

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,	)	COMPL-C-15-00236
	)	
Complainant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW, AND DECISION AND ORDER;
vs.	)	EXHIBIT "A"; CERTIFICATE OF
	)	SERVICE
ROWENA AKANA,	)	
	)	
Respondent.	)	Contested Case Hearing: Oct. 22, 24-26, 2018
	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

On October 22, 24, 25, and 26, 2018, the Hawaii State Ethics Commission ("Commission") held a contested case hearing in the matter of Hawaii State Ethics Commission vs. Rowena Akana, COMPL-C-15-00236. The hearing was held at Bishop Place, Suite 611, 1132 Bishop Street, Honolulu, Hawaii 96813.

The purpose of the hearing was to determine whether Rowena Akana (hereinafter "Respondent Akana" or "Respondent") violated the Hawaii State Ethics Code ("State Ethics Code"), Hawaii Revised Statutes ("HRS") chapter 84, specifically HRS § 84-11 (Gifts law), HRS § 84-11.5 (Gifts Reporting law), and HRS § 84-13 (Fair Treatment law) as alleged in the Further Statement of Alleged Violation, issued July 19, 2018.

Daniel M. Gluck, Esq., Virginia M. Chock, Esq., and Nancy C. Neuffer, Esq., appeared for Complainant Hawaii State Ethics Commission. James J. Bickerton, Esq., Stephen M. Tannenbaum, Esq., and Jeremy K. O'Steen, Esq., appeared for Respondent Akana, who was also present throughout the hearing.

Having heard and carefully considered the testimony, documentary evidence, and arguments of counsel presented during the hearing, as well as the pre-hearing motions and memoranda, and the

I do hereby certify that the foregoing is a full, true, and correct copy of the original on file in this office.

Secretary, State Ethics Commission

records and files herein, the Commission hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order based upon competent and substantial evidence.

To the extent that any statement denominated as a finding of fact is more properly considered a conclusion of law, then it should be treated as a conclusion of law. Conversely, if any statement denominated as a conclusion of law is more properly considered a finding of fact, then it should be treated as a finding of fact. Furthermore, to the extent that any finding of fact also contains a conclusion of law, it shall be deemed incorporated by reference into that applicable conclusion of law section.

## **I. INTRODUCTION**

### **The Parties**

1. The Commission, the Complainant in this matter, is an administrative agency that is empowered by Article XIV of the Hawaii State Constitution and HRS chapter 84 to administer and enforce the State Ethics Code.
2. Rowena Akana is the Respondent in this matter. At all times relevant to these proceedings, Respondent Akana was a member of the Office of Hawaiian Affairs (“OHA”) Board of Trustees (“BOT”).

### **Procedural History**

3. On April 19, 2018, the Commission issued Charge No. COMPL-15-00236 (“Charge”) against Respondent Akana pursuant to HRS §§ 84-31(a) and 84-31(b), and Hawaii Administrative Rules (“HAR”) § 21-5-2. Respondent Akana filed an Answer to the Charge on May 23, 2018.<sup>1</sup>

---

<sup>1</sup> *Respondent Rowena Akana’s Answer to Hawaii State Ethics Commission’s Charges Dated April 19, 2018 and Received May 3, 2018, filed May 23, 2018.*

4. On July 19, 2018, the Commission issued a Further Statement of Alleged Violation (“Further Statement”) against Respondent Akana in furtherance of the Charge. Respondent Akana filed an Answer to the Further Statement (hereafter “Answer”) on August 1, 2018.<sup>2</sup>
5. On September 10, 2018, the Commission issued a Notice of Hearing pursuant to HRS § 84-31(c), setting a contested case hearing on the Further Statement on October 22, 2018, and continuing, if necessary, through October 26, 2018.
6. On October 16, 2018, the parties stipulated to the withdrawal without prejudice of Count 9 of the Further Statement relating to the alleged improper purchase of a home security system by Respondent Akana.<sup>3</sup>
7. The Commission held the contested case hearing on October 22, 24, 25, and 26, 2018. The hearing was conducted in accordance with HRS chapter 84 (State Ethics Code), HRS chapter 91 (Hawaii Administrative Procedure Act), and HAR Title 21 (Administrative Rules of the Hawaii State Ethics Commission). All five members of the Commission were present throughout the hearing.<sup>4</sup> In accordance with HRS § 84-31(c), the hearing was open to the public.
8. On October 31, 2018, the Commission issued an Order directing the parties to submit proposed findings of fact and conclusions of law to the Commission no later than November 30, 2018.<sup>5</sup> On November 27, 2018, Respondent Akana filed an unopposed *ex parte* motion

---

<sup>2</sup> *Respondent Rowena Akana’s Answer to Hawaii State Ethics Commission’s Further Statement of Alleged Violations Dated July 19, 2018*, filed August 1, 2018.

<sup>3</sup> *Amended Stipulation and Order Re: (1) Certain Procedures and Processes for Hearing, (2) Admissibility of Exhibits, and (3) Voluntary Withdrawal of Charge Without Prejudice*, filed October 16, 2018 (approved by Commission on October 18, 2018).

<sup>4</sup> The members of the State Ethics Commission are: Reynard D. Gaulty, Chair; Ruth D. Tschumy, Vice Chair; Susan N. DeGuzman, Commissioner; Melinda S. Wood, Commissioner; and Wesley F. Fong, Commissioner.

<sup>5</sup> *Order Directing the Submission of Proposed Findings of Fact and Conclusions of Law*, filed October 31, 2018.

requesting an extension of time to December 14, 2018, in which to file Respondent's proposed findings of fact and conclusions of law.<sup>6</sup> The Commission granted Respondent's motion for an extension of time on November 29, 2018.<sup>7</sup> On December 14, 2018, both parties filed their respective proposed findings of fact and conclusions of law.

## II. FINDINGS OF FACT

### **Respondent Akana's State Employment**

1. Respondent Akana, at all times relevant herein, was employed with OHA, a state agency, as an elected member of the OHA BOT. Further Statement ¶13; Answer ¶1 (admits to ¶13).
2. Respondent Akana served as an OHA Trustee for twenty-eight years, from 1990 until 2018.
3. According to OHA's website, "The Board of Trustees is responsible for establishing OHA policy and managing the agency's trust." Further Statement ¶14; Answer ¶1 (admits to ¶14).
4. There are nine OHA Trustees.
5. OHA Trustees receive an annual salary.
6. OHA Trustees are required to participate in ethics training for elected officials, state directors and deputy directors; Trustees received reminders from OHA's human resources staff about the Trustees' obligations to attend ethics training classes.
7. Section 1.3.o of OHA's Executive Policy Manual (Feb. 2012) provides in relevant part that "[a]ll Trustees shall abide by the Standards of Conduct of the State of Hawai'i,

---

<sup>6</sup> *Respondent Rowena Akana's Unopposed Ex Parte Motion for Extension to Submit Proposed Findings of Fact and Conclusions of Law*, filed November 27, 2018.

<sup>7</sup> *Order Granting Respondent's Ex Parte Motion for Extension to Submit Proposed Findings of Fact and Conclusions of Law*, filed November 29, 2018.

Chapter 84, Hawaii Revised Statutes, as amended, and shall attend ethics training as required by law.” Exhibit C-1 at 10.

8. At least every other year, Trustees received reminders from OHA staff and/or Commission staff regarding Trustees’ obligations under the State Ethics Code. See Exhibits C-3, C-65.
9. OHA staff also provided Trustees with gifts disclosure forms and informed Trustees that there were regulations with respect to the receiving and giving of gifts.

**Counts 1-6: Acceptance of Prohibited Gifts and Failure to Report Gifts  
by the Statutory Deadline (Payments of Legal Fees)**

10. From approximately 2013 through 2017, Respondent Akana was engaged in a lawsuit she filed on September 13, 2013, against the eight other OHA Trustees in their official capacities: Akana v. Machado et al., Civil No. 13-1-2485-09 VLC, filed September 13, 2013 (hereinafter “Akana v. OHA BOT lawsuit”). Further Statement ¶32; Answer ¶1 (admits ¶32); Exhibits C-66, C-67, C-68, C-69, R-6, R-7, R-8, R-9.
11. Respondent Akana filed the Akana v. OHA BOT lawsuit in her individual and official capacities, seeking declaratory and injunctive relief with respect to OHA’s practices and procedures for providing Trustees and beneficiaries access to minutes and other related records of executive session meetings. Exhibit C-66.
12. On November 25, 2013, the defendants (i.e., the other Trustees) in the Akana v. OHA BOT lawsuit filed a counterclaim against Respondent Akana in her official capacity, alleging that she breached her fiduciary duty by disclosing privileged and confidential information. Exhibit C-67.
13. The OHA BOT did not authorize Respondent Akana to file the Akana v. OHA BOT lawsuit, but voted to initiate a counterclaim against Respondent in that lawsuit.

14. OHA presented the case to its insurance carrier to determine whether the carrier would cover Respondent Akana's attorneys' fees and costs resulting from the BOT's counterclaim, but the insurance carrier declined coverage.
15. The legal fees and costs ("legal fees") incurred by Respondent Akana in the Akana v. OHA BOT lawsuit and in the BOT's counterclaim against Respondent were paid, at least in part, by Abigail Kawananakoa ("Ms. Kawananakoa"), an OHA beneficiary. Further Statement ¶32; Answer ¶1 (admits ¶32).
16. Ms. Kawananakoa is also a beneficiary of the James Campbell Estate.
17. Ms. Kawananakoa and Respondent Akana had several discussions in 1993 – after Respondent was elected as an OHA Trustee – but did not really speak again until approximately 2006 or 2007. At that time, Respondent was an OHA Trustee and Ms. Kawananakoa, through her then-attorney James Wright ("Mr. Wright"), requested an in-person meeting with Respondent regarding the digging up of burial plots at the Kawaihae Church in connection with the renovation of a reception hall financed by OHA. Ms. Kawananakoa had a relative whose burial plot would be affected by the renovation.
18. After learning of the Akana v. OHA BOT lawsuit in or around 2013, Ms. Kawananakoa directed Mr. Wright to contact Respondent Akana to obtain more information about the lawsuit and its background. Mr. Wright called Respondent Akana and informed her that Ms. Kawananakoa had asked for information about the case. Respondent Akana provided the information requested by Mr. Wright on behalf of Ms. Kawananakoa.
19. Mr. Wright discussed the information he received from Respondent Akana with Ms. Kawananakoa. Mr. Wright thereafter informed Respondent Akana that Ms. Kawananakoa believed the case involved important issues and that she was willing to pay for Respondent Akana's legal fees.
20. Respondent Akana accepted Ms. Kawananakoa's offer and thereafter accepted payments for Respondent's legal fees relating to the Akana v. OHA BOT lawsuit and the BOT's counterclaim against Respondent.

21. As an OHA beneficiary who has over many years maintained a personal interest in OHA business, Ms. Kawanakoa had interests that may have been affected by official action or lack of action on the part of Respondent Akana.
22. Respondent Akana disagreed in her testimony that Ms. Kawanakoa had interests that may have been affected by Respondent's official actions as an OHA Trustee. However, Respondent Akana – in her Answer – admitted that “[Ms.] Kawanakoa had interests that may have been affected by official action or lack of action on the part of Respondent Akana.” Further Statement ¶33; Answer ¶1 (admits ¶33).
23. Respondent Akana was represented in the Akana v. OHA BOT lawsuit by the Law Office of Eric Seitz (“Seitz” law office) until approximately May 22, 2015, when the law firm of Bickerton Dang, LLP (“Bickerton Dang law firm”) began to represent Respondent Akana. Exhibit R-6 (Docket Entry 42).
24. Ms. Kawanakoa paid some of Respondent Akana's legal fees to the Seitz law office, and thereafter paid Respondent Akana's legal fees to the Bickerton Dang law firm.
25. The Bickerton Dang law firm invoiced Ms. Kawanakoa's attorney, Mr. Wright, for the firm's legal services provided to Respondent Akana.
26. Mr. Wright apprised Ms. Kawanakoa of the invoices coming to him and the invoice amounts, and Ms. Kawanakoa authorized payments of the invoices to the Bickerton Dang law firm.
27. Mr. Wright also periodically called Respondent Akana about the case and he reviewed pleadings and monitored what was happening in the case.
28. On October 31, 2014, the counterclaim plaintiffs in the Akana v. OHA BOT lawsuit (i.e., the other Trustees) moved for summary judgment as to Respondent Akana's breach of fiduciary duty. Exhibit C-69.

29. On April 30, 2015, the Circuit Court entered a Minute Order granting Counterclaimants' Motion for Summary Judgment – concluding that Respondent Akana did, in fact, breach her fiduciary duty to OHA – and entered a written Order to the same effect on June 3, 2015. Exhibits C-69, R-6, R-7; Hawaii State Judiciary's Public Access to Court Information, Akana v. Machado et al., Civil No. 13-1-2485-09 VLC, Minutes for January 29, 2015 (Entries 4 and 5) (available at <http://hoohiki.courts.hawaii.gov/#/case?caseId=1CC131002485>).
30. Even after the Circuit Court granted summary judgment in favor of the OHA Trustees on the counterclaim in June 2015, Respondent Akana's affirmative case where she was plaintiff, both in her individual and official capacities, continued against the OHA BOT. Ms. Kawanakoa continued to pay for Respondent Akana's legal fees for services rendered by the Bickerton Dang law firm. Akana v. Machado et al., Civil No. 13-1-2485-09 VLC, Minutes for Nov. 14, 2017 (available at <http://hoohiki.courts.hawaii.gov/#/case?caseId=1CC131002485>).
31. The parties settled the Akana v. OHA BOT lawsuit on or about November 14, 2017. Id.
32. On February 9, 2017 – while the Akana v. OHA BOT lawsuit was ongoing – Ms. Kawanakoa filed her own lawsuit against OHA: Kawanakoa v. Lindsey et al., Civ. No. 17-1-0231-02 ECN/DEO, filed February 9, 2017 (hereinafter "Kawanakoa v. OHA lawsuit"). Further Statement ¶34; Answer ¶1 (admits ¶34); Exhibits C-55 and C-56.
33. The defendants in the Kawanakoa v. OHA lawsuit were OHA Trustee (and former OHA Chairperson) Robert K. Lindsey, OHA Chief Executive Officer Kamana'o pono Crabbe ("CEO Crabbe"), and OHA. Exhibits C-55 and C-56.
34. Ms. Kawanakoa was seeking declaratory and injunctive relief to set aside an employment contract between OHA and CEO Crabbe.
35. The OHA Trustees, including Respondent Akana, were engaged in the Kawanakoa v. OHA lawsuit from approximately February 2017 through September 2017. Further Statement ¶34; Answer ¶1 (admits ¶34).

36. Respondent Akana participated in at least one executive session meeting of the OHA BOT regarding the Kawananakoa v. OHA lawsuit. Further Statement ¶34; Answer ¶1 (admits ¶34).
37. Specifically, Respondent Akana was present for the entire executive session of the BOT on March 9, 2017, in which the BOT consulted with its attorney, Paul Alston, regarding the Kawananakoa v. OHA lawsuit.
38. On or about June 22, 2017, Respondent Akana filed a gifts disclosure statement with the Commission, reporting that she had received a gift of legal fees from Ms. Kawananakoa valued at \$15,960.43. Further Statement ¶35; Answer ¶1(admits ¶35); Exhibit S-1.
39. On or about August 29, 2017, Commission staff notified Respondent Akana, through her attorneys, that the June 22, 2017 gifts disclosure statement was deficient because it failed to provide all of the information required by HRS § 84-11.5 – notably, the date on which Respondent received the gift. Further Statement ¶36; Answer ¶1 (admits ¶36); Exhibit C-84.
40. On or about August 29, 2017, Commission staff also notified Respondent Akana’s attorneys that the Commission had not received any gifts disclosure statements from 2012 through 2016 disclosing previous gifts of legal fees and inquired as to whether Respondent Akana had any reportable gifts during that time period. Further Statement ¶36; Answer ¶1 (admits ¶36); Exhibit C-84.
41. On or about September 8, 2017, Respondent Akana filed an amended gifts disclosure statement with the Commission to report that she had received the following gifts from Ms. Kawananakoa:
  - a. Legal fees, valued at \$447.28, on December 16, 2016;
  - b. Legal fees, valued at \$15,513.15, on April 28, 2017; and
  - c. Legal fees, valued at \$6,000.00, on June 17, 2017.Further Statement ¶37; Answer ¶1 (admits ¶37); Exhibit S-2.
42. On or about September 26, 2017, Respondent Akana filed a “Third Amended” gifts disclosure statement – re-reporting the three items from the previous paragraph – but attaching a written

statement expressing her belief that these items were not “gifts” and did not need to be reported. Exhibit S-3.

43. On or about September 26, 2017 – in response to the communication from Commission staff to Respondent’s attorneys – Respondent Akana filed a gifts disclosure statement with the Commission to report that she had also received the following, previously unreported, gifts from Ms. Kawanakoa, along with a copy of the same written statement referenced in the previous paragraph:
- a. Legal fees, valued at \$10,478.52, on July 1, 2015;
  - b. Legal fees, valued at \$9,521.48, on August 10, 2015;
  - c. Legal fees, valued at \$6,000.00, on March 24, 2016; and
  - d. Legal fees, valued at \$24,125.50, on April 19, 2016.

Further Statement ¶38; Answer ¶1 (admits ¶38); Exhibit S-4.

44. Respondent Akana received the value of Ms. Kawanakoa’s gifts – payments of more than \$70,000 – in the form of legal services provided by the Bickerton Dang law firm.
45. At no point did Respondent Akana seek advice from then-OHA Corporate Counsel Ernest Kimoto as to whether she could accept a gift of legal fees from an OHA beneficiary.

**Counts 7, 8, 10-53: Use of Trustee Annual Allowance for  
Personal Gain and to Provide Unwarranted Benefits to Others**

**OHA Trustee Annual Allowance: Background**

46. At all times relevant herein, each OHA Trustee – including Respondent Akana – has had access to an annual allowance (hereinafter “Trustee Annual Allowance” or “Trustee Allowance”) intended to improve Trustees’ ability to communicate with and assist beneficiaries of OHA.
47. Trustees’ Annual Allowances are funded by OHA’s trust funds.
48. OHA Trustees are allocated, and are able to spend, Trustee Annual Allowance funds by virtue of their official positions as Trustees.

