

BICKERTON ■ DANG
A LIMITED LIABILITY LAW PARTNERSHIP

STATE OF HAWAII
STATE ETHICS COMMISSION

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ROWENA M.N. AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

COMPL-C-15-00236

Complainant,

**RESPONDENT ROWENA AKANA'S
ANSWER TO HAWAII STATE
ETHICS COMMISSION'S
CHARGES DATED APRIL 19, 2018
AND RECEIVED MAY 3, 2018;
CERTIFICATE OF SERVICE**

vs.

ROWENA AKANA;

Respondent.

**RESPONDENT ROWENA AKANA'S ANSWER TO HAWAII STATE ETHICS
COMMISSION'S CHARGES DATED APRIL 19, 2018 AND RECEIVED MAY 3, 2018**

ROWENA AKANA ("AKANA" or "Respondent"), through her undersigned counsel, hereby respectfully answers the Charges of the Complainant, Hawaii State Ethics Commission ("Complainant") dated April 19, 2018 and received through her counsel on May 3, 2018 (the "Charges"). Subject to the denials and the affirmative defenses stated herein, ROWENA AKANA responds as follows:

1. Respondent admits the allegations in paragraphs 12, 13, 28, 29, 30, 31, 32, 33, 38, of the Charges but admits no wrongdoing in connection with any of the admitted acts or occurrences.

2. Respondent denies the allegations in paragraphs 20, 40, 42, 43, 44, 45, 46, 47, 48, 56, 57, 58, 59, 60, 62, 64, 66, 68, 69, 70, 72, 73 of the Charges. In addition, certain of the allegations in these paragraphs are addressed below with further responses by the Respondent.

3. Respondent denies the allegations in paragraph 41 of the Charges and more specifically states that, because the payment of legal fees referenced therein for the defense of that lawsuit referenced therein was brought against Ms. Akana in her official capacity, said payments of legal fees, in the first instance benefitted the State of Hawaii, who was, as a result, not required to pay for the defense of Ms. Akana in her official capacity, and only secondarily to Ms. Akana, who would have otherwise been entitled to defense provided by OHA and/or the State. Furthermore, Respondent is without sufficient information or knowledge to admit or deny that portion of the allegations that state “the gifts were due to Respondent AKANA’s status as an OHA Trustee” and, therefore denies same, and states, instead, that to the best of her knowledge the gifts referenced were due to the gifting party’s desire to promote transparency and fairness in OHA affairs, but she leaves Complainant to its proof regarding proving the donor’s motives and/or intent.

4. Respondent does not presently have information in her possession or knowledge or sufficient documentary evidence at her disposal sufficient to enable her to admit or deny the allegations in paragraphs 1 (first sentence), 17, 18, 19, 22, 23, 24, 25, 26, 27 of the Charges, and, therefore, she denies same and leaves Complainant to its proof.

5. Respondent responds to paragraph 21 of the Charges as follows: she admits the allegations in the first paragraph; she is without sufficient information, knowledge or copies of the relevant documentary evidence to admit or deny the allegations in the second sentence, and therefore, denies same and leaves Complainant to its proof.

6. Respondent responds to the second sentence of paragraph 1 of the Charges as follows: the allegations therein merely summarize the contents of the Hawai'i State Constitution, and, therefore, she refers the Complainant and the Hearings Officer, Administrator or Judge to the document referenced, which speaks for itself, and leaves Complainant to its proof.

7. Respondent responds to the paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Charges as follows: the allegations therein merely summarize the contents of Hawai'i law, statute and/or administrative rules, and, therefore, she refers the Complainant and the Hearing Officer, Administrator or Judge to the laws, statutes and/or rules referenced, which speak for themselves, and leaves Complainant to its proof. Furthermore, said paragraphs state legal conclusions or statements or principles of law, statute or rule, and not facts within the Respondent's first-hand knowledge, to which Respondent is not required to respond.

8. Respondent is not required to respond to paragraphs 14, 15, 16, 34, 35, 36, 37, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 64, 66, 68, 69, 70, 72, 73 of the Charges because said allegations comprise and prematurely state legal conclusions and/or recitations of purported legal duties, principles or obligations imposed under law, statute or administrative rule, and as a result, she denies same and leaves Complainant to its proof, in addition to certain of these allegations being specifically denied outright above in ¶ 2.

9. Respondent is not required to admit or deny the allegations in paragraphs 39, 49, 55, 57, 61, 63, 65, 67, 71, of the Charges because they merely repeat, reallege and incorporate prior paragraphs, but, nevertheless, for uniformity, she repeats, realleges and incorporates her responses to said prior paragraphs, in turn.

