposes of subsection (b), if the value of the gift meets the reporting requirements of section 84-11.5, HRS, the gift shall be reported and the recipient shall separately report both the non-tax-deductible value of attendance and the tax-deductible portion of the attendance fee on the recipient's annual gifts disclosure statement.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5, 84-13)

Comments:

- *Gifts received by spouses or dependent children: If the spouse of a legislator or employee receives two tickets to an event, solely because of the spouse's employment or community work, the legislator or employee may attend the event with the spouse unless it appears as though the gift was offered with the intention of influencing the legislator or employee.*

- *Gifts from family members or personal friends: Gifts generally may be accepted where the gift is based upon a personal or familial relationship and no reasonable person would conclude that a gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties. However, where such a relationship exists, the recipient may consider voluntarily recusing her- or himself from taking official action regarding the individual offering the gift to avoid any appearance of impropriety.*
- *Reporting events: Where a legislator accepts the offer of a ticket to an annual dinner held by a charitable organization in the legislator's district, and the ticket costs \$250 with a tax-deductible amount of \$200, the legislator must report having received a \$250 gift, with a meal valued at \$50 and the tax-deductible portion of the ticket of \$200.*
- *The items listed in §21-7-3(a) need not be reported on a gifts disclosure statement either because (1) they are not gifts for which there could be a reasonable inference of influence on the legislator or employee, or (2) they would never approach the gifts reporting threshold of more than \$200. Items that exceed \$200 generally would not fit the criteria for acceptance under subsections (a)(1), (a)(4), (a)(7), or (a)(9).*

§21-7-4 Offers of travel. (a) The following economy-class travel expenses, including modest meals and lodging, generally may be accepted and need not be reported on a gifts disclosure statement:

- (1) Travel expenses paid for by the United States, any of its states or territories, or any political subdivision thereof;
- (2) Travel expenses provided pursuant to a grant to or a contractual agreement with the State, provided the benefit supports a bona fide state purpose;
- (3) Travel expenses provided to individuals to serve as chaperones to groups of public school students on student educational tours, where the tours are paid for by students or their guardians and are approved by the Hawaii Department of Education, and where the travel expenses are paid for by the organizing tour company or with a portion of fees collected from other travelers.

(b) An offer of economy-class travel expenses, modest food and non-alcoholic beverages, and educational programming in connection with a bona fide professional development program, conference, or business meeting, generally may be accepted if the receipt is consistent with section 21-7-2, provided that the recipient shall report the travel pursuant to section 84-11.5, HRS. In determining whether an offer of travel is acceptable, the commission shall consider:

- (1) the donor's relationship to the recipient. Generally, an offer of travel may not be accepted where the donor lobbies, seeks business with, or is regulated by the recipient's agency;
- (2) the value of the trip, including all travel costs sponsored by the donor; and
- (3) whether the travel supports a state purpose. Generally, offers of travel to events that lack significant educational content may not be accepted. Likewise, offers to attend entertainment events, such as golf, cruises, sporting events, or luxury meals, generally may not be accepted, even if they occur as part of an otherwise acceptable event.

[Eff. §§84-11, 84-11.5, 84-13)] (Auth: HRS §84-31(a)(5)) (Imp: HRS

Comments:

- *Gifts of travel are often acceptable because of their benefit to the State. For example, if the National Association of Attorneys General wishes to pay for two Deputy Attorneys General to attend a training on effective litigation techniques, and the recipients will travel in economy class and at modestly priced hotel, the gift of travel may be accepted. If, however, a charitable organization under investigation by the Department of the Attorney General wishes to pay for a Deputy Attorney General to fly first-class to a ski resort and stay at a five-star hotel, the trip may not be accepted. Recipients are advised to contact the Commission for guidance prior to acceptance.*

§21-7-5 Valuation of gifts. (a) The value of a gift is its fair market value, which is the cost that a member of the public would reasonably expect to incur to purchase the gift, including any tax-deductible portion.

(b) If the gift is a seat at a table for an event, the value of the gift is the cost of the table sponsorship divided by the number of seats at the table.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

Comments:

- *If the face value of a ticket to an event is \$100, but at the time the ticket is offered as a gift the event is sold out and tickets on the secondary market are \$500, the value of the ticket is \$500.*

§21-7-6 Imputing gifts to others. (a) Where an offeror of a gift does not specify a recipient within an office, and the legislator or supervisor of the receiving office knows or reasonably should know of the gift, the gift is presumed to be a gift to the legislator or supervisor.

(b) A gift to a family member of a legislator or employee is presumed to be a gift to a legislator or employee where:

- (1) the gift is offered because of the family member's relationship to the legislator or employee; and
- (2) the legislator or employee knows or reasonably should know of the gift.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §84-11)

Comments: When a donor provides a gift of food to a legislative office, the legislator is presumed to be the recipient of the gift.