49. The OHA BOT sets all policies with respect to the Trustee Annual Allowance funds, including the amount allocated to each Trustee and the purposes for which the funds may (or may not) be used.
50. Beginning in 1991, and continuing until 2013, the Trustee Annual Allowance was \$7,200 per Trustee per year “to develop and maintain an ongoing communication network with beneficiaries, promote an understanding of Hawaiian issues, and encourage participation in resolution of these issues.” Exhibit C-70 (Audit of the Office of Hawaiian Affairs, Report No. 01-06, March 2001) at 14; Exhibit C-71 (Audit of the Office of Hawaiian Affairs, Report No. 18-03, Feb. 2018) at 33.
51. OHA’s Executive Policy Manual, approved and adopted by the BOT in February 2012 (thus representing official OHA policy) describes the purpose of the Trustee Annual Allowance:

**3.5.n.** Each Trustee is allowed such amount as provided by the [Board of Trustees] to be used for incidental expenses connected with Trustee duties to include: developing and maintaining an ongoing communication network with beneficiaries (and the general public); to promote a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues; to cover the costs connected with social and charitable functions which a Trustee is expected to attend and/or support; to cover registration fees and associated costs (excluding travel costs) to attend conferences, seminars, or meetings; and to support beneficiaries in their quest for self improvement and for educational efforts.

It is not intended that the allowance supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai‘i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the allowance as additional taxable income that will be reported to the IRS. The CEO shall develop internal guidelines and procedures for the use and administration of the Trustee Annual Allowance to include allowable and unallowable uses of the funds and reporting requirements.

Exhibit C-1 at 26-27 (bold emphasis in original) (underscored emphasis added).

52. The Executive Policy Manual prohibited any expenditure of Trustee Annual Allowance funds that was for a Trustee's personal gain. Exhibit C-1 at 27.
53. In or around December 2013, the BOT amended paragraph 3.5.n of the Executive Policy Manual. The amended paragraph (hereinafter "2013 Amendment") read as follows:

**3.5.n.** Increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements require enhanced capacity to immediately communicate and maintain communications with beneficiaries through electronic media and traditional communications methods.

1. Each Trustee is allowed such amounts of the [Trustee Scholarship and Annual Allowance Fund ("TSAAF") – formerly the Trustee Annual Allowance, see FOF #54, infra] as provided by the Board of Trustees to be used for incidental expenses connected with Trustee duties to include:

a. developing and maintaining an ongoing communication network with beneficiaries and the general public such expenditures may include:

(1) Copying and postage costs incurred in communicating with constituents.

(2) Renting of facilities to meet with beneficiaries if OHA facilities are not available within reasonable vicinity of the activity or event location.

(3) Facsimile, telecommunications, and other means of communications with constituents.

b. promoting a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues;

c. covering the costs connected with social and charitable functions a Trustee is expected to support and may include[] sponsoring or assisting a faith based organization's halau, youth group, extracurricula[r] after school activities and sports activities

provided those activities do not involve religious practices or activities.

d. covering official travel registration fees, and associated costs to attend conferences, seminars or meetings;

e. to provide support for beneficiaries in their personal quest for self improvement, capacity building, and for education;

f. providing funding to purchase school and educational supplies and materials, audio-visual presentation equipment, capacity building aids for schools and organizations which may include:

(1) Repairing, replacing, and purchasing of computer hardware including peripherals such as printers, scanners, modems, routers, and external hard drives for beneficiary organizations[.]

(2) upgrade or purchase software for beneficiary organization use.

g. providing compassionate assistance to beneficiaries and their families for emergencies, natural disasters, and in their times of need. Examples of compassionate assistance may include but may not be limited to financial assistance for funeral or burial services, eye glasses and vision aids, hearing aids, dentures, personal care items, and wheel chairs, unmet needs of the elderly and persons with disabilities.

2. Expenditures from the TSAAF may be disallowed for any of the following reasons: because they are contrary to OHA's mission to better the conditions of Hawaiians or because it contravenes this OHA policy or the law. The following expenditures are specifically disallowed by this policy:

a. any services provided and goods received for the personal benefit of the Trustee and/or immediate family members.

b. Trustee's computer hardware and software.

c. Trustee's general office equipment and furniture.

d. grants and donations to religious and faith based organizations for religious activities.

3. The annual TSAAF for each Trustee shall be \$7,200.00 plus any additional amount approved in its Total Operating Budget for this express purpose. Unspent amounts in the Fund shall be returned to the OHA treasury via the OHA CEO. Each Trustee's account will be replenished each year to a minimum of \$7,200.00.

4. Each Trustee will submit to the OHA CEO quarterly reports of expenditures made from the TSAAF. As much documentation that can be provided for each expenditure should be attached to the quarterly reports. Documentation may include initial requests for assistance from a beneficiary or grantee, brochures or flyers or pictures depicting the events sponsored, and expressions of thanks and gratitude for the Trustee's grant or sponsorship.

5. It is not intended that the Trustee Sponsorship and Allowance Fund supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai'i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the fund as additional taxable income that will be reported to the Internal Revenue Service.

6. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the fund including reporting requirements and auditable record keeping.

7. The Fund created by this policy will be called the *OHA Board of Trustees' Sponsorship and Annual Allowance Fund* and the report of expenditures will be called the *Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report*.

Exhibit C-2, Attachment "A" at 1-4 (bold emphasis and italicized emphases in original) (underscored emphases added) (Ramseyer formatting in original omitted); see also Exhibit C-5 at 2, Exhibit C-6 at 8 (showing votes of BOT to amend the BOT Executive Policy).

54. The 2013 Amendment changed the name of the Trustee Annual Allowance fund to the “Trustee Sponsorship and Annual Allowance Fund” or “TSAAF.”<sup>8</sup>
55. The 2013 Amendment was proposed to the BOT by OHA’s Committee on Asset and Resource Management. The Committee’s November 20, 2013, report to the BOT on the proposed amendment included an “Action Item” memorandum, prepared by then-Corporate Counsel Ernest Kimoto, which discussed the controls over the use of Trustee Annual Allowance funds by Trustees:
2. Current Fund Management. Each Trustee is provided an Annual Allowance which is deposited by Administration in a checking account at the beginning of each calendar year to be managed and used consistent with the Board’s executive policy at each Trustee’s discretion.
  3. The primary control of the use of the fund is the OHA Board of Trustees Executive Policy Manual and the OHA BOT Operations Manual which will provide guidelines and procedures, respectively, for the use of the funds. In addition, each Trustee will be required to provide a Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report within 15 days of the end of each quarter and submit his/her report through the CEO’s office and also followed up through CEO’s office for review by the CEO or designee for compliance with Chapter 10, HRS, as amended. These quarterly reports are retained for 6 years and are subject to audit.
  4. Secondary controls are the Internal Revenue Service Code and conforming Hawaii Income Tax Laws that are applicable to the operative Internal Revenue Service Code sections. Additionally, ethics and standards of conduct laws applicable to elected officials, public officers, and state government employees are found in Hawaii Revised Statutes Chapter 84 and in the OHA Board of Trustees’ Executive Policy Manual.

Exhibit C-2, “Action Item, Committee on Asset and Resource Management,” dated November 20, 2013 at 3-4 (emphasis added).

56. The 2013 Amendment prohibited any expenditure of Trustee Annual Allowance funds that contravened OHA policy or the law. Exhibit C-2, Attachment “A” at 3.

---

<sup>8</sup> Although the name of the fund changed, this Decision uses the term “Trustee Annual Allowance” to refer to both the “Trustee Annual Allowance” fund and the “Trustee Sponsorship and Annual Allowance Fund,” as they are in effect the same fund.

57. The 2013 Amendment also prohibited the expenditure of Trustee Annual Allowance funds for any services or goods for the personal benefit of the Trustee and/or the Trustee's immediate family members. Id.
58. The 2013 Amendment provided more clarity to the 2012 Executive Policy Manual; this amendment also led to an increase of the Trustee Annual Allowance from \$7,200 per Trustee per year to \$22,200 per Trustee per year (where it has remained, through Fiscal Year 2018-2019). Exhibit C-71 (2018 Audit) at 34 (increase to \$22,200 in December 2013).
59. The 2013 Amendment directed OHA's CEO to use the policy as a guide to develop internal guidelines and procedures for the use and administration of the Trustee Annual Allowance fund, including reporting requirements and record-keeping. Exhibit C-2, Attachment "A" at 4.
60. OHA's "Trustee Sponsorship and Annual Allowance Fund – Internal Guidelines and Procedures" (May 2016) (hereinafter "2016 Guidelines") – served as an operating guide to OHA fiscal staff. These guidelines provided additional clarification as to allowed and disallowed expenditures; among other things, the 2016 Guidelines stated that "disallowed expenditures include . . . political contributions[.]" Exhibit C-7 at 3.
61. The 2016 Guidelines did not change existing OHA policy in any way, because the OHA administration did not have the authority to change BOT-approved policy.
62. The 2012 Executive Policy Manual, the 2013 Amendment, and the 2016 Guidelines were the only OHA policies and guidelines that instructed OHA fiscal staff on how to administer the Trustee Annual Allowance fund.

#### **OHA Staff's Administration of the Trustee Annual Allowance Fund**

63. The Commission received testimony about the Trustee Annual Allowance fund and the administration of the fund from OHA's current Controller and from two previous OHA Controllers who also served as Chief Financial Officers ("CFO") for OHA.

64. Gloria Li has been with OHA since 2008 and is the current Controller of OHA. She testified at length on October 22, 2018 about the Trustee Annual Allowance fund and the administration of the fund.
65. Hawley Iona, a Certified Public Accountant (“CPA”), was the Controller for OHA from June 2008 until June 2011 when she was promoted to CFO. She served as CFO until January 2017. Ms. Iona testified at length on October 22, 2018 about the Trustee Annual Allowance fund and the administration of the fund.
66. John Kim,<sup>9</sup> a CPA, was the Controller for OHA from 2012 to 2017. He also served as acting CFO from January to June 2017. Mr. Kim testified on October 22, 2018, and at length on October 24, 2018 about the Trustee Annual Allowance fund and the administration of the fund.
67. The Commission finds the testimonies of Ms. Li, Ms. Iona, and Mr. Kim credible.
68. The Controller’s duties included managing OHA’s fiscal infrastructure, such as accounting systems and procurement, and included administering the Trustee Annual Allowance.
69. The CFO’s job duties included supervision of up to 50 resource management staff members, including the Controller, as well as general oversight of Trustee Annual Allowance expenditures.
70. Trustees receive the entire Trustee Annual Allowance as a lump sum at the beginning of each fiscal year: the OHA fiscal office issues a check to each Trustee, and Trustees may deposit the checks into a bank account of their choice.
71. OHA does not require that Trustees establish a separate account for their Trustee Annual Allowance funds, such that Trustees may deposit the funds into a personal bank account.

---

<sup>9</sup> The transcript reflects Mr. Kim’s first name as “Jon.” This appears to be a typographical error: internal OHA documents refer to Mr. Kim as “John.” See, e.g., Exhibits C-60, C-62, C-64.

72. Trustees can make expenditures of Trustee Annual Allowance funds by check, cash, or a personal credit card. They are not limited to writing a check from the account that contains the Trustee Annual Allowance funds.
73. On a quarterly basis, Trustees must submit expenditure reports (“quarterly reports”)<sup>10</sup> to the OHA fiscal office; the Controller and her staff reconcile those reports, identify any discrepancies, and work with the Trustees to clear any discrepancies.
74. Each quarterly report must be accompanied by a certification signed by the Trustee that each of the expenditure items listed on the report is “exclusively intended to develop and maintain an ongoing communication network with beneficiaries, promote an understanding of Hawaiian issues, and/or encourage participation in resolution of these issues.” See, e.g., Exhibit C-11 at 8; Exhibit C-54 at 4.
75. At all times relevant herein, each Trustee was required to submit this certification form with each quarterly report. As far as former OHA Controller Kim could recall, Respondent Akana submitted a certification form with each of her quarterly reports. See, e.g., Exhibits C-11 at 8, C-54 at 4.
76. As part of the 2016 Guidelines, the OHA fiscal staff also developed forms for Trustees to complete when using Trustee Annual Allowance funds to purchase food or make a donation to an organization or a beneficiary. Exhibit C-7 at 5-6. The forms clearly state that the responsibility for ensuring that expenditures complied with OHA’s policies rests with the Trustees.
77. The “Trustee Allowance Meal Form” states, in bold font, “**\*Trustees are responsible for ensuring that above meals expense comply with policies noted under OHA BOT Executive Policy Section 3.5.n.**” Exhibit C-7 at 6. See also, e.g., Exhibit C-10 at 4, Exhibit C-52 at 2.

---

<sup>10</sup>Also known as, “Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report” or “TQSAAER.” Exhibit C-7 at 3.

78. The “Trustee Allowance Beneficiary/Organization Donation Form” states, in bold font, **“\*Trustees are responsible for ensuring that beneficiary/organization donation [sic] comply with policies noted under OHA BOT Executive Policy Section 3.5.n.”** Exhibit C-7 at 5.
79. Because Trustees are provided with Trustee Annual Allowance funds in a lump sum at the beginning of the fiscal year, the OHA fiscal staff’s review of a Trustee’s quarterly report is an “after-the-fact” review; by the time the fiscal staff receives a quarterly report from a Trustee, the expenditures listed in the report have already been made by the Trustee.
80. OHA fiscal staff maintains a quarterly balance of Trustee Annual Allowance funds available for spending by a Trustee. If a Trustee has a remaining balance of unspent funds at the end of the fiscal year, the Trustee is required to return those remaining funds to OHA.
81. Any time a Trustee makes a “disallowed” expenditure, OHA fiscal staff makes an adjustment to the Trustee’s quarterly report and outstanding balance of Trustee Annual Allowance funds. For example, if a Trustee spent \$7,200 of her Trustee Allowance funds (leaving a balance of \$15,000 of the original \$22,200), but an expenditure of \$1,000 was deemed “disallowed,” then OHA’s books would reflect that the Trustee’s actual balance was \$16,000 – not \$15,000; by the end of the fiscal year, the Trustee would have to use personal funds to account for the disallowed \$1,000 expenditure.
82. The quarterly and year-end reviews of Trustee Annual Allowance expenditures are a “tedious” and “time-consuming” process, inasmuch as OHA fiscal staff reviews each expenditure manually and it is not possible for staff to catch all disallowed expenditures, primarily because each Trustee is allowed to spend \$22,200 annually, which includes many small expenditures.
83. OHA accounting staff conducts the initial review of all quarterly reports, manually reviewing all supporting documentation. If any discrepancies are identified, staff notifies the Trustee’s office and tries to work with the Trustee to clear up any discrepancies.

84. If the accounting staff is unable to clear up any discrepancies, the matter is referred to the Accounting Manager, who conducts a second review.
85. Any item warranting further review would go to the Controller, which is the final review at the administrative services level. At that point, the Controller would propose a memorandum, detailing any discrepancies found, which is then forwarded to the CFO and CEO for approval and signature. The signed memorandum is then sent to the Trustee.
86. The fact that a particular expense is “not disallowed” by OHA fiscal staff does not mean that the expenditure is “allowable” or consistent with OHA policy; it could simply mean that the expense was not “flagged” by the fiscal staff. As stated by former Controller Kim in his testimony, the failure to disallow a prohibited expense was a deficiency in the process of reviewing these expenditures; however, the fact that an expenditure was not disallowed does not necessarily mean that the expenditure was allowable pursuant to OHA policy.
87. OHA fiscal staff’s role in reviewing Trustees’ expenditures was clearly stated in a November 22, 2016, email from then-CFO Iona to then-BOT Chair Robert Lindsey:

I would like to reiterate that Administration’s role is to review purchases in compliance with stated policies and procedures. It is the responsibility of the Trustee to (1) use their best judgment and NOT make purchases that are contrary to policy or fiduciary responsibilities AND to (2) provide as much documentation as is available to support the expense/purchase. The quarterly review conducted by Admin Services staff DOES NOT validate disallowed or fraudulent expenses/purchases.

Exhibit C-60 (capitalized emphases in original) (underscored emphasis omitted).

88. Current and former OHA employees were consistent and clear in their testimony – and the Commission finds – that the Trustees themselves set the policy regarding expenditures of Trustee Annual Allowance funds, and the Trustees themselves were

responsible for ensuring that they spent Trustee Annual Allowance funds in accordance with OHA policy and other law.

89. OHA fiscal staff is available to assist Trustees with questions as to whether a specific expenditure complies with OHA policy. It is incumbent upon a Trustee to seek guidance from the OHA fiscal office before making a questionable expenditure.
90. The procedures for reviewing Trustees' quarterly reports, as described herein, were the same from 2012 through 2018.

#### **Respondent Akana's Interaction and Communication with OHA Fiscal Staff**

91. The Commission finds, based upon credible evidence, that Respondent Akana threatened and berated OHA fiscal staff who questioned or disallowed her Trustee Annual Allowance expenditures. Current and former OHA staff members testified that they and their colleagues feared personal attacks or possible retaliation when questioning Respondent Akana about her expenditures.
92. OHA fiscal staff found that trying to get additional information and documentation from Respondent Akana about her expenditures was difficult and the staff was intimidated to ask Respondent Akana for information "because they don't want to get yelled at." Transcript of Proceedings ("Tr.") I:183:18-23; I:188:18-22.
93. Respondent Akana was "the only trustee that any staff members or others at OHA [were] intimidated by." Tr. I:189:14-20.
94. On April 8, 2015, Respondent Akana sent a memorandum to CEO Crabbe, then-CFO Iona, then-Controller Kim, and then-Corporate Counsel Kimoto threatening to sue each of them in their personal capacities for allegedly failing to provide Respondent Akana with certain documents she was requesting; in her memorandum, Respondent Akana also stated that "there will be other claims made against the CFO for harassment regarding Trustee allowances and per diem." Exhibit C-62.

