

SUNSHINE LAW MEETING
MINUTES OF THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

Date: Thursday, November 21, 2019
Time: 9:00 a.m.
Place: Hawai'i State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawai'i 96813

Present: State Ethics Commission Members

Reynard D. Graulty, Chair
Ruth D. Tschumy, Vice Chair
Susan N. DeGuzman, Commissioner
Melinda S. Wood, 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
Kee M. Campbell, Staff Attorney

Excused: Wesley F. Fong, Commissioner

CALL TO ORDER

Chair Graulty called the meeting to order at 9:11 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the October 17, 2019 Meeting

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the minutes of the October 17, 2019 Sunshine Law Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, and Wood voting).

Agenda Item No. II: Executive Director's Report

Education / Training Report

Executive Director Gluck reported that staff had one more training to conduct in 2019, and that staff were working to coordinate trainings for the entirety of the Department of Commerce and Consumer Affairs.

Chair Grauly inquired about the on-line training. Executive Director Gluck stated that staff expected to launch the training very soon, and that staff would be seeking feedback from the Commissioners shortly.

Guidance and Assignment Statistics – October 2019

Executive Director Gluck referred to the monthly statistics but did not have further information to report.

Miscellaneous Office Projects/Updates

a. Personnel

Executive Director Gluck reported that Lynn Santiago, the Commission's former Secretary, would be returning to the Commission in December.

b. Office improvements

Executive Director Gluck reported that the office had exhausted the allowance provided by the building management upon renegotiation of the Commission's lease. Among other things, the office purchased new conference room tables and a new cubicle/workstation for the administrative staff.

Executive Director Gluck also stated that staff were reviewing old Commission records and disposing of records consistent with the Commission's records retention policy.

Chair Grauly asked whether the office was looking into getting more space; Executive Director Gluck stated that he did not believe the office needed more space at this time.

Sandy Ma, from Common Cause, inquired as to what records were being destroyed. Executive Director Gluck stated that the office has boxes of records dating back to the 1960s. He explained that many items would be kept permanently, including records of Commission actions, Advisory Opinions, and the like. However, certain categories of documents would be shredded, such as background materials relating to old investigations; records of informal advice given more than 10 years ago; newspaper articles; and handwritten notes.

Agenda Item No. III: Proposed Administrative Rules

Executive Director Gluck reported that he had a productive meeting with staff from the office of the Speaker of the House and President of the Senate [regarding proposed rule § 21-7-10, to implement Act 119 of 2019]. The Legislature's overarching concern appears to be that the Legislature wants to control its own processes. Executive Director Gluck told the representatives from the Speaker's and Senate President's offices that the Commission would not take any position on the substance of whether a legislator had to recuse her- or himself in any particular scenario; instead, the Commission was only trying to carry out the Legislature's mandate that the Commission promulgate a rule to cover the process for disclosure.

Executive Director Gluck proposed to the Legislature the same general mechanics for disclosure as in the previously approved draft of Hawaii Administrative Rule ("HAR") § 21-7-10, but with an additional provision that the Legislature would have sole control over enforcement of that provision. Executive Director Gluck stated that there is a provision within the Ethics Code that specifically authorizes the Legislature to pass ethics rules to apply to its members, and that he was waiting to receive feedback from the Legislature on this proposal.

Executive Director Gluck then asked the Commissioners whether it wanted to wait to resolve this issue, and thereby have one public hearing, or whether the Commission wanted to move ahead with a public hearing on all rules except § 21-7-10, followed by a second hearing after discussions with the Legislature are complete.

Chair Grauly stated that his preference was to hold only one hearing, given the time and expense to hold a public hearing. He supported the compromise offered by Executive Director Gluck and stated that waiting a few more months for the public hearing would not be too problematic. The Commissioners discussed the issue.

Commissioner DeGuzman said that, if HAR § 21-7-10 is amended, the Commission would also have to address HAR § 21-8-4 because it contains a reference to § 21-7-10. Executive Director Gluck suggested taking HAR § 21-7-10(b) and moving it to HAR § 21-8-4 to avoid the need for a cross-reference.

The Commission's consensus was to wait to resolve the proposed HAR § 21-7-10 before setting a public rulemaking hearing.

Sandy Ma, from Common Cause, asked for an explanation of the rationale behind the proposed HAR § 21-7-10, and Executive Director Gluck gave a brief explanation of Act 119.

Agenda Item No. IV: Proposed Legislation for the 2020 Legislative Session

Executive Director Gluck stated that a bill passed in the 2019 session exempts members of the Prison Oversight Commission from having to file financial disclosure statements; while this exemption is not problematic for task force members, Executive Director Gluck believes it is unconstitutional to exempt members of a board or commission from the financial disclosure requirements. As such, he proposes legislation – contained within one of the measures approved by the Commission at the October meeting – to address this issue.

Executive Director Gluck also stated that several legislators have asked whether there are additional ways to strengthen Hawaii's ethics laws, and he asked the Commission for their ideas as to what could be improved. Chair Gaulty asked for staff's input. Executive Director Gluck stated that one possible measure would be to prohibit legislators from assisting or representing private clients before state agencies, other than the Legislature, which is already prohibited. A second possibility is to encourage the Legislature to adopt stricter internal rules relating to conflicts of interests. Chair Gaulty suggested introducing these ideas now, with the expectation that they may take several years before they get any traction.

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

Executive Director Gluck reported that there was no change in the status of this case.

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

Executive Director Gluck reported that he had spoken with the Solicitor General that morning. The Solicitor General reported that Ms. Akana's Opening Brief was currently due December 26, but that there would likely be an extension until January.

Agenda Item No. VII: Meeting Calendar

Executive Director Gluck asked whether the Commission wanted to meet on December 17, the day after several Commissioners and staff return from the COGEL conference. Executive Director Gluck stated his belief that canceling this meeting would not substantially disrupt the Commission's operations.

The Commission agreed, by consensus, to cancel the December meeting.

The Commission discussed the 2020 calendar and the start time for meetings in 2020.

Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to approve the 2020 meeting calendar, with meetings to begin at 9:00 a.m. The motion carried unanimously (Graulty, Tschumy, DeGuzman, and Wood voting).

Executive Director Gluck also stated that an anti-corruption delegation from Myanmar would be visiting the Commission at its January meeting. Chair Graulty asked if the agenda could be arranged so that there are substantive issues for the delegation to observe at that time, and the Commission discussed whether the delegation could observe the adjudicatory meeting. Executive Director Gluck stated he would consult with the Attorney General's office regarding the confidentiality of the adjudicatory proceedings, but that his inclination was to keep the adjudicatory meeting closed. The Commissioners also discussed purchasing lei for the visiting guests.

ADJOURNMENT OF SUNSHINE LAW MEETING

At 9:45 a.m., Vice Chair Tschumy made and Commissioner DeGuzman seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, and Wood voting).

The meeting was adjourned at 9:45 a.m.

Minutes approved on: February 20, 2020.