§21-7-7 Submission of gifts disclosure statement. Gifts disclosure statements shall be filed using forms and methods prescribed by the commission. The commission may require that gifts disclosure statements be filed using an electronic filing system.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

§21-7-8 Public information. Gifts disclosure statements are public records and the contents of a gifts disclosure statement are public information, except as otherwise provided by law.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-11.5)

§21-7-9 Fair treatment. (a) Subject to article III, section 7 of the Constitution and section 84-13, HRS, legislators and employees shall not use or attempt to use their official positions to solicit, request, accept, receive, or grant unwarranted privileges, exemptions, advantages, contracts, treatment, or benefits, for themselves or others, or to subject others to unwarranted treatment, whether favorable or unfavorable. Among other things, legislators and employees shall not:

- (1) Take unwarranted action or withhold warranted action against an individual, or threaten to do so, for lodging a complaint with the commission, where a reasonable person would conclude that the action or lack of action, or threat thereof, was intended as retaliation for lodging a complaint or cooperating with a commission investigation;
- (2) Use or attempt to use their official position to seek or secure private employment or contracts for services for themselves or others, provided that legislators and employees may offer professional references for their current and former employees;
- (3) Accept, receive, or solicit compensation, honoraria, other consideration, or gifts for the performance of their official duties or responsibilities except as provided by law;
- (4) Use state resources for private business purposes, including, but not limited to, the use of state resources for:
 - (A) political campaign activities;
 - (B) advertising or publicizing the sale of goods or services;
 - (C) taking or responding to sales orders or inquiries;
 - (D) preparing or sending invoices;
 - (E) collecting payments;
 - (F) producing or delivering goods or services;
 - (G) arranging or conducting private business meetings;
 - (H) requesting or directing other state personnel to assist with private business activities; or

- (I) otherwise furthering a private business interest, except where the State has made a state facility or resource available for rent, purchase, or use to private organizations or individuals on generally equal terms and such use serves a state purpose;
- (5) Use state resources for fundraising, except:
 - (A) as approved by the Governor, the Speaker of the House and President of the Senate, the Chief Justice, or the President of the University of Hawaii, or
 - (B) in conjunction with a nonprofit organization that exists for the sole purpose of assisting and supporting a state facility or program, including but not limited to a state charter school;
- (6) Solicit or engage in a substantial financial transaction with a subordinate or a person or business the legislator or employee inspects or supervises in an official capacity; or
- (7) Abuse their position within state government to sexually harass another individual; provided that the commission may refer any complainant to another agency as appropriate.
- (b) In all but the most extraordinary circumstances, acceptance of a gift in compliance with section 84-11, HRS, and sections 21-7-1 to 21-7-6 will comport with the fair treatment law; however, solicitation or acceptance of a substantial number of individual gifts may raise fair treatment concerns even if each individual gift is acceptable.

[Eff. _____] (Auth: HRS §84-31(a)(5)) (Imp: HRS §§84-11, 84-13)

Comments

- *Door prizes: One who attends an event in his or her official capacity is prohibited from accepting a door prize or complimentary item of more than nominal value that is won or offered at the event. Acceptance may be permissible, however, if the item is accepted on behalf of the State and becomes property of the State. For example, an employee who wins a laptop computer at a conference the employee attends in the employee's official capacity may turn the item over to the employee's state agency to become part of the agency's inventory.*
- *Honoraria: One who gives a speech as part of his or her official duties may not accept an honorarium from a non-state source for giving the*

speech, because he or she is already compensated by the State to perform such a duty.

- *Political campaign activities: These include, but are not limited to, soliciting support for political candidates for office, organizing or publicizing political fundraisers, and organizing activities such as sign-waving to support political candidates for office.*
- *Fundraising: State resources may be used for fundraising activities in limited situations, including:*
 1. *Non-coercive fundraising to support a charity or purpose officially sponsored and endorsed by the State.*
 2. *Non-coercive fundraising for humanitarian causes officially endorsed by the State, e.g., to support victims of a natural disaster.*
- *Volunteer activities: A state employee may serve as an uncompensated officer, director, or volunteer of a nonprofit organization affiliated with the employee's state agency and whose sole purpose is to assist and support the state agency. So long as the employee receives no compensation from the nonprofit organization, and the employee is authorized by the director of the employee's agency or other relevant authority, the employee may use state resources, including state time, to benefit the organization.*
- *Travel: Except in very limited circumstances, state officials may travel only in economy class. If possible, mileage credit accrued on state travel shall be used for state travel. If such credit cannot be used for state travel, it may be applied to personal travel subject to approval by the Comptroller or other relevant authority. Similarly, travel upgrades or other benefits earned while on state travel that cannot be applied to state travel may be applied to personal travel subject to approval by the Comptroller or other relevant authority.*
- *Use of state resources for private business purposes: the State may rent public facilities (such as school cafeterias), sell advertising space at public facilities, and/or otherwise engage in transactions with private entities, so long as state facilities are generally offered on equal terms to all would-be purchasers.*