95. The April 8, 2015 memorandum affected Ms. Iona's performance as CFO and affected her willingness to challenge Respondent Akana's expenditures of Trustee Annual Allowance funds. Respondent Akana had filed an Office of Disciplinary Counsel complaint against then-Corporate Counsel Kimoto, and Ms. Iona was afraid that Respondent Akana would likewise challenge Ms. Iona's professional license:

[T]o see something that really calls you out and then really opens you up to such a personal attack – and in this case, everything is crossing your mind. You could be sued. You could lose your house. You could lose your life savings, everything. . . . [I]t scared me, and it would have definitely made me a lot more hesitant to pursue having that kind of engagement on expenditures going forward when it came to our review of the trustee allowance fund.

Tr. I:248:18 – 250:5 (emphasis added).

96. There were many incidents that affected how Ms. Iona approached Respondent Akana with respect to her Trustee Allowance expenditures:

[I]t really all boils down to there was an effort by administration to enforce policies and procedures the best that we could. There was disagreement from trustee Rowena Akana in doing so, and that, in itself would cause a lot of personal attacks against members of the administration, including myself. And that was really the standard in really the almost six years that I was the CFO.

Tr. I:250:18 – 251:16.

97. Because of Respondent Akana's threats to and intimidation of OHA fiscal staff, more than one OHA employee was reluctant to challenge Respondent Akana regarding her spending of Trustee Annual Allowance funds.
98. In January 2014, then-CFO Iona decided not to question Respondent Akana about the purchase of a \$50 iTunes gift card (Count 7, discussed at FOFs # 99-104, below) – even though Ms. Iona believed the purchase should not have been allowed – expressly because Ms. Iona did not want to upset Respondent Akana. See Exhibit C-61.

**Count 7: Use of Trustee Allowance for iTunes Gift Card**

99. On or about September 18, 2013, Respondent Akana’s credit card was used to make an in-store purchase of \$708.64 from the Apple Store Kahala. Respondent Akana’s name appears on the receipt. Exhibit C-42.
100. The purchase included two items: an iPad and a \$50 iTunes gift card. Exhibit C-42.
101. Respondent Akana’s expenditure of \$708.64 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-42.
102. Respondent Akana’s explanation for this purchase was that: a former staff member used Respondent's credit card to purchase the iPad and the iTunes gift card; Respondent authorized the purchase of the iPad but was not aware of the purchase of the gift card at the time; the former staff member then included the \$50 expenditure for the gift card on Respondent's quarterly report without Respondent's knowledge; and Respondent did not discover the \$50 gift card purchase until the Commission brought these proceedings against her.
103. However, OHA Controller Li, former Controller Kim, and former CFO Iona had no knowledge of Respondent’s claim that a former employee stole the iTunes gift card.
104. The Commission finds that due to conflicting testimony, there was insufficient evidence that Respondent Akana used or attempted to use Trustee Annual Allowance funds by purchasing the iTunes gift card on or about September 18, 2013, to provide herself or another person with a personal benefit.

**Count 8: Use of Trustee Allowance for Hawaiian Airlines Premier Club**

105. On or about July 15, 2014, Respondent Akana used \$249 of Trustee Annual Allowance funds to purchase a Hawaiian Airlines Premier Club membership (hereinafter “Premier Club membership”). Exhibit C-41.

106. Benefits of the Premier Club membership included access to Hawaiian Airlines' airport Premier Clubs, priority check-in and boarding, complimentary "Unlimited TV & More Pack" on certain flights to and from the mainland, and two free checked bags. Exhibits C-79, C-80.
107. OHA had allowed Trustees to purchase Premier Club memberships in the past, but a former BOT Chair stopped the practice before Respondent Akana purchased her Premier Club membership in 2014.
108. Respondent Akana admitted in her testimony that she purchased the Premier Club membership knowing that it was not an allowable expense.
109. Respondent Akana's expenditure was subsequently disallowed by OHA fiscal staff because it provided a personal benefit to Respondent Akana. As such, Respondent Akana eventually used personal funds to pay for this expenditure.
110. Respondent Akana claimed that she saved OHA money by paying for her Premier Club membership.
111. At the hearing, Respondent's attorney argued that Respondent Akana saved money by paying for her Premier Club membership rather than paying baggage fees for three or four bags each way.
112. OHA's corporate account with Hawaiian Airlines permitted each OHA traveler – including OHA Trustees – to take one free checked bag.
113. The Premier Club membership permitted two free checked bags – only one more free bag than already allowed by OHA's corporate account with Hawaiian Airlines.
114. According to Mr. Kimoto, OHA's former Corporate Counsel, a Trustee's receipt of a personal benefit from an expenditure would violate OHA policy, even if that expenditure ultimately saved OHA money; the proper course would have been for the Trustee to take the matter to the full BOT for its consideration.

115. Notwithstanding her knowledge that OHA's policy regarding Premiere Club membership had changed, Respondent Akana never consulted with the OHA fiscal office about her purchase of a Premier Club membership for herself.
116. The Commission finds that Respondent Akana used or attempted to use her Trustee Annual Allowance for her personal benefit by purchasing a Premier Club membership for herself.

**Counts 10, 12-18: Use of Trustee Allowance for Home Cable Television Service**

117. In 2015 to 2017, Respondent Akana subscribed to a home cable television and internet bundled service package called "Surf Pak Xtra," offered by Oceanic Time Warner Cable ("Oceanic"), a company that was rebranded as "Spectrum" in or around 2017. Exhibits C-11 to C-38 (purchases); C-76, C-77 (Spectrum re-branding).
118. The Surf Pak Xtra package consisted of standard television service as well as access to additional channels, and "Extreme Internet" service. See, e.g., Exhibit C-11 at 3-4, Exhibit C-25 at 8.
119. In 2015 and 2016, Respondent Akana used Trustee Annual Allowance funds to pay the entire amount of her monthly bills from Oceanic for the Surf Pak Xtra package.
120. OHA policy (stated in the 2013 Amendment to the Executive Policy Manual) allowed Trustee Annual Allowance funds to be used for expenses for communications with constituents. Exhibit C-2. Thus, internet service was an allowed expense. However, the policy did not provide for home cable television service as an allowable expense.
121. The Commission finds that Respondent Akana's testimony that she very rarely watched television or mostly watched Olelo or the news is not a sufficient justification to use her Trustee Annual Allowance to pay for her home cable television service. Instead, the Commission finds that Respondent Akana's home cable television service was a personal benefit to Respondent.

122. Respondent Akana's use of Trustee Annual Allowance funds to pay the entire amount of her monthly Oceanic bill was not allowable under OHA policy because the Oceanic bill included charges for home cable television service, which was a personal benefit to her.
123. Respondent Akana also used Trustee Annual Allowance funds to pay for her cell phone, her home phone, and her home fax line. Exhibit C-52 at 1. Payments for these services were made to other carriers and were not included in Respondent's payments to Oceanic for the Surf Pak Xtra package.
124. Respondent Akana used her Trustee Annual Allowance to pay the entire amount of her monthly Oceanic cable bill on or about the following dates, without reimbursing OHA or the Trustee Annual Allowance fund for the portion related to her home cable television service:
  - a. November 20, 2015 (\$127.90) (Count 10). Exhibit C-13.
  - b. January 22, 2016 (\$127.90) (Count 12). Exhibit C-14.
  - c. February 15, 2016 (\$135.78) (Count 13). Exhibit C-15.
  - d. March 5, 2016 (\$132.43) (Count 14). Exhibit C-16.
  - e. April 10, 2016 (\$134.37) (Count 15). Exhibit C-17.
  - f. May 9, 2016 (\$133.55) (Count 16). Exhibit C-18.
  - g. June 6, 2016 (\$133.55) (Count 17). Exhibit C-19.
  - h. June 30, 2016 (\$133.55) (Count 18). Exhibit C-20.
125. For each of the transactions listed above (relating to Count 10 and Counts 12-18), the Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit by paying for her home cable television service.

**Count 11: Use of Trustee Allowance for Home Cable Television Service**

126. Respondent Akana was charged with using her Trustee Annual Allowance to pay the entire amount (\$127.90) of her November 28, 2015 Oceanic cable bill on or about December 20, 2015 (Count 11).

127. Respondent Akana's quarterly report for January 1, 2016 – March 30, 2016 includes a copy of the November 28, 2015 bill with a balance of \$127.90. Exhibit C-14 at 6-7.
128. However, neither the quarterly report for October 1, 2015 – December 31, 2015 (Exhibit C-13 at 1), nor the quarterly report for January 1, 2016 – March 31, 2016 (Exhibit C-14 at 1), includes a line item for this particular expenditure.
129. The Commission finds that there was insufficient evidence to demonstrate that Respondent Akana used or attempted to use Trustee Annual Allowance funds to pay her Oceanic bill dated November 28, 2015, to provide herself with a personal benefit.

**Counts 19-20: Use of Trustee Annual Allowance for Home Cable Television Service**

130. On August 8, 2016, Respondent Akana used Trustee Annual Allowance funds to pay for her entire Oceanic cable bill (\$133.55) (Count 19). Exhibit C-21.
131. On September 5, 2016, Respondent Akana used Trustee Annual Allowance funds to pay for her entire Oceanic cable bill (\$133.55) (Count 20). Exhibit C-22.
132. Respondent Akana submitted her quarterly report for July 1, 2016 – September 30, 2016 on October 7, 2016; Respondent Akana's quarterly report included the August 8, 2016 and September 5, 2016 payments to Oceanic. Exhibits C-11, C-21, C-22.
133. In an October 17, 2016 memorandum, OHA CEO Crabbe informed Respondent Akana that her first quarter (July 1, 2016 – September 30, 2016) expenditures related to cable and television service were not aligned with the intended use of the Trustee Annual Allowance and should be disallowed. Exhibit C-11 at 1-2.
134. CEO Crabbe's memorandum explained: "Standard TV, Digital Variety Pak, 2-Way Addressable Box is not considered communications to constituents. Only internet is allowed under the TSAAF. Based on inquiry with Oceanic customer service the breakdown of internet charge is \$47.89 (Internet \$42.07 + Olelo Capital Funding \$0.26 + Cable franchise fee \$3.58 + State GET \$1.98)." Exhibit C-11 at 1-2.

135. OHA fiscal staff determined that OHA policy only allowed Respondent Akana to use her Trustee Annual Allowance to pay \$47.89 for her monthly home internet service from Oceanic.
136. The portion of the Oceanic bill not attributable to Respondent Akana's home internet service was disallowed by OHA fiscal staff because those Oceanic services were for the personal benefit of Respondent Akana.
137. CEO Crabbe's memorandum also informed Respondent Akana that the quarterly reports for all Trustees for the first fiscal quarter ending September 30, 2016, had been reviewed by OHA administration staff to ensure that any similar transactions were processed in a consistent manner.
138. In a November 2, 2016 memorandum, Respondent Akana challenged CEO Crabbe's determination that Trustee Annual Allowance funds could not be used for her home cable television service and asked that the BOT review "all of the Trustee Allowance forms again"; her justification was that "Every bill submitted in FY 2016 was approved." Exhibit C-12 at 17.
139. Although Respondent Akana's previous expenditures for home cable television service were "not disapproved," by OHA fiscal staff, this did not mean that those expenditures were consistent with OHA policy for the use of Trustee Annual Allowance funds. Former OHA CFO Iona clearly explained:

Q. (Charge Counsel) So if Respondent Akana made an expenditure that wasn't disapproved, does that mean it was consistent with OHA policy?

A. (Ms. Iona) It does not mean that. It could very well mean that it didn't – it wasn't flagged by someone in admin services as being questionable or disallowed expense.

Earlier, you had asked about the cable expense, and I think that's a great example. It took us a couple of years, but eventually we flagged it and eventually we had come to the conclusion that cable expense of the broader cable bill had

a personal benefit, and therefore, should not have been allowed, and so that's an example of, you know, if it comes to our attention, we're definitely going to mark it.

But certainly, there's – it's just not possible for, you know, the limited staff, the trustee allowance fund growing by three times its size, to really catch everything that was disallowable. So the responsibility, once again, has to fall back on the actual person expending the funds.

Tr. I:227:1-24; 228:1-4.

140. In a memorandum to Respondent Akana dated November 16, 2016 and signed on November 21, 2016 (“November 16, 2016 memorandum”), CEO Crabbe explained:

Administration confirmed that your previous submittals of Oceanic Time Warner Cable invoices were not noted as disallowed expenditures of Trustee Sponsorship and Annual Allowance Fund (TSAAF). Upon further review, however, it was noted that the portion of claimed expense related to cable and TV services is not aligned with TSAAF's intended use and should be disallowed.

Exhibit C-12 at 22. Crabbe directed Respondent Akana to adjust (i.e., reimburse) her Trustee Annual Allowance account for the disallowed Oceanic first quarter expenses.

141. Evidence in the record supports CEO Crabbe's determination that Respondent Akana should have claimed only \$47.89 each month in Trustee Annual Allowance funds for her home internet service. Another OHA staff member, Jonathan Lum, called Oceanic customer service to get the breakdown of the cost of internet service alone in late 2016, which showed that the monthly cost of home internet service was \$47.89. Exhibit C-11 at 1-2. Furthermore, Respondent's own December 2016 records and an independent quote obtained by the Complainant demonstrated that the cost of Respondent Akana's internet service should not have exceeded \$47.89. Exhibit C-25 at 6 (establishing the cost of “Extreme Internet” to be \$29.95/month); Exhibit C-78 (independent quote from Complainant showing the cost of internet to be \$44.99/month at Respondent's address).
142. Respondent Akana used her Trustee Annual Allowance to pay the entire amount of her Oceanic cable bills on August 8, 2016 (Count 19, \$133.55) and September 5, 2016 (Count 20,

\$133.55) and attempted to have the entire amount of each expenditure offset against her outstanding balance of Trustee Annual Allowance funds. Exhibits C-21, C-22.

143. After CEO Crabbe determined that Respondent Akana was permitted to claim only \$47.89 of her Trustee Annual Allowance for monthly home internet service, Respondent's reported expenditures for August 8, 2016 and September 5, 2016, and her Trustee Annual Allowance fund balance were "adjusted" accordingly. Exhibit C-22 at 1. In other words, by the end of the fiscal year, Respondent Akana had used personal funds to pay for the difference between the allowable amount for August 2016 and September 2016 (\$47.89 each month) and the original amount that she had claimed (\$133.55 each month).

144. The November 16, 2016 memorandum from CEO Crabbe also stated in part:

As all FY 2016 transactions have been processed and closed, we do not recommend retroactive adjustment to FY 2016 Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report (TQSAAER). Instead, we ask that this adjustment to [sic] be applied to your most recent TQSAAER for fiscal quarter ending September 30, 2016 and moving forward.

Exhibit C-11 at 5.

145. As stated in CEO Crabbe's November 16, 2016 memorandum, OHA staff did not recommend that Respondent Akana pay back her Trustee Annual Allowance expenditures for cable television service during the previous fiscal year (FY 2016). However, this did not signify that Respondent's previous expenditures were approved or allowed under OHA policy. OHA staff did not want to take on the administrative burden of having to go back to retroactively adjust the previous fiscal year's transactions.

146. Respondent Akana did not reimburse OHA or the Trustee Annual Allowance fund for any portion of the other cable television expenditures made by her during the 2015-2016 fiscal year.

147. For the August 8, 2016 and September 5, 2016 transactions (relating to Counts 19 and 20), the Commission finds that Respondent Akana used or attempted to use her Trustee Annual Allowance for her personal benefit by paying for her home cable television service.

**Counts 21-36: Use of Trustee Allowance for Home Cable Television Service**

148. On or about October 22, 2016 and November 24, 2016, Respondent Akana made payments of \$136.83 – the full amount of her monthly bill for the Surf Pak Xtra package, including her home cable television service – to Oceanic (Counts 21 and 22). Exhibits C-23 and C-24.
149. The checks for these expenditures were drawn from the same bank account as Respondent’s previous expenditures to pay for her Oceanic cable bills. Compare Exhibit C-17 Unredacted (April 10, 2016 expenditure) with Exhibit C-23 Unredacted (October 22, 2016 expenditure) & Exhibit C-24 Unredacted (November 24, 2016 expenditure).<sup>11</sup>
150. On the memo line of the check pertaining to the November 24, 2016 expenditure is a handwritten note that says “allowable.” Exhibit C-24.
151. Despite receiving notification from CEO Crabbe on October 17, 2016 (Exhibit C-11) and November 21, 2016 (Crabbe’s November 16, 2016 memorandum, Exhibit C-12) that expenditures on cable television service would be disallowed and that internet service could be claimed at only \$47.89, Respondent Akana claimed \$80.00 of Trustee Annual Allowance funds when she submitted her quarterly report for the October 2016 and November 2016 expenditures. Exhibits C-23 and C-24.
152. Respondent Akana was charged with using her Trustee Annual Allowance to pay the entire amount (\$136.83) of her Oceanic cable bills on October 22, 2016 (Count 21) and November 24, 2016. (Count 22). Respondent Akana appears to have initially paid for the entire amount of both bills with funds from a checking account used by Respondent for her previous Trustee Annual Allowance expenditures. However, at a later date, Respondent Akana claimed \$80 of Trustee Annual Allowance funds for each of those payments.

---

<sup>11</sup> The Commission is holding under seal all unredacted exhibits cited to in this Decision.

153. Although Respondent used her Trustee Annual Allowance to pay \$80 and not \$136.83 to Oceanic on October 22, 2016 (Count 21) and November 24, 2016 (Count 22), this amount was still more than Respondent was allowed to claim for her home internet service.
154. On or about December 21, 2016, Respondent Akana again used Trustee Annual Allowance funds to pay \$80.00 to Oceanic (Count 23). Exhibit C-25.
155. Respondent Akana's expenditures of \$80.00 were not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for these expenditures. Exhibits C-23, C-24, and C-25.
156. It is unclear how Respondent Akana arrived at the \$80 amount for her home internet service fee.
157. In the documentation attached with the October 22, 2016 Oceanic expenditure (Count 21), there appears the following handwritten note:

03.23.17 11:53 AM  
Per Trustee, report as \$80.  
- K

Exhibit C-23 at 8.

