

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, July 18, 2019  
Time: 10:00 a.m.  
Place: Hawaii State Ethics Commission Conference Room  
American Savings Bank Tower  
1001 Bishop Street, Suite 960  
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Reynard D. Graulty, Chair  
Ruth D. Tschumy, Vice Chair  
Susan N. DeGuzman, Commissioner  
Melinda S. Wood, Commissioner  
Wesley F. Fong, Commissioner

State Ethics Commission Staff

Susan D. Yoza, Associate Director  
Nancy C. Neuffer, Staff Attorney  
Virginia M. Chock, Staff Attorney  
Bonita Y.M. Chang, Staff Attorney  
Kee M. Campbell, Staff Attorney  
Caroline K. Choi, Office Manager

Excused: Daniel M. Gluck, Executive Director

**CALL TO ORDER**

Chair Graulty called the meeting to order at 10:00 a.m.

**Agenda Item No. I: Consideration and Approval of the Minutes of the June 20, 2019 Meeting**

Associate Director Yoza explained that the minutes were amended to clarify that the Commission agreed it need not review the list of delinquent financial disclosure filers before the list was published.

Vice Chair Tschumy made and Commissioner Wood seconded a motion to approve the minutes of the June 20, 2019 Sunshine Meeting, as amended. The motion carried unanimously (Grauldy, Tschumy, DeGuzman, Wood, and Fong voting).

## **Agenda Item No. II: Executive Director's Report**

### *Education / Training Report*

Associate Director Yoza reported that several departments requested ethics training for their employees, including the Department of Transportation, the University of Hawaii, the Department of the Attorney General, and the Department of Land and Natural Resources. Staff also will give an ethics presentation at the Department of Commerce and Consumer Affairs Orientation Program for new board and commission members. Associate Director Yoza also updated the Commission on the online training program.

### *Guidance and Assignment Statistics – June 2019*

Associate Director Yoza summarized the guidance and assignment statistics for June.

### *Financial Report for FY2018-2019 (Quarter Ending June 30, 2019)*

Associate Director Yoza reported that the Commission used 99.9% of its appropriation for FY 2018-2019, and \$597.17 in unspent funds lapsed back to the State. Before the fiscal year ended, funds were used to make prepayments for two months of office rent (for which the Commission received a 50% rent discount), consulting services to enhance the e-filing system, and computer license renewals.

### *Miscellaneous Office Projects / Updates*

- a. Filing statistics for Financial Disclosure statements and lobbying expenditure reports

Associate Director Yoza reported that the list of delinquent financial disclosure filers was posted at the end of June. There were 149 delinquent filers on the list, but 116 of those individuals have since filed. There are 33 remaining delinquent filers.

Associate Director Yoza also reported that 359 lobbying expenditure reports were filed for the March 1 to April 30 reporting period. In addition, the filing deadline for gifts disclosures was June 30, 2019, and 205 gifts disclosures were filed and posted on the Commission's website. Staff will review the gifts disclosures and follow up as needed.

b. Ethics Conference – September 5, 2019

Associate Director Yoza reported that Executive Director Gluck has been working with Jan Yamane, Executive Director of the Honolulu Ethics Commission, on the program for the September 5 ethics conference at Kapalama Hale. Staff is moving forward with other arrangements for the conference.

c. COGEL Conference – December 15-18, 2019

Associate Director Yoza reported that Chair Gaulty, Commissioner Fong, and Staff Attorneys Bonita Chang and Kee Campbell will attend the COGEL conference in Chicago. Commissioner Wood said that she will inform staff whether she also can attend the conference.

