

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: May 17, 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 April 19, 2018 Meeting

- II. Executive Director's Report
 1. Education / Training Report
 2. Guidance and Assignment Statistics – April 2018
Attachment 2: 2018 Guidance and Assignment Statistics
 3. Miscellaneous Office Projects / Updates
 - (a) Electronic filing system
 - (b) Office improvements

III. Legislative update

1. Ethics Commission bills:

(a) [SB872](#) Housekeeping measure to allow Ethics Commission to hire its own attorneys – dead

2. Other bills

(a) [SB2609](#) Redacting dollar amounts on public volunteer board/commission members' disclosure statements (oppose) – dead

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

(c) [SB2996](#) Establishing an airport corporation (comments to clarify that members will be bound by Ethics Code) – dead

IV. Administrative Rules

1. Report from Permitted Interaction Group (“PIG”) regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapter 10

Attachment 2: PIG Report and Draft of Chapter 10

2. Discussion of Report from PIG regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapters 7-9

Attachment 3: PIG Report and Draft of Chapters 7-9

V. 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
APRIL 19, 2018 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the April 19, 2018 Hawaii State
Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, 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

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
Pat K. Mukai, Secretary

Excused: Susan N. DeGuzman, Commissioner

CALL TO ORDER

The meeting was called to order at 10:00 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the March 29, 2018, Meeting

Vice Chair Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the March 29, 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 March 29, 2018, Meeting (Regarding Evaluation of Executive Director Daniel**
3 **Gluck)**
4

5 Vice Chair Tschumy made and Commissioner O'Neal seconded a motion to
6 approve the minutes of the March 29, 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 *Education / Training Report*
13

14 Executive Director Gluck reported that many training sessions will be coming up
15 in the next few months, including sessions on the neighbor islands.
16

17 *Guidance and Assignment Statistics – March 2018*
18

19 *Attachment 2: 2018 Guidance and Assignment Statistics*
20

21 Executive Director Gluck referred to the attachment and said that work is
22 progressing steadily.
23

24 *Financial Report for FY 2017-2018 (Quarter Ending March 31, 2018)*
25

26 *Attachment 3: Third Quarter Financial Report*
27

28 Executive Director Gluck reported that the Commission is well under budget for
29 the current fiscal year. He said that staff will be using approximately \$12,000 in this
30 fiscal year, and an additional \$15,000 in the next fiscal year, for computer consulting
31 services to assist with the electronic filing system. He also said that funds from this
32 fiscal year can be used to pay for travel expenses for the 2018 COGEL (Conference on
33 Governmental Ethics Laws) conference. He said that there are also excess funds in the
34 budget for office furniture and equipment, and that staff is assessing the office needs in
35 this area.
36

37 Executive Director Gluck also reported that in the past few years, the
38 Commission has prepaid office rent for a quarter of the year, but he did not believe it
39 was necessary to prepay this much rent because the Legislature has consistently
40 appropriated funds to cover the office rent. Executive Director Gluck proposed that the
41 office prepay one month's rent to cover any unanticipated fees and allow more money
42 to lapse back to the general fund. There were no objections to this by the
43 Commissioners.
44

1 *Miscellaneous Office Projects / Updates*

2
3 *a. Electronic Filing System*

4 *b. 50th Anniversary Events*

5
6 *i. Report on/approval of expenditures*

7 *Attachment 4: Expenditure Statement*

8
9 Executive Director Gluck referred to the spreadsheet showing the expenditures
10 for the Commission's 50th Anniversary ceremony at the Capitol. He said that the
11 Commission should continue to discuss whether to use state funds or contributions from
12 individuals to pay for these expenditures. Executive Director Gluck explained that state
13 funds can be used to pay for lei purchased for protocol purposes, and paper goods and
14 drinks that can be used for Commission meetings. He said that he believed it was also
15 appropriate to use state funds to pay for the food that was purchased because it was for
16 an official event for all members of the Legislature and other invited guests. He
17 suggested that a modest contribution of \$20 by each of the Commissioners and the
18 Executive and Associate Directors be accepted to help offset some of the food costs.

19
20 Chair Graulty said that he was pleased to see that the food served at the
21 reception was very modest. He also said that he believed this was an office function
22 and he had no problem approving the amount spent for this event.

23
24 Commissioner O'Neal asked whether there is a line item in the budget for this
25 type of expenditure by the Commission. Executive Director Gluck explained that there
26 is a category in the budget for Commission meetings, which includes money for
27 Commission lunches. He said there is more than enough money in this category of the
28 budget to cover the 50th Anniversary food costs.

29
30 Chair Graulty asked that Commissioners vote to approve the use of Commission
31 funds to reimburse staff for the 50th Anniversary expenditures and that contributions of
32 \$20 be accepted from each of the Commissioners and the Executive and Associate
33 Directors to help defray some of the expenses.

34
35 Commissioner O'Neal made and Vice Chair Tschumy seconded a motion to
36 approve the payment of expenditures for the Commission's 50th Anniversary as
37 summarized by Chair Graulty. The motion carried unanimously (Graulty, Tschumy,
38 O'Neal, and Wood voting).

39
40
41 **Agenda Item No. IV: COGEL – Philadelphia, December 9-12, 2018**

42
43 Discussion of attendance by Commissioners.

1 Executive Director Gluck reported that there is sufficient money in the budget to
2 prepay travel expenses for the 2018 COGEL conference in Philadelphia. Several staff
3 attorneys are planning to attend the conference. He asked Commissioners to inform
4 staff if they would like to attend the conference so that travel bookings can be made
5 now. Chair Graulty and Vice Chair Tschumy said that they would like to attend the
6 conference; Commissioner Wood said that if she is reappointed to another term, she
7 also would like to attend the conference.
8
9

10 **Agenda Item No. V: Legislative Update**

11
12 Executive Director Gluck reported that S.B. No. 872, which was introduced last
13 year, appears to have been revived. The bill places the Commission on the list of
14 agencies that can hire their own attorneys. The bill passed all committees except
15 House Finance last year; a few weeks ago, House Finance heard and passed the bill
16 and it is now in conference committee. Executive Director Gluck reported that the
17 Commission advocated for other bills, which were mainly housekeeping measures, and
18 they are all dead. He also reported on the status of ethics bills that were introduced by
19 others.
20

21 Chair Graulty said that it is difficult for the Commission to get ethics legislation
22 passed because the Commission does not have a strong constituency. Executive
23 Director Gluck agreed and said that the Commission would need to spend more time
24 on coalition building if it wants to advocate for more significant legislation to be passed.
25 He said that the Commission can discuss what legislation that might be at a future
26 meeting.
27

28
29 **Agenda Item No VI: Administrative Rules**

30
31 Report from Permitted Interaction Group regarding proposed amendments to
32 Hawaii Administrative Rules, Title 21, Chapters 7-9.
33

34 Chair Graulty said that he and Commissioner O'Neal have submitted a Permitted
35 Interaction Group ("PIG") report on Chapters 7-9 of the proposed administrative rules.
36 He explained that the PIG report will be considered and voted upon at the next
37 Commission meeting. Executive Director Gluck said that the last chapter of the
38 proposed rules, Chapter 10, is almost completed and will be submitted to the PIG
39 shortly. Chair Graulty said that after Chapter 10 has been considered, he will entertain
40 a motion by any Commissioner for reconsideration of the Commission's actions with
41 respect to any of the previously considered proposed rules.
42

43 Commissioner Wood made and Vice Chair Tschumy seconded a motion to
44 accept the report from the Permitted Interaction Group regarding proposed
45 amendments to Hawaii Administrative Rules, Title 21, Chapters 7-9. The motion carried
46 unanimously (Graulty, Tschumy, O'Neal, and Wood voting).

1 **Agenda Item No. VII: Staff Evaluations of Commission**

2
3 Results of survey of staff members regarding performance of the Commission
4 and Commissioners.

5
6 The Commission discussed the results of the staff survey regarding the
7 performance of Commissioners. Commissioner O'Neal expressed his appreciation to
8 staff for taking the time to respond to the survey. Executive Director Gluck replied that
9 staff appreciated being asked to provide feedback to the Commissioners.

10
11 Vice Chair Tschumy said that she apologized if the Commissioners' interactions
12 with each other at meetings made any of the staff feel uncomfortable. She said that the
13 Commissioners would try to do better.

14
15 Vice Chair Tschumy also responded to feedback from staff about
16 Commissioners' proposed edits to documents. She said that comments regarding
17 substantive changes to a document should go to the Commission for discussion. She
18 suggested that comments regarding non-substantive or stylistic changes be given by
19 Commissioners directly to the staff member who drafted the document and it will be up
20 to the staff member to decide whether the document should be revised. Vice Chair
21 Tschumy said that this practice will save time for staff and Commissioners. The other
22 Commissioners agreed with this suggested procedure. Commissioner Wood said she
23 was happy to see that staff generally welcomes editing suggestions by Commissioners.