158. The "K" above refers to Respondent Akana's Trustee Aide, Ms. Kay Watanabe.
159. Similarly, in the documentation attached with the November 24, 2016 Oceanic expenditure (Count 22), there appears the same handwritten note. Exhibit C-24 at 6.
160. In documentation attached with the December 21, 2016 Oceanic expenditure (Count 23), there appears to be a printout of a screen shot of the Oceanic website listing three options for internet service: "Extreme" Internet – 100/10 Mbps – for \$29.95 a month, "Ultimate 200" Internet – 200/20 Mbps – for \$39.99 a month; and "Ultimate 300" Internet – 300/20 Mbps – for \$59.99 a month. Exhibit C-25 at 6.

161. Just below this screen shot appears a handwritten note:

4/5/17	\$59.99 monthly rate
	+\$10.00 modem lease
	<u>+\$10.00</u> estimated taxes
	\$79.99

Exhibit C-25 at 6.

162. This handwritten note provides the only possible basis on which Respondent Akana may have determined that she could use \$80 a month of Trustee Annual Allowance funds (rather than \$47.89 a month) for her home internet service. However, as set forth above, Complainant introduced competent and substantial evidence that the cost of home internet service was less than \$50 a month, and Respondent Akana did not present any evidence to contradict Complainant’s evidence.
163. Moreover, this screenshot and handwritten note below the screenshot (Exhibit C-25) do not support Respondent Akana’s claims for \$80.00 a month for home internet service. As part of the Surf Pak Xtra package, Respondent Akana received “Extreme Internet” – the lowest level of internet service, offered at \$29.95 a month. Exhibit C-25 at 6-7. Thus, if Respondent Akana was, in fact, using \$59.99 a month as a baseline for her home internet service, it would mean she was using an artificially high baseline – the most expensive internet service (“Ultimate 300” at \$59.99 a month), rather than the less expensive service she was actually receiving (“Extreme” at \$29.95 a month).
164. As such, in each of the months in which Respondent used more than \$47.89 of Trustee Annual Allowance funds to pay her Oceanic bill, the Commission finds that Respondent was using Trustee Annual Allowance funds to subsidize her purchase of home cable television service – despite previously being informed by OHA staff that she was allowed to claim only \$47.89 for internet service. Thus, she received an unwarranted benefit of approximately \$32.11 per month (\$80.00 – \$47.89).
165. By using \$80.00 a month of Trustee Annual Allowance funds to pay her Oceanic bill, Respondent Akana also failed to comply with the directive from CEO Crabbe that Trustee Annual Allowance funds not be used for home cable television service.

166. Between January 2017 and December 2017, Respondent Akana continued to use Trustee Annual Allowance funds to pay approximately \$80 – for her home internet service and to subsidize her home cable television service, without reimbursing OHA or the Trustee Annual Allowance fund for such expenditures:
- a. January 20, 2017 (\$80) (Count 24). Exhibit C-26.
  - b. February 13, 2017 (\$80) (Count 25). Exhibit C-27.<sup>12</sup>
  - c. March 15, 2017 (\$80) (Count 26). Exhibit C-28.
  - d. April 20, 2017 (\$80) (Count 27). Exhibit C-29.
  - e. May 20, 2017 (\$80) (Count 28). Exhibit C-30.
  - f. June 25, 2017 (\$80) (Count 29). Exhibit C-31.
  - g. July 21, 2017 (\$80) (Count 30). Exhibit C-32.<sup>13</sup>
  - h. August 24, 2017 (\$80) (Count 31). Exhibit C-33.
  - i. September 10, 2017 (\$82) (Count 32). Exhibit C-34.<sup>14</sup>
  - j. October 10, 2017 (\$80) (Count 33). Exhibit C-35.
  - k. November 20, 2017 (\$80) (Count 34). Exhibit C-36.
  - l. December 13, 2017 (\$80) (Count 35). Exhibit C-37.
  - m. December 30, 2017 (\$80) (Count 36). Exhibit C-38.

---

<sup>12</sup> Exhibit C-27 shows two checks: one for \$80.00, apparently drawn on the account holding Respondent Akana’s Trustee Annual Allowance funds – with the same account number reflected on the checks for the October and November 2016 payments discussed above (Exhibit C-23 Unredacted and Exhibit C-24 Unredacted, respectively) – and another check for \$56.83, apparently from a personal account, for the balance of that month’s Oceanic bill (dated January 28, 2017). Exhibit C-27 Unredacted at 5. See also Note 11, supra.

<sup>13</sup> The July 2017 payment was made to Spectrum, the successor company to Oceanic. See Exhibits C-32 at 3, C-76, C-77.

<sup>14</sup> The charges during this month increased due to additional charges that applied to Respondent Akana’s home cable television service: there was an increase in the “Broadcast TV & Sports Programming Surcharge” from \$8.75 to \$10.20 (an increase of \$1.45); the remaining \$0.15 is an increase in the Cable Franchise Fee (from \$3.67 to \$3.75) and General Excise Tax. Compare Exhibit C-33 at 6 with Exhibit C-34 at 3.

167. For each of the transactions listed above (relating to Counts 21-36), the Commission finds that Respondent Akana used her Trustee Annual Allowance for her own personal benefit by subsidizing her payments for her home cable television service.

**Counts 37-48: Use of Trustee Allowance Funds for Personal Food Purchases in General**

168. OHA did not have specific policies regarding the use of Trustee Annual Allowance funds to purchase food, except that expenditures for alcoholic beverages were not permitted. See Exhibit C-7 at 3.

169. However, food purchases were subject to OHA's executive policy (as stated in the 2013 Amendment) regarding the use of Trustee Annual Allowance funds and Trustees were responsible for ensuring that their food expenditures complied with that policy. As OHA Controller Li explained:

Q. (Respondent's Counsel) Is it OHA policy that food is allowed if it's at staff meetings where the staff is working on OHA work?

A. (Ms. Li) If you're talking about our food policy in general -- any food purchase for staff is not allowed.

But we're talking about trustee allowance. For trustee allowance, because it wasn't specifically said it was disallowed, so food purchase was allowed. And it really is -- if you look at the meal form, on the bottom there's a caveat that says, you know, it's trustee's responsibility to make sure that their food purchase is compliant with the executive policy.

Tr. I:176:14 – 177:2.

170. The "Trustee Allowance Meal Form" states, in bold font, "**\*Trustees are responsible for ensuring that above meals expense comply with policies noted under OHA BOT Executive Policy Section 3.5.n.**" Exhibit C-7 at 6. See also, e.g., Exhibit C-10 at 4, Exhibit C-52 at 2.

171. OHA Executive Policy Section 3.5.n (2013 Amendment) allowed the expenditure of Trustee Annual Allowance funds to pay for associated costs to attend meetings. Exhibit C-2, Attachment “A” at 1-2.
172. OHA fiscal staff’s understanding of the policy was that costs to attend “meetings” applied to meetings with beneficiaries or other policy makers, but purchasing refreshments for meetings with staff were not included as allowable costs.
173. OHA Executive Policy Section 3.5.n (2013 Amendment) specifically disallowed the expenditure of Trustee Annual Allowance funds for services and goods for a Trustee’s personal benefit. Exhibit C-2, Attachment “A” at 3.
174. OHA fiscal staff’s understanding of the policy was that Trustees could spend Trustee Allowance funds on food for meetings with outside beneficiaries, but not for internal meetings with staff. As former Controller Kim explained, “we looked for some kind of link that established [that trustees were] working with either beneficiaries or constituents or some kind of other partners that we would typically work with.” Tr. II:330:25 – 331:15.
175. Trustee food expenditures for staff meetings could be permissible under the policy if there was a “clear business purpose” for the meeting, such as bringing in lunch to a remote location during a staff retreat, and if the expenditure amount was reasonable.
176. However, a Trustee’s notation that Trustee Annual Allowance funds were used for a “staff lunch” would not be sufficient to justify a food expenditure because such a notation would not indicate a clear business need for the expenditure.
177. Expenditures for purely internal functions, including a staff birthday party or a going-away party for a staff member, would typically be disallowed under OHA policy.
178. Given that food expenditures were not specifically disallowed by OHA policy, OHA fiscal staff would often defer to Respondent Akana – knowing that the Trustees were ultimately responsible for administering the Trustee Annual Allowance – even when an expenditure appeared improper.

179. There are many examples in the record of Respondent Akana's expenditures on food that are not alleged to constitute a violation of the State Ethics Code. For example, according to Respondent Akana's quarterly report for July 1, 2016 to September 30, 2016, Respondent Akana spent \$73.98 of Trustee Annual Allowance funds on or about September 29, 2016 at Kincaid's for dinner with the Assistant Director of the Bureau of Indian Affairs from Washington, D.C. Exhibit C-22 at 1-2. Former Controller Kim testified that, on its face, this expenditure would generally be allowable. See also, e.g., Exhibit C-18 at 1 (\$41.41 on 5/10/16 for meeting with Chair of Board of Education); Exhibit C-33 at 2 (\$36.54 on 5/19/17 for meeting with beneficiary); Exhibit C-41 at 1 (\$107.28 on 9/10/14 for dinner for group traveling to Oahu from neighbor island); Exhibit C-52 at 1 (\$28.14 on 12/15/16 for meeting with beneficiary).

### **Count 37**

180. On or about October 3, 2013, a charge was made on Respondent Akana's credit card to pay for a "staff lunch" from Legend Seafood Restaurant, in the amount of \$30.52. Respondent Akana's Trustee Annual Allowance funds were used to pay for this credit card charge. Exhibit C-43.
181. The expenditure of \$30.52 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-43.
182. OHA does not have any other records indicating the justification for this particular purchase.
183. The only indication of the purpose of this expenditure is a handwritten notation of "staff lunch" on the receipt and a notation of "staff lunch" on Respondent Akana's quarterly report (October 1, 2015 – December 31, 2015). Exhibit C-43. However, Respondent Akana maintains that she was in New York City at the time of the purchase, and that a former aide made this purchase without her knowledge.
184. The Commission finds that there was insufficient evidence that Respondent Akana used or attempted to use Trustee Annual Allowance funds to pay for a staff lunch from Legend

Seafood Restaurant on October 3, 2013 to provide herself or another person with a personal benefit.

**Count 38**

185. On or about March 17, 2014, Respondent Akana used Trustee Annual Allowance funds to pay for pastries and juice from Leonard's Bakery, in the amount of \$17.80. Exhibit C-44.
186. Respondent Akana's expenditure of \$17.80 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-44.
187. A handwritten note on the receipt indicates that this purchase was for "Refreshments for staff meeting after trip to Berlin"; a similar note on Respondent's quarterly report (January 1, 2014 – March 31, 2014) states, "Refreshments for staff meeting de briefing [sic] after Berlin trip." An itemized receipt indicates that Respondent Akana purchased 12 "Original," 1 "Pinwheel" and 1 orange juice from Leonard's Bakery. Exhibit C-44.
188. OHA does not have any other records indicating the justification for this particular purchase.
189. Respondent Akana's explanation for this purchase was that she would frequently bring in donuts for staff and that this purchase was therefore for a "working meeting."
190. This type of purchase – refreshments for an internal staff meeting – was not allowable under OHA policy.
191. Respondent's purchase of refreshments for a staff meeting was a personal expense rather than an expense that was necessary or required for OHA business.
192. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing refreshments for an internal staff meeting on or about March 17, 2014.

### **Count 39**

193. On or about July 3, 2014, Respondent Akana used Trustee Annual Allowance funds to pay for wraps, chips, cookies, bottled water, and a delivery charge from 1132 Café & Catering, in the amount of \$268.59. Exhibit C-45.
194. Respondent Akana's expenditure of \$268.59 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-45.
195. Respondent Akana's quarterly report (July 1, 2014 – September 30, 2014) indicates that this purchase was for a "Going away party for secretary" and "Going away party for sec. Food for whole office." Exhibit C-45.
196. OHA does not have any other records indicating the justification for this particular purchase.
197. Respondent Akana did not provide any other evidence regarding this specific purchase, except to explain that she believed that these types of expenditures were justified for "morale building" and because "most of our staff are beneficiaries."
198. This type of purchase – food for an internal staff "going away" party – was not allowable under OHA policy.
199. Respondent's purchase of food for a staff "going away" party or for "morale building" was a personal expense rather than an expense that was necessary or required for OHA business.
200. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of other OHA employees by purchasing food for a staff "going away" party on or about July 3, 2014.

### **Count 40**

201. On or about August 4, 2014, Respondent Akana used Trustee Annual Allowance funds to pay for 24 Coco Puffs for staff from Liliha Bakery, in the amount of \$31.94. Exhibit C-46.

202. Respondent Akana's expenditure of \$31.94 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-46.
203. A handwritten note on the receipt says that this purchase was for "Breakfast for Office Staff"; Respondent Akana's quarterly report (July 1, 2014 – September 30, 2014) indicates that this purchase was for "Coco Puff [sic] for office staff." Exhibit C-46.
204. OHA does not have any other records indicating the justification for this particular purchase.
205. Respondent Akana's explanation for this purchase was that she purchased these pastries for staff for a working meeting after she traveled to South Dakota.
206. This type of purchase – refreshments for an internal staff meeting – was not allowable under OHA policy.
207. Respondent's purchase of refreshments for a staff meeting was a personal expense rather than an expense that was necessary or required for OHA business.
208. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing refreshments for an internal staff meeting on or about August 4, 2014.

#### **Count 41**

209. On or about February 10, 2015, Respondent Akana used Trustee Annual Allowance funds to pay for food from Zippy's Nimitz, in the amount of \$61.83. Exhibit C-47.
210. Respondent Akana's expenditure of \$61.83 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-47.
211. A handwritten note on the Zippy's receipt indicates that the purchase was for "Celebration lunch Birthday for staff;" Respondent Akana's quarterly report (January 1, 2015 – March 31,

2015) indicates “Birthday Celebration for Staff” and “Birthday Lunch for Staff.” Exhibit C-47.

212. OHA does not have any other records indicating the justification for this particular purchase.
213. Respondent Akana did not provide any other testimony regarding this specific purchase, except to explain that she believed these types of expenditures were justified for “morale building” and because “most of our staff are beneficiaries.”
214. This type of purchase – food for an internal staff birthday party – was not allowable under OHA policy.
215. Respondent’s purchase of food for a birthday lunch celebration for staff or for “morale building” was a personal expense rather than an expense that was necessary or required for OHA business.
216. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing food for a birthday lunch for staff on or about February 10, 2015.

**Count 42**

217. On or about January 23, 2015, Respondent Akana used Trustee Annual Allowance funds to pay for manapua from Royal Kitchen, in the amount of \$66.49. Exhibit C-48.
218. Respondent Akana’s expenditure of \$66.49 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-48.
219. Respondent Akana’s quarterly report (January 1, 2015 – March 31, 2015) indicates that this purchase was for “food for BOT staff” and “Manapua for BOT staff.” Exhibit C-48.
220. OHA does not have any other records indicating the justification for this particular purchase.

221. Respondent Akana's explanation for this purchase was that the manapua were for a working meeting to prepare for a BOT meeting.
222. This type of purchase – food for an internal staff meeting – was not allowable under OHA policy.
223. Respondent's purchase of food for an internal staff meeting was a personal expense rather than an expense that was necessary or required for OHA business.
224. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of BOT staff by purchasing food for an internal staff meeting on or about January 23, 2015.

#### **Count 43**

225. On or about July 9, 2015, Respondent Akana used Trustee Annual Allowance funds to pay for food for a "staff meeting" from Liliha Bakery, in the amount of \$39.48. Exhibit C-49.
226. Respondent Akana's expenditure of \$39.48 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-49.
227. The Liliha Bakery receipt attached to Respondent Akana's quarterly report (July 1, 2015 – September 30, 2015) does not indicate what was purchased. A handwritten note on the receipt indicates only "7/9/2015: Trustee staff meeting." Exhibit C-49.
228. OHA does not have any other records indicating the justification for this particular purchase.
229. Respondent Akana did not provide any other evidence regarding this specific purchase.
230. This type of purchase – food for an internal staff meeting – was not allowable under OHA policy.
231. Respondent's purchase of food for an internal staff meeting was a personal expense rather an expense that was necessary or required for OHA business.

232. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing food for an internal staff meeting on or about July 9, 2015.

**Count 44**

233. On or about December 2, 2015, Respondent Akana used Trustee Annual Allowance funds to pay for food for staff from Chinatown Express Ala Moana, in the amount of \$31.01. Exhibit C-50.

234. Respondent Akana's expenditure of \$31.01 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-50.

235. A handwritten note on the receipt states "Working Lunch w/ staff," and Respondent Akana's quarterly report (October 1, 2015 – December 31, 2015) indicates the purchase was for "Meal for working lunch." Exhibit C-50.

236. OHA does not have any other records indicating the justification for this particular purchase.

237. Respondent Akana's explanation for this purchase was that the food was for a working meeting with OHA legislative staff to discuss OHA's proposed legislative package.

238. This type of purchase – food for an internal staff meeting – was not allowable under OHA policy.

239. Respondent's purchase of food for an internal staff meeting was a personal expense rather than an expense that was necessary or required for OHA business.

240. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing food for an internal staff meeting on or about December 2, 2015.

### **Count 45**

241. On or about August 15, 2016, Respondent Akana used Trustee Annual Allowance funds to pay for “refreshments for staff” from Leonard’s Bakery, in the amount of \$20.73. Exhibit C-51.
242. Respondent Akana’s expenditure of \$20.73 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-51.
243. An itemized receipt indicates that Respondent Akana purchased 18 “Original.” A handwritten note on the receipt indicates that the purchase was for “Refreshments for staff” and Respondent Akana’s quarterly report (July 1, 2016 – September 30, 2016) indicates that the purchase was for “Refreshments for staff.” Exhibit C-51.
244. OHA does not have any other records indicating the justification for this particular purchase, and Respondent Akana did not provide any other information regarding this purchase.
245. This type of purchase – refreshments for staff – was not allowable under OHA policy.
246. Respondent’s purchase of refreshments for staff was a personal expense rather than an expense that was necessary or required for OHA business.
247. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing refreshments for staff on or about August 15, 2016.

### **Count 46**

248. On or about October 5, 2016, Respondent Akana used Trustee Annual Allowance funds to pay for lunch for staff from Tanaka Saimin, in the amount of \$43.66. Exhibit C-52.
249. Respondent Akana’s expenditure of \$43.66 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-52.

250. Respondent Akana's Trustee Allowance Meal Form states that the purpose of this purchase was "To prepare for next day's BOT Meeting" and that the attendees were Respondent Akana and her Trustee Aides, Nathan Takeuchi and Kay Watanabe. A handwritten note on the receipt for this purchase states, "Staff Lunch"; Respondent Akana's quarterly report (October 1, 2016 – December 31, 2016) indicates the same. Exhibit C-52.
251. OHA does not have any other records indicating the justification for this particular purchase.
252. Respondent Akana explained that this expenditure was for lunch with her staff at Tanaka Saimin to prepare for a BOT meeting the next day.
253. When asked why it was necessary for Respondent to take her staff to a restaurant for this meeting, Respondent testified as follows:
- Q. (Commissioner Fong) Why did you have lunch outside of the office? Couldn't you have had it in the office if you were going to meet with them or talk with them?
- A. (Ms. Akana) Well, I suppose we could have, but rather than taking cold saimin back to the office, it was probably better to eat it there.
- Tr. III:585:23 – 586:4.
254. This type of purchase – food for an internal staff meeting – was not allowable under OHA policy.
255. Respondent's purchase of lunch for an internal staff meeting was a personal expense rather an expense that was necessary or required for OHA business.
256. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and the personal benefit of OHA staff by purchasing lunch for an internal staff meeting on or about October 5, 2016.

### Count 47

257. On or about February 17, 2017, Respondent Akana used Trustee Annual Allowance funds to cover the cost of food that had been purchased for a staff member's last day, in the amount of \$25. Exhibit C-53.
258. Respondent Akana's expenditure of \$25 was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-53.
259. Respondent Akana's Trustee Allowance Meal Form states that the attendees were Respondent Akana and Lora Contreras; Respondent Akana's quarterly report (January 1, 2017 – March 31, 2017) states that the purchase was for "Lunch for staff's last day." Exhibit C-53. It appears from the evidence that Ms. Contreras paid for the meal at Serg's Mexican Kitchen, after which Respondent Akana used Trustee Annual Allowance funds to reimburse Ms. Contreras.
260. OHA does not have any other records indicating the justification for this particular purchase.
261. Respondent Akana's explanation for this purchase was that it was for her staff member's last day.
262. Respondent Akana did not provide any other evidence regarding this specific purchase, except to explain that she believed that these types of expenditures were justified for "morale building" and because "most of our staff are beneficiaries."
263. This type of purchase – food for an internal staff lunch for a staff member's last day – was not allowable under OHA policy.
264. Respondent's purchase of lunch for a staff member's last day at work or for "morale building" was a personal expense rather than an expense that was required or necessary for OHA business.

265. The Commission finds that Respondent Akana used her Trustee Annual Allowance for her personal benefit and for the personal benefit of her OHA staff by paying for lunch for a staff member's last day at work on or about February 17, 2017.

#### **Count 48**

266. On or about December 5, 2017, Respondent Akana used Trustee Annual Allowance funds to pay for food from Royal Kitchen for an OHA Trustees' pot luck holiday party, in the amount of \$23.72. Exhibit C-54.

267. A handwritten note on the receipt states that the purchase was for "Noodles for OHA Xmas party"; Respondent Akana's quarterly report (October 1, 2017 – December 31, 2017) indicates "Noodles for OHA BOT pot luck on 12/05/17." Exhibit C-54.

268. Respondent Akana's expenditure of \$23.72 was disallowed by OHA fiscal staff. Exhibit C-54.

269. Respondent Akana was informed of the disallowance of the food for the BOT staff potluck, among other things, via a memorandum from CEO Crabbe, dated February 9, 2018. Exhibit C-54.

270. Respondent Akana maintained that she was expected to show up at OHA's annual holiday party for morale purposes.

271. Respondent's purchase of food for a BOT staff holiday party or for "morale purposes" was a personal expense rather than an expense that was necessary or required for OHA business.

272. The Commission finds that Trustee Akana used her Trustee Annual Allowance for her personal benefit and for the personal benefit of other Trustees and/or OHA staff by purchasing food for a BOT staff holiday party on or about December 5, 2017.

#### **Counts 49-51: Use of Trustee Allowance for Political Contributions**

273. At all times relevant herein, OHA policy and guidelines specifically prohibited Trustees from using Trustee Allowance funds to make contributions to a political party. Exhibit C-7 at 3.

### Count 49

274. On or about February 11, 2014, Respondent Akana used Trustee Annual Allowance funds to make a political contribution to the Hawaii County Democrats, in the amount of \$50. Exhibit C-8.
275. The \$50 contribution to the Hawaii County Democrats was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-8.
276. Respondent Akana claimed that the \$50 contribution was disallowed and that she paid back funds for the expenditure. However, OHA records do not show that the contribution was disallowed or that Respondent used personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Respondent Akana also failed to produce any supporting evidence for her claim that she repaid OHA.
277. The “Hawaii County Democrats” is affiliated with the Democratic Party of Hawaii, a political party. Exhibit C-72.
278. Margaret Wille, the Chair of the Democratic Party for the County of Hawaii, was called as a witness by Respondent Akana.
279. Every year, there is a county convention of the Democratic Party to which all Democratic candidates and elected officials are invited.
280. The public is invited to attend and watch the event, but only Democratic officials and candidates are allowed to speak:

Q. (Respondent’s Counsel) And just to be clear, it’s not just all elected officials and all candidates within the democratic party. It’s bipartisan; is that accurate?

A. (Ms. Wille) No. It’s – it is democrat, all democrats.

Tr. IV:617:25 – 618:10. See also Tr. IV:618:18 – 619:3 (“We don’t – we don’t invite – there’s a republican candidate, they’re not invited to speak.”).

281. Donations received for the event are used to cover expenses at the event, with any extra proceeds rolled over to the next political event – such as the Grand Rally the night before the primary election.
282. At one of the Hawaii County Democrats’ events, some Republicans were handing out materials and Ms. Wille “sort of shooed them”; Republicans would not be permitted to take over the Hawaii County Democrats’ event.
283. Respondent Akana did not attend the event.
284. Although Respondent Akana maintains that her \$50 donation to the Hawaii County Democrats was for refreshments for the event, she reported it on her quarterly report (January 1, 2014 – March 31, 2014) as a “political contribution.” Exhibit C-8.
285. OHA policy prohibited the use of Trustee Annual Allowance funds for this political contribution.
286. The Commission finds that Respondent Akana used her Trustee Annual Allowance to benefit a political party by making a political contribution to the Hawaii County Democrats on or about February 11, 2014.

**Count 50**

287. On or about February 11, 2014, Respondent Akana used Trustee Annual Allowance funds to make a political contribution to the Democratic National Committee, in the amount of \$50. Exhibit C-9.
288. The \$50 contribution to the Democratic National Committee was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-9.
289. Respondent Akana claimed that the \$50 contribution was disallowed and that she paid back funds for the expenditure. However, OHA records do not show that the contribution was disallowed or that Respondent used personal funds to reimburse OHA or the Trustee Annual

Allowance fund for this expenditure. Respondent Akana also failed to produce any supporting evidence for her claim that she repaid OHA.

290. The Democratic National Committee is a political party. Exhibit C-73.
291. Respondent Akana's quarterly report (January 1, 2014 – March 31, 2014) included supporting documentation for Respondent's political contribution to the Democratic National Committee. The supporting documentation included a copy of a Democratic National Committee donation form soliciting donations "to help take back the House, protect our Senate majority, and win crucial Democratic victories at all levels." Exhibit C-9.
292. Respondent Akana reported the \$50 donation to the Democratic National Committee on her quarterly report as a "political contribution."
293. OHA policy prohibited the use of Trustee Annual Allowance funds for this political contribution.
294. The Commission finds that Respondent Akana used her Trustee Annual Allowance to benefit a political party by making a political contribution to the Democratic National Committee on or about February 11, 2014.

### **Count 51**

295. At all times relevant herein, OHA policy and guidelines specifically prohibited Trustees from using Trustee Annual Allowance funds to make a contribution to support a political action committee event.
296. On or about December 5, 2017, Respondent Akana used \$500 of Trustee Annual Allowance funds to pay DeMont Connor for entertainment for Kanaka Maoli, an event presented on January 16, 2018, by the Ho'omana Pono Political Action Committee (HPAC) (of which Mr. Connor was President, see Exhibit C-74) and the Ka Lahui Hawai'i Political Action Committee (KPAC) (see Exhibit C-75). Exhibit C-10.

297. Respondent Akana reported the \$500 payment to DeMont Connor as a “Donation for entertainment for 01/16/18 event” on her quarterly report for October 1, 2017 - December 31, 2017. Exhibit C-10.
298. Respondent Akana’s Trustee Allowance Beneficiary/Organization Donation Form described the purpose of the \$500 donation as, “Funding For Entertainment At January 16, 2018 Event.” Exhibit C-10.
299. In an email to Respondent Akana’s aide Kay Watanabe, dated November 29, 2017, DeMont Connor stated: “Aloha e Kay! Here is the flyer for the event on January 16, 2018. I am NOT asking funding for the political event. My request is for Entertainment.” Exhibit C-10.
300. Notwithstanding Mr. Connor’s statement that he was not asking for funding for the “political event” on January 16, 2018, Respondent Akana’s donation to Mr. Connor was for the purpose of funding entertainment for the event and therefore directly benefitted the political action committee event.
301. OHA policy prohibited the use of Trustee Annual Allowance funds for this contribution to a political action committee event.
302. The \$500 contribution was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-10.
303. The Commission finds that Respondent Akana used her Trustee Annual Allowance to benefit one or more political action committees by making a contribution on or about December 5, 2017, for entertainment for the Kanaka Maoli political action committee event presented by HPAC and KPAC.

**Counts 52-53: Use of Trustee Allowance Funds for  
Donations to Hawaiian Humane Society**

304. On or about February 20, 2014, Respondent Akana used \$50 of Trustee Annual Allowance funds to make a donation to the Hawaiian Humane Society, a non-profit organization. Exhibit C-39.
305. The \$50 contribution was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-39.
306. On or about August 8, 2017, Respondent Akana used Trustee Annual Allowance funds to donate \$25 to the Hawaiian Humane Society. Exhibit C-40.
307. The \$25 contribution was not disallowed by OHA, and Respondent Akana did not use personal funds to reimburse OHA or the Trustee Annual Allowance fund for this expenditure. Exhibit C-40.
308. Contributions to the Hawaiian Humane Society did not necessarily align with the intent of the Trustee Annual Allowance because, as former CFO Iona testified, “there isn’t an obvious Native Hawaiian benefit.” Tr. I:239:13-21. Ms. Iona explained that, while many organizations, such as the Hawaiian Humane Society serve the public – which includes Native Hawaiians – OHA trust funds should not necessarily support those organizations absent a clear benefit to the Native Hawaiian community.
309. If the Hawaiian Humane Society or another organization specifically tracked its services to the Native Hawaiian community, that could factor in to whether the expense would be allowable under OHA policy.
310. OHA fiscal staff would, in most cases, have reached out to the Trustee’s office for further explanation or documentation as to how a Trustee’s contribution to the Hawaiian Humane Society related to the purpose of the Trustee Allowance Fund and OHA policy. Absent any additional information, such expenditure should not have been allowed.

311. The Commission heard testimony from Stephanie Kendrick, a public policy advocate for the Hawaiian Humane Society, called as a witness by the Respondent.
312. The Hawaiian Humane Society provides a wide range of community services on Oahu, serving as an animal shelter, spaying and neutering animals, and offering a pet food bank.
313. The Hawaiian Humane Society does not track any of its programs by ethnicity, but Ms. Kendrick maintained that “given the depth of our history in the community and the breadth of our outreach, it would seem to me that probably all ethnic groups on our island benefit.” Tr. IV:610:25 – 611:6.
314. According to Ms. Kendrick, the Hawaiian Humane Society’s services “benefit native Hawaiian communities, particularly given the increased outreach we’ve done on West Oahu, which I know just demographically is a predominantly Hawaiian area.” Tr. IV:613:4-8.
315. Respondent Akana claimed that she made donations to the Hawaiian Humane Society because its free services are used by the Hawaiian community.
316. The Commission finds that (1) it is unclear whether OHA policy at the time prohibited Respondent Akana from making the donations using Trustee Allowance funds; (2) Respondent did not receive any direct personal benefit from making the donations; and (3) there is insufficient evidence that Respondent used or attempted to use Trustee Annual Allowance funds to provide the Hawaiian Humane Society with an unwarranted benefit.

### **III. CONCLUSIONS OF LAW**

#### **The State Ethics Code**

1. The people of Hawaii have declared that state employees must exhibit the highest standards of ethical conduct. To this end, the Hawaii State Constitution mandates that the Legislature adopt a code of ethics applicable to all state employees. Haw. Const. art. XIV.
2. In accordance with and pursuant to the constitutional mandate, the State Ethics Code, HRS chapter 84, establishes standards of conduct for state employees that the Legislature deemed necessary to preserve the public’s confidence in state employees and authorizes the

Commission to administer and enforce those standards. Preamble, HRS chapter 84; HRS § 84-31.

3. The Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1.
4. All state employees, with the exception of judges and justices, are subject to, and must comply with, the State Ethics Code. HRS § 84-2.
5. The State Ethics Code defines an “employee” to include elected officers or employees of the State, including members of boards, commissions, and committees. HRS § 84-3.
6. For purposes of investigation and taking appropriate action on alleged violations of the State Ethics Code by an employee or former employee, the Commission has jurisdiction in all proceedings commenced within six years of an alleged violation. HRS § 84-31(a)(6).
7. In a contested case hearing held pursuant to HRS § 84-31, the Commission’s findings must be based upon competent and substantial evidence. HRS § 84-31(c).
8. An employee who violates the State Ethics Code is subject to an administrative fine imposed by the Commission. HRS § 84-39.
9. Prior to June 22, 2017, HRS § 84-39 authorized an administrative fine of up to \$500 for each violation of the State Ethics Code.
10. In 2017, HRS § 84-39 was amended by Act 50 to authorize an administrative fine of up to \$1,000 for each violation of the State Ethics Code. 2017 Haw. Sess. Laws Act 50. Act 50 took effect on June 22, 2017.
11. For violations of the State Ethics Code that occurred before June 22, 2017, the Commission may assess an administrative fine of up to \$500 for each violation.
12. For violations of the State Ethics Code that occurred on or after June 22, 2017, the Commission may assess an administrative fine of up to \$1,000 for each violation.

### **Application of the State Ethics Code to Respondent Akana**

13. OHA is governed by the BOT, whose members are elected to office in accordance with HRS chapter 13D. HRS § 10-7.
14. OHA Trustees receive an annual salary and are included in benefit programs generally applicable to officers and employees of the State. HRS § 10-9(1).
15. OHA Trustees are state employees as defined in HRS § 84-3.
16. Respondent Akana was, at all times relevant herein, a state employee as defined in HRS § 84-3.
17. As a state employee, Respondent Akana was required to comply with the State Ethics Code.
18. As set forth herein and in the Commission's October 16, 2018 *Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent*, the Commission has jurisdiction over all counts in this matter and over Respondent Akana, who was a state employee at all relevant times.

### **The Gifts Law**

19. The Gifts law, HRS § 84-11, prohibits a state employee from accepting or receiving, directly or indirectly, any gift under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of the employee's official duties, or is intended as a reward for any official action by the employee.
20. The Gifts law applies to any gift, "whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form[.]" HRS § 84-11.
21. For purposes of the Gifts law, it is irrelevant whether the donor actually intends to influence an employee's action or whether the employee is actually influenced by the gift. As stated by the Commission in Advisory Opinion No. 2018-2:

The Gifts law is based on the appearance of improper influence or reward. The actual intent of the donor in giving a gift is irrelevant

to determining whether the Gifts law is violated. Likewise, it does not matter whether the recipient of the gift is actually influenced by the gift. The Gifts law is violated where the facts and circumstances of the situation raise a reasonable inference of improper influence or reward.

### **The Gifts Reporting Law**

22. The Gifts Reporting law, HRS § 84-11.5, was enacted in 1992. The significance of the disclosure law is reflected in its legislative history:

The purpose of this bill is to require that legislators and employees file gifts disclosure statements with the State Ethics Commission on June 30 of each year.

In order to promote public confidence in our government, it is important for the State Ethics Commission to monitor and prevent any abuse that may arise in situations involving . . . the duties and services of a public official. Your Committee on Conference is in agreement that, despite a slight inconvenience, the filing of gift disclosure statements are necessary to further promote public confidence in our government as well as our public officials.

Conf. Comm. Rep. No. 41, in 1992 House Journal, at 808 (emphasis added).

23. The Gifts Reporting law is not merely a “technical” requirement. Rather, the law provides an important means for the Commission and the public to monitor the actions of public officials and is necessary to promote public confidence in government.
24. The Gifts Reporting law, HRS § 84-11.5, requires a state employee to file a gifts disclosure statement with the Commission on June 30 of each year if all the following conditions are met:
- (1) The . . . employee, or spouse or dependent child of the . . . employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
  - (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the . . . employee; and
  - (3) The gift is not exempted . . . from reporting requirements[.]

HRS § 84-11.5(a).

25. The gifts disclosure statement covers the period from June 1 of the preceding calendar year through June 1 of the year of the report. HRS § 84-11.5(b).
26. The gifts disclosure statement must contain the following information:
  - (1) A description of the gift;
  - (2) A good faith estimate of the value of the gift;
  - (3) The date the gift was received; and
  - (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

HRS § 84-11.5(c).

27. The following items are excluded from the reporting requirements of the Gifts Reporting law:
  - (1) Gifts received by will or intestate succession;
  - (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
  - (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. . .;
  - (4) Political campaign contributions that comply with state law;
  - (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
  - (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
  - (7) Exchanges of approximately equal value on holidays, birthday[s], or special occasions.

HRS § 84-11.5(d).

28. The failure of an employee to file a gifts disclosure statement as required by the Gifts Reporting law is a violation of the State Ethics Code. HRS § 84-11.5(e).

### **The Fair Treatment Law**

29. The Fair Treatment law, HRS § 84-13, prohibits a state employee from using or attempting to use the employee's official position to secure or grant unwarranted privileges, advantages, benefits, or treatment for the employee or others.

30. The Fair Treatment law applies to the actions of OHA Trustees in spending their Trustee Annual Allowance funds.
31. Notwithstanding Respondent Akana's contentions to the contrary, the Commission has jurisdiction to review Respondent's actions relating to her expenditures of Trustee Annual Allowance funds to determine whether her actions were in violation of the State Ethics Code, specifically the Fair Treatment law. See Commission's *Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent*, filed October 16, 2018.
32. OHA's executive policy establishes that the Trustee Annual Allowance must be used to, among other things, "develop and maintain an ongoing communication network with beneficiaries and the general public," "promote a broader understanding of Hawaiian issues within the Hawaiian community and among the general public," or "cover the costs connected with social and charitable functions a Trustee is expected to support" such as assisting a halau or youth group. Exhibit C-2. OHA policy specifically disallows the use of Trustee Annual Allowance funds for a Trustee's personal benefit or personal gain. Exhibit C-1 at 26-27; Exhibit C-2, Attachment "A" at 2.
33. OHA policy does not preclude the application of the State Ethics Code – a constitutionally mandated state law – to a Trustee's use of her Trustee Annual Allowance funds. In fact, OHA policy recognizes and expressly states that Trustee expenditures must also comply with the law. See 2013 Amendment to OHA's Executive Policy Manual, Exhibit C-2 (stating that Trustee Annual Allowance expenditures may be disallowed if they contravene OHA's mission, OHA's policy, or the law.); see also Exhibit C-2, "Action Item", at 4 (explaining that the proposed 2013 Amendment that controls the use of the Trustee Annual Allowance includes the BOT's Executive Policy Manual, Federal and State tax laws, and ethics laws found in HRS chapter 84, i.e., the State Ethics Code).
34. A Trustee's use of Trustee Annual Allowance funds must not contravene OHA policy or the State Ethics Code, including the Fair Treatment law, HRS § 84-13.

35. Respondent Akana's expenditures of Trustee Annual Allowance funds to benefit herself, or to benefit another individual or organization in a manner that is not consistent with OHA, its mission, and/or the purpose of the Trustee Annual Allowance fund constitutes a violation of the Fair Treatment law, HRS 84-13, over which the Commission has jurisdiction.
36. HRS § 84-13(3), part of the Fair Treatment law, prohibits a state employee from using state time, equipment or facilities for private business purposes.
37. HRS § 84-13(3) "prohibit[s] employees from using their government positions to secure or grant unfair treatment for themselves or others" and "disallow[s] the use of state time, equipment, or facilities for private business purposes, including political campaign activities." ADVISORY OPINION NO. 561, 1985 WL 1265277, at \*1.
38. The Fair Treatment Law, HRS § 84-13, prohibits a state employee from using or attempting to use state resources, including but not limited to state funds, to support a political party or a political action committee. See id. at \*2 ("[T]he ethics law requires that private business matters, including political campaign activities, must be separated to the greatest extent possible from state affairs.").
39. OHA policy also prohibits the use of Trustee Annual Allowance funds for political contributions.
40. Notwithstanding Respondent Akana's assertion that "intent is a necessary element of any violation of a law" and that she did not "intend" to violate the Fair Treatment law, the Commission concludes that the Complainant is not required to prove that Respondent Akana actually intended to violate the State Ethics Code. See Hirono v. Peabody, 81 Hawai'i 230, 234, 915 P.2d 704, 708 (1996) (holding that "a law takes effect upon its passage, and mere ignorance of the law constitutes no defense to its enforcement"); Boyd v. Hawaii State Ethics Comm'n, 136 Hawai'i 140, 153, 358 P.3d 709, 722 (Ct. App. 2015) (holding that intent was not a required element of HRS § 84-14(a) or (d), and that "mere ignorance of the law constitutes no defense to its enforcement"), vacated on other grounds 138 Hawai'i 218, 378 P.3d 934 (2016).

41. Respondent Akana also argues that she did not violate the State Ethics Code because she paid back Trustee Allowance expenditures that were disallowed by OHA staff. For purposes of the Fair Treatment law, whether Respondent Akana reimbursed OHA or the Trustee Annual Allowance fund for disallowed expenditures using personal funds is irrelevant. The Fair Treatment law prohibited Respondent from using or attempting to use her official position to secure unwarranted benefits for herself or others. Thus, the fact that Respondent Akana attempted to use her Trustee Annual Allowance for her own (or another person's) unwarranted benefit is a violation of the State Ethics Code, regardless whether the OHA administration later disallowed an expenditure and required Respondent to reimburse the funds.
42. Respondent Akana also argues that she did not violate the State Ethics Code because some of the expenditures for which she was charged were "allowed" or "not disallowed" by OHA fiscal staff. This, however, is not determinative as to whether Respondent Akana violated the Fair Treatment law.
43. The fact that an expenditure was "not disallowed" by OHA fiscal staff does not mean the expenditure was consistent with OHA policy or the State Ethics Code. The evidence was clear that OHA fiscal staff's review of Trustee expenditures is a difficult and time-consuming process and it is not possible for staff to catch all disallowed expenditures. FOF # 82.
44. It is the responsibility of Trustees themselves to ensure that they spend Trustee Annual Allowance funds in accordance with OHA policy and the State Ethics Code. FOFs # 87-88.
45. The State Ethics Code applies to all state employees, including OHA employees, and an agency may not exempt its employees from the Fair Treatment law through its own policies (or lack thereof). As such, OHA's failure to "disallow" some of Respondent Akana's expenditures is not determinative as to whether Respondent Akana violated the Fair Treatment Law.

46. Although not dispositive, Respondent Akana’s argument – that her expenditures were approved by OHA, such that she did not violate the State Ethics Code – also rings particularly hollow here. There is credible and substantial evidence that Respondent Akana bullied, intimidated, and threatened OHA staff who were tasked with reviewing Respondent Akana’s expenditures. Respondent Akana’s conduct made the jobs of OHA fiscal staff members more difficult, and also made them reluctant to question Respondent Akana about her Trustee Annual Allowance expenditures.
47. Respondent Akana was responsible for ensuring that she complied with the State Ethics Code. Respondent Akana is responsible for her own conduct; she cannot shift this responsibility on to others.
48. Respondent Akana only had access to Trustee Annual Allowance funds because of her official position as an elected Trustee. The evidence demonstrates that Respondent Akana used her official position as an OHA Trustee to provide herself and others with unwarranted benefits in violation of the Fair Treatment law.

#### **COUNTS 1 TO 4**

##### **Violations of the Gifts Reporting Law, HRS § 84-11.5**

##### **Failure to Report Gifts by Statutory Deadline (Gifts of Legal Fees from Abigail Kawananao)**

49. The Gifts law, HRS § 84-11, and the Gifts Reporting law, HRS § 84-11.5, impose different requirements on state employees. The Gifts law prohibits employees from accepting certain gifts, regardless value, “under circumstances in which it can reasonably be inferred that the gift is intended to influence the . . . employee in the performance of the . . . employee’s official duties or is intended as a reward for any official action on the . . . employee’s part.” The Gifts Reporting law, on the other hand, requires state employees to report gifts received under certain conditions – though the reporting of a gift does not transform an otherwise unacceptable gift into an acceptable one. HRS § 84-11.5(f) (stating that the Gifts Reporting law does not affect the applicability of the Gifts law).

50. The standard for reporting gifts under HRS § 84-11.5 is clear: state employees must report all gifts valued at over \$200 where “[t]he source of the gift or gifts have interests that may be affected by official action or lack of action by the . . . employee,” subject to certain exemptions. HRS § 84-11.5(a).
51. The State Ethics Code defines “official action” as “a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” HRS § 84-3. Thus, “official action” is very broadly defined to include any action by an employee, including inaction, which involves the use of discretionary authority.
52. Ms. Kawananakoa had interests that may have been affected by official action or lack of action on the part of Respondent Akana, which Respondent admitted in her Answer to the Further Statement of Alleged Violation. Further Statement ¶33; Answer ¶1 (admits to ¶33).
53. Ms. Kawananakoa’s interests stemmed from her status as an OHA beneficiary, as the plaintiff in the Kawananakoa v. OHA lawsuit, and as the funder of the Akana v. OHA BOT lawsuit (which Respondent Akana brought in both her individual and official capacities).
54. A “beneficiary” of the public trust entrusted upon OHA means Native Hawaiians and Hawaiians. HRS § 10-2.
55. As an OHA beneficiary, Ms. Kawananakoa was subject to Respondent Akana’s official actions as a Trustee of OHA, whose purpose is to serve the interests of Native Hawaiians and Hawaiians pursuant to HRS chapter 10.
56. As the plaintiff in a lawsuit against OHA, Ms. Kawananakoa – the source of the gifts (payments of legal fees) to Respondent Akana – had interests that may have been affected by official action, or lack thereof, by Respondent Akana. Respondent Akana, as a member of the BOT overseeing and directing OHA, a defendant in the lawsuit, could and did participate in at least one executive session meeting in which the OHA Trustees discussed the Kawananakoa lawsuit with their legal counsel and was in a position to take official action affecting Ms. Kawananakoa (such as a recommendation to settle the lawsuit).

57. As the source of funding for the Akana v. OHA BOT lawsuit, Ms. Kawanakoa had interests that may have been affected – and indeed were affected – by Respondent Akana’s decision (Respondent’s “official action”) to initiate and continue her lawsuit against the other OHA Trustees, and to defend against the other Trustees’ counterclaim against her. Ms. Kawanakoa’s interests stemmed from her continuing financial support for Respondent Akana’s lawsuit and legal defense.
58. Ms. Kawanakoa, acting through her attorney Mr. Wright, obtained information from Respondent Akana about the lawsuit. According to Mr. Wright, Ms. Kawanakoa believed that the lawsuit raised important issues and therefore offered to assist Respondent Akana by paying for Respondent’s legal fees. Thus, Ms. Kawanakoa acted directly in response to Respondent Akana’s initiation of a lawsuit against the OHA BOT by offering to pay for Respondent’s legal fees.
59. As the source of funding for Respondent’s lawsuit, Ms. Kawanakoa’s interests continued to be affected by Respondent’s official actions as the plaintiff in the Akana v. OHA BOT lawsuit (filed in her official capacity as well as her individual capacity) and as the counterclaim defendant (sued in her official capacity). As Respondent continued her lawsuit (and defense to the counterclaim) and continued to incur legal fees amounting to tens of thousands of dollars, Ms. Kawanakoa continued to approve and authorize payments of Respondent’s legal fees by Mr. Wright.
60. The legal fees paid by Ms. Kawanakoa to the Bickerton Dang law firm for legal services provided to Respondent Akana were gifts to Respondent Akana within the meaning of HRS § 84-11.5: Bickerton Dang’s legal services, paid for by Ms. Kawanakoa, were “service[s]” that were “received directly or indirectly” by Respondent Akana.
61. Each of the following payments of legal fees by Ms. Kawanakoa to the Bickerton Dang law firm for legal services provided to Respondent Akana was a gift valued at over \$200:
- a. July 1, 2015 (\$10,478.52) (Count 1);
  - b. August 10, 2015 (\$9,521.48) (Count 2);
  - c. March 24, 2016 (\$6,000.00) (Count 3);

- d. April 19, 2016 (\$24,125.50) (Count 4).
62. None of these gifts were exempted by HRS § 84-11.5(d) from the gifts reporting requirements.
63. Gifts received at different times must be reported separately: HRS § 84-11.5 requires an individual filing a gifts disclosure statement to report “[t]he date the gift was received[.]” HRS § 84-11.5(c)(3); see also HRS § 84-11.5(a)(1) (requires reporting of “any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form”).
64. Each payment of legal fees by Ms. Kawanakoa to the Bickerton Dang law firm for legal services provided to Respondent Akana, constituted a separate and distinct, reportable gift for purposes of HRS § 84-11.5.
65. Respondent Akana was clearly required to report each payment of legal fees by Ms. Kawanakoa to the Bickerton Dang law firm on an annual gifts disclosure statement filed with the Commission, by the deadlines set forth in HRS § 84-11.5.
66. Respondent Akana was required to report Ms. Kawanakoa’s payment of legal fees on July 1, 2015 (\$10,478.52) by the statutory deadline of June 30, 2016 (Count 1).
67. Respondent Akana was required to report Ms. Kawanakoa’s payment of legal fees on August 10, 2015 (\$9,521.48) by the statutory deadline of June 30, 2016 (Count 2).
68. Respondent Akana was required to report Ms. Kawanakoa’s payment of legal fees on March 24, 2016 (\$6,000) by the statutory deadline of June 30, 2016 (Count 3).
69. Respondent Akana was required to report Ms. Kawanakoa’s payment of legal fees on April 19, 2016 (\$24,125.50) by the statutory deadline of June 30, 2016 (Count 4).
70. Respondent Akana’s contention that she did not need to report these legal fees and that they were not “gifts” because she received them in her “official capacity” is wholly without merit: if she were correct, then state employees could simply ignore HRS § 84-11.5 altogether by

claiming that gifts – whether cash, meals, tangible goods, or services – were being provided to them in their official capacities. This contradicts the plain language of HRS § 84-11.5.

71. Respondent Akana accepted Ms. Kawanakoa’s offer to pay for her legal fees. It was incumbent upon Respondent to ascertain the value of these legal fees for gift reporting purposes and to report these gifts in a timely fashion as required by HRS § 84-11.5. Her claim that she was not provided with copies of the Bickerton Dang law firm’s invoices and that, during the course of the litigation, she did not know the specific amounts of her legal fees does not absolve Respondent of her responsibilities under the State Ethics Code.
72. Respondent Akana violated HRS § 84-11.5 by failing to report a gift (the payment of Respondent’s legal fees) from Ms. Kawanakoa received on July 1, 2015 (\$10,478.52) by the statutory deadline of June 30, 2016 (Count 1).
73. Respondent Akana violated HRS § 84-11.5 by failing to report a gift (the payment of Respondent’s legal fees) from Ms. Kawanakoa received on August 10, 2015 (\$9,521.48) by the statutory deadline of June 30, 2016 (Count 2).
74. Respondent Akana violated HRS § 84-11.5 by failing to report a gift (the payment of Respondent’s legal fees) from Ms. Kawanakoa received on March 24, 2016 (\$6,000.00) by the statutory deadline of June 30, 2016 (Count 3).
75. Respondent Akana violated HRS § 84-11.5 by failing to report a gift (the payment of Respondent’s legal fees) from Ms. Kawanakoa received on April 19, 2016 (\$24,125.50) by the statutory deadline of June 30, 2016 (Count 4).
76. The Commission disagrees that Respondent Akana’s failure to report four gifts (amounting to over \$50,000) from Ms. Kawanakoa is a “technical” violation warranting only a “nominal penalty per instance” or that “any fine at all[] is excessive when considering the nature of the alleged violations[.]” See Respondent’s Response to Commission’s Request for Additional Legal Briefing, October 1, 2018, at 15-16.

77. Respondent Akana’s failure to report the gifts that she received from Ms. Kawanakoa are not mere “technical” violations. Gifts disclosures serve the vital purposes of government transparency and accountability. They provide the Commission and the public with information needed to hold government employees to the highest ethical standards. As reflected in the legislative history of HRS § 84-11.5, gifts disclosures may be a slight inconvenience for filers, but they are necessary to promote public confidence in government and in public officials. COLs # 22-23.
78. Had Respondent timely filed her gifts disclosure statements by the June 30, 2016 deadline, the Commission and the public would have had this information a year earlier. Calling this a “technical” violation entirely misses the point of the Gifts Reporting law.
79. The Commission disagrees with Respondent Akana’s argument that a penalty of \$1,000 per violation would be unconstitutional. *Respondent’s Response to Commission’s Request for Additional Legal Briefing*, October 1, 2018, at 14-16. With respect to Counts 1-4, Respondent Akana is not subject to a fine of \$1,000 per violation.
80. Act 50 of 2017, which went into effect on June 22, 2017, increased the maximum possible fine for violations of the State Ethics Code from \$500 to \$1,000. The maximum fine only applies to violations that occurred on or after June 22, 2017, and Respondent Akana’s violations of HRS § 84-11.5 (Counts 1-4) occurred in 2016.
81. The Commission concludes that the maximum fine of \$500 per violation (Counts 1-4) applicable at the time of Respondent Akana’s misconduct is consistent with applicable law and appropriate.
82. The Legislature was clear that a violation of HRS § 84-11.5 (occurring prior to June 22, 2017) was a violation of the State Ethics Code, punishable by a maximum fine of \$500. See HRS § 84-11.5(e) (“Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.”); HRS § 84-39.
83. When the Legislature intended to set a lower maximum fine for a particular violation, it did so clearly. See, e.g., HRS § 84-17(i) (setting a fine of \$75 for failure to file a financial disclosure

statement on time); HRS § 84-17(j) (setting a fine of \$50 for failure to file a candidate financial disclosure form).

