

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, January 24, 2019
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
Susan N. DeGuzman, Commissioner
Melinda S. Wood, Commissioner
Wesley F. Fong, 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

CALL TO ORDER

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

Agenda Item No. I: Consideration and Approval of the Minutes of the November 14, 2018 Meeting

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the minutes of the November 14, 2018 Sunshine Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item II: Consideration and Approval of the Executive Session Minutes of the November 14, 2018 Meeting (Regarding Discussion of *Akana v. Hawaii State Ethics Commission*, Civil No. 18-1-1019-06 (JHA) and *Akana v. Hawaii State Ethics Commission* and *Daniel Gluck*, Civil No. 18-1-1665-10 (KKH) (appeal))

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the minutes of the November 14, 2018 Executive Session. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. III: Election of Officers for 2019

Vice Chair Tschumy asked whether Chair Graulty would be willing to continue to serve as Chair due to the pending Akana case. Chair Graulty said that he does not believe any one person should serve as Chair for too long, but now may not be the right time to change leadership on the Commission. Chair Graulty said that he would be willing to serve as Chair until June 30, 2019, but for no longer than this. He suggested that the Commission postpone its election of officers until June 2019.

Commissioner Fong made and Vice Chair Tschumy seconded a motion to postpone the election of officers until June 2019. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. IV: Executive Director's Report

Education / Training Report

Executive Director Gluck said that staff has been very busy with training sessions at the Capitol, including training for House Representatives and House staff, as well as mandatory training for new Cabinet members. The Governor's office has also requested ethics refresher training for all Cabinet members. Additional training sessions will be coming up in the next few months, including training for all employees of the State Department of Taxation.

In response to a question by Commissioner Fong about continuing legal education credit for ethics, Executive Director Gluck explained that the attorneys who attended the COGEL conference last December should be eligible to receive 15 to 18 ethics credits.

Executive Director Gluck said that he spoke to the West Honolulu Rotary Club at Commissioner Fong's invitation. Commissioner Fong said that Executive Director Gluck did an excellent job in educating members of the Rotary Club about what the Commission does.

Guidance and Assignment Statistics – August 2018

Attachment 2: 2018 Guidance and Assignment Statistics

Executive Director Gluck referred to the year-to-date statistics for guidance and assignments. He said there were over 1,000 attorney-of-the-day assignments, as well as other closed assignments, for 2018.

Miscellaneous Office Projects / Updates

Executive Director Gluck said that the Commission's new investigator, Jason Kamisugi, and new office manager, Caroline Choi, have both settled in and are doing very well.

Financial Report for FY2018-2019 (Quarter Ending December 31, 2018)

Executive Director Gluck updated the Commission on the Second Quarter Financial Report and funds paid for consulting services for the Commission's e-filing system. He said that the current consultant is doing an excellent job. He discussed some of the new features of the e-filing system for financial disclosures and said that the new e-filing system for lobbying registrations and expenditure reports will be launched soon.

Executive Director Gluck also explained that the Commission's budget request for FY 2019-2020 was heard by the House Finance Committee. He said the entire amount of the Commission's request was approved and put into the budget bill (**H.B. 1**), which must cross over to the Senate and then to the Governor for approval. Aside from a few small increases, the Commission's budget request was flat. Executive Director Gluck said that the level of funding received by the Commission has been good and the Legislature has been supportive of the resources needed by the Commission for its work.

Agenda Item No. V: Report from attendees of COGEL Conference

Chair Graulty, Commissioner Wood and Commissioner Fong discussed their impressions of the 2018 COGEL Conference in Philadelphia.

Commissioner Wood said she found the conference very interesting because it allowed her to see how other jurisdictions deal with ethics problems. Commissioner Fong said that he also appreciated speaking to people from other jurisdictions. He noted that the Commission is fortunate to have a well-staffed office compared to ethics agencies in some of the other states.

Chair Graulty attended a session on pension forfeitures by government officials, which he thought would be a serious deterrent to ethics violations. Commissioner Fong was also impressed that some jurisdictions levy liens against individuals to collect fines. Commissioner Fong said he attended a session about sexual harassment, which he thought raised issues about whether this should be treated as an ethics violation. Chair Graulty and Commissioner Wood also discussed a film shown at the conference about dark money and its negative influence on government.

Agenda Item No. VI: 2019 Legislative Session

Executive Director Gluck updated the Commission about the status of the Commission's three bills that were introduced in both the House and the Senate. He said that he has reached out to House Judiciary Chair Lee to see if hearings can be scheduled on these bills (**H.B. 169**, **H.B. 170** and **H.B. 171**).