24
25 Commissioner O'Neal said that he would leave it up to Executive Director Gluck
26 to decide whether Commissioners with stylistic edits should go to him or directly to the
27 staff member who drafted the document.

28
29 Commissioner O'Neal said that he had questioned before whether it is the
30 Commissioners' role to recommend how staff should draft legal documents. He said
31 that he did not feel qualified to make such recommendations and he asked whether the
32 procedure being discussed would apply to all Commissioners in the future. Executive
33 Director Gluck said that any Commissioner with comments about a document is
34 encouraged to provide feedback to staff and that Commissioners should not discount
35 their own views or opinions. Chair Gaulty agreed and said that the procedure will apply
36 to all Commissioners. Chair Gaulty also noted that it is staff's job to explain things in a
37 way that laymen can understand and that Commissioners do not need legal expertise to
38 make stylistic comments about a document. He also said that it would be up to staff to
39 decide whether to accept or decline suggested stylistic edits.

40
41 The Commissioners agreed that they did not want to review stylistic changes to
42 documents. Commissioner O'Neal said that if the changes are stylistic, staff can
43 approve and make the changes without sending a redlined draft to the Commissioners
44 to review.

1 Executive Director Gluck explained that staff wants to make sure Commissioners
2 see the final version of documents that they are signing. He said that draft documents
3 will be provided to all Commissioners at the same time for review and any
4 Commissioner can provide stylistic comments to staff. He said that if Commissioners
5 prefer not to see redlined drafts for stylistic edits (such as corrections for typographical
6 errors, punctuation, grammar, and other non-substantive changes), then when staff
7 presents a document in final form to the Commission, staff will explain that there were
8 stylistic changes but no substantive changes to the document. The Commissioners
9 said they preferred this procedure for dealing with stylistic changes to documents.

10
11 Executive Director Gluck also informed Commissioners that in the survey, staff
12 said they were pleased that Commissioners review the meeting folder materials and
13 come very prepared to Commission meetings.

14
15
16 **ADJOURNMENT OF SUNSHINE LAW MEETING**

17
18 At 10:33 a.m., Vice Chair Tschumy made and Commissioner O'Neal seconded a
19 motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Grauldy,
20 Tschumy, O'Neal, and Wood voting).

21
22 The meeting was adjourned at 10:33 a.m.

23
24
25 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT

Attachment 1: Executive Director's Report

Attachment 2: 2018 Guidance and Assignment Statistics

SUNSHINE MEETING
AGENDA ITEM II
EXECUTIVE DIRECTOR'S REPORT
May 17, 2018

1. Education / Training Report

a. Recently held 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
100 attendees

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
92 attendees

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
94 registrants

b. Upcoming trainings/presentations:

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

Department of Education – Office of Human Resources
Friday, June 22, 2018
10:00 a.m. – 11:30 a.m.
Stevenson Middle School
1202 Prospect Street
Honolulu, 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 – April 2018

Attachment 1: 2018 guidance and assignment statistics

3. Miscellaneous Office Projects / Updates

- a. Electronic filing system
- b. Office improvements

2018	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of Trainings	3	1	4	1									9
# of People Trained	75	6	197	100									378
Attorney of the Day	128	61	74	91									354
New assignments													
Advisory Opinion	1	0	0	0									1
Complaint	5	10	8	4									27
Gifts/Invitations/Travel	13	13	9	21									56
Guidance	11	7	3	3									24
Judicial Selection Comm'n	3	5	3	1									12
Training Request	0	4	1	2									7
Record Request	1	2	0	3									6
Project/Other	4	2	1	2									9
Total	38	43	25	36	0	0	0	0	0	0	0	0	142
Closed Assignments													
Advisory Opinion	0	1	0	1									2
Complaint	4	2	9	3									18
Gifts/Invitations/Travel	16	7	3	10									36
Guidance	5	5	3	1									14
Judicial Selection Comm'n	0	0	0	0									0
Training Request	0	0	1	1									2
Record Request	0	2	1	1									4
Project/Other	6	2	2	1									11
Total	31	19	19	18	0	0	0	0	0	0	0	0	87

SUNSHINE LAW MEETING
AGENDA ITEM III

LEGISLATIVE UPDATE

No attachments

SUNSHINE LAW MEETING
AGENDA ITEM IV.1

ADMINISTRATIVE RULES

Report from Permitted Interaction Group (“PIG”) regarding proposed amendments to
Hawaii Administrative Rules, Title 21, Chapter 10

Attachment 1: Staff Overview

Attachment 2: Permitted Interaction Group Report and Hawaii Administrative
Rules, Title 21, Chapter 10

ADMINISTRATIVE RULES

Report from Permitted Interaction Group (“PIG”) regarding proposed amendments to Hawaii Administrative Rules, Title 21, Chapter 10

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 Chapter 10 (Lobbying) of the proposed rules. The PIG’s report and Chapter 10 are attached and presented to the Commission. Chapter 10 is an entirely new chapter on lobbying that is proposed to be added to the Commission’s administrative rules. This is the last and final chapter of the proposed rules that were prepared by the Commission’s staff.

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 Chapter 10 will be scheduled for the Commission’s next public meeting in June.

Recommendation

Accept the permitted interaction group’s report for Chapter 10 of the Commission’s administrative rules.

SDY/pm

**Permitted Interaction Group Report:
Proposed Amendments to Hawaii Administrative Rules Title 21,
Chapter 10**

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

May 17, 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 Chapter 10 (Lobbying) of the proposed rules and has determined that no further changes are necessary. Therefore, the PIG recommends that the Commission consider for approval HAR Title 21, Chapter 10 (attached to this report), as drafted by the Commission's staff.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

Adoption of Chapter 21-10
Hawaii Administrative Rules

Month, Day, 2018

SUMMARY

Chapter 21-10, Hawaii Administrative Rules, entitled “Lobbying”, is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 21

HAWAII STATE ETHICS COMMISSION

CHAPTER 10

STATE ETHICS COMMISSION

LOBBYING

- 21-10-1 Definitions
- 21-10-2 Registration and termination
- 21-10-3 Exclusions from registration requirement
- 21-10-4 Background work in support of lobbying
- 21-10-5 Statement of contributions and expenditures
- 21-10-6 Contributions for the purposes of lobbying
- 21-10-7 Reporting of expenditures
- 21-10-8 Expenditures for the purpose of lobbying
- 21-10-9 Accounting issues in statements of contributions and expenditures statements
- 21-10-10 Submission of registration forms and statements of contributions and expenditures

§21-10-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Client” means the individual or entity that employs or retains another person for compensation to lobby on behalf of that individual or entity;

“Direct lobbying” means any oral or written communication with a legislator, or an employee, intern, or volunteer of the legislature or an agency, that would appear to a reasonable person to be an attempt to influence legislation or rulemaking. Direct lobbying includes but is not limited to drafting or submitting testimony; discussing existing or potential legislation or administrative rules; and advocating for the passage or defeat of any legislation or administrative rule;

“Employing organization” means an organization that employs or contracts with a lobbyist to act on behalf of a client;

“Engaging” in lobbying means taking part in lobbying activities, excluding purely administrative tasks such as making copies and setting meetings;

“For pay or other consideration” includes a wage, salary, fee, or other compensation provided to an owner, director, employee, or contractor of an organization who lobbies on behalf of the organization;

“Grassroots lobbying” means any oral or written communication directed at any member of the public that both expresses an opinion about existing or potential legislation, administrative rule, or ballot issue and includes an explicit or implied call to action;

“Lobbying” means communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue. Lobbying includes direct lobbying and grassroots lobbying;

“Lobbyist” has the same meaning as in section 97-1, HRS;

“Person” has the same meaning as in section 97-1, HRS.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

Comments and Examples:

- *The Commission may consider any guidance provided by the Internal Revenue Service in determining whether an activity constitutes “lobbying.”*
- *Example 1: A lobbyist for a bank attends a political fundraiser and speaks with a state representative. The two discuss the bank’s current profits and financial outlook, but do not discuss any potential legislation or regulatory issues that might affect the bank. This discussion is not considered lobbying.*

- *Example 2: A lobbyist for a non-profit organization that focuses on environmental issues attends a social event and speaks with a state senator. The two discuss, in general terms, the need to pass stronger legislation on the state level to protect coral reefs. This discussion is considered lobbying.*
- *Example 3: Several staff members of a non-profit organization research and write a paper on whether a policy proposal from another state would be feasible here in Hawaii. The organization does not engage in lobbying and does not intend to use the paper in support of any lobbying efforts. After spending many hours on the project, the organization determines the proposal would not be feasible in Hawaii and the project is shelved. This work is not considered lobbying.*
- *Example 4: Same facts as in #3, except that the organization initially plans to use the paper in lobbying; after researching the issue, however, the organization abandons the issue and does not use the paper for any lobbying efforts. The work is not considered lobbying.*
- *Example 5: Same facts as in #3, except after concluding the research, the organization decides that it will ask the legislature to pass legislation on the issue and uses its research paper to support its position. The work is considered lobbying.*
- *Example 6: A business pays for a public opinion poll to see whether the public would support a legislative initiative. The poll does not attempt to influence the individuals being polled, but merely asks for their opinions on the issue. The results are not shared publicly and the business never pursues the issue. This work is not considered lobbying.*
- *Example 7: Same facts as in #6, but the but the results are made public (to influence legislators' willingness to consider the legislation) and/or cited in the business's testimony. This work is considered lobbying.*

Registration of Lobbyists

§21-10-2 Registration and termination. (a) Every lobbyist, as defined by section 97-1, HRS, shall register with the commission within five days of becoming a lobbyist.

(b) For purposes of determining whether an individual has met the threshold requirements to register as a lobbyist, all time spent lobbying shall be included. This includes, but is not limited to:

- (1) drafting and providing testimony;
- (2) discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
- (3) time spent waiting to testify at a hearing, when the individual who is waiting:
 - (A) is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;
 - (B) spends that time preparing, reviewing, or strategizing on the testimony; or
 - (C) spends that time otherwise lobbying.

(b) Time expended on the following activities need not be counted for purposes of registration:

- (1) performing work relating to service on a task force created by the legislature or an agency; and
- (2) research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period.

(c) Every lobbyist shall renew the lobbyist's registration biennially by filing a registration and authorization form with the commission within ten days of the opening of every odd-numbered legislative session.

(d) If a lobbyist does not renew the lobbyist's registration as provided by subsection (c), the lobbyist's registration is deemed to have expired on December 31 of the preceding even-numbered year, provided that the lobbyist shall remain subject to the requirements of chapter 97, HRS, and these rules for the period during which the registration was effective.

(e) Lobbyists' registrations shall be terminated as set forth in section 97-2, HRS.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

§21-10-3 Exclusions from registration requirement. (a) The following individuals need not register as lobbyists:

- (1) any individual who represents oneself and not any other person before the legislature or administrative agency, provided that these individuals may be required to submit statements of contributions and expenditures as provided in section 97-3, HRS, and these rules. For purposes of this subsection, “any other person” includes a sole proprietorship or other business owned or operated by the individual;
- (2) any federal, state, or county official or employee acting in the official’s or employee’s official capacity, provided that if the federal, state, or county official or employee contracts for the services of a lobbyist, the director of the agency employing the lobbyist shall be responsible for submitting statements of contributions and expenditures as required by section 97-3, HRS, and these rules;
- (3) any person engaged in the business of publishing or broadcasting news or comment on the news, while engaged in the gathering or dissemination of news and comment on the news and in the ordinary course of business;
- (4) an attorney advising a client on the construction or effect of proposed legislative or administrative action; and
- (5) any person who possesses special skills and knowledge relevant to certain areas of legislation or rulemaking, whose skills and knowledge may be helpful to the legislative and executive branches of state government, and who makes an occasional appearance at the written request of the legislature or an administrative agency, or the lobbyist even though receiving reimbursement or other payment from the legislature or administrative agency or the lobbyist for the appearance. Any written request for an appearance shall be provided to the commission within five business days of a request by the commission.

(b) Individuals shall register as lobbyists and submit statements of contributions and expenditures for lobbying when that lobbying exceeds the scope of subsection (a).

[Eff.

] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))

(Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

Comments and Examples, subsection (2):

- *Example 1: The director of a state agency testifies on a bill affecting one of her agency's programs. The director is not required to register as a lobbyist, nor is the agency required to submit a statement of contributions and expenditures.*
- *Example 2: A state agency hires a private sector individual to lobby on behalf of the agency. The lobbyist is subject to the registration and reporting requirements, and the director of the state agency is responsible for submitting statements of contributions and expenditures.*

Comments and Examples, subsection (4):

- *Example 3: A client seeks an attorney's advice about the application of a proposed new law. The attorney provides the advice and does not engage in any other lobbying activities. The attorney does not need to register as a lobbyist or file a statement of contributions and expenditures, and the client need not report the attorneys' fees as a lobbying expense.*
- *Example 4: A client asks for an attorney's help in amending a law. The attorney drafts testimony, meets with legislators, and testifies on the proposed amendment. This is lobbying.*

Comments and Examples, subsection (5):

- *Example 5: A Senate committee is scheduled to hear a bill amending the tax code. The committee chair emails an economist and asks her to testify and provide her expert opinion on the bill. The economist is not subject to either the registration or reporting requirements for this testimony. If the economist engages in other lobbying, however – that is, lobbying other than at the direct request of the Senator – she must register as a lobbyist and submit expenditure reports if she meets the threshold requirements for registration/reporting.*
- *Example 6: A House committee is scheduled to hear a bill that will affect the hotel industry. A Representative knows of an executive at a hotel who is interested in the bill and telephones the executive to tell him the bill has been scheduled. The executive testifies on the bill. The executive is subject to the registration and reporting requirements.*

§21-10-4 Background work in support of lobbying. An individual who, under the direction of a registered lobbyist, is paid to draft testimony, research legislative issues, conduct public opinion polls, or perform administrative work in support of lobbying activities, is not required to register as a lobbyist if:

(a) the individual does not meet with or communicate directly with any official in the legislative or executive branch regarding the subject matter of any existing or potential legislation or rule; and

(b) the expenditures for that individual's activities are reported pursuant to section 21-10-5.

[Eff.] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments:

- *This Rule is intended to allow individuals to “ghost write” testimony – and to perform background research and administrative work – without having to register as a lobbyist, provided several strict conditions are met. A registered lobbyist must supervise the work; the work must be reported on the joint statement of contributions and expenditures or on a registered lobbyist’s statement as provided by §21-10-5(c); and the individuals performing background work may not directly communicate with legislators or agency employees regarding the subject matter of the legislation.*

Reporting of Lobbying Contributions and Expenditures

§21-10-5 Statement of contributions and expenditures. (a) Each client, its lobbyists, and the lobbyists' employing organization, if any, shall file a joint statement of contributions and expenditures that includes all expenditures made for the purposes of lobbying on behalf of that client.

- (b) A joint statement of contributions and expenditures shall include:
- (1) the names of all registered lobbyists engaged in lobbying on behalf of the client;
 - (2) all contributions for the purpose of lobbying received by the lobbyists, the employing organization, and the client, as set forth in section 97-3, HRS, and these rules;
 - (3) all expenditures made by or in support of the lobbying interests or activities of the client, including out-of-pocket expenditures made by individual lobbyists, as set forth in section 97-3, HRS, and these rules;
 - (4) the signature, digital or otherwise, by each registered lobbyist lobbying on behalf of the client, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures; and
 - (5) The signature of any person making expenditures of \$1,000 or more of the person's or any other person's money for the purpose of lobbying, with such signature certifying the completeness and accuracy of the statement of contributions and expenditures.

(c) If a lobbyist expends funds or receives contributions for the purpose of lobbying that are not captured on any client's statement of contributions and expenditures, the lobbyist shall submit a separate statement reporting these contributions and expenditures.

(d) Each client, each of its lobbyists, and each lobbyists' employing organization, if any, shall be responsible for filing of timely, accurate, and complete statements of contributions and expenditures to the commission.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments:

- *This rule addresses the statutory requirement that statements of contributions and expenditures be filed by up to three different entities (the client, the employing organization, and the lobbyist; or, in the case of lobbyists employed in-house by the client, by the client/employing organization and the lobbyist), even though the statements refer to the same lobbying activity. This*

rule creates a single, client-based report, rather than requiring separate reports from the client, the employing organization, and the lobbyist. This avoids double reporting, and also avoids the current practice of having lobbyists submit expenditure reports listing “zero” expenditures (because all expenditures were covered by the client and/or the employing organization). This method will also provide better information to the public, insofar as the public can see – in one place, on one report – all sums expended to benefit a particular client.

- *If a lobbyist represents multiple clients, the lobbyist must sign each client’s statement of contributions and expenditures.*

§21-10-6 Contributions for the purpose of lobbying. (a) Contributions for the purposes of lobbying shall be reported as set forth in section 97-3, HRS, except where a contributor’s identity may be withheld pursuant to law.

(b) Contributions shall be reported where the contributor knows or reasonably should know that the primary purpose of the contribution is to support lobbying.

(c) Where a contribution is used in part for lobbying and in part for other expenses, the reporting entity need report only the amount used for lobbying.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments and Examples:

- *Reporting contributions: The identity of a contributor need not be reported where the United States Constitution, Hawaii Constitution, or other law permits the contributor’s identity to be withheld. Contributions need not be explicitly earmarked for lobbying to be reportable; if the contributor reasonably should know that the contribution will be used primarily to support lobbying then it is reportable. For example, if the primary purpose of an organization is legislative advocacy, then a contributor should reasonably know that a donation will be used for lobbying.*
- *Example 1: A trade organization made up of several different companies is formed to promote the industry, offer education to its members, and engage in legislative advocacy. Each member company pays annual dues. The trade organization must report that portion of the dues that is attributable to the lobbying effort.*

§21-10-7 Reporting of expenditures. (a) Expenditures shall be reported as provided by section 97-3, HRS, and these rules, using forms and methods proscribed by the commission.

- (b) Each statement shall include:
 - (1) The total sum expended for the purpose of lobbying by or on behalf of the person filing the statement during the relevant reporting period, regardless of whether the expenditure was made by a registered lobbyist, along with an itemization of how that sum was expended among the following categories:
 - (A) Preparation and distribution of lobbying materials;
 - (B) Media advertising;
 - (C) Compensation paid to lobbyists, as follows:
 - (i) Where a client pays an employing organization such as a law firm, which in turn employs a lobbyist, the client shall report the amount paid to the employing organization for the purpose of lobbying during the relevant reporting period;
 - (ii) Where a client's employee serves as a lobbyist, the client shall report the pro rata portion of the lobbyist's salary that is attributable to the lobbyist's lobbying activities during the relevant reporting period;provided that a client shall indicate whether the lobbyist is a salaried employee, is paid on an hourly basis, or is paid a lump sum, whether annually, monthly, or otherwise.
 - (D) Fees paid to consultants for services, including the name of each individual consultant or entity and the nature of the services provided;
 - (E) Entertainment and events;
 - (F) Receptions, meals, food, and beverages;
 - (G) Gifts;
 - (H) Loans;
 - (I) Interstate transportation, including incidental meals and lodging; and
 - (J) Other disbursements;provided that the sum of the expenditures on each of these categories shall equal the total sum expended for the purpose of lobbying in any reporting period, or the filer shall provide an explanation for any discrepancy;
- (2) The name and address of each legislator or employee who received benefits valued at \$25 or more on any day from the filer; and

- (3) The name and address of each legislator or employee who received benefits valued at \$150 or more in a reporting period from the filer.
- [Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments:

- *Lobbyists should be aware of the State Ethics Code's restrictions on certain gifts and benefits. See HRS §§ 84-11, 84-11.5, 84-13; HAR chapter 21-7.*

§21-10-8 Expenditures for the purposes of lobbying. (a) Expenditures made “for the purpose of lobbying” means all those expenditures in support of, and to prepare for, direct lobbying or grassroots lobbying. This includes, but is not limited to:

- (1) drafting and providing testimony;
 - (2) discussing actual or potential legislation or rules with any official in the legislative or executive branch who is or may be involved in legislation or rulemaking;
 - (3) discussing lobbying strategy;
 - (4) research or polling when the primary purpose of the research or polling is to use in lobbying activities;
 - (5) advertising;
 - (6) monitoring the status of proposed legislation or proposed administrative rules, when the primary purpose of the monitoring is to engage in lobbying;
 - (7) an event organized for the purpose of providing interaction between members of the legislature or an agency and an individual or organization that is engaged in lobbying, or intends to engage in lobbying, where the topics of the lobbying effort are discussed;
 - (8) time spent waiting to testify at a hearing, when the individual who is waiting:
 - (A) is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;
 - (B) spends that time preparing, reviewing, or strategizing on the testimony; or
 - (C) spends that time otherwise lobbying.
- (b) Expenditures on the following activities are not considered expenditures for the purpose of lobbying:
- (1) performing work relating to service on a task force created by the legislature or an agency; and

- (2) research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period.

[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-3, 97-6)

Comments and examples:

- *Example 1: Paid staff of a non-profit organization dedicated to serving the needs of the elderly meet to discuss the current state of elder affairs and what issues they currently face. Without more, expenditures relating to this meeting are not reportable lobbying expenditures. However, if the group discusses proposed legislation or how the organization should respond to bills, then expenditures relating to this meeting are reportable lobbying expenditures. If the group spends a portion of the meeting discussing lobbying efforts and a portion discussing non-lobbying work, then expenditures for the pro rata share of the meeting devoted to lobbying should be reported.*
- *Example 2: A non-profit organization that lobbies on health care puts on a brunch and invites members of the legislature to discuss both the mission of the organization and legislation that the organization would like introduced. Expenditures relating to the brunch are reportable.*

§21-10-9 Accounting issues in statements of contributions and expenditures. (a) Statements of contributions and expenditures required by section 97-3, HRS, and these rules shall report expenditures during the relevant reporting period on an accrual basis.