END OF CHAPTER 7

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Adoption of Chapter 21-8
Hawaii Administrative Rules

Month, Day, 2018

SUMMARY

Chapter 21-8, Hawaii Administrative Rules, entitled “Conflicts of Interests”, is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 8

STATE ETHICS COMMISSION

CONFLICTS OF INTERESTS

- 21-8-1 Conflicts of Interests, Officer or Director of Private Organization
in Employee's State Capacity
- 21-8-2 Reason to Believe
- 21-8-3 Assist or Represent – Exception for Personal Service Contracts

§21-8-1 Conflicts of Interests, Officer or Director of Private Organization in Employee's State Capacity. (a) A state employee who serves as a director or officer of a private organization in the employee's official capacity is not prohibited from taking official action affecting that organization, provided that action does not affect the personal financial interest of the employee, the employee's spouse, or the employee's dependent children.

(b) Any discretionary action taken by the employee as a director or officer as set forth in subsection (a) shall be considered official action for purposes of chapter 84, HRS.

[Eff. _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-3, 84-14, 84-31)

Examples:

- (1) *An employee of a state agency sits as a director of a non-profit organization by virtue of the employee's state position. The employee is not prohibited from taking official action, in the employee's capacity as a state employee, affecting that non-profit organization.*
- (2) *An employee of a state agency sits as a director of a non-profit organization by virtue of the employee's state position. The employee's spouse is employed by the non-profit organization. The employee is prohibited from taking official action, in the employee's capacity as a state employee, affecting that non-profit organization.*

§21-8-2 Reason to Believe. For purposes of section 84-14(b), HRS, an employee has reason to believe a business or undertaking may be directly involved in official action to be taken by the employee unless it is highly unlikely that the employee will take action affecting that business or undertaking.

[Eff. _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

§21-8-3 Assist or Represent – Exception for Personal Service

Contracts. A legislator or employee may be permitted to provide the legislator’s or employee’s own personal services to the legislator’s or employee’s agency where there is an overriding state purpose that outweighs any appearance of a conflict of interest. The commission may evaluate the following factors in determining whether a personal services contract is permissible:

- (a) whether there is an appearance that the legislator or employee is receiving unwarranted or preferential treatment from the legislator’s or employee’s agency;
- (b) whether the legislator or employee is using confidential information to obtain the personal services contract;
- (c) whether there is a substantial public need for the legislator’s or employee’s expertise;
- (d) whether the legislator or employee possesses expertise in a particular area;
- (e) whether the agency is having difficulty obtaining services of this specialized expertise from other sources; and
- (f) whether the personal services contract is otherwise consistent with chapter 84, HRS, and other applicable law.

[Eff. _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

END OF CHAPTER 8

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Adoption of Chapter 21-9
Hawaii Administrative Rules

Month, Day, 2017

SUMMARY

Chapter 21-9, Hawaii Administrative Rules, entitled “Post-Employment Restrictions and Contracts”, is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 9

STATE ETHICS COMMISSION

POST-EMPLOYMENT RESTRICTIONS AND CONTRACTS

- 21-9-1 Agency or subdivision thereof
- 21-9-2 Responsibility to enforce contracts rules

§21-9-1 Agency or subdivision thereof. For purposes of section 84-18(c), in determining what constitutes the former employee's state agency or subdivision thereof, the commission may consider the size of the agency; the likelihood that the former employee would have any unfair advantage in representing a person or business before that agency; the former employee's position within the agency; whether the former employee will communicate with former colleagues within the agency; whether the former employee has confidential information that may provide an unfair advantage; and any other factors that could reasonably give the appearance of impropriety.

[Eff. _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §84-18)

Comments:

- *Role in former agency: the former director of an agency would likely be prohibited from representing another person before any section of that agency; in contrast, an individual who worked for a subsection of a large agency – and had minimal contact with other subsections of the agency – may not be prohibited from representing another person before a different subsection.*

§21-9-2 Responsibility to enforce contracts rules. (a) A state agency's director or acting director shall be responsible for ensuring that all agency contracts comply with section 84-15, HRS.

(b) Any violations of section 84-15, HRS shall be assessed against the director or acting director of the state agency at the time the violation occurred.

[Eff. _____] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-15, 84-31)

END OF CHAPTER 9

SUNSHINE LAW MEETING
AGENDA ITEM VII

STAFF EVALUATION OF COMMISSION

Results of survey of staff members regarding performance of the Commission and
Commissioners

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 an officer of the Commission.

Attachment 1: Summary of Staff Comments Regarding Commissioners