84. Respondent Akana accepted more than \$50,000 in legal services paid for by Ms. Kawanakoa without disclosing those gifts to the Commission or the public for more than a year.
85. It is not unreasonable to impose a fine of \$2,000 (4 counts x \$500 per count) for failing to disclose this information. See, e.g., 5 U.S.C. app. § 104(a)(1) (federal executive-branch employees may be fined up to \$50,000 for failing to report gifts); 5 U.S.C. app. § 104(d); 5 C.F.R. § 2634.704 (\$200 late filing fee for federal executive-branch employees whose disclosures are filed more than 30 days past the filing deadline); Associated Press, “Mitch Landrieu pays \$1,500 fine for late ethics disclosure,” New Orleans City Business (June 18, 2018), available at <https://neworleanscitybusiness.com/blog/2018/06/18/mitch-landrieu-pays-1500-fine-for-late-ethics-disclosure/> (\$1,500 fine imposed because Landrieu was six days late in reporting receipt of a free hotel room and transportation to a conference); Rachel Swan, “San Quentin warden pays fine for ethics violation,” San Francisco Chronicle (October 10, 2017) (\$4,000 fine imposed because the San Quentin warden failed to report \$1,550 in gifts on time and accepted improper gifts; fine could have been up to \$10,000, but the warden self-reported the error), available at <https://www.sfchronicle.com/politics/article/San-Quentin-warden-pays-fine-for-ethics-violation-12265257.php>. Cf. Bill Ruthhart and Hal Dardick, “Former Obama aide fined \$90,000 for illegally lobbying Emanuel on Uber’s behalf,” Chicago Tribune (February 16, 2017) (lobbyist fined \$90,000 for being 90 days late in registering as a lobbyist), available at <http://www.chicagotribune.com/news/local/breaking/ct-david-plouffe-uber-lobbying-fine-20170216-story.html>.

## **COUNTS 5 TO 6**

### **Violations of the Gifts Law, HRS § 84-11**

#### **Acceptance of Prohibited Gifts (Gifts of Legal Fees from Abigail Kawanakoa)**

86. Respondent Akana’s continued acceptance of gifts of legal fees – on two occasions, totaling more than \$21,000 – after Ms. Kawanakoa filed a lawsuit against OHA, creates a reasonable inference “that the gift is intended to influence [Respondent Akana] in the performance of [Respondent Akana’s] official duties or is intended as a reward for any official action on [Respondent Akana’s] part.” HRS § 84-11.
87. A reasonable person clearly could – and, the Commission believes, would – infer that a donor who pays for more than \$21,000 of services to an elected official after suing that official’s agency intends to influence that official.
88. In Advisory Opinion No. 2018-02, the Commission considered whether a state official could accept pro bono legal services. In that Advisory Opinion, the Commission reiterated the three factors it uses in determining whether a gift is prohibited:

The Commission considers several factors in determining whether a gift is prohibited under the State Ethics Code: (1) the value of the gift; (2) the relationship between the recipient and the donor of the gift, including whether the recipient takes official action with respect to the donor; and (3) whether the gift benefits the recipient personally or serves legitimate state interests. See, e.g., Advisory Op. No. 2011-1, 2011 WL 13192591, at \*1.

Advisory Op. No. 2018-02, 2018 WL 4599569, at \*2.

89. The Commission, in that case, concluded that the first factor weighed against acceptance, insofar as the gifts were “substantial, being valued at several thousand dollars.” Id.
90. Similarly, in the instant case, the first factor weighs against acceptance: the gifts from Ms. Kawanakoa are valued at tens of thousands of dollars.
91. The Commission opined that the second factor “is perhaps the most important of the three,” id. at \*3, and explained that this factor weighed in favor of acceptance in that case:

The [recipient] knows (and became friends with) Attorney A and Attorney B [the donors of the pro bono legal services] through his private employment . . . , which pre-dates his becoming a member of the Board by several years. It does not appear that either Attorney A or Attorney B (or their respective law firms) is currently involved in official action the Board Member is taking in

his Board (state) capacity. There is no indication that Attorney B has matters before the Agency. Although Attorney A is involved in the pending Lawsuit, the Board Member, in his state capacity, has taken prompt and unequivocal steps to avoid taking official action affecting the Lawsuit, and hence, affecting Attorney A. Based on the facts and circumstances, it appears unlikely that the gifts of pro bono legal services from Attorney A and Attorney B would influence or reward the Board Member for any official action he might take in his Board capacity.

Id. (footnote omitted).

92. In contrast, there is no evidence here that Respondent Akana had a personal friendship or private relationship with Ms. Kawanakoa preceding Respondent's acceptance of legal fee payments from Ms. Kawanakoa. Respondent Akana's relationship with Ms. Kawanakoa began after Respondent Akana became an OHA Trustee and her interactions with Ms. Kawanakoa were in Respondent's official capacity as an OHA Trustee.
93. Also, contrary to the facts of Advisory Opinion No. 2018-02, Respondent Akana did not take "prompt and unequivocal steps to avoid taking official action" affecting Ms. Kawanakoa or the Kawanakoa vs. OHA lawsuit. Instead, Respondent Akana participated in an executive session meeting with OHA's attorney on the Kawanakoa v. OHA lawsuit while continuing to receive payments from Ms. Kawanakoa to assist Respondent Akana with her own lawsuit against the BOT. See FOFs # 35-37.
94. As to the third factor in Advisory Opinion No. 2018-02, the Commission stated:

The third factor, the extent to which the gifts benefit the Board Member personally or benefit the State, is complex in this case. The legal services are being provided to the Board Member in his individual capacity – and he is therefore receiving them in his individual capacity – but the services are required only because he serves as a member of the Board. On the one hand, the State may benefit if state officials are able to accept pro bono legal services if sued in their individual capacities, insofar as more community members may be willing to enter public service if they are able to use such a "safety net." On the other hand, by definition, individual-capacity lawsuits are based upon alleged activities undertaken outside the scope of one's official state duties – suggesting that there is, in fact, no benefit to the State. In the specific circumstances of this case, however, it appears that a recommendation was made to all members of the Agency's board

to obtain legal representation in their individual capacities, and that the Board Member's solicitation and acceptance of pro bono legal services was in response to this.

Id. at \*3.

95. In Advisory Opinion No. 2018-02, the Commission concluded that “this is a close case” but that “based on the specific facts and circumstances presented by the Board member, particularly with respect to the second factor, the Commission does not believe it is reasonable to infer that the gifts of pro bono legal services . . . are intended to influence or reward the Board Member in performing his official duties[.]” Id.
96. Even if the third factor were to tip in Respondent Akana's favor in the instant case, it would be outweighed by the first and second factors: by accepting more than \$20,000 in gifts of legal fees from Ms. Kawananakoa after Ms. Kawananakoa sued OHA – and by participating in at least one privileged and confidential executive session meeting with OHA's attorney in which the Kawananakoa lawsuit was discussed – there is a reasonable inference that the gifts were intended to influence or reward Respondent Akana for the performance of her official actions.
97. Respondent Akana contends that she did not violate the Gifts law because she was not asked to give anything in return for Ms. Kawananakoa's payment of legal fees and the payment of these fees did not result in any official acts by Respondent benefitting Ms. Kawananakoa. The Commission concludes that Respondent's contention is without merit. A donor's actual intent in giving a gift does not determine whether a gift is prohibited by the Gifts law; similarly, it does not matter whether the gift actually influences the recipient's actions. If a gift is given under circumstances where it can reasonably be inferred that an intent to influence or reward exists, the gift is prohibited. This interpretation of the Gifts law fully comports with the plain language of the law as well as the purpose of the State Ethics Code to preserve public confidence in public officials. Preamble, HRS chapter 84.
98. Respondent Akana violated HRS § 84-11 by accepting a gift (the payment of Respondent's legal fees) from Ms. Kawananakoa on or about April 28, 2017 (\$15,513.15) when the OHA

BOT, including Respondent Akana, was engaged in the Kawananakoa vs. OHA lawsuit (Count 5).

99. Respondent Akana violated HRS § 84-11 by accepting a gift (the payment of Respondent's legal fees) from Ms. Kawananakoa on or about June 17, 2017 (\$6,000.00) when the OHA BOT, including Respondent Akana, was engaged in the Kawananakoa vs. OHA lawsuit (Count 6).

## COUNTS 7 TO 8<sup>15</sup>

### **Violations of the Fair Treatment Law, HRS § 84-13**

#### **Use or Attempted Use of Official Position to Secure Unwarranted Personal Benefits (Trustee Annual Allowance Expenditures for Apple iTunes Gift Card; Hawaiian Airlines Premier Club Membership)**

100. In light of the Commission's finding (FOF # 104) that there was insufficient evidence, with respect to Count 7, that Respondent Akana used or attempted to use her Trustee Annual Allowance funds to purchase an iTunes Gift Card to provide herself or another person with a personal benefit, the Commission does not conclude that Respondent Akana violated HRS § 84-13 (Count 7).
101. Although Respondent Akana maintains that she purchased the Hawaiian Airlines Premier Club membership to save money on baggage fees, Respondent Akana was already entitled to one free bag when she traveled on Hawaiian Airlines through OHA's corporate account. The Premier Club membership allowed Respondent Akana to enjoy the other personal benefits of membership – such as access to the airline's club lounge and complimentary “Unlimited TV & More Pack” on certain flights – conferring an unwarranted benefit upon her.
102. Respondent Akana purchased the Premier Club membership knowing that it was disallowed. She informed the Commission that she was aware that the practice of Trustees being allowed to purchase this membership had previously ended under a prior BOT Chairperson. Even though this expenditure was disallowed by OHA, such that Respondent Akana eventually

---

<sup>15</sup> Count 9 was voluntarily dismissed prior to the contested case hearing.

used personal funds to reimburse OHA for this purchase, she expended Trustee Annual Allowance funds on this purchase and submitted a quarterly report to OHA in which she sought to have this purchase offset against her Trustee Annual Allowance balance.

103. Respondent Akana's attempt to use Trustee Annual Allowance funds to confer a personal benefit upon herself is a violation of the Fair Treatment Law.
104. Respondent Akana used or attempted to use her official position to secure an unwarranted personal benefit for herself in violation of HRS § 84-13 by using Trustee Annual Allowance funds to purchase a Premier Club membership with Hawaiian Airlines costing \$249 (Count 8).

### **COUNTS 10 TO 36**

#### **Violations of Fair Treatment Law, HRS § 84-13**

##### **Use or Attempted Use of Official Position to Secure Unwarranted Personal Benefits (Trustee Annual Allowance Expenditures for Home Cable Television Service)**

105. In light of the Commission's finding (FOF # 129) that there was insufficient evidence, with respect to Count 11, that Respondent Akana used or attempted to use Trustee Annual Allowance funds to pay her Oceanic bill (\$127.90), dated November 28, 2015, to provide herself with a personal benefit, the Commission does not conclude that Respondent Akana violated HRS § 84-13 (Count 11).
106. Respondent Akana used or attempted to use her official position to secure unwarranted personal benefits for herself – that is, home cable television service – in violation of HRS § 84-13 by paying for or attempting to pay for all or some of the monthly charges for Respondent's home cable television service with Trustee Annual Allowance funds on or about each of the dates listed below:
  - a. November 20, 2015 (Count 10);
  - b. January 22, 2016 (Count 12);
  - c. February 15, 2016 (Count 13);
  - d. March 5, 2016 (Count 14);

- e. April 10, 2016 (Count 15);
- f. May 9, 2016 (Count 16);
- g. June 6, 2016 (Count 17);
- h. June 30, 2016 (Count 18);
- i. August 8, 2016 (Count 19);
- j. September 5, 2016 (Count 20);
- k. October 22, 2016 (Count 21);
- l. November 24, 2016 (Count 22);
- m. December 21, 2016 (Count 23);
- n. January 20, 2017 (Count 24);
- o. February 13, 2017 (Count 25);
- p. March 15, 2017 (Count 26);
- q. April 20, 2017 (Count 27);
- r. May 20, 2017 (Count 28);
- s. June 25, 2017 (Count 29);
- t. July 21, 2017 (Count 30);
- u. August 24, 2017 (Count 31);
- v. September 10, 2017 (Count 32);
- w. October 10, 2017 (Count 33);
- x. November 20, 2017 (Count 34);
- y. December 13, 2017 (Count 35); and
- z. December 30, 2017 (Count 36).

107. Even though the August 8, 2016 (Count 19) and September 5, 2016 (Count 20) expenditures were disallowed in part by OHA, such that Respondent Akana eventually used personal funds

to pay for a portion of these purchases, Respondent submitted a quarterly report to OHA in which she sought to have these purchases offset against her Trustee Annual Allowance balance. Her attempts to use Trustee Annual Allowance funds to confer a personal benefit upon herself are violations of the Fair Treatment Law.

108. Each expenditure made by Respondent Akana out of the Trustee Annual Allowance for home television service constitutes a separate violation of HRS § 84-13.
109. There is no evidence to suggest that Respondent Akana reimbursed OHA or the Trustee Annual Allowance fund for any of these purchases of home cable television service, other than her eventual use of personal funds to pay for a portion of the August 2016 and September 2016 purchases. However, even if Respondent Akana had reimbursed OHA or the Trustee Annual Allowance fund, each attempt by Respondent Akana to use her official position to make the above-referenced purchases of home cable television service using Trustee Annual Allowance funds constitutes a violation of HRS § 84-13.
110. The Commission concludes that the violations in Counts 21-36 are especially troubling. Respondent Akana continued to claim \$80 for reimbursement for internet service even after being informed by OHA staff that she was only allowed to claim \$47.89. In other words, Respondent Akana dishonestly continued to claim \$80 for internet service knowing that she was not entitled to reimbursement from her Trustee Allowance for this amount.

## **COUNTS 37 TO 48**

### **Violations of Fair Treatment Law, HRS § 84-13**

#### **Use or Attempted Use of Official Position to Secure Unwarranted Personal Benefits (Trustee Annual Allowance Expenditures for Food for Self, Other OHA Trustees, and/or OHA Staff)**

111. Although OHA policy relating to the purchase of food with Trustee Annual Allowance funds was not the model of clarity, substantial evidence was adduced that Trustees were not allowed to spend Trustee Annual Allowance funds on staff parties, or on purely internal meetings absent some documented need to do so.

112. Even if OHA policy allowed Trustees to use Trustee Allowance funds for food expenditures without restriction, the State Ethics Code does not. The Fair Treatment law does not permit an employee to use her official position to obtain unwarranted benefits for herself or anyone else. The Fair Treatment law prohibits Trustees from using Trustee Allowance funds for food expenditures to obtain unwarranted personal benefits for themselves or other OHA employees.
113. Respondent Akana used her Trustee Allowance to purchase refreshments or lunches for herself and her staff. Such expenditures are generally considered personal expenses for state employees unless they are necessary for state business. In this case, the Fair Treatment law prohibited Respondent's expenditures of Trustee Allowance funds for personal purchases of food for herself and her staff unless the expenditures were necessary or required for state (i.e., OHA) business.
114. The Commission understands that Hawaii has a cultural practice of using food to express appreciation and Aloha. The State Ethics Code does not prohibit OHA employees from purchasing food to share with work colleagues. However, Trustees seeking to purchase food as an expression of appreciation to OHA staff should make these purchases using personal funds rather than the OHA Trustee Allowance, which is specifically dedicated to benefitting Hawaiian beneficiaries by, among other things, promoting a broader understanding of Hawaiian issues or developing a communication network with beneficiaries and the general public. Using Trustee Allowance funds to purchase food for the office without any clear business need provides OHA employees with an unwarranted benefit in contravention of the Fair Treatment Law and the purpose of the Trustee Allowance fund.
115. The Commission concludes, based upon competent and substantial evidence, that Respondent Akana's food purchases were personal expenses and were not necessary or required for OHA business. The purchase of pastries, coco puffs, or manapua for a staff meeting is a personal expense rather than an expense that is necessary for the performance of OHA business. (Counts 38, 40, 42, 43, 45). The purchase of food for a staff lunch – even if work is discussed during lunch -- is also a personal expense unless it is necessary for staff to perform OHA business during lunch (Counts 44, 46). The Commission concludes that Respondent Akana's

use of her Trustee Annual Allowance fund to pay for these personal food expenses was an unwarranted personal benefit for Respondent Akana and OHA staff.

116. Likewise, although the Commission understands that a Trustee – or any state agency head -- may wish to promote office morale by purchasing food to celebrate staff birthdays or holiday parties, this was not an allowed expenditure under OHA policy; nor was it allowed under the State Ethics Code. These are personal expenses for which Trustee Annual Allowance funds should not have been used. The State Ethics Code does not permit the expenditure of Trustee Annual Allowance funds (rather than personal funds) on staff birthday, going away, or holiday parties (Counts 39, 41, 47, 48). The Commission concludes that Respondent Akana’s use of her Trustee Annual Allowance fund to pay for these personal food expenses was an unwarranted personal benefit for Respondent Akana and OHA staff.
117. The Commission is not persuaded by Respondent Akana’s attempt to justify her food expenditures by asserting that members of her staff for whom she purchased refreshments and lunches were also OHA beneficiaries. The evidence clearly showed that Respondent’s food purchases were to benefit herself and her “staff” – that is, the employees who worked for her at OHA. The evidence does not support Respondent’s contention that she used Trustee Annual Allowance funds to purchase food for her “staff” because they were OHA beneficiaries.
118. Respondent Akana used or attempted to use her official position to secure unwarranted personal benefits for herself and other OHA employees, in violation of HRS § 84-13, by paying for food for herself and/or OHA Trustees and/or OHA staff with Trustee Annual Allowance funds on the following dates:
  - a. March 17, 2014, “refreshments for staff meeting,” from Leonard’s Bakery, \$17.80 (Count 38);
  - b. July 3, 2014, food for a staff “going away party”, from 1132 Café & Catering, \$268.59 (Count 39);
  - c. August 4, 2014, food for a staff “working meeting,” from Liliha Bakery, \$31.94 (Count 40);

- d. February 10, 2015, food for a “birthday celebration” for staff, from Zippy’s Nimitz, \$61.83 (Count 41);
  - e. January 23, 2015, manapua for staff, from Royal Kitchen, \$66.49 (Count 42);
  - f. July 9, 2015, food for a “staff meeting,” from Liliha Bakery, \$39.48 (Count 43);
  - g. December 2, 2015, food for a “working lunch” with staff, from Chinatown Express Ala Moana, \$31.01 (Count 44);
  - h. August 15, 2016, “refreshments for staff” from Leonard’s Bakery, \$20.73 (Count 45);
  - i. October 5, 2016, lunch for a “staff lunch,” from Tanaka Saimin, \$43.66 (Count 46);
  - j. February 17, 2017, the cost of food that had been purchased for a staff member’s “last day,” \$25.00 (Count 47); and
  - k. December 5, 2017, noodles from Royal Kitchen for a “pot luck” OHA Trustees’ holiday party, \$23.72 (Count 48).
119. Each expenditure made by Respondent Akana out of Trustee Annual Allowance funds to pay for food for herself, other OHA Trustees, and/or OHA staff constitutes a separate violation of HRS § 84-13.
120. Even if one or more of these purchases had been “disallowed” by OHA, such that Respondent Akana eventually used personal funds to pay for the expenditures, each attempt by Respondent Akana to use her official position to make the above-referenced purchases of food constitutes a violation of HRS § 84-13.
121. In light of the Commission’s finding (FOF # 184) that there was insufficient evidence, with respect to Count 37, that Respondent Akana used or attempted to use Trustee Annual Allowance funds to purchase lunch from Legend Seafood Restaurant on October 3, 2013, to provide herself or another person with a personal benefit, the Commission does not conclude that Respondent Akana violated HRS § 84-13 (Count 37).