**Agenda Item No. III: Proposed Administrative Rules**

- a. Update regarding current Administrative Rules package
- b. Proposed rules regarding disclosures by legislators and task force members, and contested hearing transcripts

Staff Attorney Campbell said that due to the new laws passed this year (Acts 109, 119, and 120), staff drafted additional amendments to the Commission's administrative rules. Staff Attorney Campbell summarized the proposed amendments. He said the first amendment clarifies the requirement that legislators and task force members publicly disclose interests that are affected by their official action. The proposed amendment requires a legislator or task force member to disclose the interest at the first available public session or meeting, and in a written format such as a task force report. Staff Attorney Campbell said that the proposed amendment will be sent to the leadership at the Legislature to preview before it is sent to the Attorney General and Governor for review.

Chair Gaulty said he liked the requirement that there be public disclosure at the first available opportunity. He noted that if someone fails to comply with this requirement, the matter could become an enforcement issue for the Commission.

Staff Attorney Campbell explained that additional changes were made to the proposed amendment given to the Commissioners and these changes were incorporated into a revised draft (Attachment 1). Staff Attorney Campbell summarized the changes to the proposed amendment, which included changes to Hawaii Administrative Rules ("HAR") § 21-7-10 and a new proposed HAR § 21-8-4.

Vice Chair Tschumy made and Commissioner Fong seconded a motion to approve the proposed HAR §§ 21-7-10 and 21-8-4, as amended. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, Wood, and Fong voting).

Staff Attorney Campbell summarized the proposed amendment to HAR § 21-5-10, which addresses requests for hearing transcripts. The proposed amendment provides that any party may request a transcript of a contested case hearing. If the request is made prior to a request for judicial review, the requesting party must pay for the transcript; if the request is made after a request for judicial review, the Commission must pay for the transcript as part of the Commission's obligation to provide a record to the circuit court.

In response to a comment by Chair Grauly, Staff Attorney Campbell agreed that under the proposed amendment, a party who requests reconsideration or a rehearing by the Commission must pay for the transcript.

Staff Attorney Campbell explained that there were a few non-substantive changes to the proposed amendment for HAR § 21-5-10 (Attachment 1).

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the proposed HAR § 21-5-10, as amended. The motion carried unanimously (Grauly, Tschumy, DeGuzman, Wood, and Fong voting).

**Agenda Item No. IV: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA)**

Associate Director Yoza said that there were no updates to report for this case.

**Agenda Item No. V: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 19-1-0379-03 (JHA)**

With respect to Rowena Akana's appeal to circuit court, Associate Director Yoza reported that the Department of the Attorney General filed an Answering Brief on behalf of the Commission on July 15, 2019. Ms. Akana's attorneys have fourteen days in which to file a Reply Brief. No hearing date for this matter has been scheduled yet.

**Agenda Item No. VI: Civil Beat Law Center for the Public Interest v. City & County of Honolulu, SCAP-17-0000899**

Staff Attorney Neuffer summarized the recent Hawaii Supreme Court opinion interpreting the personnel-privacy exception to the Sunshine Law's open meeting requirement. The Court held that the Sunshine Law allows, but does not require, a board to hold a closed meeting if an exception to the open meeting requirement applies. If a board holds a closed meeting to discuss personnel matters, two criteria must be met: (1) the discussion must relate to "the hire, evaluation, dismissal, or discipline" of an employee or charges brought against an employee as specified in the Sunshine Law, and (2) consideration of matters affecting a privacy interest must be involved. Staff

Attorney Neuffer explained that this is something to keep in mind when the Commission goes into executive session to discuss personnel matters. Associate Director Yoza added that staff regularly consults with the Office of Information Practices to ensure the Commission's compliance with the requirements of the Sunshine Law.

Commissioner Fong asked what language Commissioners should use when making a motion to go into executive session. Associate Director Yoza explained that the meeting agenda generally includes the statutory language for convening an executive session and this language can be used for the purpose of making a motion. Chair Gaulty said that in the future, he expects there will be discussion after a motion is made and before a vote is taken to ensure there is a proper basis for holding an executive session.

Staff Attorney Neuffer said the Hawaii Supreme Court also discussed the attorney-client exception to the open meeting requirement. Chair Gaulty explained the Court's holding that a board may go into executive session to consult with its attorneys, but only if the discussion relates to the board's powers, duties, privileges, immunities, and liabilities.