In addition to the House budget bill (**H.B. 1**), there is another bill that will fund cost adjustments for staff salaries for legislative branch agencies. The Legislature will use the percentage increases from collective bargaining to calculate salary adjustment amounts for the legislative agencies, including the Commission. The Salary Commission also will meet this spring to set salaries for department heads (which will affect the Executive Director's salary).

Executive Director Gluck discussed some of the other bills that he has been tracking. He recommended that the following positions be taken should the bills come up for hearing, but also asked Commissioners to inform him if they have strong feelings about any of the bills.

S.B. 955 requires state agency executive directors to file public financial disclosures. Executive Director Gluck said that he is inclined to support the bill. He also said that he has no problem with becoming a public financial disclosure filer himself.

H.B. 199 exempts charter school employees from the post-employment laws by allowing them to work for nonprofit organizations that support their schools immediately upon leaving their school employment. Executive Director Gluck said this bill is troubling and he would point out some of the ethics issues that may result from this bill.

H.B. 391 would create a state-law version of the federal Hatch Act, and is similar to a bill that was also introduced last year. Executive Director Gluck said the bill is probably not necessary but it does make some things more explicit so he was inclined not to oppose it.

S.B. 447 prohibits campaign contributions by lobbyists and fundraisers during the legislative session. Executive Director Gluck did not believe the Commission needs to take a strong position on this bill.

S.B. 1055 requires legislators and other state officials to provide more information on their financial disclosure statements about their sources of income, including who their clients are. Executive Director Gluck said he would support the intent of this bill.

S.B. 1056 requires two additional lobbying expenditure reports in a calendar year. Executive Director Gluck said he would support this bill.

Executive Director Gluck informed the Commission about another matter concerning legislation passed in 2017 which increased the maximum fine for ethics violations from \$500 to \$1,000. Staff supported the legislation and testified that the \$500 fine had been set in statute since 1992 but that due to inflation, the same amount would now be about \$850. Recently, staff realized that this information was incorrect because the \$500 fine was set in 2006 and the Commission did not have any fining authority before 2006. Executive Director Gluck said that the fine increase to \$1,000 was fully warranted and there is nothing in the legislation that passed that needs to be corrected. However, staff inadvertently provided incorrect information to the Legislature in 2017. Executive Director Gluck asked whether the Commissioners felt it was appropriate to send a letter, which he has drafted, to the Judiciary Committee Chairs explaining the error.

The Commissioners discussed whether any action needed to be taken under these circumstances and if so, whether the Executive Director should send a letter or informally speak to the Judiciary Committee Chairs. Vice Chair Tschumy and Commissioner DeGuzman stated that being open and honest about this matter was appropriate. Executive Director Gluck said that he would be inclined to send a letter. Chair Grauly suggested that Executive Director Gluck take whatever action he felt was best in light of the discussion.

Executive Director Gluck also informed the Commission that the Senate Committee on Government Operations would be holding an informational briefing that afternoon on recently reported ethics violations by employees of the Department of Land and Natural Resources (Division of Boating and Ocean Recreation, Kauai Office).

Agenda Item No. VII: 2019 Meeting Calendar

Commissioner Fong said that he must leave by 12:45 p.m. on Thursdays to teach a class at the University of Hawaii. Commissioner DeGuzman suggested that the Commission continue to schedule its meetings at 10:00 a.m. unless there is a long agenda, in which case a meeting can be scheduled to start at 9:00 a.m.

Commissioner DeGuzman made and Commissioner Wood seconded a motion to approve the 2019 Meeting Calendar. The motion carried unanimously (Grauly, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. VIII: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019 (JHA)

Executive Director Gluck updated the Commission on Judge Ashford's recent Order granting in part and denying in part the Commission's motion to dismiss the Complaint or, in the alternative, to stay the proceedings pending resolution of the Commission's administrative process.

Agenda Item No. IX: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1665-10 (KKH) (appeal)

Chair Gaulty acknowledged the information provided about the Stipulation and Order withdrawing Rowena Akana's appeal to Circuit Court of the Commission's Order regarding jurisdictional and constitutional issues raised by Ms. Akana in COMPL-C-15-00236.

ADJOURNMENT OF SUNSHINE LAW MEETING

At 10:54 a.m., Commissioner Wood made and Vice Chair Tschumy seconded a motion to adjourn the Sunshine Law meeting. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, Wood and Fong voting).

The meeting was adjourned at 10:54 a.m.

Minutes approved on: February 21, 2019