(b) Where an entity makes a lump sum expenditure for both lobbying and non-lobbying activities, the entity shall report either the entire lump sum expenditure or the pro rata share expended for the purposes of lobbying.

Comments and Examples:

- *Example 1: A client hires a consultant to run radio ads during the January/February reporting period. The consultant does not bill the client until March. The expenditure is reported on the January/February contributions and expenditures statement.*

- *Example 2: A client pays a lobbyist a flat fee of \$24,000 a year to lobby. This fee is divided into monthly installments of \$2,000; however, the lobbyist and client do not know – when filing the January-February report – whether the lobbyist will be lobbying more or less in March-April (or May-December) than in January-February, and thus do not know how to apportion the \$24,000. The lobbyist and client may make a good-faith estimate as to when the lobbying activities will occur. The Ethics Commission’s experience is that, where a lobbyist focuses exclusively on the state legislature, the split is generally 40% for January-February, 40% for March-April, and 20% for May-December. A client and lobbyist with this type of lump-sum (or lump-sum-in-installments) arrangement may use the 40/40/20 model unless the lobbyist has a good faith belief that expenditures for lobbying will deviate from this model. However, any client who pays a lobbyist on an hourly basis should use report actual expenditures (rather than estimates) using an accrual basis.*

- *Clients often pay lobbyists a set monthly or yearly sum, where the lobbyist may perform both lobbying and non-lobbying work for the client. In such situations, the client has two options:*
 - *Option #1: Report the entire sum as a lobbying expense. This is a clear and straightforward way to report expenditures, as neither the client nor the lobbyist must track the hours spent lobbying nor determine whether a particular activity constitutes “lobbying.” This method may result in over-reporting, however, as some work performed by a lobbyist may not constitute “lobbying.”*

 - *Option #2: Track the lobbyist’s hours on lobbying and non-lobbying activities, and report the pro rata share of the lobbying expense (taking into account the “lump sum” rules discussed above). The Commission will presume that a lobbyist’s hourly rate is the same for both lobbying and non-lobbying activities; a client that contends it pays a lobbyist \$100 an hour for lobbying but \$2,000 an hour for non-lobbying activities will likely face an enforcement action for violating the reporting requirements of HRS § 97-3 and these rules.*

§21-10-10 Submission of registration forms and statements of contributions and expenditures. Registration forms and statements of contributions and expenditures shall be filed using forms and methods prescribed by the commission. The commission may require that forms and statements be filed using an electronic filing system.
[Eff. _____] (Auth: HRS §§84-31(a)(5), 97-6(a)(5))
(Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

These amendments to and compilations of Title 21, Chapters 1-10, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

SUNSHINE LAW MEETING
AGENDA ITEM IV.2

Discussion of Report from Permitted Interaction Group (“PIG”) 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

Discussion of Report from Permitted Interaction Group regarding Proposed Amendments to Hawaii Administrative Rules, Title 21, Chapters 7 - 9

STAFF OVERVIEWI. Discussion

At its last public meeting on April 19, 2018, the Commission received recommendations from the permitted interaction group ("PIG") that was formed to review proposed amendments to the Commission's rules, Hawaii Administrative Rules ("HAR") Title 21. The PIG¹ submitted its report and recommendations for Chapters 7 - 9 of the rules.² Chapters 7 - 9 address the following subjects:

Chapter 7: Gifts and Fair Treatment

Chapter 8: Conflicts of Interests

Chapter 9: Post-Employment Restrictions and Contracts

At the Commission's meeting on May 17, 2018, the Commission is asked to discuss the proposed Chapters 7 - 9. As previously explained, the proposed rules will be subject to the rulemaking procedures required by HRS chapter 91, which include holding a public hearing on the proposed rules.

II. Recommendation

Discuss and approve proposed HAR Title 21, Chapters 7 - 9.

SDY/pm

¹ The PIG was formed on January 18, 2018, and is comprised of Chair Grauly and Commissioner O'Neal.

² Chapters 7 - 9 are new chapters that are proposed to be added to the Commission's administrative rules.

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

(Submitted by Chair Reynard Grauly 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 Grauly 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