

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, August 15, 2019

Time: 10:00 a.m.

Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

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

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney

Excused: Kee M. Campbell, Staff Attorney

CALL TO ORDER

Chair Graulty called the meeting to order at 10:04 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the July 18, 2019 Meeting

Commissioner DeGuzman suggested that the minutes be amended to reflect that Executive Director Gluck was excused from the July 18, 2019 meeting.

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the minutes of the July 18, 2019 Sunshine Law Meeting, as amended. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).

Agenda Item No. II: Executive Director's Report

Education / Training Report

Executive Director Gluck reported that he is expecting a record number of training sessions and attendees this year. In the upcoming weeks, staff will conduct training for employees of the Office of Hawaiian Affairs and the Legislature. In addition, Executive Director Gluck and the Chief Counsel of the Office of Disciplinary Counsel will conduct a continuing legal education course on ethics for government attorneys.

Executive Director Gluck also reported that staff is continuing to work on the online training course. Later in the meeting, Commissioner Fong raised a question about mandatory ethics training for employees. Executive Director Gluck said that once the online training program is up and running, the Commission could ask the Legislature to enact a law making it mandatory for employees to take the online training course. Staff Attorney Chock also explained that the online course will allow employees to obtain a certificate of completion after they have taken the course. Executive Director Gluck said he hopes to have a method of tracking who takes the online course.

Guidance and Assignment Statistics – July 2019

Executive Director Gluck reported that the guidance and assignment statistics for the office remain steady.

Miscellaneous Office Projects / Updates

- a. Filing statistics for Financial Disclosure statements and lobbying expenditure reports; late filing notices

Executive Director Gluck updated the Commission about the financial disclosure filing statistics. He said filings have been received from 100% of the public employee filers, close to 99% of the confidential employee filers, and close to 95% of the board and commission filers. Approximately 57 filers have not yet submitted their forms. Executive Director Gluck said that 98.6% of filers used the Commission's e-filing system. He also said that staff will be doing compliance audits of some of the filings.

- b. Ethics Conference – September 5, 2019

Executive Director Gluck provided an update on plans for the September 5 Ethics Conference. The Kauai County Ethics Board has decided to participate in the conference. Each neighbor island ethics board will send three to five participants to the conference. Executive Director Gluck will distribute information to everyone before the conference about each board's applicable laws and work. He also will compile and distribute a list of attendees and contact information for them.

Executive Director Gluck asked for the Commissioners' input on the draft conference program. Commissioner Fong said that he would like to hear about each county board's "hot topics." Commissioner Wood suggested that participants be allowed to submit advance questions for discussion at the conference. She was also interested in hearing how the county boards believe they are perceived by the public. Chair Gaulty said that it would be helpful for staff and commission/board members to meet separately to discuss their work. He felt that commission/board members should have an opportunity to talk candidly among themselves about certain issues. He said the county boards might be interested in discussing whether their appointment process should be changed. Another topic might be the prohibition against political campaign activities.

Chair Gaulty said that Common Cause and the League of Women Voters should be allowed to offer their impressions about the work of the ethics boards, but he did not feel the conference was the right place for this discussion. Executive Director Gluck said that coincidentally, Common Cause Hawaii has invited him to participate in a panel discussion about ethics in Hawaii.

Sandy Ma, Executive Director of Common Cause Hawaii, asked to address the Commission. She said that she understands the need for internal discussions by the ethics boards about how to move their programs forward at the state and county levels. She also said that she appreciated Chair Gaulty's comments about providing an opportunity for public input in the future.

Executive Director Gluck asked whether the Commissioners would like to include the Campaign Spending Commission in the conference program. Chair Gaulty said he felt there was already enough on the program relating to ethics and he preferred to hear about the Campaign Spending Commission's work at the COGEL Conference.

c. COGEL Conference – December 15-18, 2019

Executive Director Gluck reported that reservations for the COGEL Conference have been made for Chair Gaulty, Commissioner Wood, Commissioner Fong, Staff Attorney Chang, and Staff Attorney Campbell.

Agenda Item No. III: Proposed Administrative Rules

a. Proposed hearing date: September 19, 2019, 10:30 a.m.

Executive Director Gluck reported that the Attorney General's office and the Governor's office signed off on the proposed rules and the Commission can now schedule a public hearing. The Legislative Reference Bureau ("LRB") has recommended formatting edits and the removal of comments and examples from the proposed rules. He said the comments and examples can be introduced as testimony at the hearing and can be included as part of the record to provide context for the rules.

Executive Director Gluck referred to the proposed Notice of Public Hearing. The notice will be posted on the Lieutenant Governor's website, the State calendar, and the Commission's website. Executive Director Gluck also said that the Attorney General's office suggested that the notice be published in the newspaper so staff will arrange for an ad in the Honolulu Star-Advertiser. He said that he also plans to notify Civil Beat about the public hearing.

Executive Director Gluck explained that the Commission also can choose to hold public hearings on the neighbor islands or accept testimony from the neighbor islands via videoconference. Chair Grauly said that videoconferencing will enable people from the neighbor islands to participate in the public hearing without bearing the expense of travelling to the hearing to testify in person. Executive Director Gluck explained that the public can submit testimony via email, but that arrangements also can be made for the Commission to accept testimony via videoconference. He said that he would just have to find a date when the Commission can use the State Office Tower videoconference facilities and then coordinate arrangements with neighbor island locations.

Chair Grauly acknowledged Ms. Ma from Common Cause Hawaii, who testified that she agreed with allowing people from the neighbor islands to testify via videoconference. She also suggested that information about the public hearing be sent to Hawaii Public Radio.

Executive Director Gluck explained that if the Commission decides to accept testimony via videoconference, the Notice of Public Hearing should state this. He also said arrangements for videoconferencing can probably be made in time for a public hearing to be scheduled in October. Staff Attorney Chang suggested that an alternative would be to allow testifiers to call in and provide audio testimony.

A discussion followed as to the method of public testimony preferred by the Commissioners. Chair Grauly, Vice Chair Tschumy, Commissioner Wood, and Commissioner Fong said they preferred audio testimony because it would be less burdensome than having to make videoconferencing arrangements. Commissioner DeGuzman said she believed that written testimony was sufficient as she did not think there would be a large number of people testifying on the rules.

Chair Grauly asked staff to arrange for public testimony via telephone (audio testimony); if videoconferencing is not more expensive or burdensome, however, staff can arrange for testimony via videoconference.

Commissioner Fong suggested that staff send the Notice of Public Hearing to the neighbor island newspapers because they might publish information about the hearing as a public service announcement.

Commissioner DeGuzman raised a question about what will happen if the Commission amends the proposed rules after considering testimony at the public hearing. She asked whether the Commission would be required to hold a second public

hearing on the amended rules. Executive Director Gluck said he did not believe a second hearing was required, but he will consult with the Attorney General's office about this. He said that there are additional amendments that were not included in the proposed rules, and these additional amendments will be scheduled for rulemaking proceedings in a couple of months.

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

Executive Director Gluck reported that this case is still on hold and there have been no developments.

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

Executive Director Gluck reported that oral arguments for Ms. Akana's appeal of the Commission's decision will be on September 6, 2019, at 10:00 a.m. before Judge Ashford. Executive Director Gluck briefly discussed possible outcomes from the appeal and a time frame for the Judge's decision. He said Judge Ashford may give some indication on September 6 as to how he will rule but given the length of the briefs submitted by the parties, he may just take the matter under advisement.

ADJOURNMENT OF SUNSHINE LAW MEETING

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

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

Minutes approved on: September 19, 2019