## COUNTS 49 TO 51

### Violations of Fair Treatment Law, HRS § 84-13

#### Use or Attempted Use of Official Position to Secure Unwarranted Personal Benefits (Trustee Annual Allowance Expenditures for Political Donations)

122. The Fair Treatment law does not permit state funds to be used for political purposes. ADVISORY OPINION NO. 561, 1985 WL 1265277, at \*1. This policy was also reflected in the 2016 Guidelines, which expressly prohibited political contributions using Trustee Annual Allowance funds.
123. Respondent Akana used or attempted to use her official position to provide an unwarranted benefit to a political party in violation of HRS § 84-13 (Count 49) by making a political contribution of \$50 to the Hawaii County Democrats on or about February 11, 2014 with her Trustee Annual Allowance funds (Count 49).
124. Respondent Akana used or attempted to use her official position to provide an unwarranted benefit to a political party in violation of HRS § 84-13 by making a political contribution of \$50 to the Democratic National Committee on or about February 11, 2014 with her Trustee Annual Allowance funds (Count 50).
125. Respondent Akana used or attempted to use her official position to provide an unwarranted benefit to one or more political action committees in violation of HRS § 84-13 by using Trustee Annual Allowance funds to make a contribution of \$500 on or about December 5, 2017 to pay for entertainment for the Kanaka Maoli Political Action Committee event (Count 51).
126. Each expenditure made by Respondent Akana out of Trustee Annual Allowance funds to make a donation to a political party or political action committee event constitutes a separate violation of HRS § 84-13.
127. The Commission found (FOFs # 275, 276, 288, 289) that Respondent did not reimburse OHA for her political contributions to the Hawaii County Democrats (Count 49) or the Democratic National Committee (Count 50). However, even if she had, her attempt to use her official

position to contribute Trustee Annual Allowance funds to the Hawaii County Democrats or the Democratic National Committee violated HRS § 84-13.

128. One of the basic precepts of the State Ethics Code is that state employees cannot use state resources (or in this case, resources given to a state employee because of her official position) for political campaign purposes or activities. Additionally, OHA policy clearly prohibited the use of Trustee Annual Allowance funds for political contributions or political action committee events. Thus, Respondent Akana should have been well aware that the use of Trustee Allowance funds for political contributions or political action committee events (Counts 49-51) was prohibited.

### **COUNTS 52 TO 53**

#### **Violations of Fair Treatment Law, HRS § 84-13**

##### **Use or Attempted Use of Official Position to Secure Unwarranted Benefits (Trustee Annual Allowance Expenditures for Donations to Hawaiian Humane Society)**

129. The Commission considered whether Respondent Akana's donations to the Hawaiian Humane Society (Counts 52 and 53) aligned with OHA policy for the use of Trustee Annual Allowance funds.
130. Although there was conflicting testimony on this matter, in light of the Commission's findings regarding Counts 52-53 (FOFs # 304-316), the Commission concludes that it is proper for OHA to determine whether contributions to a non-profit organization, such as the Hawaiian Humane Society, are aligned with the purpose of the Trustee Annual Allowance and OHA policy. In the absence of policies or guidelines for such contributions, the Commission does not believe it can determine that the services provided by the Hawaiian Humane Society are so removed from the purpose of the Trustee Annual Allowance such that Respondent Akana's donations to the Hawaiian Humane Society conferred an unwarranted benefit upon that organization.
131. The Commission also concludes that there was insufficient evidence that Respondent Akana used or attempted to use her state position to provide the Hawaiian Humane Society with an unwarranted benefit by making a donation of \$50 on February 20, 2014 (Count 52) and a

donation of \$25 on August 8, 2017 (Count 53). Therefore, as to these Counts, the Commission does not conclude that Respondent Akana violated HRS § 84-13 (Counts 52 and 53).

#### **IV. ADMINISTRATIVE FINE**

1. Prior to June 22, 2017, HRS section 84-39 provided that an employee who violates a provision of HRS chapter 84 shall be subject to an administrative fine imposed by the Hawaii State Ethics Commission of up to \$500 for each violation.
2. On June 22, 2017, the maximum penalty for each violation of HRS chapter 84 increased from \$500 to \$1,000.
3. Respondent Akana committed four (4) violations of HRS § 84-11.5 (Counts 1-4), two (2) violations of HRS § 84-11 (Counts 5-6), and forty-one (41) violations of HRS § 84-13 (Counts 8, 10, 12-36, 38-48, 49-51), for a total of forty-seven (47) violations of HRS chapter 84.
4. Counts 29-36, 48, and 51 occurred after June 22, 2017, when the maximum penalty for a violation of HRS chapter 84 increased from \$500 to \$1,000.
5. The Commission concludes that Respondent Akana's failure to report gifts totaling more than \$50,000 from Ms. Kawananakoa constituted violations of the State Ethics Code, and that each violation warrants the maximum administrative fine of \$500 applicable at the time the offenses occurred.
6. The Commission concludes that Respondent Akana's receipt of gifts totaling more than \$21,000 from Ms. Kawananakoa on or about April 28, 2017 and June 17, 2017 constituted violations of the State Ethics Code, and that each violation warrants the maximum administrative fine of \$500 applicable at the time the offense occurred.
7. The Commission concludes that Respondent Akana's expenditure of her Trustee Annual Allowance for her Hawaiian Airlines Premier Club membership, political contributions – including the political action committee event – and home cable television service

constituted violations of the State Ethics Code, and that each violation warrants the maximum administrative fine applicable at the time the offense occurred.

8. Regarding Respondent Akana’s expenditures on food: the Commission concludes that it is proper for Respondent Akana to pay an administrative fine equivalent to the amount of each expenditure, essentially requiring Respondent Akana to use personal funds to pay for these expenditures. The Commission has taken this approach in similar cases. Regarding Respondent Akana’s expenditure for food for OHA Trustees’ holiday party (Count 48) – an expenditure that was disallowed by OHA, such that Respondent Akana eventually used personal funds to pay for the expenditure – no administrative fine will be imposed.

9. Upon consideration of the evidence and the arguments of counsel, the Hawaii State Ethics Commission hereby determines and concludes that the following administrative fines for each of the violations of HRS chapter 84 that occurred are appropriate and shall be assessed:

- |    |   |                              |
|----|---|------------------------------|
| a. | Counts 1-4 (Failure to Report Gifts):               | \$500 each (\$2,000 total)   |
| b. | Counts 5-6 (Improper Acceptance of Gifts):          | \$500 each (\$1,000 total)   |
| c. | Counts 8 (Expenditures – Premier Club):             | \$500                        |
| d. | Counts 10, 12-28 (Expenditures – Cable Television): | \$500 each (\$9,000 total)   |
| e. | Counts 29-36 (Expenditures – Cable Television):     | \$1,000 each (\$8,000 total) |
| f. | Count 38 (Expenditure – Food):                      | \$17.80                      |
| g. | Count 39 (Expenditure – Food):                      | \$268.59                     |
| h. | Count 40 (Expenditure – Food):                      | \$31.94                      |
| i. | Count 41 (Expenditure – Food):                      | \$61.83                      |
| j. | Count 42 (Expenditure – Food):                      | \$66.49                      |
| k. | Count 43 (Expenditure – Food):                      | \$39.48                      |
| l. | Count 44 (Expenditure – Food):                      | \$31.01                      |

- m. Count 45 (Expenditure – Food): \$20.73
- n. Count 46 (Expenditure – Food): \$43.66
- o. Count 47 (Expenditure – Food): \$25.00
- p. Count 48 (Expenditure – Food): \$0.00  
This expenditure was disallowed by OHA.
- q. Counts 49-50 (Expenditures – Political Contributions): \$500 each (\$1,000 total)
- r. Count 51 (Expenditure – Contribution PAC Event): \$1,000

10. Contrary to Respondent Akana’s assertion that any administrative penalties assessed against her would be excessive, the Commission finds that the maximum administrative penalties imposed above are appropriate in light of the breadth and egregious nature of Respondent Akana’s conduct. See, e.g., COL #110. The evidence established that Respondent Akana committed dozens of violations of the State Ethics Code by accepting illegal gifts valued at over \$21,000; failing to timely report gifts valued at over \$50,000; and using Trustee Annual Allowance funds for her own personal benefit or for political contributions.
11. The administrative penalties imposed above are appropriate given the especially troubling actions of the Respondent with respect to the use of her Trustee Annual Allowance. See, e.g., COL # 110. Because OHA staff who administered the Trustee Annual Allowance were fearful of personal attacks and threats for questioning Respondent’s expenditures, it cannot be said that any expenditure that was “not disallowed” complied with OHA’s own policies. Indeed, Respondent Akana seemingly displayed a “pattern of consistently trying to get away with spending that a prudent person would not otherwise be able to push that boundary.” Tr. I:255:1 – 256:9.
12. Respondent Akana would be hard-pressed to claim that she was unaware of the requirements of the State Ethics Code, especially in light of the fact that OHA Trustees, including Respondent Akana, are required to attend an ethics training course administered by the State Ethics Commission. In addition, OHA’s own Executive Policy

Manual (promulgated by the Trustees themselves) requires Trustees to abide by the standards of conduct in HRS chapter 84. Exhibit C-1 at 10.

13. Finally, numerous Trustee Annual Allowance expenditures made by Respondent Akana were not aligned with the policies established by OHA; to wit: that the Trustee Annual Allowance must be used to, among other things, “develop and maintain an ongoing communication network with beneficiaries and the general public” and “promote a broader understanding of Hawaiian issues within the Hawaiian community and among the general public.” OHA’s policies specifically disallowed the use of Trustee Annual Allowance funds for a Trustee’s personal benefit or personal gain. Consequently, based on the foregoing, the Commission concludes that the administrative penalties assessed in section IV.9. above are appropriate based on the competent and substantial evidence adduced at the contested case hearing.

**V. DECISION AND ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby determines that:

- (a) Respondent Akana committed the following violations:
  - (i) Four (4) violations of HRS § 84-11.5, Gifts Reporting law (Counts 1-4);
  - (ii) Two (2) violations of HRS § 84-11, Gifts law (Counts 5-6); and
  - (iii) Forty-one violations of HRS § 84-13, Fair Treatment law (Counts 8, 10, 12-36, 38-48, 49-51), for a total of forty-seven (47) violations of HRS chapter 84.
- (b) An administrative fine for each of the violations committed by Respondent Akana (with the exception of Count 48, for which no administrative fine is assessed) is appropriate and shall be assessed in the amounts listed section IV.9. above;
- (c) No administrative fine will be assessed for five (5) alleged violations of HRS § 84-13, Fair Treatment Law (Counts 7, 11, 37, 52, & 53) based on insufficient evidence; and
- (d) Sufficient cause exists for the issuance of a complaint by the Commission pursuant to HRS § 84-32(c) and referral of this matter to the Attorney General.

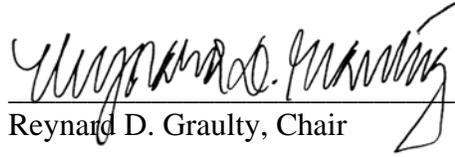
**THEREFORE, IT IS HEREBY ORDERED** as follows:

- (a) An administrative fine in the total amount of TWENTY-THREE THOUSAND, ONE HUNDRED AND SIX DOLLARS AND FIFTY-THREE CENTS (\$23,106.53) is hereby imposed against Respondent Akana;
  
- (b) Respondent Akana shall forward to the Hawaii State Ethics Commission a check in the amount of TWENTY-THREE THOUSAND, ONE HUNDRED AND SIX DOLLARS AND FIFTY-THREE CENTS (\$23,106.53), payable to the State of Hawaii, no later than sixty (60) days from the date of this Decision and Order; and
  
- (c) Pursuant to HRS § 84-32(c), the Commission shall issue a complaint and refer this matter to the Attorney General, who may exercise any and all legal or equitable remedies available to the State, including the recovery of prohibited gifts of legal fees of TWENTY-ONE THOUSAND, FIVE HUNDRED AND THIRTEEN DOLLARS AND FIFTEEN CENTS (\$21,513.15) accepted by Respondent in violation of HRS § 84-11.

*Signatures on next page*

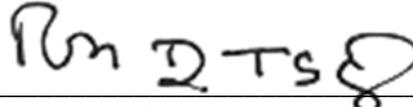
Dated: Honolulu, Hawaii, February 5, 2019.

HAWAII STATE ETHICS COMMISSION



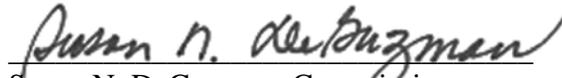
---

Reynard D. Gaulty, Chair



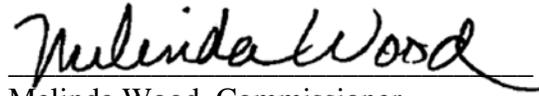
---

Ruth D. Tschumy, Vice Chair



---

Susan N. DeGuzman, Commissioner



---

Melinda Wood, Commissioner



---

Wesley F. Fong, Commissioner

## EXHIBIT “A”<sup>1</sup>

<b>RESPONDENT’S PROPOSED FINDINGS OF FACTS</b>		
Paragraph Numbers	Accepted/Rejected	Reasoning
1-3, 5, 7, 9, 10, 22, 23, 29, 33, 38, 41, 42, 44, 45, 46, 48, 64, 75, 79, 86, 91	Accepted in substance	Relevant and supported by the evidence
8, 12, 16, 32, 54, 55, 89	Rejected	Immaterial and/or irrelevant to the decision
19, 36, 37, 39, 40, 56, 72	Rejected	Not sufficiently supported by the evidence
14, 30, 35, 53, 58, 87, 88	Rejected	Incomplete statement of the facts
26, 52, 62	Rejected	Not sufficiently supported by the evidence and/or incomplete statement of the facts
13, 17, 18, 20, 27, 28, 31, 34, 43, 49-51, 59, 60, 65, 70, 73, 84, 90, 97-100, 103	Rejected	Immaterial and/or irrelevant to the decision; also not sufficiently supported by the evidence
6, 15, 25, 57, 61, 63, 66, 68, 69, 71, 74, 76, 78, 80, 82, 83, 85, 92-96, 101, 102	Partially accepted in substance and partially rejected	Partially accepted, in substance, as relevant and supported by the evidence; partially rejected as an incomplete statement of the facts
4, 11, 24, 47, 67, 77, 81	Partially accepted in substance and partially rejected	Partially accepted, in substance, as relevant and supported by the evidence; partially rejected as immaterial and/or irrelevant to the decision
21	Partially accepted in substance and partially rejected	Partially accepted, in substance, as relevant and supported by the evidence; partially rejected as not sufficiently supported by the evidence

<sup>1</sup> In Compliance with the Commission’s directive, the parties submitted proposed Findings of Fact and Conclusions of Law on December 14, 2018. The Commission notes that HRS § 91-12, entitled “Decisions and orders,” requires that, “[i]f any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented.” Consequently, the Commission’s ruling with respect to each of the proposed findings of fact submitted by the parties is reflected in the table above.

**COMPLAINANT’S PROPOSED FINDINGS OF FACTS**

All of Complainant’s proposed findings are accepted, in substance, as relevant and supported by the evidence, except for the following paragraphs.

Paragraph numbers	Accepted/Rejected	Reasoning
19, 44-49, 52	Rejected	Unnecessary for decision and information readily available in record
105, 277	Rejected	Immaterial and/or irrelevant to the decision
108, 114, 188	Rejected	Not sufficiently supported by the evidence

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

---

HAWAII STATE ETHICS COMMISSION,	)	COMPL-C-15-00236
	)	
Complainant,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
ROWENA AKANA,	)	
	)	
Respondent.	)	

---

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing document was served upon the following individuals by electronic mail and personal delivery, as follows:

James J. Bickerton, Esq.  
Stephen M. Tannenbaum, Esq.  
Bridget G. Morgan, Esq.  
Jeremy O'Steen, Esq.  
BICKERTON DANG, LLLP  
Topa Financial Center  
Fort Street Tower  
745 Fort Street, Suite 801  
Honolulu, Hawaii 96813

Email: [bickerton@bsds.com](mailto:bickerton@bsds.com); [tannenbaum@bsds.com](mailto:tannenbaum@bsds.com); [morgan@bsds.com](mailto:morgan@bsds.com);  
[osteen@bsds.com](mailto:osteen@bsds.com)

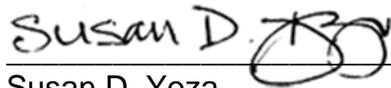
Attorneys for Respondent

Daniel M. Gluck, Esq.  
Virginia M. Chock, Esq.  
1001 Bishop Street  
American Savings Bank Tower, Suite 970  
Honolulu, Hawaii 96813

Email: [Aka-ChargeCounsel@hawaiiethics.org](mailto:Aka-ChargeCounsel@hawaiiethics.org)

Charge Counsel for Complainant

DATED: Honolulu, Hawaii, February 5, 2019.

Handwritten signature of Susan D. Yoza in black ink, written over a horizontal line.

Susan D. Yoza  
Kee M. Campbell  
Commission Counsel for  
Hawaii State Ethics Commission