Commissioner DeGuzman said it was her understanding that if the Commission requests an executive session, but staff does not believe an executive session is appropriate, staff will so advise the Commission. Associate Director Yoza confirmed that staff will do this.

### **Agenda Item No. III: Proposed Administrative Rules**

Staff Attorney Campbell said that during the discussion of HAR § 21-8-4, he meant to point out that the rule's reference to HAR § 21-7-10 should be changed to HAR § 21-7-10(b). He asked that the Commission approve this change to the proposed rule.

Commissioner DeGuzman made and Commissioner Wood seconded a motion to approve the proposed HAR § 21-8-4, as amended. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, Wood, and Fong voting).

Associate Director Yoza also informed the Commission that the Commission's administrative rules package was still being reviewed by the Governor's office.

### **ADJOURNMENT OF SUNSHINE LAW MEETING**

At 10:30 a.m., Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Gaulty, Tschumy, DeGuzman, Wood, and Fong voting).

The meeting was adjourned at 10:30 a.m.

Minutes approved on: August 15, 2019

Sunshine Minutes  
July 18, 2019  
Attachment 1

**§21-7-10 Public Disclosure of Interests or Transactions Affected by Legislators' or Task Force Members' Official Action. ~~Potential Conflicts of Interests for Legislators and Task Force Members~~**

- (a) Section 84-13, HRS, does not prohibit legislators from introducing bills and resolutions, from serving on a committee, or from making statements or taking official action as a legislator, provided that the legislator publicly discloses the nature and extent of the interest or transaction that the legislator believes may be affected by the legislator's official action. Disclosure shall be made at the first available public session on the matter and shall be memorialized in any relevant committee report or written minutes if applicable. If no public session will be held prior to the legislator taking official action, disclosure shall be made in writing to the presiding officer of the appropriate legislative body, and then subsequently in the first available public session on the bill and in any committee report or minutes memorializing that session.
- (b) Sections 84-13 and 84-14, HRS, do not prohibit a person from serving on a task force, or making statements or taking official action as a task force member or a task force member's designee or representative, provided that the task force member, designee, or representative shall publicly disclose the nature and extent of any interest or transaction that they believe may be affected by their official action. This disclosure shall be made verbally at the first available meeting of the task force and shall be memorialized in any task force report. If no meeting is to occur before the task force member, designee, or representative takes official action affecting their interests, the disclosure shall be made in writing to all other task force members, and then subsequently in any task force report.

(Auth: HRS §§84-31(a)(5), 84-13(d), 84-14(f)) (Imp: HRS §§84-31, 84-13(b)-(d), 84-14(f))

**§21-8-4 Public Disclosure of Interests or Transactions Affected by Task Force Members' Official Action.** Section 84-14, HRS, does not prohibit a person from serving on a task force, or making statements or taking official action as a task force member or a task force member's designee or representative, provided that the task force member, designee, or representative makes the disclosure required by Section 21-7-10(b) of these rules.

**§21-5-10 Record of hearing[s].**

- (a) The record of the hearing shall be compiled in conformance with section [§] 91-9[~~(e)~~], HRS. The commission shall [~~will~~] make provisions for an audio, video, and/or stenographic [~~record~~] recording of the testimony, but it [~~shall~~] need not be transcribed unless requested for purposes of rehearing or court review.
- (b) Any party, prior to any request for judicial review, may request a transcript of audio, video, or stenographically recorded testimony, but the provided that the requesting party shall ~~arrange for and~~ be responsible for the cost of preparing the transcript ~~prior to any request for judicial review~~.
- (c) If judicial review is requested, the commission shall cause a transcript of the hearing to be prepared as part of the record on appeal. Any person seeking a copy of that transcript may request one pursuant to chapter 92F, HRS.

[Eff. July 13, 1981; am and comp] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 97-6)