10. Respondent hereby requests a hearing before a neutral hearing officer to determine the lack of validity of the charges brought against her and to dismiss same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Charges fails to state a claim against the Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Complainant lacks subject matter jurisdiction over all of the claims and charges asserted in the Charges against Respondent relating to OHA Trustee trust fund expenditures, because Complainant does not have jurisdiction over the discretionary spending accounts of the OHA Trustees, since such funds comprise “trust funds” and do not constitute “state funds,” and Complainant does not have jurisdiction over the former.

THIRD AFFIRMATIVE DEFENSE

3. Complainant’s claims are barred, in whole or in part, because Complainant lacks standing to bring the charges alleged.

FOURTH AFFIRMATIVE DEFENSE

4. Complainant’s charges are barred and/or Complainant is not entitled to the relief sought due to the doctrines of laches and waiver.

FIFTH AFFIRMATIVE DEFENSE

5. Complainant’s charges are barred, in whole or in part, in that they violate the Equal Protection clause and Rights of Citizens Clause of the Hawaii State Constitution because they single the Respondent out for alleged acts taken and/or expenditures made in her official capacity as an OHA Trustee that a large number of other OHA Trustees regularly engage in and consider proper, for which those OHA Trustees have not faced similar proceedings and charges, thereby subjecting the Respondent to an arbitrary exercise of Complainant’s power and dissimilar treatment under the law.

SIXTH AFFIRMATIVE DEFENSE

6. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's Equal Protection and Due Process rights and Rights of Citizens under the Hawaii State Constitution by singling the Respondent out for alleged wrongful acts taken in her official capacity as an OHA Trustee, for acts and expenditures that were previously *approved* by OHA, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA.

SEVENTH AFFIRMATIVE DEFENSE

7. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's due process rights under the Hawaii State Constitution, as well as, the Cruel and Excessive Punishment Prohibition contained in the Hawaii State Constitution, by seeking fines and penalties against the Respondent that are excessive and grossly disproportionate to the underlying charges – such as seeking a \$1,000.00 fine in connection with an alleged expenditure violation in the amount of \$23.72 for food purchased to bring to an OHA pot-luck holiday party – thereby constituting an arbitrary exercise and abuse of Complainant's power and unconstitutional, excessive fines and punishment.

EIGHTH AFFIRMATIVE DEFENSE

8. Complainant's charges are barred, in whole or in part, by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE

9. Complainant's charges are barred, in whole or in part, by the doctrines of unclean hands and persistent inequitable conduct.

TENTH AFFIRMATIVE DEFENSE

10. Complainant's charges are barred, in whole or in part, due to lack of causation.

ELEVENTH AFFIRMATIVE DEFENSE

11. Complainant's charges are barred, in whole or in part, due to improper motive on the part of the Complainant in that, upon information and belief, it is engaged in a wrongful plan and scheme to alienate, isolate and remove Respondent from her OHA Trustee position, in collusion with a cabal of other OHA Trustees and related persons who have historically opposed Respondent due to her outspoken nature, demands for full transparency and activist pursuits.

TWELFTH AFFIRMATIVE DEFENSE

12. Complainant's charges are barred, in whole or in part, by statutes of limitations or by equivalent time limitations for Complainant to first bring charges.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Respondent states her intention to rely on any other applicable affirmative defenses permitted under the Hawaii Rules of Civil Procedure, all statutes and laws and rules applicable to the Hawaii State Ethics Commission, other Hawaii statute, and other Hawaii case law, and Respondent will amend and/or supplement this Answer/Response if and when such defenses are determined to be applicable, and to seek relief from the courts of the state of Hawai'i.

WHEREFORE, Respondent ROWENA AKANA hereby respectfully prays as follows in response to the Charges:

- a. That she be granted a hearing before a neutral hearings officer to determine the invalidity of the charges against her and to dismiss the fines requested in connection therewith;
- b. That the Charges against her be dismissed with prejudice;

- c. That a finding of no wrongdoing on Respondent's part ensue;
- d. That no fines be levied against her;
- e. That, in the alternative, if any fines are to be levied against her for technical violations, such as for belated reporting, that they be nominal due to no wrongful intent, motive or wrongdoing, in the amount of \$1.00 or some other amount deemed reasonable but less than the maximum \$1,000;
- f. That she be awarded her reasonable attorneys' fees and costs incurred in defending against this frivolous and ill-motivated proceeding;
- g. For such other and further relief as the neutral Hearing Officer may deem just and proper.

DATED: Honolulu, Hawai'i, May 23, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

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Complainant,

vs.

CERTIFICATE OF SERVICE

ROWENA AKANA;

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following party at their last known address in the manner and on the date herein below indicated:

Danie Gluck, Esq.
Virginia Chock, Esq.
HAWAII STATE ETHICS COMMISSION
1001 Bishop Street,
ASB Tower, Suite 970
Honolulu, HI 96813

Via Hand Delivery

DATED: Honolulu, Hawai'i, May 23, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA