

SUNSHINE LAW MEETING



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

NOTICE OF MEETING OF THE HAWAI'I STATE ETHICS COMMISSION

Date: February 20, 2020

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

A G E N D A

CALL TO ORDER

I. Consideration and Approval of the Minutes of the November 21, 2019 Meeting

Note: A Commissioner who was absent at the November 21, 2019 meeting inadvertently voted to approve the minutes of that meeting at the January 16, 2020 meeting; the Commissioners who attended the November 21 meeting will re-vote on the matter at this month's meeting.

II. Consideration and Approval of the Minutes of the January 16, 2020 Meeting

III. Proposed Administrative Rules

1. Update regarding March 19, 2020 public hearing
2. Demonstration of video conferencing system

IV. Executive Director's Report

1. Education / Training Report

Attachment 2: 2020 Training Attendance / Schedule

Attachment 3: Online Training Completions by Department

2. Guidance and Assignment Statistics – January 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. The High Road Newsletter – February 2020

Attachment 5: The High Road Newsletter, Issue 2020-1

4. Miscellaneous Office Projects / Updates

V. 2020 Legislative Session

1. [HB2124](#) / [SB2114](#): Prohibits certain state officials and employees from representing certain interests before the State for 12 months after termination from their respective positions. (Ethics Commission bill)
2. [HB2125](#) / [SB2115](#): Makes various amendments to the State Ethics Code. Repeals exemption from certain financial disclosure requirements granted to members of the Hawaii Correctional System Oversight Commission. (Ethics Commission bill)
3. [HB 1673](#) / [SB2100](#): Restores statutory protection for legislators when carrying out a legislative function. Clarifies that each house of the legislature shall adopt rules regarding disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action. (Ethics Commission bill)
4. [HB2120](#): Amends the certain parts of the conflicts of interests provision of the State Ethics Code to include members of the legislature, delegates to the constitutional convention, and justices and judges of all state courts.

5. [HB1937](#): Prohibits legislators from assisting or representing, with or without compensation, private persons or businesses before all state agencies, excluding the courts.
6. [HB361](#) / [HB1927](#): Prohibits the governor and each county mayor, while holding those offices, to maintain any other employment or receive any emolument, beginning on the sixty-first calendar day after their election or appointment to office. Specifies that the county boards and commissions have enforcement authority over each respective county mayor. Specifies that the Hawaii state ethics commission has enforcement authority over the governor.
7. [HB2256](#) / [SB3058](#): Repeals the sunset provision in Act 38, Session Laws of Hawaii 2017 (Technology Transfer at the University of Hawaii)
8. [HB2747](#) / [HB2748](#) / [HB1998](#) / [HB2381](#) / [HB2678](#): Authorizing forfeiture of pension benefits (and/or other benefits) under certain conditions.
9. [HB2752](#): Requires the board of education to invite the exclusive representative for bargaining unit (5) (teachers and other personnel of the department of education) to appoint a nonvoting public school teacher representative to the board.
10. [HB1885](#): Proposes an amendment to article III, section 8, of the Constitution of the State of Hawaii to provide that constitutional section shall not be construed to prohibit a member of the legislature from being employed in a faculty member position at the University of Hawaii solely because of the membership in the legislature; provided that the legislature may enact legislation to ensure that work schedules and time demands do not unreasonably conflict. (Deferred)
11. Ethics Commission Budget measures: [HB2661](#), [HB2660](#), [SB3079](#).
12. Various provisions purporting to exempt task forces and/or new commissions/employees from Ethics Code requirements (e.g., [SB2332](#), [SB3103](#), [HB1918](#), [HB1796](#)).

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

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

VII. *Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA)*

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

VIII. *State of Hawaii, Ethics Commission, by and through its Attorney General, v. Rowena Akana, Civil No. 1DRC-20-0000134*

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Attachment 1: Complaint

Attachment 2: Answer and Counterclaim

Attachment 3: Amended Answer and First Amended Counterclaim

IX. Office of Information Practices: Opinion Upholding Commission's Denial of Request to Access Government Records

Briefing by Executive Director Gluck regarding the Office of Information Practices' Opinion Letter No. F20-02 (U Appeal 18-5), upholding the Commission's 2018 denial of a request to access government records.

Attachment 1: OIP Opinion Letter No. F20-02

X. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, please contact the Hawaii State Ethics Commission by telephone at (808) 587-0460, by facsimile at (808) 587-0470 (fax), or via email at ethics@hawaiiethics.org. Requests made as early as possible will allow adequate time to fulfill your request.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. An individual or representative wishing to testify may notify any staff member of the Commission prior to the meeting or, during the meeting itself, may inform a Commissioner or Commission staff of a desire to testify. Testimony must be related to an item that is on the agenda, and the testifier shall identify the agenda item to be addressed by the testimony.

SUNSHINE LAW MEETING
AGENDA ITEM I

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
NOVEMBER 21, 2019 MEETING

Note: A Commissioner who was absent at the November 21, 2019 meeting inadvertently voted to approve the minutes of that meeting at the January 16, 2020 meeting; the Commissioners who attended the November 21 meeting will re-vote on the matter at this month's meeting.

Attachment 1: Sunshine Law Meeting Minutes of the November 21, 2019
Hawaii State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, November 21, 2019

Time: 9:00 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. Gaulty, 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 Gaulty 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 (Gaulty, Tschumy, DeGuzman, and Wood voting).

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

2
3 *Education / Training Report*

4
5 Executive Director Gluck reported that staff had one more training to conduct in
6 2019, and that staff were working to coordinate trainings for the entirety of the
7 Department of Commerce and Consumer Affairs.

8
9 Chair Gaulty inquired about the on-line training. Executive Director Gluck stated
10 that staff expected to launch the training very soon, and that staff would be seeking
11 feedback from the Commissioners shortly.

12
13 *Guidance and Assignment Statistics – October 2019*

14
15 Executive Director Gluck referred to the monthly statistics but did not have further
16 information to report.

17
18 *Miscellaneous Office Projects/Updates*

19
20 a. Personnel

21
22 Executive Director Gluck reported that Lynn Santiago, the Commission's former
23 Secretary, would be returning to the Commission in December.

24
25 b. Office improvements

26
27 Executive Director Gluck reported that the office had exhausted the allowance
28 provided by the building management upon renegotiation of the Commission's lease.
29 Among other things, the office purchased new conference room tables and a new
30 cubicle/workstation for the administrative staff.

31
32 Executive Director Gluck also stated that staff were reviewing old Commission
33 records and disposing of records consistent with the Commission's records retention
34 policy.

35
36 Chair Gaulty asked whether the office was looking into getting more space;
37 Executive Director Gluck stated that he did not believe the office needed more space at
38 this time.

39
40 Sandy Ma, from Common Cause, inquired as to what records were being
41 destroyed. Executive Director Gluck stated that the office has boxes of records dating
42 back to the 1960s. He explained that many items would be kept permanently, including
43 records of Commission actions, Advisory Opinions, and the like. However, certain
44 categories of documents would be shredded, such as background materials relating to
45 old investigations; records of informal advice given more than 10 years ago; newspaper
46 articles; and handwritten notes.

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

2
3 Executive Director Gluck reported that he had a productive meeting with staff
4 from the office of the Speaker of the House and President of the Senate [regarding
5 proposed rule § 21-7-10, to implement Act 119 of 2019]. The Legislature's overarching
6 concern appears to be that the Legislature wants to control its own processes.
7 Executive Director Gluck told the representatives from the Speaker's and Senate
8 President's offices that the Commission would not take any position on the substance of
9 whether a legislator had to recuse her- or himself in any particular scenario; instead, the
10 Commission was only trying to carry out the Legislature's mandate that the Commission
11 promulgate a rule to cover the process for disclosure.
12

13 Executive Director Gluck proposed to the Legislature the same general
14 mechanics for disclosure as in the previously approved draft of Hawaii Administrative
15 Rule ("HAR") § 21-7-10, but with an additional provision that the Legislature would have
16 sole control over enforcement of that provision. Executive Director Gluck stated that
17 there is a provision within the Ethics Code that specifically authorizes the Legislature to
18 pass ethics rules to apply to its members, and that he was waiting to receive feedback
19 from the Legislature on this proposal.
20

21 Executive Director Gluck then asked the Commissioners whether it wanted to
22 wait to resolve this issue, and thereby have one public hearing, or whether the
23 Commission wanted to move ahead with a public hearing on all rules except § 21-7-10,
24 followed by a second hearing after discussions with the Legislature are complete.
25

26 Chair Grauly stated that his preference was to hold only one hearing, given the
27 time and expense to hold a public hearing. He supported the compromise offered by
28 Executive Director Gluck and stated that waiting a few more months for the public
29 hearing would not be too problematic. The Commissioners discussed the issue.
30

31 Commissioner DeGuzman said that, if HAR § 21-7-10 is amended, the
32 Commission would also have to address HAR § 21-8-4 because it contains a reference
33 to § 21-7-10. Executive Director Gluck suggested taking HAR § 21-7-10(b) and moving
34 it to HAR § 21-8-4 to avoid the need for a cross-reference.
35

36 The Commission's consensus was to wait to resolve the proposed HAR § 21-7-
37 10 before setting a public rulemaking hearing.
38

39 Sandy Ma, from Common Cause, asked for an explanation of the rationale
40 behind the proposed HAR § 21-7-10, and Executive Director Gluck gave a brief
41 explanation of Act 119.
42
43
44
45
46

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

2
3 Executive Director Gluck stated that a bill passed in the 2019 session exempts
4 members of the Prison Oversight Commission from having to file financial disclosure
5 statements; while this exemption is not problematic for task force members, Executive
6 Director Gluck believes it is unconstitutional to exempt members of a board or
7 commission from the financial disclosure requirements. As such, he proposes
8 legislation – contained within one of the measures approved by the Commission at the
9 October meeting – to address this issue.

10
11 Executive Director Gluck also stated that several legislators have asked whether
12 there are additional ways to strengthen Hawaii's ethics laws, and he asked the
13 Commission for their ideas as to what could be improved. Chair Gaulty asked for
14 staff's input. Executive Director Gluck stated that one possible measure would be to
15 prohibit legislators from assisting or representing private clients before state agencies,
16 other than the Legislature, which is already prohibited. A second possibility is to
17 encourage the Legislature to adopt stricter internal rules relating to conflicts of interests.
18 Chair Gaulty suggested introducing these ideas now, with the expectation that they
19 may take several years before they get any traction.

20
21
22 **Agenda Item No. V: *Akana v. Hawaii State Ethics Commission and Daniel Gluck*,
23 Civil No. 18-1-1019-06 (JHA)**

24
25 Executive Director Gluck reported that there was no change in the status of this
26 case.

27
28
29 **Agenda Item No. VI: *Akana v. Hawaii State Ethics Commission*, Civil No. 19-1-
30 0379-03 (JHA)**

31
32 Executive Director Gluck reported that he had spoken with the Solicitor General
33 that morning. The Solicitor General reported that Ms. Akana's Opening Brief was
34 currently due December 26, but that there would likely be an extension until January.

35
36
37 **Agenda Item No. VII: Meeting Calendar**

38
39 Executive Director Gluck asked whether the Commission wanted to meet on
40 December 17, the day after several Commissioners and staff return from the COGEL
41 conference. Executive Director Gluck stated his belief that canceling this meeting would
42 not substantially disrupt the Commission's operations.

43
44 The Commission agreed, by consensus, to cancel the December meeting.
45

1 The Commission discussed the 2020 calendar and the start time for meetings in
2 2020.

3
4 Commissioner DeGuzman made and Vice Chair Tschumy seconded a motion to
5 approve the 2020 meeting calendar, with meetings to begin at 9:00 a.m. The motion
6 carried unanimously (Graulity, Tschumy, DeGuzman, and Wood voting).

7
8 Executive Director Gluck also stated that an anti-corruption delegation from
9 Myanmar would be visiting the Commission at its January meeting. Chair Graulity asked
10 if the agenda could be arranged so that there are substantive issues for the delegation
11 to observe at that time, and the Commission discussed whether the delegation could
12 observe the adjudicatory meeting. Executive Director Gluck stated he would consult
13 with the Attorney General's office regarding the confidentiality of the adjudicatory
14 proceedings, but that his inclination was to keep the adjudicatory meeting closed. The
15 Commissioners also discussed purchasing lei for the visiting guests.

16
17
18 **ADJOURNMENT OF SUNSHINE LAW MEETING**

19
20 At 9:45 a.m., Vice Chair Tschumy made and Commissioner DeGuzman
21 seconded a motion to adjourn the Sunshine Law Meeting. The motion carried
22 unanimously (Graulity, Tschumy, DeGuzman, and Wood voting).

23
24 The meeting was adjourned at 9:45 a.m.

25
26
27
28 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
JANUARY 16, 2020 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the January 16, 2020
 Hawaii State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, January 16, 2020

Time: 9:00 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. Grauly, 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
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee M. Campbell, Staff Attorney

Excused: Nancy C. Neuffer, Staff Attorney

CALL TO ORDER

Chair Grauly called the meeting to order at 9:05 a.m. and welcomed the visiting delegation from the Myanmar Anti-Corruption Commission. The Commissioners introduced themselves.

Robert LaMont introduced himself and explained that he works with a USAID project in Myanmar – Promoting the Rule of Law in Myanmar – with the goal of strengthening anti-corruption efforts in Myanmar's transition from a dictatorship to democracy. One of its projects is working with the Myanmar Anti-Corruption Commission. Fourteen individuals were present and introduced themselves, including

1 several members of the Commission and its staff, representatives from the Supreme
2 Court and Attorney General's office, and journalists and other members of civil society.
3
4

5 **Agenda Item No. I: Consideration and Approval of the Minutes of the**
6 **November 21, 2019 Meeting**
7

8 Vice Chair Tschumy made and Commissioner Wood seconded a motion to
9 approve the minutes of the November 21, 2019 Sunshine Law Meeting. The motion
10 carried unanimously (Graulty, Tschumy, DeGuzman, Wood, and Fong voting).
11
12

13 **Agenda Item No. II: Election of Officers for 2020**
14

15 Executive Director Gluck explained that, per guidance received from the Office of
16 Information Practices, the Commission staff would maintain records of how each
17 Commissioner votes on the election of officers for 2020.
18

19 Chair Graulty was re-elected as Chair. Commissioner Wood asked whether Vice
20 Chair Tschumy would be willing to continue serving as Vice Chair, and Vice Chair
21 Tschumy said that she was. Vice Chair Tschumy was re-elected as Vice Chair.
22
23

24 **Agenda Item No. III: Executive Director's Report**
25

26 At Chair Graulty's request, Executive Director Gluck introduced himself and the
27 staff and gave a brief overview of the Commission and its operations to the visitors.
28

29 *2019 Annual Report*
30

31 Executive Director Gluck stated that, per the Commission's request, staff had
32 prepared an annual report describing the Commission's work in 2019.
33

34 *Education / Training Report*
35

36 Executive Director Gluck stated that staff had already done four trainings in 2020,
37 with many other trainings scheduled. He also reported that the on-line training system
38 launched a week and a half earlier and over 200 individuals had already taken the
39 training. Associate Director Yoza stated that 77 Department of Education employees
40 had taken the training, with other large numbers from the Department of Health,
41 Department of Transportation, and Department of Accounting and General Services.
42 She also reported a wide range of types of employees taking the training, including
43 janitors, Principals and Vice Principals from the Department of Education, Department
44 of Health immunologists, and heavy equipment operators.

1 In response to a question from Commissioner DeGuzman, Executive Director
2 Gluck stated that staff has publicized the on-line training system by sending memoranda
3 to approximately 150 state officials, including department directors, the Governor, and
4 officials with the University of Hawaii and the Office of Hawaiian Affairs; placing the
5 information on the Commission website; sending the information out on Twitter; and
6 informing state officials in person about the availability of this new resource.

7 8 *Guidance and Assignment Statistics – 2019* 9

10 Executive Director Gluck referred the Commissioners to the meeting folder
11 materials, but did not have other additional information to report.

12 13 *Financial Report for FY 2019-2020 (Quarter Ending December 31, 2019)* 14

15 Executive Director Gluck indicated that the office was under budget in its
16 expenditures.

17 18 *Miscellaneous Office Projects/Updates* 19

20 Executive Director Gluck reported that the office installed a new workstation and
21 would be disposing of a desk.

22
23 After beginning the discussion on Proposed Administrative Rules, Executive
24 Director Gluck also stated that Staff Attorney Chang and Computer Specialist Lui were
25 working to implement several improvements to the on-line filing system for financial
26 disclosures and lobbying reports. Staff Attorney Chang explained some of these
27 improvements, including automatic reminders for filers.

28
29 Chair Graulty asked whether the neighbor island ethics boards could piggyback
30 off the Commission's on-line training platform; Executive Director Gluck said he would
31 look into this.

32 33 34 **Agenda Item No. IV: Proposed Administrative Rules** 35

36 Executive Director Gluck stated that he met with the Senate President and the
37 Speaker of the House earlier that week, both of whom indicated their preference to
38 repeal the statutory provision requiring the Commission to promulgate rules governing
39 legislators' disclosures of potential conflicts of interests. Executive Director Gluck
40 reported that they had collectively agreed to introduce a measure that addresses this
41 issue while also addressing a long-standing Commission concern regarding the
42 legislative exemption in the Fair Treatment law. The Commissioners discussed this
43 proposed measure and approved of this approach.

44
45 With this update, Executive Director Gluck stated that he believed the rules were
46 ready to go to public hearing, and asked the Chair how the Commission would like to

1 proceed. Chair Gaulty recognized Bob Toyofuku, a registered lobbyist who was
2 present at the meeting, and asked whether Mr. Toyofuku had anything he would like to
3 share regarding the proposed rules.
4

5 Mr. Toyofuku stated that he had not reviewed the final draft, but that he had
6 some discussions with Executive Director Gluck. Mr. Toyofuku asked whether
7 “discussing existing or potential legislation or administrative rules” would be limited to
8 discussions with a legislator, or would it include internal discussions, when determining
9 whether something is “direct lobbying.” Executive Director Gluck responded that, while
10 the interpretation would be up to the Commission, he believed that purely theoretical
11 discussions about potential legislation would not be included, but that even internal
12 discussions among staff about existing legislation – and strategies on any legislative
13 efforts – would be included.
14

15 Mr. Toyofuku also referred to the past practice of allowing up to \$25 in
16 expenditures for food for legislators and staff, and whether that would be included in the
17 rules. Executive Director Gluck responded by stating that, in his reading of the
18 proposed rules in Chapter 7, gifts from registered lobbyists to legislative staff would be
19 prohibited. Mr. Toyofuku asked whether this would apply to staff, or whether gifts to
20 staff would be attributable to the legislators themselves. Executive Director Gluck
21 stated that gifts to staff would be imputed to the supervisor/legislator, and that, pursuant
22 to proposed HAR § 21-7-2, all gifts from lobbyists to legislators or legislative staff would
23 be prohibited.
24

25 Commissioner Fong asked whether a lobbyist would be able to bring two boxes
26 of malasadas to a legislator’s office. Executive Director Gluck stated that, under the
27 current draft of the rules, this would be prohibited; however, Executive Director Gluck
28 noted that these were draft rules, that the promulgation and interpretation of these rules
29 would be up to the Commission, and that these rules had not yet gone through public
30 hearing.
31

32 Mr. Toyofuku asked about lei or other items on Opening Day of the Legislature.
33 Executive Director Gluck stated that there is an exception for lei, other than money lei,
34 on special occasions.
35

36 Mr. Toyofuku said that he would submit any additional feedback on the rules to
37 Executive Director Gluck, and he thanked the Commission.
38

39 Sandy Ma from Common Cause Hawaii was also present. She asked whether
40 the rules would prohibit Common Cause from inviting legislators to a public event where
41 Common Cause provides food and drink. Executive Director Gluck said that, as he
42 read the rules, if a lobbying entity were hosting an event, then legislators would be
43 prohibited from accepting food and drink from the lobbying entity. Executive Director
44 Gluck said that he would give more thought to the issue of events that are open to the
45 general public, which events may be attended by legislators, but that the general rule
46 would be no gifts from lobbyists to lawmakers.

1 Mr. Toyofuku added that corporate lobbying entities used to have large
2 receptions to which the entire Legislature was invited; these events were scaled back to
3 try to keep the per-head cost to under \$25, but Mr. Toyofuku has advised some clients
4 not to have these events at all because of the difficulty of keeping the costs down.
5

6 Chair Grauly asked Executive Director Gluck whether there was anything further
7 on this matter. Executive Director Gluck stated that the staff had several additional
8 proposed edits and asked whether Chair Grauly wanted to try to finish the draft rules at
9 this meeting or defer this discussion until February. Commissioner Fong asked whether
10 staff had received other feedback on the rules, and Executive Director Gluck stated that
11 there were similar kinds of questions to those raised by Mr. Toyofuku at the Lobbyists
12 Law training presented by staff earlier that month. Executive Director Gluck asked
13 whether the Commission wanted another month to review the rules, and Chair Grauly
14 stated that he believed the rules had been percolating for long enough and that he
15 believed the Commission was ready to move ahead with a public hearing after review
16 by the Attorney General's office and the Office of the Governor.
17

18 Executive Director Gluck discussed additional proposed edits: first, deleting the
19 entirety of § 21-7-10, and moving the language of subsection (c) to become part of § 21-
20 8-4; second, making minor changes to § 21-5-10.
21

22 Commissioner Fong made and Commissioner DeGuzman seconded a motion to
23 approve the draft of the proposed administrative rules, as amended, for public hearing
24 on March 19. The motion carried unanimously (Grauly, Tschumy, DeGuzman, Wood,
25 and Fong voting).
26
27

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

29

30 Chair Grauly reported on the COGEL Conference in Chicago in December 2019,
31 informing the Commission and staff about speakers from British Columbia and a film
32 about corruption in a small town. He thanked Office Manager Caroline Choi for her
33 assistance with travel logistics. He asked Commissioners Wood and Fong and Staff
34 Attorneys Chang and Campbell for their feedback as well.
35

36 Commissioner Wood stated that she attended several sessions on voting
37 regulations. She reported hearing that all 50 states' election systems had been probed
38 by foreign agents, largely from China, Iran, Russia, and Nigeria, and that the
39 Department of Homeland Security has a cybersecurity division devoted to election
40 security.
41

42 Commissioner Fong asked the delegation from Myanmar about Myanmar's
43 voting system. Myanmar Anti-Corruption Commissioner Daw Myat Myat So explained
44 that Myanmar uses advanced voting, and that voters must appear in person at voting
45 stations.

1 Staff Attorney Chang reported speaking with other agencies' staff about their
2 electronic reporting systems, and that Hawaii is relatively ahead of the game with
3 respect to its e-filing capabilities. Staff Attorney Campbell stated some other ethics
4 entities will reach out to trainees prior to ethics training, to provide those trainees with
5 materials and to solicit questions, and he thought this could be implemented here. Staff
6 Attorney Campbell also stated that some jurisdictions are requiring disclosures of
7 fundraisers by state agencies – particularly in locations that have large, well-resourced
8 companies giving money or other resources to governmental entities.
9

10 **Agenda Item No. VI: 2020 Legislative Session**

11
12
13 Executive Director Gluck referred to the earlier discussion about the new ethics
14 bill; the Commission agreed, by consensus, to support that measure.
15

16 Executive Director Gluck stated that the other bills proposed by the Commission
17 had been revised by the Legislative Reference Bureau, and he noted that neither the
18 Commissioners nor the Commission's Executive Director were included in the list of
19 positions subject to the new post-employment restrictions on lobbying. Executive
20 Director Gluck asked whether there was any objection to having Executive Director
21 Gluck testify to the Legislature that the Commission, and its Executive Director, are
22 willing to be included on this list of positions. By consensus, the Commission indicated
23 it had no objection to Commissioners or the Commission's Executive Director being
24 included on this list.
25

26 Commissioner Wood raised concerns with the existing provision in the post-
27 employment law excluding individuals who worked for the State for fewer than 181
28 days; Executive Director Gluck stated that he would like to see that provision amended
29 so that the confidentiality provision applies even to those individuals who work for the
30 state for fewer than 181 days.
31

32 Commissioner Fong made and Commissioner DeGuzman seconded a motion to
33 move ahead with these legislative proposals. The motion carried (Grauly, Tschumy,
34 DeGuzman, and Fong voting yes; Wood abstaining).
35

36 Executive Director Gluck then stated that the University of Hawaii was likely
37 looking to remove the sunset provision on legislation from several years ago exempting
38 technology transfer activities from the Ethics Code; Chair Grauly suggested that the
39 sunset provision should not be removed entirely if the University has not yet completed
40 its rules for these activities.
41

42 Executive Director Gluck also discussed possible legislation that would restrict
43 legislators from representing private clients before state agencies. The Commission
44 indicated that it would like to support this measure.

1 **Agenda VII: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No.**
2 **18-1-1019-06 (JHA)**
3

4 Executive Director Gluck reported no change in this matter.
5
6

7 **Agenda Item No. VIII: Akana v. Hawaii State Ethics Commission, Civil No. 19-1-**
8 **0379-03 (JHA)**
9

10
11 Executive Director Gluck stated that the Department of the Attorney General is
12 taking action to try to recover both the administrative penalty imposed upon Ms. Akana
13 and the gifts improperly received by Ms. Akana.
14
15

16 **Agenda Item No. IX: Appeal of Denial of Request to Access Government Records**
17
18

19 Executive Director Gluck stated that the Commission received a request to
20 access government records regarding an investigation. Executive Director Gluck
21 explained his belief that all records are confidential, such that the Commission would
22 not disclose records pursuant to a Uniform Information Practices Act ("UIPA") request,
23 even if the request came from the complainant. Executive Director Gluck explained that
24 someone submitted a UIPA request to the Commission and Executive Director Gluck
25 denied the request, after which the requester filed an appeal with the Office of
26 Information Practices.
27

28 Executive Director Gluck asked whether the Commission wished to continue to
29 take the position that its investigatory files are confidential, including those items
30 received from the complainant. The Commission discussed the issue, and agreed to
31 continue to take the position that all its investigatory files are confidential.
32
33

34 Chair Gaulty called for a brief recess at 10:25 a.m.
35

36 Chair Gaulty reconvened the meeting at 10:35 a.m. Commissioner Fong left the
37 meeting at approximately 10:35 a.m.
38
39

40 **Agenda Item No. X: Discussion with Myanmar Anti-Corruption Commission**
41

42 Members of the delegation asked about the Commission's education and training
43 programs, and the Commission, its staff, and the delegation discussed these and other
44 matters. The delegation explained how the Anti-Corruption Commission is trying to train
45 130 of its own employees. The delegation also explained how it organized a Youth
46 Integrated Camp Program, in which the Anti-Corruption Commission held a five-day

1 camp for approximately 130 university students to learn about government ethics. The
2 Ethics Commissioners talked about the importance of the Commission's independence
3 and explained Hawaii's process for selecting Commissioners. The delegation had
4 questions about the Ethics Commission's role in the legislative process, the
5 Commission's priorities for enforcement, the Commission's relationship with the media,
6 and the Commission's regulation of lobbyists. The Commission and its staff had
7 questions about the Anti-Corruption Commission's process for investigating complaints
8 and its training program.
9

10 Chair Grauly concluded the meeting by stating that the Ethics Commission was
11 honored by the delegation's visit, and he wished the delegates well.
12
13
14

15 **ADJOURNMENT OF SUNSHINE LAW MEETING**

16
17

18 At 11:25 a.m., Commissioner DeGuzman made and Vice Chair Tschumy
19 seconded a motion to adjourn the Sunshine Law Meeting. The motion carried
20 unanimously (Grauly, Tschumy, DeGuzman, and Wood voting).
21
22
23
24
25

26 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM III

PROPOSED ADMINISTRATIVE RULES

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM IV

EXECUTIVE DIRECTOR'S REPORT

- Attachment 1: Executive Director's Report
- Attachment 2: 2020 Training Attendance / Schedule
- Attachment 3: Online Training Completions by Department
- Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic
- Attachment 5: The High Road Newsletter, Issue 2020-1

SUNSHINE MEETING
AGENDA ITEM IV

EXECUTIVE DIRECTOR'S REPORT
February 20, 2020

1. Education / Training Report

Attachment 2: 2020 Training Attendance / Schedule

a. Recently held trainings/presentations:

General Ethics Training
State Capitol, Room 325
Honolulu, Hawai'i
January 13, 2020
10:00 a.m. – 11:30 a.m.
30 attendees

Lobbyists Law Training
State Capitol, Room 325
Honolulu, Hawai'i
January 14, 2020
2:00 p.m. – 3:30 p.m.
30 attendees

b. Upcoming trainings/presentations:

General Ethics Training/Ethics Training for Supervisors
Department of Commerce and Consumer Affairs
Honolulu, Hawai'i
February 24, 25, 27 (six trainings total)

General Ethics Training
University of Hawai'i – Hilo
200 W. Kawili Street, UCB 100
Hilo, Hawai'i
March 17, 2020
10:00 a.m. – 11:30 a.m.

Ethics Training – Dept. of Transportation, Harbors Division
Pier 19
Honolulu, Hawai'i
March 20, 2020
10:00 a.m. – 11:30 a.m.
12:30 p.m. – 2:00 p.m. (supervisors)

General Ethics Training
Mission Memorial Auditorium
Honolulu, Hawai'i
March 24, 2020
10:00 a.m. – 11:30 a.m.

General Ethics Training
Kaua'i – Courthouse Multipurpose Room
Lihue, Hawai'i
March 25, 2020
10:00 a.m. – 11:30 a.m.

Attachment 3: Online Training Completions by Department

2. Guidance and Assignment Statistics – January 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. The High Road Newsletter – February 2020

Attachment 5: The High Road Newsletter, Issue 2020-1

4. Miscellaneous Office Projects/Updates

HAWAII STATE ETHICS COMMISSION 2020 EDUCATION PROGRAM (Ethics Workshops and Presentations)		
DATE	PRESENTATIONS	NUMBER OF PARTICIPANTS
1/2/2020	General Ethics Training, House of Representatives Staff Training	99
1/7/2020	General Ethics Training, Windward Community College	122
1/13/2020	Ethics Refresher Course, State Capitol, Honolulu	30
1/14/2020	Lobbyists Law Training, State Capitol, Honolulu	30
2/24/2020	General Ethics Training, DCCA, Supervisors	
2/24/2020	General Ethics Training, DCCA, Non-Supervisors	
2/25/2020	General Ethics Training, DCCA, Supervisors	
2/25/2020	General Ethics Training, DCCA, Non-Supervisors	
2/27/2020	General Ethics Training, DCCA, Supervisors	
2/27/2020	General Ethics Training, DCCA, Non-Supervisors	
3/17/2020	General Ethics Training, Hilo	
3/20/2020	General Ethics Training, DOT, Harbors (2 sessions)	
3/24/2020	General Ethics Training, Honolulu	
3/25/2020	General Ethics Training, Lihue	
4/6/2020	General Ethics Training, Kona	
4/21/2020	General Ethics Training, DLNR, DOFAW	
4/28/2020	General Ethics Training, Dept. of Health Exec. Comm. Honolulu	
5/8/2020	General Ethics Training, Kahului	
5/12/2020	General Ethics Training, Pearl City	
10/20/2020	General Ethics Training, Honolulu	
xx/xx/2020	General Ethics Training, DOT, Harbors (white collar)	
TOTAL	22 Presentations	281 participants

Department/Agency	# of Completions
Department of Education (DOE)	124
Department of Health (DOH)	108
Department of Transportation (DOT)	95
Department of Accounting and General Services (DAGS)	57
University of Hawaii-West Oahu (UOHW)	30
Department of Agriculture (DOA)	22
Hawaii Health Systems Corporation (HHSC)	23
Department of Commerce and Consumer Affairs (DCCA)	13
Other (Please fill-in "Other Department/Agency")	9
Department of Land and Natural Resources (DLNR)	8
Public Charter School (SPCSC)	4
Department of the Attorney General (ATG)	4
Office of the Governor (GOV)	3
University of Hawaii-Manoa (UOHM)	3
University of Hawaii-System (UOH)	3
Office of the Lieutenant Governor (LTG)	1
Research Corporation of the University of Hawaii (RCUH)	1
Senate (SEN)	1
Department of Public Safety (DPS)	1
University of Hawaii-Community Colleges (UOHC)	1
Department of Business, Economic Development and Tourism (DBEDT)	1
Judiciary (JUD)	1

Total Certificate of Completions Issued

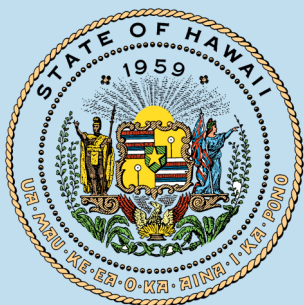
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As of February 14, 2020, 2:30 PM

2020	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of In-Person Trainings	4												4
# of People Trained In Person	281												281
# of On-Line Training	403												403
Attorney of the Day													
	148												148
New assignments													
Advisory Opinion	0												0
Complaint	7												7
Gifts/Invitations/Travel	16												16
Guidance	2												2
Judicial Selection Comm'n	1												1
Training Request	0												0
Record Request	1												1
Project/Other	3												3
Total	30	0	0	0	0	0	0	0	0	0	0	0	30
Closed Assignments													
Advisory Opinion	0												0
Complaint	8												8
Gifts/Invitations/Travel	22												22
Guidance	4												4
Judicial Selection Comm'n	1												1
Training Request	1												1
Record Request	3												3
Project/Other	3												3
Total	42	0	0	0	0	0	0	0	0	0	0	0	42

Dataset Views

[illegible]



“The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”

— *Hawaii State Constitution Article XIV*

Hawai‘i State Ethics Commission

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The High Road

The High Road is a publication of the Hawai‘i State Ethics Commission

Issue 2020-1

February 2020

State Ethics Commission Proposes Cooling-Off Period on Lobbying by Former State Officials



The 2020 legislative session is underway and a bill proposed by the State Ethics Commission is seeking to ensure clearer boundaries between high-ranking government officials and lobbyists. [H.B. 2124](#) / [S.B. 2114](#) prohibits certain state officials who leave state office from immediately becoming paid lobbyists. The bill creates a twelve-month cooling-off period on lobbying after an official leaves state employment. During this period, an official would be prohibited from lobbying the Legislature or state agencies for pay. State officials who would be affected by the bill include the Governor and Lieutenant Governor, executive department heads, the President of the University of Hawai‘i, the Trustees and Administrator of the Office of Hawaiian Affairs, and certain other state officials. Legislators are

already prohibited from lobbying the Legislature for twelve months after leaving state office, but the bill would also prohibit Legislators from lobbying state agencies for twelve months with regard to proposed administrative rules.

The Commission also has proposed two other bills to strengthen and clarify the Ethics Code:

[H.B. 2125](#) / [S.B. 2115](#) amends the financial disclosure law for state officials by requiring filers to report the names of clients they have assisted or represented before state agencies. This bill also requires members of the Hawai‘i Correctional System Oversight Commission to file confidential financial disclosure statements with the Commission.

[H.B. 1673](#) / [S.B. 2100](#) restores the Ethics Code’s protection for Legislators when carrying out their legislative functions and clarifies that the Legislature shall adopt rules regarding the disclosure of any interest or transaction that a Legislator believes may be affected by the Legislator’s official action.

State Ethics Commission to Hold Public Hearing on Proposed Administrative Rules

**March 19, 2020
9:30am
1001 Bishop Street
Suite 960, Honolulu
livestream to Maui,
Kaua‘i, Hawai‘i Island**

The State Ethics Commission will hold a public hearing on proposed amendments to the Commission’s administrative rules (Hawaii Administrative Rules Title 21). The hearing will be held on March 19, 2020, 9:30 a.m., at 1001 Bishop Street, Suite 960, Honolulu, Hawai‘i.

continued on page 3

Hawai'i State Ethics Commission

Commissioners:

Reynard Graulty,
Chair
Ruth Tschumy,
Vice Chair
Susan DeGuzman
Melinda Wood
Wesley Fong

Executive Director:

Daniel Gluck

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[@HawaiiEthics](https://twitter.com/HawaiiEthics)

NEW! Ethics Online Training Is Here!

State employees on O'ahu, Hawai'i Island, Kaua'i, Maui and Moloka'i have all started logging on to the State Ethics Commission's new online training program. The 30-minute interactive program was launched in January and within the first few weeks, 500 employees statewide completed the program. State agencies with the largest number of employees who have taken the program to date (and have received certificates of completion for doing so) include: (1) the Department of Education; (2) the Department of Health; (3) the Department of Transportation; and (4) the Department of Accounting and General Services. Congratulations to these agencies!



The online program provides basic information that every employee should have about the laws in the State Ethics Code, Hawai'i Revised Statutes ("HRS") Chapter 84. Anyone with internet access can take the program using a desktop computer, laptop, tablet, or even a smartphone. After completing the program, employees may obtain a certificate of completion to show that they have taken the online training.

No more having to wait for an ethics class to be scheduled near your workplace or having to drive to an outside location for training. Ethics online training is now available 24/7 to you! We especially encourage neighbor island employees to try the online program.

For more information about the online program and to access the program, visit our website or click [here](#).

2020 Ethics Training Schedule



Looking for a more personal training experience away from your office or workplace? Sign up for one of our in-person ethics training classes in 2020. The classes are taught by the State Ethics Commission's attorneys and, like the online program, they provide a good overview of the laws in the State Ethics Code that apply to all state employees. These classes are about 90 minutes long and they include time for audience questions. Instructors are also available after

class to speak to individuals about ethics issues or concerns. Classes include employees from different state agencies so you will have an opportunity to meet some of your state colleagues outside of your own department.

Ethics classes will be offered in 2020 on O'ahu (Honolulu and Pearl City), Hawai'i Island (Hilo and Kona), Kaua'i (Lihue), and Maui (Kahului). The Maui class will also be video conferenced to state employees on Moloka'i.

For information about training dates and locations, and to learn when online registration for the classes will begin, visit our website or view our 2020 Ethics Training Schedule by clicking [here](#).

“The purpose of this chapter is to . . . establish an ethics commission which will . . . render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.”

*Preamble,
Hawaii Revised
Statutes Chapter 84
(State Ethics Code)*

**Hawai‘i State
Ethics Commission**

Phone: (808) 587-0460

Fax: (808) 587-0470

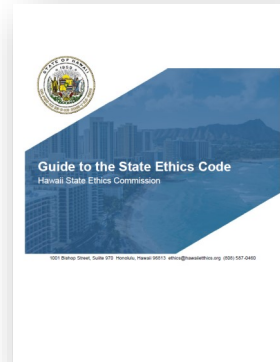
Website:
<http://ethics.hawaii.gov/>

Email:
ethics@hawaiiethics.org

Twitter:
[@HawaiiEthics](https://twitter.com/HawaiiEthics)

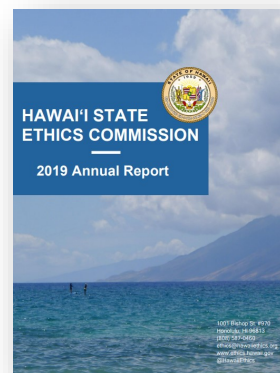
NEW! Guide to the State Ethics Code

Our latest publication, [Guide to the State Ethics Code](#), is a handy new reference to the ethics laws for state employees. This new Guide includes short summaries of all the ethics laws; links to more information about specific topics, such as gifts; and a short interactive quiz for you to test your knowledge of the State Ethics Code. Check out our new [Guide to the State Ethics Code](#)!



NEW! 2019 Annual Report

The State Ethics Commission’s [2019 Annual Report](#) highlights the work of the Commission and its staff in administering the State Ethics Code and the Lobbyists Law. The Annual Report includes summaries of the Commission’s advisory opinions, major enforcement actions and ethics education program in 2019. The Report also highlights the Commission’s work last year administering the financial and gifts disclosure laws, as well as the lobbyist registration and reporting laws. The 2019 Annual Report is available [here](#).



ADMINISTRATIVE RULES *continued from page 1*

The hearing also will be livestreamed to locations on Maui, Kaua‘i and Hawai‘i Island. Interested persons may submit public testimony, orally or in writing, at the public hearing on O‘ahu or at any of the neighbor island locations.

The proposed amendments to the administrative rules address the Commission’s operations and procedures, including its procedures for advisory opinions, investigations and settlements, and contested case hearings. The proposals also clarify certain provisions of the State Ethics Code (including the laws regarding gifts, gifts reporting, fair treatment and conflicts of interests) and the Lobbyists Law (including reporting and registration requirements for lobbyists). To view the proposed administrative rules, which are posted on the Commission’s website, click [here](#).

For more information about how to submit public testimony on O‘ahu or the neighbor islands, click [here](#) to view the Commission’s [Notice of Public Hearing on Proposed Administrative Rules](#).

SUNSHINE LAW MEETING
AGENDA ITEM V
2020 LEGISLATIVE SESSION

No attachments. *Please see agenda for links to proposed bills.*

SUNSHINE LAW MEETING
AGENDA ITEM VI

AKANA V. HAWAII STATE ETHICS COMMISSION AND DANIEL GLUCK,
CIVIL NO. 18-1-1019-06 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM VII

AKANA V. HAWAII STATE ETHICS COMMISSION,
CIVIL NO. 19-1-0379-03 (JHA)

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM VIII

STATE OF HAWAII, ETHICS COMMISSION, BY AND THROUGH ITS
ATTORNEY GENERAL, V. ROWENA AKANA
CIVIL NO. 1DRC-20-0000134

Discussion of case status.

The Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- Attachment 1: Complaint
- Attachment 2: Answer and Counterclaim
- Attachment 3: Amended Answer and First Amended Counterclaim

CLARE E. CONNORS 7936
Attorney General of Hawai'i

MICHAEL S. VINCENT 5871
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Deputy Attorneys General
Department of the Attorney General
State of Hawai'i
425 Queen Street, Room 212
Honolulu, Hawai'i 96813
Telephone: (808) 586-1100

Attorneys for Plaintiff
STATE OF HAWAI'I,
Ethics Commission

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FIRST CIRCUIT
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02-JAN-2020
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IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAI'I

STATE OF HAWAI'I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

VS.

ROWENA AKANA,

Defendant.

Civil No.
(ASSUMPSIT)

COMPLAINT; EXHIBITS 1 – 8; SUMMONS

COMPLAINT

1. This action is filed pursuant to Hawaii Revised Statutes (hereinafter "HRS"), §§
84-19(b), which states:

§84-19 Violation. (b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within one year of a determination of such violation.

2. On or about February 5, 2019, the State Hawaii of Ethics Commission (hereinafter “Commission”) referred an administrative Complaint, with Exhibit A, filed on February 5, 2019, to the Department of the Attorney General for Further Action. Exhibit A of the administrative Complaint is a Findings of Fact, Conclusions of Law and Decision and Order (hereinafter “Decision and Order”) issued by the Commission on February 5, 2019. See Exhibit 1.

3. The Decision and Order was issued after an administrative hearing was held, in administrative case number COMPL-C-15-00236, to determine whether, among fifty-three counts, Defendant Rowena Akana (hereinafter “Defendant Akana”), referred to as Respondent Rowena Akana in the administrative case, violated HRS § 84-11 by accepting gifts in the form of monetary payments by Abigail Kawanana (hereinafter “Kawanana”) to the law firm of Bickerton Dang, LLLP, for legal services provided by Bickerton Dang, LLLP to Defendant Akana.

4. Administrative case number COMPL-C-15-00236 was initiated on April 19, 2018, when the Commission filed a Charge that contained fifty counts against the Defendant Akana. See Exhibit 2.

5. On May 23, 2018, Defendant Akana filed an answer to the Commission’s charges. See Exhibit 3.

6. On July 19, 2018, the Commission filed a Further Statement of Alleged Violation (hereinafter "Further Statement") that contained fifty-three counts against the Defendant Akana. See Exhibit 4.

7. On August 1, 2018, Defendant Akana filed an Answer to the Further Statement. See Exhibit 5.

8. The administrative hearing in case number COMPL-C-15-00236 was held from October 22, 2018 through October 26, 2018, in Honolulu, Hawaii, and was presided by Chair, Commissioner Reynard D. Grauly, Vice Chair, Commissioner Ruth D. Tschumy, Commissioner Susan N. DeGuzman, Commissioner Melinda Wood and Commissioner Wesley F. Fong.

9. Counts 1 through 53 in the Further Statement were tried at the hearing to determine whether administrative fines would be imposed against Defendant Akana.

10. Counts 5 and 6 in the Further Statement are the specific counts tried at the hearing that relate to this action, and are as follows:

"COUNTS 5 TO 6

Violations of Gifts Law, § 84-11
Acceptance of Gifts of Legal Fees

48. The allegations contained in the paragraphs above are repeated and realleged.¹

49. Respondent AKANA, by accepting a gift of legal fees from Kawananakoa on or about April 28, 2017, in the amount of \$15,513.15, at which time the OHA Board of Trustees, including Respondent AKANA, were engaged in the Kawananakoa vs. OHA Lawsuit, violated HRS § 84-11 (COUNT 5).²

¹ See allegations 1 through 48 in the Further Statement. Exhibit 5.

² OHA is the abbreviation for Office of Hawaii Affairs.

50. Respondent AKANA, by accepting a gift of legal fees from Kawananakoa on or about June 17, 2017, in the amount of \$6,000.00, at which time the OHA Board of Trustees, including Respondent AKANA, was engaged in the Kawananakoa vs. OHA Lawsuit, violated HRS § 84-11 (COUNT 6).”

11. Defendant Akana, through her counsel, was provided with a fair and full opportunity to fully litigate the administrative case which included, but was not limited to, requesting documents from the Commission, issuing subpoenas for witnesses and documents, raising any and all issues to contest the allegations in the Further Statement, cross examining the Commission’s witnesses, objecting to the introduction of the Commission’s evidence and to the testimony of the Commission’s witnesses, making various objections during the hearing, and presenting Defendant Akana’s own case by calling and questioning Defendant Akana’s witnesses, introducing Defendant Akana’s evidence, making closing arguments and filing a proposed findings of fact and conclusions of law.

12. To prove whether or not Defendant Akana violated HRS § 84-11, the parties litigated, and the Commissioners determined, whether the following three factors in Advisory Opinion No. 2018-02 were met:

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.

13. On December 14, 2018, subsequent to the administrative hearing, Defendant Akana filed a Post-Hearing Proposed Findings of Facts (hereinafter “FOF”) and Conclusions of Law (hereinafter “COL”); Certificate of Service. Exhibit 6.

14. Defendant Akana's FOFs and COLs were proposed in a manner in which, if accepted by the Commission, would have supported a Decision and Order that the gift of \$21,513.15 in legal fees from Kawanana'kōa to Defendant Akana were not in violation of HRS § 84-11.

15. On February 5, 2019, the Commission issued its Decision and Order. See Exhibit 1.

16. Findings of Fact 10 through 45, in the Decision and Order, are the Commission's findings related to Defendant's acceptance of prohibited gifts, in violation of HRS § 84-11. See Exhibit 1, FOF 10 through FOF 45.

17. A summary of several key findings of fact are:

- 1) Kawanana'kōa filed the Kawanana'kōa vs. OHA Lawsuit on February 9, 2017 (FOF 32).
- 2) The OHA Trustees and Defendant Akana were engaged in the Kawanana'kōa vs. OHA Lawsuit from February, 2017 through September, 2017 (FOF 35).
- 3) Defendant Akana was present for an entire executive session of the OHA Board of Trustees (hereinafter "OHA BOT"), on March 9, 2017, during which time the OHA BOT consulted with its attorney, Paul Alston, regarding the Kawanana'kōa vs. OHA Lawsuit (FOF 37).
- 4) Defendant Akana filed an amended gifts disclosure on September 8, 2017, disclosing that she received gifts from Kawanana'kōa, in the form of payments for legal fees, on April 28, 2017 for \$15,513.15 and on June 17, 2017 for \$6,000.00 (FOF 41).
- 5) Defendant Akana received the value of Kawanana'kōa's gifts – payments of more than \$70,000.00 – in the form of legal services provided by the Bickerton Dang law firm (FOF 44).
- 6) Defendant Akana did not consult with OHA's corporate counsel for advice on whether she could accept gifts, in the form of legal services paid for by Kawanana'kōa (FOF 45).

18. Conclusions of Law (hereinafter "COL") 1 through COL 85, support the Commission's decision that Defendant Akana violated HRS § 84-11. See Exhibit 1, COL 1 through COL 85.

19. The Commission entered COL 86 through 99, which specifically address Counts 5 to 6 in the Further Statement, as follows:

III. CONCLUSIONS OF LAW

...

COUNTS 5 TO 6

Violations of the Gifts Law, HRS § 84-11

Acceptance of Prohibited Gifts (Gifts of Legal Fees from Abigail Kawananaoka)

86. Respondent Akana's continued acceptance of gifts of legal fees - on two occasions, totaling more than \$21,000- after Ms. Kawananaoka 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. Kawananaoka 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. Kawananaoka preceding Respondent's acceptance of legal fee payments from Ms. Kawananaoka. Respondent Akana's relationship with Ms. Kawananaoka began after Respondent Akana became an OHA Trustee and her interactions with Ms. Kawananaoka 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. Kawananaoka or the Kawananaoka vs. OHA lawsuit. Instead, Respondent Akana participated in an executive session meeting with OHA's attorney on the Kawananaoka v. OHA lawsuit while continuing to receive payments from Ms. Kawananaoka 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. Kawananaoka after Ms. Kawananaoka sued OHA - and by participating in at least one privileged and confidential executive session meeting with OHA's attorney in which the Kawananaoka 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. Kawananaoka's payment of legal fees and the payment of these fees did not result in any official acts by Respondent benefitting Ms. Kawananaoka. 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. Kawanakoa on or about April 28, 2017 (\$15,513.15) when the OHA BOT, including Respondent Akana, was engaged in the Kawanakoa 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. Kawanakoa on or about June 17, 2017 (\$6,000.00) when the OHA BOT, including Respondent Akana, was engaged in the Kawanakoa vs. OHA lawsuit (Count 6).

20. The Commission determined that Defendant Akana committed forty-seven violations of the code of ethics, including two violations of HRS § 84-11, Gifts law (Counts 5-6), as detailed in COL 98 and COL 99, and ordered that, in addition to paying \$23,106.53 in fines for the forty-seven violations, that “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 (Defendant Akana) in violation of HRS § 84-11. See Exhibit 1, Section V. DECISION AND ORDER.

21. Defendant Akana appealed the Decision and Order to the Circuit Court of the First Circuit (hereinafter “Circuit Court”), case number 19-1-0379-03 JHA. The case was assigned to Honorable James H. Ashford.

22. On September 24, 2019, the Circuit Court filed an Order Affirming the Hawaii State Ethics Commission’s (1) Findings of Facts, Conclusions of Law, and Decision and Order, dated February 5, 2019, and (2) Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent, dated October 16, 2018, entered by the Court on September 24, 2019. See Exhibit 7.

23. On November 27, 2019, the Circuit Court filed an Amended Final Judgment in favor of the Hawaii State Ethics commission and against Defendant Akana, in the amount of \$23,106.53, the total amount of the administrative fines assessed against Defendant Akana. See Exhibit 8. Collection of the \$23,106.53 in fines will be part of a separate action in Circuit Court.

24. As noted in paragraph 1, the collection of the \$21,513.13 value of the gift by Kawananakoa, in the form of monetary payments to the law firm of Bickerton Dang, LLLP for legal services provided by Bickerton Dang, LLLP to Defendant Akana, has been referred to the State of Hawaii, Department of the Attorney General and is the basis for this case.

25. Although Defendant Akana has appealed the Amended Final Judgment to the Intermediate Court of Appeals, Defendant Akana has not filed a supersedeas bond, pursuant to Rule 62(d), Hawaii Rules of Civil Procedure, to stay execution of the Amended Final Judgment. In any event, the supersedeas bond would not stay the proceedings in this case.

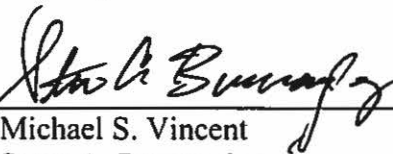
WHEREFORE, Plaintiff requests that the Court order the following relief:

1. Judgment in the amount of \$21,513.15, plus fees for service of process, in favor of the State of Hawaii, Ethics Commission, against Defendant Rowena Akana, and
2. further relief as the Court deems just and proper.

Dated: Honolulu, Hawaii: July 2, 2019

CLARE E. CONNORS

Attorney General of Hawaii

By: 
Michael S. Vincent
Steve A. Bumanglag
Deputy Attorneys General

Attorneys for the State of Hawaii
Ethics Commission

EXHIBIT 1

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

STATE OF HAWAII
STATE ETHICS COMMISSION

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

COMPLAINT

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, pursuant to Hawaii Revised Statutes ("HRS") § 84-31 and HRS chapter 91. The hearing involved alleged violations of the State Ethics Code, HRS chapter 84, committed by Respondent Rowena Akana ("Respondent Akana") while employed with the Office of Hawaiian Affairs ("OHA") as an elected member of the OHA Board of Trustees. During her term of office as an OHA Trustee, Respondent Akana was an "employee" of the State of Hawaii ("State") as defined by HRS § 84-3. Respondent Akana's term of office as an OHA Trustee ended on November 6, 2018.

On February 5, 2019, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and incorporated herein as Exhibit "A."

STATE OF HAWAII
STATE ETHICS COMMISSION

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.

James J. Bickerton

Secretary, State Ethics Commission **Page 49**

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, 2018.¹

¹ *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, 2018.²
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.³
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.⁴ 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, 2018.⁵ On November 27, 2018, Respondent Akana filed an unopposed *ex parte* motion

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

³ *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).

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

⁵ *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.⁶ The Commission granted Respondent's motion for an extension of time on November 29, 2018.⁷ 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,

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

⁷ *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 Kawananaoka ("Ms. Kawananaoka"), an OHA beneficiary. Further Statement ¶32; Answer ¶1 (admits ¶32).
16. Ms. Kawananaoka is also a beneficiary of the James Campbell Estate.
17. Ms. Kawananaoka 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. Kawananaoka, through her then-attorney James Wright ("Mr. Wright"), requested an in-person meeting with Respondent regarding the digging up of burial plots at the Kawaiaha'o Church in connection with the renovation of a reception hall financed by OHA. Ms. Kawananaoka 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. Kawananaoka 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. Kawananaoka had asked for information about the case. Respondent Akana provided the information requested by Mr. Wright on behalf of Ms. Kawananaoka.
19. Mr. Wright discussed the information he received from Respondent Akana with Ms. Kawananaoka. Mr. Wright thereafter informed Respondent Akana that Ms. Kawananaoka believed the case involved important issues and that she was willing to pay for Respondent Akana's legal fees.
20. Respondent Akana accepted Ms. Kawananaoka'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. Kawananaoka 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. Kawananaoka 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.] Kawananaoka 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. Kawananaoka 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. Kawananaoka's attorney, Mr. Wright, for the firm's legal services provided to Respondent Akana.
26. Mr. Wright apprised Ms. Kawananaoka of the invoices coming to him and the invoice amounts, and Ms. Kawananaoka 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=ICC131002485>).
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. Kawananaoka 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=ICC131002485>).
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. Kawananaoka filed her own lawsuit against OHA: Kawananaoka v. Lindsey et al., Civ. No. 17-1-0231-02 ECN/DEO, filed February 9, 2017 (hereinafter "Kawananaoka v. OHA lawsuit"). Further Statement ¶34; Answer ¶1 (admits ¶34); Exhibits C-55 and C-56.
33. The defendants in the Kawananaoka v. OHA lawsuit were OHA Trustee (and former OHA Chairperson) Robert K. Lindsey, OHA Chief Executive Officer Kamana'opono Crabbe ("CEO Crabbe"), and OHA. Exhibits C-55 and C-56.
34. Ms. Kawananaoka 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 Kawananaoka 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.”⁸
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.

⁸ 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,⁹ 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.

⁹ 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”)¹⁰ 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.

¹⁰Also 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).¹¹
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.

¹¹ 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 estimated taxes</u>
	\$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-27.¹²
- 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-32.¹³
- h. August 24, 2017 (\$80) (Count 31). Exhibit C-33.
- i. September 10, 2017 (\$82) (Count 32). Exhibit C-34.¹⁴
- 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.

¹² 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.

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

¹⁴ 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 Kawanana)

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. Kawananaokoa 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. Kawananaokoa’s interests stemmed from her status as an OHA beneficiary, as the plaintiff in the Kawananaokoa 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. Kawananaokoa 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. Kawananaokoa – 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 Kawananaokoa lawsuit with their legal counsel and was in a position to take official action affecting Ms. Kawananaokoa (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. Kawananaoka 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. Kawananaoka 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. Kawananaoka’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. Kawananaoka’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. Kawananaoka’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. Kawananaoka’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. Kawananakoa'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. Kawananakoa 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. Kawananakoa 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. Kawananakoa 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. Kawananakoa 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. Kawananakoa 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. Kawananakoa 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 Kawananakoa)

86. Respondent Akana's continued acceptance of gifts of legal fees – on two occasions, totaling more than \$21,000 – after Ms. Kawananaoka 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. Kawananaoka 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. Kawananaoka preceding Respondent's acceptance of legal fee payments from Ms. Kawananaoka. Respondent Akana's relationship with Ms. Kawananaoka began after Respondent Akana became an OHA Trustee and her interactions with Ms. Kawananaoka 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. Kawananaoka or the Kawananaoka vs. OHA lawsuit. Instead, Respondent Akana participated in an executive session meeting with OHA's attorney on the Kawananaoka v. OHA lawsuit while continuing to receive payments from Ms. Kawananaoka 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. Kawananaoka after Ms. Kawananaoka sued OHA – and by participating in at least one privileged and confidential executive session meeting with OHA's attorney in which the Kawananaoka 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. Kawananaoka's payment of legal fees and the payment of these fees did not result in any official acts by Respondent benefitting Ms. Kawananaoka. 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. Kawananaoka 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 8¹⁵

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

¹⁵ 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. Kawanakoa 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. Kawanakoa 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): This expenditure was disallowed by OHA.	\$0.00
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"¹

RESPONDENT'S PROPOSED FINDINGS OF FACTS		
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

¹ 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:

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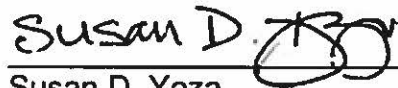
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Charge Counsel for Complainant

DATED: Honolulu, Hawaii, February 5, 2019.



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

EXHIBIT 2

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

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

CHARGE

Pursuant to Hawaii Revised Statutes ("HRS") §§ 84-31(a) and 84-31(b), and Hawaii Administrative Rules ("HAR") § 21-5-2, the HAWAII STATE ETHICS COMMISSION ("Commission") issues this Charge against ROWENA AKANA ("Respondent AKANA") for violations of the State Ethics Code, HRS chapter 84, based on the following allegations:

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. 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).

The Gifts Law

5. The Gifts Law, HRS § 84-11, prohibits a state employee from soliciting, 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 on the employee's part.

The Gifts Reporting Law

6. 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 has interests that may be affected by official action or lack of action by the employee; and
- (3) The Gifts Reporting law does not exempt the gift from reporting requirements.

HRS § 84-11.5(a).

7. 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).

8. 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).

9. 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).

10. 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

11. 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.

Respondent AKANA's Employment

12. Respondent AKANA, at all times relevant herein, was employed with the Office of Hawaiian Affairs ("OHA"), a state agency, as an elected member of the OHA Board of Trustees.

13. OHA's Board of Trustees governs OHA and is responsible for establishing OHA policy and managing the agency's trust for the benefit of current and future beneficiaries.

14. Respondent AKANA was, at all times relevant herein, a state employee as defined in HRS § 84-3.

15. As a state employee, Respondent AKANA was, at all times relevant herein, required to comply with the State Ethics Code.

OHA Trustee Annual Allowance

16. Pursuant to OHA's executive policies, each OHA Trustee is provided with an annual allowance ("Trustee Annual Allowance") to use for purposes that include: developing and maintaining a communications network with OHA beneficiaries and the

general public; promoting a broader understanding of, and encouraging participation in, Hawaiian issues within the Hawaiian community; covering the costs of social and charitable functions that a Trustee is expected to attend or support; covering costs associated with attending conferences, seminars, or meetings; providing OHA beneficiaries support for self-improvement and education; providing funding to support schools and organizations; and providing compassionate assistance to OHA beneficiaries and their families in emergencies and times of need.

Expenditures from Trustee Annual Allowance:
Political Contributions

17. 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 \$50.00.

18. 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 \$50.00.

19. On or about December 5, 2017, Respondent AKANA used Trustee Annual Allowance funds to make a donation of \$500.00 to pay for entertainment for Kanaka Maoli, a Political Action Committee event.

Trustee Annual Allowance Expenditures:
Home Cable Television Services

20. On or about each of the following dates, Respondent AKANA used Trustee Annual Allowance funds to pay Oceanic Time Warner Cable ("Oceanic") for

home cable television service for her personal use, at a cost of approximately \$80.00 to \$90.00 a month:

- a. November 20, 2015;
- b. December 20, 2015;
- c. January 22, 2016;
- d. February 15, 2016;
- e. March 5, 2016;
- f. April 10, 2016;
- g. May 9, 2016;
- h. June 6, 2016; and
- i. June 30, 2016.

Trustee Annual Allowance Expenditures:
Services Above and Beyond Basic Home Internet Service

21. On or about each of the dates listed below, Respondent AKANA used Trustee Annual Allowance funds to pay \$80.00 or \$82.00 to Oceanic or Spectrum for monthly home internet service, which she represents was for OHA-related purposes. Even if the use of Trustee Annual Allowance funds for home internet service was proper, however, the actual approximate cost of basic home internet service was only \$47.89 per month:

- a. October 22, 2016 (payment of \$80.00 to Oceanic);
- b. November 24, 2016 (payment of \$80.00 to Oceanic);
- c. December 20, 2016 (payment of \$80.00 to Oceanic);
- d. January 20, 2017 (payment of \$80.00 to Oceanic);

- e. February 13, 2017 (payment of \$80.00 to Oceanic);
- f. March 13, 2017 (payment of \$80.00 to Oceanic);
- g. April 20, 2017 (payment of \$80.00 to Oceanic);
- h. May 20, 2017 (payment of \$80.00 to Oceanic);
- i. June 25, 2017 (payment of \$80.00 to Oceanic);
- j. July 21, 2017 (payment of \$80.00 to Spectrum);
- k. August 24, 2017 (payment of \$80.00 to Spectrum);
- l. September 10, 2017 (payment of \$82.00 to Spectrum);
- m. October 10, 2017 (payment of \$80.00 to Spectrum);
- n. November 20, 2017 (payment of \$80.00 to Spectrum);
- o. December 13, 2017 (payment of \$80.00 to Spectrum); and
- p. December 30, 2017 (payment of \$80.00 to Spectrum).

Trustee Annual Allowance Expenditures:

iTunes Gift Card; Hawaiian Airlines "Premier Club" Membership; Home Security System

22. On or about September 18, 2013, Respondent AKANA used Trustee Annual Allowance funds to purchase an Apple iTunes gift card from the Apple Store, Kahala, valued at \$50.00.

23. On or about July 15, 2014, Respondent AKANA used Trustee Annual Allowance funds to purchase a "Premier Club" membership with Hawaiian Airlines for \$249.00. Such membership provided benefits including but not limited to check-in luggage allowance of up to two pieces at no charge, priority pre-boarding, "Premier Club Lounge" access at various airports, and a complimentary "Unlimited TV & More Pack" on certain air routes.

24. On or about September 9, 2015, Respondent AKANA used Trustee Annual Allowance funds to purchase a "Canary" home security system from Verizon Wireless for her home for \$209.41.

Trustee Annual Allowance Expenditures:
Food for Parties for OHA Personnel

25. Respondent AKANA used Trustee Annual Allowance funds to purchase food for parties for herself and/or OHA personnel, as follows:

- a. On or about July 3, 2014, Respondent AKANA used Trustee Annual Allowance funds pay for food from 1132 Café & Catering in the amount of \$268.59, for a "going away party" for a staff member;
- b. On or about February 10, 2015, Respondent AKANA used Trustee Annual Allowance funds in the amount of \$61.83, to pay for food from Zippy's, for a staff "birthday celebration";
- c. On or about February 17, 2017, Respondent AKANA used Trustee Annual Allowance funds in the amount of \$25.00 for food that was purchased for a party for a staff member's "last day";
- d. On or about December 5, 2017, Respondent AKANA used Trustee Annual Allowance funds to pay for food from Royal Kitchen, in the amount of \$23.72, for a "pot luck" OHA Trustees' holiday party.

Trustee Annual Allowance Expenditures:
Donations to Hawaiian Humane Society

26. On or about February 20, 2014, Respondent AKANA used Annual Trustee allowance funds to make a donation of \$50.00 to the Hawaiian Humane Society, an animal welfare organization that has no connection to OHA.

27. On or about August 8, 2017, Respondent AKANA used Annual Trustee allowance funds to make a donation of \$25.00 to the Hawaiian Humane Society.

Receipt of Gifts from OHA Beneficiary (Payment of Legal Fees);
Reporting of Gifts from OHA Beneficiary

28. During the time period of approximately 2015 through 2017, Respondent AKANA was engaged in a lawsuit she filed against OHA ("Akana-OHA Lawsuit"). The legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit were paid in part by Abigail Kawananakoa, an OHA beneficiary.

29. From approximately February 2017 up to and including September 2017, OHA Trustees, including Respondent AKANA, were engaged in a lawsuit filed by Kawananakoa against OHA. Respondent AKANA participated in at least one Executive Session meeting of the OHA Trustees regarding the Kawananakoa-OHA Lawsuit.

30. 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 Kawananakoa, valued at \$15,960.43. Respondent AKANA did not report the date that she received this gift.

31. On or about August 29, 2017, Commission staff notified Respondent AKANA, through her counsel, 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 she received each gift. Commission staff likewise notified Respondent AKANA's counsel 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.

32. On or about September 8, 2017, Respondent AKANA filed an amended gifts disclosure statement with the Commission for the period of June 1, 2016 through June 1, 2017 to report that she had received the following gifts from Kawanānakoā:

- a. Legal fees, valued at \$447.28, on December 16, 2016;
- b. Legal fees, valued at \$15,513.15, on April 28, 1017; and
- c. Legal fees, valued at \$6,000.00, on June 17, 2017.

33. On or about September 26, 2017, Respondent AKANA filed a gifts disclosure statement with the Commission to report that she had also received the following, previously unreported gifts from Kawanānakoā:

- d. Legal fees, valued at \$10,478.52, on July 1, 2015;
- e. Legal fees, valued at \$9,521.48, on August 10, 2015;
- f. Legal fees, valued at \$6,000.00, on March 24, 2016; and
- g. Legal fees, valued at \$24,125.50, on April 19, 2016.

34. The deadline by which Respondent AKANA was required to report the gift valued at \$10,478.52, reportedly received on July 1, 2015, was June 30, 2016.

35. The deadline by which Respondent AKANA was required to report the gift valued \$9,521.48, reportedly received on August 10, 2015, was June 30, 2016.

36. The deadline by which Respondent AKANA was required to report the gift valued at \$6,000.00, reportedly received on March 24, 2016, was due June 30, 2016.

37. The deadline by which Respondent AKANA was required to report the gift valued at \$24,125.50, reportedly received on April 19, 2016, was due June 30, 2016.

Trustee Annual Allowance Expenditure:
Floral Gift to Kawananakoa

38. On or about August 17, 2017, Respondent AKANA used Annual Trustee allowance funds to purchase a floral gift for Kawananakoa when Kawanankoa suffered an illness. The floral gift, which was purchased from Jr. Lou & T, cost \$125.65.

COUNTS 1 TO 7

Violations of Gifts Law, § 84-11 and/or Fair Treatment Law, HRS § 84-13
Acceptance of Gifts from OHA Beneficiary
(Legal Fees)

39. The allegations contained in the paragraphs above are repeated and realleged.

40. Respondent AKANA, as an OHA Trustee, was involved in official action affecting the interests of Kawananakoa, an OHA beneficiary.

41. Respondent AKANA received gifts from Kawananakoa in the form of Kawananakoa's payment of Respondent AKANA's legal fees. These gifts were due to Respondent AKANA's status as an OHA Trustee.

42. Respondent AKANA, by accepting a gift from Kawananakoa on or about July 1, 2015, in the form of Kawananakoa's payment of \$10,478.52 in legal fees

incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

43. Respondent AKANA, by accepting a gift from Kawananakoa on or about August 10, 2015, in the form of Kawananakoa's payment of \$9,521.48 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

44. Respondent AKANA, by accepting a gift from Kawananakoa on or about March 24, 2016, in the form of Kawananakoa's payment of \$6,000.00 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

45. Respondent AKANA, by accepting a gift from Kawananakoa on or about April 19, 2016, in the form of Kawananakoa's payment of \$24,125.50 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

46. Respondent AKANA, by accepting a gift from Kawananakoa, on or about December 16, 2016, in the form of Kawananakoa's payment of \$447.28 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

47. Respondent AKANA, by accepting a gift from Kawananakoa on or about April 28, 2017, in the form of Kawananakoa's payment of \$15,513.15 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

48. Respondent AKANA, by accepting a gift from Kawananakoa on or about June 17, 2017, in the form of Kawananakoa's payment of \$6,000.00 in legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit, violated HRS § 84-11 and/or HRS § 84-13.

COUNTS 8 TO 12

Violations of Gifts Reporting Law, HRS § 84-11.5
Incomplete and Late Reporting of Gifts
(Legal Fees)

49. The allegations contained in the paragraphs above are repeated and realleged.

50. Respondent AKANA, in filing a gifts disclosure statement with the Commission on or about June 22, 2017 to report gifts of legal fees she received from Kawananakoa totaling \$15,960.43, failed to report the dates that she received these gifts, in violation of HRS § 84-11.5.

51. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on July 1, 2015 (\$10,478.52) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5.

52. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on August 10, 2015 (\$9,521.48) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5.

53. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on March 24, 2016 (\$6,000.00) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5.

54. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on April 19, 2016 (\$24,125.50) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5.

COUNT 13

Violation of Fair Treatment Law, HRS § 84-13

Use of Official Position to Accord Another Special Treatment
(Trustee Annual Allowance Expenditure for Floral Gift to Kawananakoa)

55. The allegations contained in the paragraphs above are repeated and realleged.

56. Respondent AKANA, by using Trustee Annual Allowance funds on or about August 17, 2017 to purchase a \$125.65 floral gift from Jr. Lou & T for Kawananakoa, after Kawananakoa had gifted Respondent AKANA more than \$72,000.00 towards Respondent AKANA's legal fees, misused her official position by expending Trustee Annual Allowance funds to accord Kawananakoa special treatment, in violation of HRS § 84-13.

COUNTS 14 TO 16

Violations of Fair Treatment Law, HRS § 84-13

Use of Official Position to Secure Unwarranted Personal Benefits
(Trustee Annual Allowance Expenditures for Apple iTunes Gift Card;
Hawaiian Airlines Premier Club Membership; Canary Home Security System)

57. The allegations contained in the paragraphs above are repeated and realleged.

58. Respondent AKANA, by using Trustee Annual Allowance funds to purchase an Apple iTunes gift card valued at \$50.00 on or about September 18, 2013,

used or attempted to use her official position to secure an unwarranted personal benefit for herself, in violation of HRS § 84-13.

59. Respondent AKANA, by using Trustee Annual Allowance funds to purchase a Premier Club membership with Hawaiian Airlines costing \$249.00, used or attempted to use her official position to secure an unwarranted personal benefit for herself, in violation of HRS § 84-13.

60. Respondent AKANA, by using Trustee Annual Allowance funds to purchase a Canary home security system from Verizon Wireless costing \$209.41, used or attempted to use her official position to secure an unwarranted personal benefit for herself, in violation of HRS § 84-13.

COUNTS 17 TO 25

Violations of Fair Treatment Law, HRS § 84-13

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

61. The allegations contained in the paragraphs above are repeated and realleged.

62. Respondent AKANA, by using Trustee Annual Allowance funds of approximately \$80.00 to \$90.00 on or about each of the dates listed below, used or attempted to use her official position to secure unwarranted personal benefits for herself -- specifically, monthly home cable television service from Oceanic for her personal use -- in violation of HRS § 84-13:

- a. November 20, 2015;
- b. December 20, 2015;

- c. January 22, 2016;
- d. February 15, 2016;
- e. March 5, 2016;
- f. April 10, 2016;
- g. May 9, 2016;
- h. June 6, 2016; and
- i. June 30, 2016.

Each expenditure made by Respondent AKANA from the Trustee Annual Allowance fund for monthly home cable television service constituted a separate violation of HRS § 84-13.

COUNTS 26 TO 41

Violations of Fair Treatment Law, HRS § 84-13

Use of Official Position to Secure Unwarranted Personal Benefits
(Trustee Annual Allowance Expenditures for Services Above and Beyond
Basic Home Internet Service)

63. The allegations contained in the paragraphs above are repeated and realleged.

64. Respondent AKANA, by using Trustee Annual Allowance funds of \$80.00 or \$82.00 on or about each of the dates listed below to purchase monthly home internet service from Oceanic or Spectrum, when the approximate cost of basic home internet service was only \$47.89 per month, used or attempted to use her official position to secure unwarranted personal benefits for herself, in violation of HRS § 84-13:

- a. October 22, 2016 (payment of \$80.00 to Oceanic);
- b. November 24, 2016 (payment of \$80.00 to Oceanic);
- c. December 20, 2016 (payment of \$80.00 to Oceanic);
- d. January 20, 2017 (payment of \$80.00 to Oceanic);
- e. February 13, 2017 (payment of \$80.00 to Oceanic);
- f. March 13, 2017 (payment of \$80.00 to Oceanic);
- g. April 20, 2017 (payment of \$80.00 to Oceanic);
- h. May 20, 2017 (payment of \$80.00 to Oceanic);
- i. June 25, 2017 (payment of \$80.00 to Oceanic);
- j. July 21, 2017 (payment of \$80.00 to Spectrum);
- k. August 24, 2017 (payment of \$80.00 to Spectrum);
- l. September 10, 2017 (payment of \$82.00 to Spectrum);
- m. October 10, 2017 (payment of \$80.00 to Spectrum);
- n. November 20, 2017 (payment of \$80.00 to Spectrum);
- o. December 13, 2017 (payment of \$80.00 to Spectrum)
- p. December 30, 2017 (payment of \$80.00 to Spectrum).

Each expenditure made by Respondent AKANA out of the Trustee Annual Allowance that was higher than the cost of basic internet service constituted a separate violation of HRS § 84-13.

COUNTS 42 TO 45

Violations of Fair Treatment Law, HRS § 84-13

Use of Official Position to Secure Unwarranted Personal Benefits
(Trustee Annual Allowance Expenditures for Food for Parties)

65. The allegations contained in the paragraphs above are repeated and realleged.

66. Respondent AKANA, by using Trustee Annual Allowance funds to pay for food for parties for herself and/or OHA personnel as described below, used or attempted to use her official position to secure unwarranted personal benefits for OHA personnel, including herself, in violation of HRS § 84-13:

- a. July 3, 2014, \$268.59 for food from 1132 Café & Catering for a "going away party" for a staff member;
- b. February 10, 2015, \$61.83 for food from Zippy's, for a staff "birthday celebration";
- c. February 17, 2017, \$25.00 for food purchased for a party for a staff member's "last day";
- d. December 5, 2017, \$23.72 for food from Royal Kitchen, for a "pot luck" OHA Trustees' holiday party.

Each expenditure made by Respondent AKANA out of Trustee Annual Allowance funds to pay for food for parties for herself and/or OHA personnel constituted a separate violation of HRS § 84-13.

COUNTS 46 TO 48

Violations of Fair Treatment Law, HRS § 84-13

Use of Official Position for Political Purposes

(Trustee Annual Allowance Expenditures for Political Contributions)

67. The allegations contained in the paragraphs above are repeated and realleged.

68. Respondent AKANA, by using Trustee Annual Allowance funds to make a political contribution of \$50.00 to the Hawaii County Democrats on or about February 11, 2014, used or attempted to use her official position for political purposes -- that is, to unfairly benefit a political party -- in violation of HRS § 84-13.

69. Respondent AKANA, by using Trustee Annual Allowance funds to make a political contribution of \$50.00 to the Democratic National Committee on or about February 11, 2014, used or attempted to use her official position for political purposes -- that is, to unfairly benefit a political party -- in violation of HRS § 84-13.

70. Respondent AKANA, by using Trustee Annual Allowance funds on or about December 5, 2017 to make a donation of \$500.00 to pay for entertainment for the Kanaka Maoli Political Action Committee event, used or attempted to use her official position for political purposes -- that is, to unfairly benefit one or more political action committees -- in violation of HRS § 84-13.

COUNTS 49 TO 50

Violations of Fair Treatment Law, HRS § 84-13

Use of Official Position to Grant Unwarranted Benefits

(Trustee Allowance Expenditures for Donations to Hawaiian Humane Society)

71. The allegations contained in the paragraphs above are repeated and realleged.

72. Respondent AKANA, by using Trustee Annual Allowance funds to make a donation of \$50.00 to the Hawaiian Humane Society on or about February 20, 2014, used or attempted to use her official position to unfairly benefit the Hawaiian Humane Society, an animal welfare association that had no connection to OHA, in violation of HRS § 84-13.

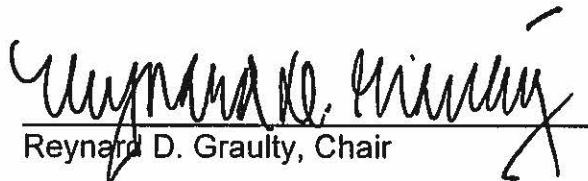
73. Respondent AKANA, by using Trustee Annual Allowance funds to make a donation of \$25.00 to the Hawaiian Humane Society on or about August 8, 2017, used or attempted to use her official position to unfairly benefit the Hawaiian Humane Society, in violation of HRS § 84-13.

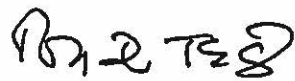
Notice of Respondent AKANA's Rights and Obligations

Respondent AKANA may file a written response to the Charge. HRS § 84-31(b). The Commission shall investigate the allegations contained in the Charge on a confidential basis. HRS § 84-31(b). If a majority of the Commission determines that there is probable cause to believe that a violation of the State Ethics Code might have occurred, the Commission may issue a Further Statement of Alleged Violation and may subsequently set the matter for hearing. HRS § 84-31(b). Upon issuance of a notice of hearing, the Charge and the Further Statement of Alleged Violation and the Respondent's responses thereto shall become public records. HRS § 84-31(c).

Dated: Honolulu, Hawaii, April 19, 2018.

HAWAII STATE ETHICS COMMISSION


Reynard D. Gaulty, Chair


Ruth D. Tschumy, Vice Chair

EXCUSED
Susan N. DeGuzman, Commissioner


David O'Neal, Commissioner


Melinda Wood, Commissioner

EXHIBIT 3

BICKERTON ■ DANG
A LIMITED LIABILITY LAW PARTNERSHIP

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Attorneys for Respondent
ROWENA M.N. AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

Complainant,

vs.

ROWENA AKANA;

Respondent.

COMPL-C-15-00236

**RESPONDENT ROWENA AKANA'S
ANSWER TO HAWAII STATE
ETHICS COMMISSION'S
CHARGES DATED APRIL 19, 2018
AND RECEIVED MAY 3, 2018;
CERTIFICATE OF SERVICE**

**RESPONDENT ROWENA AKANA'S ANSWER TO HAWAII STATE ETHICS
COMMISSION'S CHARGES DATED APRIL 19, 2018 AND RECEIVED MAY 3, 2018**

ROWENA AKANA ("AKANA" or "Respondent"), through her undersigned counsel, hereby respectfully answers the Charges of the Complainant, Hawaii State Ethics Commission ("Complainant") dated April 19, 2018 and received through her counsel on May 3, 2018 (the "Charges"). Subject to the denials and the affirmative defenses stated herein, ROWENA AKANA responds as follows:

1. Respondent admits the allegations in paragraphs 12, 13, 28, 29, 30, 31, 32, 33, 38, of the Charges but admits no wrongdoing in connection with any of the admitted acts or occurrences.

2. Respondent denies the allegations in paragraphs 20, 40, 42, 43, 44, 45, 46, 47, 48, 56, 57, 58, 59, 60, 62, 64, 66, 68, 69, 70, 72, 73 of the Charges. In addition, certain of the allegations in these paragraphs are addressed below with further responses by the Respondent.

3. Respondent denies the allegations in paragraph 41 of the Charges and more specifically states that, because the payment of legal fees referenced therein for the defense of that lawsuit referenced therein was brought against Ms. Akana in her official capacity, said payments of legal fees, in the first instance benefitted the State of Hawaii, who was, as a result, not required to pay for the defense of Ms. Akana in her official capacity, and only secondarily to Ms. Akana, who would have otherwise been entitled to defense provided by OHA and/or the State. Furthermore, Respondent is without sufficient information or knowledge to admit or deny that portion of the allegations that state “the gifts were due to Respondent AKANA’s status as an OHA Trustee” and, therefore denies same, and states, instead, that to the best of her knowledge the gifts referenced were due to the gifting party’s desire to promote transparency and fairness in OHA affairs, but she leaves Complainant to its proof regarding proving the donor’s motives and/or intent.

4. Respondent does not presently have information in her possession or knowledge or sufficient documentary evidence at her disposal sufficient to enable her to admit or deny the allegations in paragraphs 1 (first sentence), 17, 18, 19, 22, 23, 24, 25, 26, 27 of the Charges, and, therefore, she denies same and leaves Complainant to its proof.

5. Respondent responds to paragraph 21 of the Charges as follows: she admits the allegations in the first paragraph; she is without sufficient information, knowledge or copies of the relevant documentary evidence to admit or deny the allegations in the second sentence, and therefore, denies same and leaves Complainant to its proof.

6. Respondent responds to the second sentence of paragraph 1 of the Charges as follows: the allegations therein merely summarize the contents of the Hawai'i State Constitution, and, therefore, she refers the Complainant and the Hearings Officer, Administrator or Judge to the document referenced, which speaks for itself, and leaves Complainant to its proof.

7. Respondent responds to the paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Charges as follows: the allegations therein merely summarize the contents of Hawai'i law, statute and/or administrative rules, and, therefore, she refers the Complainant and the Hearing Officer, Administrator or Judge to the laws, statutes and/or rules referenced, which speak for themselves, and leaves Complainant to its proof. Furthermore, said paragraphs state legal conclusions or statements or principles of law, statute or rule, and not facts within the Respondent's first-hand knowledge, to which Respondent is not required to respond.

8. Respondent is not required to respond to paragraphs 14, 15, 16, 34, 35, 36, 37, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 64, 66, 68, 69, 70, 72, 73 of the Charges because said allegations comprise and prematurely state legal conclusions and/or recitations of purported legal duties, principles or obligations imposed under law, statute or administrative rule, and as a result, she denies same and leaves Complainant to its proof, in addition to certain of these allegations being specifically denied outright above in ¶ 2.

9. Respondent is not required to admit or deny the allegations in paragraphs 39, 49, 55, 57, 61, 63, 65, 67, 71, of the Charges because they merely repeat, reallege and incorporate prior paragraphs, but, nevertheless, for uniformity, she repeats, realleges and incorporates her responses to said prior paragraphs, in turn.

10. Respondent hereby requests a hearing before a neutral hearing officer to determine the lack of validity of the charges brought against her and to dismiss same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Charges fails to state a claim against the Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Complainant lacks subject matter jurisdiction over all of the claims and charges asserted in the Charges against Respondent relating to OHA Trustee trust fund expenditures, because Complainant does not have jurisdiction over the discretionary spending accounts of the OHA Trustees, since such funds comprise “trust funds” and do not constitute “state funds,” and Complainant does not have jurisdiction over the former.

THIRD AFFIRMATIVE DEFENSE

3. Complainant’s claims are barred, in whole or in part, because Complainant lacks standing to bring the charges alleged.

FOURTH AFFIRMATIVE DEFENSE

4. Complainant’s charges are barred and/or Complainant is not entitled to the relief sought due to the doctrines of laches and waiver.

FIFTH AFFIRMATIVE DEFENSE

5. Complainant’s charges are barred, in whole or in part, in that they violate the Equal Protection clause and Rights of Citizens Clause of the Hawaii State Constitution because they single the Respondent out for alleged acts taken and/or expenditures made in her official capacity as an OHA Trustee that a large number of other OHA Trustees regularly engage in and consider proper, for which those OHA Trustees have not faced similar proceedings and charges, thereby subjecting the Respondent to an arbitrary exercise of Complainant’s power and dissimilar treatment under the law.

SIXTH AFFIRMATIVE DEFENSE

6. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's Equal Protection and Due Process rights and Rights of Citizens under the Hawaii State Constitution by singling the Respondent out for alleged wrongful acts taken in her official capacity as an OHA Trustee, for acts and expenditures that were previously *approved* by OHA, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA.

SEVENTH AFFIRMATIVE DEFENSE

7. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's due process rights under the Hawaii State Constitution, as well as, the Cruel and Excessive Punishment Prohibition contained in the Hawaii State Constitution, by seeking fines and penalties against the Respondent that are excessive and grossly disproportionate to the underlying charges – such as seeking a \$1,000.00 fine in connection with an alleged expenditure violation in the amount of \$23.72 for food purchased to bring to an OHA pot-luck holiday party – thereby constituting an arbitrary exercise and abuse of Complainant's power and unconstitutional, excessive fines and punishment.

EIGHTH AFFIRMATIVE DEFENSE

8. Complainant's charges are barred, in whole or in part, by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE

9. Complainant's charges re barred, in whole or in part, by the doctrines of unclean hands and persistent inequitable conduct.

TENTH AFFIRMATIVE DEFENSE

10. Complainant's charges are barred, in whole or in part, due to lack of causation.

ELEVENTH AFFIRMATIVE DEFENSE

11. Complainant's charges are barred, in whole or in part, due to improper motive on the part of the Complainant in that, upon information and belief, it is engaged in a wrongful plan and scheme to alienate, isolate and remove Respondent from her OHA Trustee position, in collusion with a cabal of other OHA Trustees and related persons who have historically opposed Respondent due to her outspoken nature, demands for full transparency and activist pursuits.

TWELFTH AFFIRMATIVE DEFENSE

12. Complainant's charges are barred, in whole or in part, by statutes of limitations or by equivalent time limitations for Complainant to first bring charges.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Respondent states her intention to rely on any other applicable affirmative defenses permitted under the Hawaii Rules of Civil Procedure, all statutes and laws and rules applicable to the Hawaii State Ethics Commission, other Hawaii statute, and other Hawaii case law, and Respondent will amend and/or supplement this Answer/Response if and when such defenses are determined to be applicable, and to seek relief from the courts of the state of Hawai'i.

WHEREFORE, Respondent ROWENA AKANA hereby respectfully prays as follows in response to the Charges:

- a. That she be granted a hearing before a neutral hearings officer to determine the invalidity of the charges against her and to dismiss the fines requested in connection therewith;
- b. That the Charges against her be dismissed with prejudice;

- c. That a finding of no wrongdoing on Respondent's part ensue;
- d. That no fines be levied against her;
- e. That, in the alternative, if any fines are to be levied against her for technical violations, such as for belated reporting, that they be nominal due to no wrongful intent, motive or wrongdoing, in the amount of \$1.00 or some other amount deemed reasonable but less than the maximum \$1,000;
- f. That she be awarded her reasonable attorneys' fees and costs incurred in defending against this frivolous and ill-motivated proceeding;
- g. For such other and further relief as the neutral Hearing Officer may deem just and proper.

DATED: Honolulu, Hawai'i, May 23, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

COMPL-C-15-00236

Complainant,

vs.

CERTIFICATE OF SERVICE

ROWENA AKANA;

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following party at their last known address in the manner and on the date herein below indicated:

Danie Gluck, Esq.
Virginia Chock, Esq.
HAWAII STATE ETHICS COMMISSION
1001 Bishop Street,
ASB Tower, Suite 970
Honolulu, HI 96813

Via Hand Delivery

DATED: Honolulu, Hawai'i, May 23, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA

EXHIBIT 4

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,)	COMPL-C-15-00236
)	
Complainant,	)	FURTHER STATEMENT
	)	OF ALLEGED VIOLATION
vs.)	
)	
ROWENA AKANA,)	
)	
Respondent.)	

FURTHER STATEMENT OF ALLEGED VIOLATION

Under the authority of and pursuant to §§ 84-31(a) and 84-31(b), Hawaii Revised Statutes ("HRS"), and § 21-5-2, Hawaii Administrative Rules, the HAWAII STATE ETHICS COMMISSION ("Commission"), in furtherance of Charge No. COMPL-C-15-00236, Hawaii State Ethics Commission vs. Rowena Akana, issued by the Commission on April 19, 2018, hereby issues this Further Statement of Alleged Violation against ROWENA AKANA ("Respondent AKANA") for violations of the State Ethics Code, HRS chapter 84, based on the following:

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. 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).

The Gifts Law

6. The Gifts Law, HRS § 84-11, prohibits a state employee from soliciting, 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 on the employee's part.

The Gifts Reporting Law

7. 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).

8. 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).

9. 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).

10. 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).

11. 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

12. 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.

Respondent AKANA's State Employment

13. Respondent AKANA, at all times relevant herein, was employed with the Office of Hawaiian Affairs ("OHA"), a state agency, as an elected member of the OHA Board of Trustees.

14. According to OHA's website, "The Board of Trustees is responsible for establishing OHA policy and managing the agency's trust."

15. Respondent AKANA was, at all times relevant herein, a state employee as defined in HRS § 84-3.

16. As a state employee, Respondent AKANA was, at all times relevant herein, required to comply with the State Ethics Code.

OHA Trustee Annual Allowance

17. Pursuant to OHA's executive policies, each OHA Trustee is provided with an annual allowance ("Trustee Annual Allowance") to use for purposes that include: developing and maintaining a communications network with OHA beneficiaries and the general public; promoting a broader understanding of, and encouraging participation in, Hawaiian issues within the Hawaiian community; covering the costs of social and charitable functions that a Trustee is expected to attend or support; covering costs associated with attending conferences, seminars, or meetings; providing OHA beneficiaries support for self-improvement and education; providing funding to support schools and organizations; and providing compassionate assistance to OHA beneficiaries and their families in emergencies and times of need.

Trustee Annual Allowance Expenditures:
Political Contributions

18. 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 \$50.00.

19. 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 \$50.00.

20. On or about December 5, 2017, Respondent AKANA used Trustee Annual Allowance funds to make a donation of \$500.00 to pay for entertainment for Kanaka Maoli, a Political Action Committee event.

Trustee Annual Allowance Expenditures
for Home Cable Television Service
(November 2015 through November 2016)

21. During the years 2015, 2016, and 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 later rebranded as "Spectrum" in or around 2017. The Surf Pak Xtra package consisted of standard television service as well as access to additional channels, and "extreme" internet service.

22. On or about each of the dates listed below, Respondent AKANA used Trustee Annual Allowance funds to pay the full amount of Oceanic's monthly bill for the Surf Pak Xtra package, as follows:

- a. November 20, 2015, \$127.90;
- b. December 20, 2015, \$127.90;
- c. January 22, 2016, \$127.90;
- d. February 15, 2016, \$135.78;
- e. March 5, 2016, \$132.43;

- f. April 10, 2016, \$134.37;
- g. May 9, 2016, \$133.55;
- h. June 6, 2016, \$133.55;
- i. June 30, 2016, \$133.55;
- j. August 8, 2016, \$133.55;
- k. September 5, 2016, \$133.55;
- l. October 22, 2016, \$136.83; and
- m. November 24, 2016, \$136.83.

23. Respondent AKANA represents that she used the home internet service provided in the Surf Pak Xtra package for OHA-related business. However, in 2015 and 2016, the approximate monthly cost of the type of internet service she used was under \$50.00. Thus, on the thirteen occasions listed in the previous paragraph – from approximately November 2015 through November 2016 – Respondent AKANA used Trustee Annual Allowance funds to pay for home cable television service.

Trustee Annual Allowance Expenditures
for Home Cable Television Service
(December 2016 through December 2017)

24. On or about each of the dates below, Respondent AKANA used \$80.00 or \$82.00 in Trustee Annual Allowance funds to pay a portion of Oceanic's or Spectrum's total monthly bill for the Surf Pak Xtra package, as follows:

- a. December 21, 2016, used \$80.00; Oceanic's total monthly bill was \$136.83;

- b. January 20, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- c. February 13, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- d. March 15, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- e. April 20, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- f. May 20, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- g. June 25, 2017, used \$80.00; Oceanic's total monthly bill was \$136.83;
- h. July 21, 2017, used \$80.00; Spectrum's total monthly bill was \$136.83;
- i. August 24, 2017, used \$80.00; Spectrum's total monthly bill was \$136.83;
- j. September 10, 2017, used \$82.00; Spectrum's total monthly bill was \$138.43;
- k. October 10, 2017, used \$80.00; Spectrum's total monthly bill was \$138.43;
- l. November 20, 2017, used \$80.00; Spectrum's total monthly bill was \$138.43;
- m. December 13, 2017, used \$80.00; Spectrum's total monthly bill was \$138.43; and
- n. December 30, 2017, used \$80.00; Spectrum's total monthly bill was \$138.43.

25. Respondent AKANA used \$80.00 or \$82.00 of Trustee Annual Allowance funds on or about the above dates, purportedly, to pay for the home internet service provided in the Surf Pak Xtra package, to be used for OHA-related business. However, at that time, the approximate monthly cost for the type of internet service she used was under \$50.00. Thus, on the fourteen occasions listed in the previous paragraph – from approximately December 2016 through December 2017 – Respondent AKANA used Trustee Annual Allowance funds to partly pay for home cable television service.

Trustee Annual Allowance Expenditures:
iTunes Gift Card; Hawaiian Airlines "Premier Club" Membership;
Home Security System

26. On or about September 18, 2013, Respondent AKANA used Trustee Annual Allowance funds to purchase an Apple iTunes gift card from the Apple Store, Kahala, valued at \$50.00.

27. On or about July 15, 2014, Respondent AKANA used Trustee Annual Allowance funds to purchase a "Premier Club" membership with Hawaiian Airlines for \$249.00. Such membership provided benefits including but not limited to "Premier Club Lounge" access at various airports, a complimentary "Unlimited TV & More Pack" on certain air routes, and priority pre-boarding. The "Premier Club" membership also allowed members to check up to two pieces of luggage at no charge, but OHA's corporate account with Hawaiian Airlines already permitted travelers to check two pieces of baggage for free.

28. On or about September 9, 2015, Respondent AKANA used Trustee Annual Allowance funds to purchase a "Canary" home security system from Verizon, for her home, for \$209.41.

Trustee Annual Allowance Expenditures:
Food for Self, Other OHA Trustees, and/or OHA Staff

29. Respondent AKANA used Trustee Annual Allowance funds on at least twelve occasions to purchase food for herself, other OHA Trustees, and/or OHA staff, as described below:

- a. On or about October 3, 2013, Respondent AKANA used Trustee Annual Allowance funds to pay for lunch for staff from Legend Seafood Restaurant, in the amount of \$30.52;
- b. On or about March 17, 2014, Respondent AKANA used Trustee Annual Allowance funds to pay for refreshments for staff from Leonard's Bakery, in the amount of \$17.80;
- c. On or about July 3, 2014, Respondent AKANA used Trustee Annual Allowance funds to pay for food for a "going away party" for a staff member from 1132 Café & Catering, in the amount of \$268.59;
- d. On or about August 4, 2014, Respondent AKANA used Trustee Annual Allowance funds to pay for breakfast for staff from Liliha Bakery, in the amount of \$31.94;

- e. On or about February 10, 2015, Respondent AKANA used Trustee Annual Allowance funds to pay for food for a staff "birthday celebration" from Zippy's Nimitz, in the amount of \$61.83;
- f. On or about January 23, 2015, Respondent AKANA used Trustee Annual Allowance funds to pay for manapua for staff from Royal Kitchen, in the amount of \$66.49;
- g. 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;
- h. 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;
- i. 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;
- j. 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;
- k. 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 party for a staff member's "last day," in the amount of \$25.00; and

- I. On or about December 5, 2017, Respondent AKANA used Trustee Annual Allowance funds to pay for noodles from Royal Kitchen for a "pot luck" OHA Trustees' holiday party, in the amount of \$23.72.

Trustee Annual Allowance Expenditures:
Donations to Hawaiian Humane Society

30. On or about February 20, 2014, Respondent AKANA used Annual Trustee Allowance funds to make a donation of \$50.00 to the Hawaiian Humane Society, an animal welfare organization that has no connection to OHA.

31. On or about August 8, 2017, Respondent AKANA used Annual Trustee Allowance funds to make a donation of \$25.00 to the Hawaiian Humane Society.

Receipt of Gifts from OHA Beneficiary (Payment of Legal Fees);
Reporting of Gifts

32. From approximately 2015 through 2017, Respondent AKANA was engaged in a lawsuit she filed against OHA ("Akana vs. OHA Lawsuit"). The legal fees incurred by Respondent AKANA in the Akana-OHA Lawsuit were paid in part by Abigail Kawananakoa ("Kawananakoa"), an OHA beneficiary.

33. Kawananakoa had interests that may have been affected by official action or lack of action on the part of Respondent Akana.

34. In or around February 2017, Kawananakoa filed a lawsuit against OHA ("Kawananakoa vs. OHA Lawsuit"). The OHA Board of Trustees, including Respondent AKANA, were engaged in the Kawananakoa vs. OHA Lawsuit from approximately February 2017 through September 2017. Respondent AKANA participated in at least

one Executive Session meeting of the OHA Board Trustees regarding the Kawananakoa vs. OHA Lawsuit.

35. 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 Kawananakoa valued at \$15,960.43.

36. On or about August 29, 2017, Commission staff notified Respondent AKANA, through her counsel, 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 she received each gift. Commission staff also notified Respondent AKANA's counsel 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.

37. On or about September 8, 2017, Respondent AKANA filed an amended gifts disclosure statement with the Commission for the period of June 1, 2016 through June 1, 2017, to report that she had received the following gifts from 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.

38. On or about September 26, 2017, Respondent AKANA filed a gifts disclosure statement with the Commission to report that she had also received the following, previously unreported gifts from Kawananakoa:

- 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.
39. The deadline by which Respondent AKANA was required to report the gift valued at \$10,478.52, reportedly received on July 1, 2015, was June 30, 2016.
40. The deadline by which Respondent AKANA was required to report the gift valued \$9,521.48, reportedly received on August 10, 2015, was June 30, 2016.
41. The deadline by which Respondent AKANA was required to report the gift valued at \$6,000.00, reportedly received on March 24, 2016, was June 30, 2016.
42. The deadline by which Respondent AKANA was required to report the gift valued at \$24,125.50, reportedly received on April 19, 2016, was June 30, 2016.

COUNTS 1 TO 4

Violations of Gifts Reporting Law, HRS § 84-11.5
Failure to Report Gifts of Legal Fees by Statutory Deadline

43. The allegations contained in the paragraphs above are repeated and realleged.

44. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on July 1, 2015 (\$10,478.52) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5 (COUNT 1).

45. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on August 10, 2015 (\$9,521.48) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5 (COUNT 2).

46. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on March 24, 2016 (\$6,000.00) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5 (COUNT 3).

47. Respondent AKANA, by failing to report a gift of legal fees from Kawananakoa received on April 19, 2016 (\$24,125.50) by the statutory deadline of June 30, 2016, violated HRS § 84-11.5 (COUNT 4).

COUNTS 5 TO 6

Violations of Gifts Law, § 84-11 Acceptance of Gifts of Legal Fees

48. The allegations contained in the paragraphs above are repeated and realleged.

49. Respondent AKANA, by accepting a gift of legal fees from Kawananakoa on or about April 28, 2017, in the amount of \$15,513.15, at which time the OHA Board of Trustees, including Respondent AKANA, were engaged in the Kawananakoa vs. OHA Lawsuit, violated HRS § 84-11 COUNT 5).

50. Respondent AKANA, by accepting a gift of legal fees from Kawananakoa on or about June 17, 2017, in the amount of \$6,000.00, at which time the OHA Board of Trustees, including Respondent AKANA, was engaged in the Kawananakoa vs. OHA Lawsuit, violated HRS § 84-11 (COUNT 6).

COUNTS 7 TO 9

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 Apple iTunes Gift Card;
Hawaiian Airlines Premier Club Membership; Canary Home Security System)

51. The allegations contained in the paragraphs above are repeated and realleged.

52. Respondent AKANA, by using Trustee Annual Allowance funds to purchase an Apple iTunes gift card valued at \$50.00 on or about September 18, 2013, used or attempted to use her official position to secure an unwarranted personal benefit for herself or another person, in violation of HRS § 84-13 (COUNT 7).

53. Respondent AKANA, by using Trustee Annual Allowance funds to purchase a Premier Club membership with Hawaiian Airlines costing \$249.00, used or attempted to use her official position to secure an unwarranted personal benefit for herself, in violation of HRS § 84-13 (COUNT 8).

54. Respondent AKANA, by using Trustee Annual Allowance funds to purchase a Canary home security system from Verizon costing \$209.41, used or attempted to use her official position to secure an unwarranted personal benefit for herself, in violation of HRS § 84-13 (COUNT 9).

COUNTS 10 TO 22

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,
November 2015 through November 2016)

55. The allegations contained in the paragraphs above are repeated and realleged.

56. Respondent AKANA, by using Trustee Annual Allowance funds to pay the total amount of Oceanic's monthly bill for the Surf Pak Xtra package on or about each of the dates listed below, where the approximate monthly cost of the type of internet service she used was under \$50.00, 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:

- a. November 20, 2015 (\$127.90) (COUNT 10);
- b. December 20, 2015 (\$127.90) (COUNT 11);
- c. January 22, 2016 (\$127.90) (COUNT 12);
- d. February 15, 2016 (\$135.78) (COUNT 13);
- e. March 5, 2016 (\$132.43) (COUNT 14);
- f. April 10, 2016 (\$134.37) (COUNT 15);
- g. May 9, 2016 (\$133.55) (COUNT 16);
- h. June 6, 2016 (\$133.55) (COUNT 17);
- i. June 30, 2016 (\$133.55) (COUNT 18);
- j. August 8, 2016 (\$133.55) (COUNT 19);
- k. September 5, 2016 (\$133.55) (COUNT 20);

l. October 22, 2016, (\$136.83) (COUNT 21); and

m. November 24, 2016 (\$136.83) (COUNT 22).

57. Each expenditure made by Respondent AKANA out of the Trustee Annual Allowance for home television service constituted a separate violation of HRS § 84-13.

COUNTS 23 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,
December 2016 through December 2017)

58. The allegations contained in the paragraphs above are repeated and realleged.

59. Respondent AKANA, by using Trustee Annual Allowance funds of \$80.00 or \$82.00 on or about each of the dates listed below to pay a portion of Oceanic's or Spectrum's total monthly bill for the Surf Pak Xtra package, purportedly, for home internet service, when the approximate monthly cost of the type of internet service she used was under \$50.00, used Trustee Annual Allowance funds to partly pay for home cable television service. Respondent AKANA's actions constituted the use or attempted use of her official position to secure unwarranted personal benefits for herself – that is, home cable television service – in violation of HRS § 84-13:

- a. December 21, 2016 (used \$80.00 to pay Oceanic) (COUNT 23);
- b. January 20, 2017 (used \$80.00 to pay Oceanic) (COUNT 24);
- c. February 13, 2017 (used \$80.00 to pay Oceanic) (COUNT 25);
- d. March 15, 2017 (used \$80.00 to pay Oceanic) (COUNT 26);

- e. April 20, 2017 (used \$80.00 to pay Oceanic) (COUNT 27);
- f. May 20, 2017 (used \$80.00 to pay Oceanic) (COUNT 28);
- g. June 25, 2017 (used \$80.00 to pay Oceanic) (COUNT 29);
- h. July 21, 2017 (used \$80.00 to pay Spectrum) (COUNT 30);
- i. August 24, 2017 (used \$80.00 to pay Spectrum) (COUNT 31);
- j. September 10, 2017 (used \$82.00 to pay Spectrum) (COUNT 32);
- k. October 10, 2017 (used \$80.00 to pay Spectrum) (COUNT 33);
- l. November 20, 2017 (used \$80.00 to pay Spectrum) (COUNT 34);
- m. December 13, 2017 (used \$80.00 to pay Spectrum) (COUNT 35); and
- n. December 30, 2017 (used \$80.00 to pay Spectrum) (COUNT 36).

60. Each expenditure made by Respondent AKANA out of the Trustee Annual Allowance to partly pay for home cable television service constituted a separate violation of HRS § 84-13.

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)

61. The allegations contained in the paragraphs above are repeated and realleged.

62. Respondent AKANA, by using Trustee Annual Allowance funds on or about each of the following dates, for the purposes and in the amounts stated below, to pay for food or meals for her herself and/or OHA Trustees and/or OHA staff, used or

attempted to use her official position to secure unwarranted personal benefits for OHA personnel, including herself, in violation of HRS § 84-13:

- a. October 3, 2013, lunch for staff, from Legend Seafood Restaurant, \$30.52 (COUNT 37);
- b. March 17, 2014, refreshments for staff, from Leonard's Bakery, \$17.80 (COUNT 38);
- c. July 3, 2014, food for a "going away party" for a staff member, from 1132 Café & Catering, \$268.59 (COUNT 39);
- d. August 4, 2014, breakfast for staff, from Liliha Bakery, \$31.94 (COUNT 40);
- e. February 10, 2015, food for a staff "birthday celebration," from Zippy's Nimitz, \$61.83 (COUNT 41);
- f. January 23, 2015, manapua for staff, from Royal Kitchen, \$66.49 (COUNT 42);
- g. July 9, 2015, food for a staff meeting, from Liliha Bakery, \$39.48 (COUNT 43);
- h. December 2, 2015, food for staff from Chinatown Express Ala Moana, \$31.01 (COUNT 44);
- i. August 15, 2016, refreshments for staff from Leonard's Bakery, \$20.73 (COUNT 45);
- j. October 5, 2016, lunch for staff from Tanaka Saimin, \$43.66 (COUNT 46);

- k. February 17, 2017, the cost of food that had been purchased for a party for a staff member's "last day," \$25.00 (COUNT 47); and
- l. December 5, 2017, noodles from Royal Kitchen for a "pot luck" OHA Trustees' holiday party, \$23.72 (COUNT 48).

Each expenditure made by Respondent AKANA out of Trustee Annual Allowance funds to pay for food herself, other OHA Trustees, and/or OHA staff constituted a separate violation of HRS § 84-13.

COUNTS 49 TO 51

Violations of Fair Treatment Law, HRS § 84-13

Use or Attempted Use of Official Position for Political Purposes (Trustee Annual Allowance Expenditures for Political Contributions)

- 63. The allegations contained in the paragraphs above are repeated and realleged.
- 64. Respondent AKANA, by using Trustee Annual Allowance funds to make a political contribution of \$50.00 to the Hawaii County Democrats on or about February 11, 2014, used or attempted to use her official position for political purposes – that is, to unfairly benefit a political party – in violation of HRS § 84-13 (COUNT 49).
- 65. Respondent AKANA, by using Trustee Annual Allowance funds to make a political contribution of \$50.00 to the Democratic National Committee on or about February 11, 2014, used or attempted to use her official position for political purposes – that is, to unfairly benefit a political party – in violation of HRS § 84-13 (COUNT 50).
- 66. Respondent AKANA, by using Trustee Annual Allowance funds on or about December 5, 2017 to make a donation of \$500.00 to pay for entertainment for the

Kanaka Maoli Political Action Committee event, used or attempted to use her official position for political purposes – that is, to unfairly benefit one or more political action committees – in violation of HRS § 84-13 (COUNT 51).

COUNTS 52 TO 53

Violations of Fair Treatment Law, HRS § 84-13

Use or Attempted Use of Official Position to Grant Unwarranted Benefits
(Trustee Allowance Expenditures for Donations to Hawaiian Humane Society)

67. The allegations contained in the paragraphs above are repeated and realleged.

68. Respondent AKANA, by using Trustee Annual Allowance funds to make a donation of \$50.00 to the Hawaiian Humane Society on or about February 20, 2014, used or attempted to use her official position to unfairly benefit the Hawaiian Humane Society, an animal welfare association that had no connection to OHA, in violation of HRS § 84-13 (COUNT 52).

69. Respondent AKANA, by using Trustee Annual Allowance funds to make a donation of \$25.00 to the Hawaiian Humane Society on or about August 8, 2017, used or attempted to use her official position to unfairly benefit the Hawaiian Humane Society, in violation of HRS § 84-13 (COUNT 53).

Notice of Respondent AKANA's Rights and Obligations

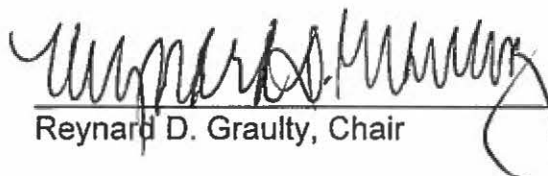
Pursuant to HRS § 84-31(b), within twenty days after service of the Further Statement of Alleged Violation, Respondent Akana may file a written response. If after twenty days following service of the Further Statement of Alleged Violation, the majority of the members of the Commission conclude that there is probable cause to believe that

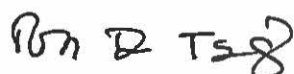
a violation of the State Ethics Code has been committed, then the Commission shall set a time and place for a hearing, giving notice to the Respondent. Upon the Commission's issuance of a notice of hearing, the Charge and Further Statement of Alleged Violation, and the Respondent's written response thereto shall become public records. The hearing shall be held within ninety days of the Commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to have the right of cross-examination. The hearing shall be in accordance with HRS chapter 91. All witnesses shall testify under oath and the hearing shall be open to the public.

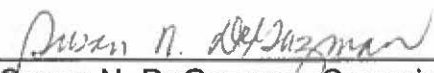
HRS § 84-31(c).

Dated: Honolulu, Hawaii, July 19, 2018.

HAWAII STATE ETHICS COMMISSION


Reynard D. Gaulty, Chair


Ruth D. Tschumy, Vice Chair


Susan N. DeGuzman, Commissioner

EXCUSED
Melinda Wood, Commissioner


Wesley F. Fong, Commissioner

EXHIBIT 5

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BICKERTON ■ DANG

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Attorneys for Respondent

ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

Complainant,

vs.

ROWENA AKANA;

Respondent.

COMPL-C-15-00236

**RESPONDENT ROWENA AKANA'S
ANSWER TO HAWAII STATE
ETHICS COMMISSION'S
FURTHER STATEMENT OF
ALLEGED VIOLATIONS DATED
JULY 19, 2018; CERTIFICATE OF
SERVICE**

**RESPONDENT ROWENA AKANA'S ANSWER TO HAWAII STATE ETHICS
COMMISSION'S FURTHER STATEMENT OF ALLEGED VIOLATIONS
DATED JULY 19, 2018**

ROWENA AKANA ("Trustee Akana" or "Respondent"), through her undersigned counsel, hereby respectfully answers the Further Statement of Alleged Violations from the Hawaii State Ethics Commission ("Complainant") dated July 19, 2018 (the "Charges"). Subject to the denials and the affirmative defenses stated herein, ROWENA AKANA responds as follows:

1. Respondent admits the allegations in paragraphs 13, 14, 32, 33, 34, 35, 36, 37 and 38 of the Charges but admits no wrongdoing in connection with any of the admitted acts or occurrences.

2. Respondent denies the allegations in paragraphs 44, 45, 46, 47, 49, 50, 52, 53, 54, 56, 57, 59, 60, 62, 64, 65, 66, 68 and 69 of the Charges. In addition, certain of the allegations in these paragraphs are addressed below with further responses by the Respondent.

3. Respondent does not presently have information in her possession or knowledge or sufficient documentary evidence at her disposal sufficient to enable her to admit or deny the allegations in paragraphs 1 (first sentence), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Charges, and, therefore, she denies same and leaves Complainant to its proof.

4. Respondent responds to the second sentence of paragraph 1 of the Charges as follows: the allegations therein merely summarize the contents of the Hawai'i State Constitution, and, therefore, she refers the Complainant and the Hearings Officer, Administrator or Judge to the document referenced, which speaks for itself, and leaves Complainant to its proof.

5. Respondent responds to the paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Charges as follows: the allegations therein merely summarize and or quote the contents of Hawai'i law, statute and/or administrative rules, and, therefore, she refers the Complainant and the Hearing Officer, Administrator or Judge to the laws, statutes and/or rules referenced, which speak for themselves, and leaves Complainant to its proof. Furthermore, said paragraphs state legal conclusions or statements or principles of law, statute or rule, and not facts within the Respondent's first-hand knowledge, to which Respondent is not required to respond.

6. Respondent is not required to respond to paragraphs 15, 16, 17, 39, 40, 41, 42,

44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 56, 57, 59, 60, 62, 64, 65, 66, 68 and 69 of the Charges because said allegations comprise and prematurely state legal conclusions and/or recitations of purported legal duties, principles or obligations imposed under law, statute or administrative rule, or recitations of OHA policy, and as a result, she denies same and leaves Complainant to its proof, in addition to certain of these allegations being specifically denied outright above in ¶ 2.

7. Respondent is not required to admit or deny the allegations in paragraphs 43, 48, 51, 55, 58, 61, 63 and 67 of the Charges because they merely repeat, reallege and incorporate prior paragraphs, but, nevertheless, she repeats, realleges and incorporates her responses to said prior paragraphs, in turn.

8. Respondent hereby requests a hearing before a neutral hearing officer to determine the lack of validity of the charges brought against her and to dismiss same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Charges fails to state a claim against the Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Complainant lacks subject matter jurisdiction over all of the claims and charges asserted in the Expenditures and Gifts Charges against Respondent relating to any OHA Trustee trust fund expenditures, because Complainant does not have jurisdiction over the discretionary spending accounts of the OHA Trustees, since such funds comprise “trust funds” and do not constitute “state funds,” and Complainant does not have jurisdiction over the former.

THIRD AFFIRMATIVE DEFENSE

3. Complainant’s claims are barred, in whole or in part, because Complainant lacks standing to bring the charges alleged.

FOURTH AFFIRMATIVE DEFENSE

4. Complainant's charges are barred and/or Complainant is not entitled to the relief sought due to the doctrines of laches and waiver.

FIFTH AFFIRMATIVE DEFENSE

5. Complainant's charges are barred, in whole or in part, in that they violate the Equal Protection clause and Rights of Citizens Clause of the Hawaii State Constitution because they single the Respondent out for alleged acts taken and/or expenditures made in her official capacity as an OHA Trustee that a large number of other OHA Trustees regularly engage in and consider proper, for which those OHA Trustees have not faced similar proceedings and charges, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law.

SIXTH AFFIRMATIVE DEFENSE

6. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's Equal Protection and Due Process rights and Rights of Citizens under the Hawaii State Constitution by singling the Respondent out for alleged wrongful acts taken in her official capacity as an OHA Trustee, for acts and expenditures that were previously *approved* by OHA, thereby subjecting the Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA. Furthermore, regarding acts and expenditures that were *not approved* by OHA, Respondent reimbursed OHA for each and every such line item at the time of the review, so Complainant's charges either evidence a misunderstanding of the OHA process or seek to penalize Respondent for charges that she in good faith presented to OHA per standard policies and procedures and promptly paid upon being told to do so, begging the question of where and what is the violation

and similarly subjecting Respondent to an arbitrary exercise of Complainant's power and dissimilar treatment under the law, and constituting an overstepping of jurisdiction by Complainant into areas already regulated and intended to be regulated internally by OHA.

SEVENTH AFFIRMATIVE DEFENSE

7. Complainant's charges are barred, in whole or in part, in that they violate the Respondent's due process rights under the Hawaii State Constitution, as well as, the Cruel and Excessive Punishment Prohibition contained in the Hawaii State Constitution, by seeking fines and penalties against the Respondent that are excessive and grossly disproportionate to the underlying charges – such as seeking a \$1,000.00 fine in connection with an alleged expenditure violation in the amount of \$23.72 for food purchased to bring to an OHA pot-luck holiday party – thereby constituting an arbitrary exercise and abuse of Complainant's power and unconstitutional, excessive fines and punishment.

EIGHTH AFFIRMATIVE DEFENSE

8. Complainant's charges are barred, in whole or in part, by the doctrine of equitable estoppel.

NINTH AFFIRMATIVE DEFENSE

9. Complainant's charges re barred, in whole or in part, by the doctrines of unclean hands and persistent inequitable conduct.

TENTH AFFIRMATIVE DEFENSE

10. Complainant's charges are barred, in whole or in part, due to lack of causation.

ELEVENTH AFFIRMATIVE DEFENSE

11. Complainant's charges are barred, in whole or in part, due to improper motive on the part of the Complainant in that, upon information and belief, it is engaged in a wrongful plan and scheme to alienate, isolate and remove Respondent from her OHA Trustee position, in

collusion with a cabal of other OHA Trustees and related persons who have historically opposed Respondent due to her outspoken nature, demands for full transparency and activist pursuits.

TWELFTH AFFIRMATIVE DEFENSE

12. Complainant's charges are barred, in whole or in part, by statutes of limitations or by equivalent time limitations for Complainant to first bring charges.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Complainant's charges relating to expenditures are barred due to accord and satisfaction, in that a number of the charges alleged pertain to items that were already reimbursed to OHA by Trustee Akana per OHA's standard accounting procedures at the time, or shortly after the time, they were incurred, per OHA policy and practice.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Respondent states her intention to rely on any other applicable affirmative defenses permitted under the Hawaii Rules of Civil Procedure, all statutes and laws and rules applicable to the Hawaii State Ethics Commission, other Hawaii statute, and other Hawaii case law, and Respondent will amend and/or supplement this Answer/Response if and when such defenses are determined to be applicable, and to seek relief from the courts of the state of Hawai'i.

WHEREFORE, Respondent ROWENA AKANA hereby respectfully prays as follows in response to the Charges:

- a. That she be granted a hearing before a neutral hearings officer to determine the invalidity of the charges against her and to dismiss the fines requested in connection therewith;
- b. That the Charges against her be dismissed with prejudice;
- c. That a finding of no wrongdoing on Respondent's part ensue;

- d. That no fines be levied against her;
- e. That, in the alternative, if any fines are to be levied against her for technical violations, such as for belated reporting, that they be nominal due to no wrongful intent, motive or wrongdoing, in the amount of \$1.00 or some other amount deemed reasonable but less than the maximum \$1,000;
- f. That she be awarded her reasonable attorneys' fees and costs incurred in defending against this frivolous and ill-motivated proceeding;
- g. For such other and further relief as the neutral Hearing Officer may deem just and proper.

DATED: Honolulu, Hawai'i, August 1, 2018.



JAMES J. BICKERTON
BRIDGET G. MORGAN
STEPHEN M. TANNENBAUM

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

Complainant,

vs.

ROWENA AKANA;

Respondent.

COMPL-C-15-00236

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document –
**RESPONDENT ROWENA AKANA'S ANSWER TO HAWAII STATE ETHICS
COMMISSION'S FURTHER STATEMENT OF ALLEGED VIOLATIONS DATED
JULY 19, 2018 (COMPL-C-15-00236)** – was duly served upon the following party at their last
known address in the manner and on the date herein below indicated:

Daniel Gluck, Esq.
Virginia Chock, Esq.
HAWAII STATE ETHICS COMMISSION
1001 Bishop Street,
ASB Tower, Suite 970
Honolulu, HI 96813

Via Hand Delivery

DATED: Honolulu, Hawai'i, August 1, 2018.


JAMES J. BICKERTON
STEPHEN M. TANNENBAUM
BRIDGET G. MORGAN

Attorneys for Respondent
ROWENA AKANA

EXHIBIT 6

BICKERTON ■ DANG
A LIMITED LIABILITY LAW PARTNERSHIP

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STATE OF HAWAII
STATE ETHICS COMMISSION

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

COMPL-C-15-00236

Complainant,

vs.

ROWENA AKANA;

Respondent.

**RESPONDENT ROWENA AKANA'S
POST-HEARING PROPOSED
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW;
CERTIFICATE OF SERVICE**

**RESPONDENT ROWENA AKANA'S POST-HEARING PROPOSED FINDINGS OF
FACTS AND CONCLUSIONS OF LAW**

Respondent ROWENA AKANA ("Trustee Akana" or "Respondent"), by and through her undersigned counsel, pursuant to the Order Directing the Submission of Proposed Findings of Fact and Conclusions of Law filed October 31, 2018, hereby respectfully submits her post-hearing Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding that took place before the Hawai'i State Ethics Commission (the "Commission") on October 22, 24, 25 and 26, 2018 (the "Hearing"), before Commissioners Wesley F. Fong, Melinda S. Wood, Ruth D. Tschumy, Susan N. DeGuzman, and Reynard D. Gaulty (the "Commissioners"). James

J. Bickerton, Stephen M. Tannenbaum and Jeremy K. O'Steen appeared on behalf of Respondent Trustee Rowena Akana, and Daniel Gluck and Virginia Chock appeared as Charge Counsel on behalf of Complainant, the Commission.

The Commissioners, having examined and considered the charges, pre-hearing motions and memoranda, the records and files herein, the exhibits offered into evidence at the Hearing, and having heard and considered the arguments of counsel and the testimony of the witnesses appearing at the Hearing, and being fully advised and informed of the facts of this matter, hereby now make the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

To the extent that any of the following Findings of Fact contain legal conclusions, they shall also be deemed Conclusions of Law. To the extent any of the following Findings of Fact contain mixed factual findings and legal conclusions, each shall be given full effect as both a Findings of Fact and a Conclusion of Law.

Acceptance of Legal Services Paid for by Another **(Counts 5 to 6)**

The following facts have been established by the evidence and testimony presented on the issue of Respondent's acceptance and receipt of legal services and legal-related costs paid for by Ms. Abigail Kawananakoa ("Ms. Kawananakoa") in that matter bearing the Civil No. 13-1-2485-09 VLC that was pending in the First Circuit Court of the State of Hawai'i, entitled *Rowena M.N. Akana, etc. v. Collette Machado, etc., et al.* (the "OHA Lawsuit"). See Commission's Exhibit ("Comm. Ex.") C-66.

1. On September 13, 2013, Respondent sued her fellow Office of Hawaiian Affairs ("OHA") Trustees in Hawai'i First Circuit Court in that matter bearing the Civil No. 13-1-2485-

09 VLC, entitled *Rowena M.N. Akana, etc. v. Collette Machado, etc., et al.* (the “OHA Lawsuit”). *See* Hrg. Tr. vol. 2, 404:2-18, Oct. 24, 2018¹; Comm. Ex. C-66.

2. Respondent’s claims in the OHA Lawsuit were based on Hawaii “Sunshine Laws” (Haw. Rev. Stat. § 92-4), seeking the disclosure of certain communications by the OHA Board of Trustees (the “Board”) that were made in executive sessions and, therefore, off-limits to the public. In the OHA Lawsuit, Respondent contended that specific meeting minutes should be made public and that policies should be changed relating to same and other non-public executive session minutes and materials. *See* Hrg. Tr. vol. 3, 521:19-524:5, Oct. 25, 2018; Comm. Ex. C-66.

3. Thereafter, on or about November 25, 2013, defendants in the OHA Lawsuit, Respondent’s fellow OHA co-Trustees, filed counterclaims against Respondent alleging she had improperly disclosed privileged information and seeking damages therefrom, suing her in her official capacity as an OHA Trustee. *See* Hrg. Tr. vol. 2, 404:21-405:7, 436:17-437:18; Comm. Ex. C-67.

4. After suing Respondent, the OHA Board and Mr. Ernest Kim, OHA legal counsel, conferred with OHA’s insurers and the determination was made not to provide Respondent with legal counsel for the defense of the counterclaims against her, despite the fact that the OHA Board had reached the opposite conclusion regarding providing legal defense for themselves with respect to the claims Respondent had filed against them, and despite the fact that Respondent had been sued in her official capacity as an OHA Trustee, as had they. *See* Hrg. Tr. vol. 2, 433:6-434:20.

¹ All references to the transcripts of the Hearing set forth herein are as abbreviated as “Hrg. Tr.” followed by the volume number (“vol. 1” being for the Hearing on October 22, 2018; “vol. 2” being for the Hearing on October 24, 2018; “vol. 3” being for the Hearing on October 25, 2018; and “vol. 4” being for the Hearing on October 26, 2018), followed by the page and line citations.

5. Ms. Kawananaoka learned of the OHA Lawsuit in or about late 2013. *See* Hrg. Tr. vol. 4, 641:3-644:8, Oct. 26, 2018.

6. After hearing about the OHA Lawsuit, Ms. Kawananaoka directed her lawyer and the trustee of one of her trusts, James Wright, Esq., to reach out to Respondent to offer to pay for Respondent's legal services and case-related costs incurred in the OHA Lawsuit. *See* Hrg. Tr. vol 3, 571:14-22; Hrg. Tr. vol 4, 644:16-645:9.

7. In or about early 2014, Mr. Wright called Respondent and conveyed Ms. Kawananaoka's offer. *See* Hrg. Tr. vol 4, 644:16-645:9.

8. Respondent did not solicit the offer or ask for the payment of her legal fees and costs incurred in the defense of the OHA Lawsuit from Ms. Kawananaoka. *See* Hrg. Tr. vol. 4, 647:19-648:18.

9. Respondent accepted Ms. Kawananaoka's offer, and thereafter accepted legal services and case-related costs from the law firm of Bickerton Dang, LLLP ("Bickerton Dang") that were valued in the amount of \$21,513.15, as set forth in the Further Statement of Alleged Violation dated July 19, 2019 (the "Further Statement") in Counts 5 and 6 (paragraphs 49 and 50), relating to the OHA Lawsuit. *See* Hrg. Tr. vol 3, 571:14-22; Further Statement ¶¶ 49-50.

10. Said fees and costs were paid for directly by Ms. Kawananaoka's trustee, Mr. Wright. *See* Hrg. Tr. vol. 4, 648:19-649:3; 664:12-18.

11. Mr. Wright did not send any money to Respondent; rather, all amounts were sent directly to Bickerton Dang, LLLP ("Bickerton Dang"), and Bickerton Dang directly billed Mr. Wright. *See* Hrg. Tr. vol. 4, 648:19-649:3; 664:12-18.

12. Furthermore, Respondent did not know the precise amount of the legal bills, *i.e.*, the amount of the legal services and costs being paid for until the time came for her to report them to the Commission. *See* Hrg. Tr. vol. 3, 505:17-506:1; 518:7-519:6.

13. The vast majority of the legal services and costs provided and paid for and in issue in this case – or approximately 80 to 90 percent– were incurred to advance the collective issues, not individual issues, regarding what trustees may do or should not do. *See* Hrg. Tr. vol. 4, 667:14-668:11.

14. There were never any communication between Ms. Kawananaoka and Respondent about the OHA Lawsuit or the former's offer to pay for Respondent's legal fees and costs, before, during or after the OHA Lawsuit. *See* Hrg. Tr. vol. 3, 530:1-7.

15. The relationship between Ms. Kawananaoka, the alleged "Gifto", and Respondent, the alleged "Giftee," predated the provision of the legal services, due to sporadic past interactions and, specifically, one interaction several years before 2013 pertaining to Kawaiaha'o Church. The interactions pertaining to the Kawaiaha'o Church, however, were adversarial, since Ms. Kawananaoka was displeased with the uprooting of the cemetery adjacent to the Church and OHA's purported approval of same. *See* Hrg. Tr. vol. 3, 528:16-529:25; 533:11-16.

16. The payment of Respondent's legal fees and costs were not given by Ms. Kawananaoka in return for anything from the Respondent or in return for a promise of any future benefit to be given by Respondent. *See* Hrg. Tr. vol. 3, 530:1-533:10, 535:6-21; Hrg. Tr. vol 4, 658:3-11, 659:19-25.

17. Nor did the payment of Respondent's legal fees and costs result in any official acts taken by the Respondent that provided a benefit to Ms. Kawananaoka or in any unofficial acts taken by the Respondent that provided a benefit to Ms. Kawananaoka. *See* Hrg. Tr. vol. 3, 530:1-533:10, 535:6-21; Hrg. Tr. vol 4, 658:3-11, 659:19-25.

18. The legal services that were gifted were not intended to affect the Respondent's performance of her official duties. *See* Hrg. Tr. vol. 3, 530:1-533:10; Hrg. Tr. vol 4, 658:3-11, 659:19-25.

19. Ms. Kawanakoa did not have any have specific, direct interest in the outcome of the specific case in relation to which the legal fees were gifted, the OHA Lawsuit, except for the benefit she would have received as any other beneficiary of the OHA Trust. *See* Hrg. Tr. vol. 4, 658:3-659:18.

20. The reason for the gift in the form of the payment of the aforementioned legal fees and costs was that Ms. Kawanakoa has a long and documented history of offering to pay for and paying for the legal fees and costs incurred by native Hawaiians who find themselves in legal disputes and who have difficulty mounting and paying for their defense, due to of her desire to promote what she considers a necessary fair and equal process for all. *See* Hrg. Tr. vol. 4, 644:9-645:9, 647:19-648:18.

Belated Filing of Gift Disclosure Forms
(Counts 1 to 4)

21. Respondent filed an amended report for the 2016-2017 reporting year first identifying a gift of legal fees and costs paid to Bickerton Dang from Ms. Kawanakoa incurred in the OHA Lawsuit in the amount of \$15,960.43 on June 22, 2017. *See* Comm. Ex. S-1.

22. Respondent thereafter filed a second amended report for the 2016-2017 reporting year on September 8, 2017, identifying a gift of legal fees and costs from Ms. Kawanakoa incurred in the OHA Lawsuit in the amount of \$447.28 received on or about December 16, 2016; in the amount of \$15,513.15 received on or about April 28, 2017; and in the amount of \$6,000.00 received on or about June 17, 2017. *See* Comm. Ex. S-2.

23. Respondent thereafter filed a statement of her position with her prior second amended report on September 26, 2017, regarding an explanation for the perceived lack of

necessity for filing a disclosure for the legal fees and costs paid by Ms. Kawananaoka incurred in the OHA Lawsuit. *See* Comm. Ex. S-3.

24. Respondent's statement of position set forth as follows:

Ms. Akana additionally states that she is filing this disclosure form out of an abundance of caution and for full transparency, but believes that the payments of legal fees on her behalf should not be considered a personal "gift" because they were paid for defense of a legal action in which Ms. Akana was sued in her official capacity as a state official. (See attached Complaint.) Therefore, it is Ms. Akana's position that, as such, the primary benefit arising from the payment of defense fees and costs accrues to the State, not Ms. Akana personally. For example, if any other State employee was sued in her or his official capacity and the Attorney General provided a defense for that person, this would not be deemed a "gift" for reporting purposes. Ms. Akana submits her situation is no different.

See Comm. Ex. S-3.

25. Respondent filed an amended report for the 2015-2016 reporting year on September 26, 2017, identifying a gift of legal fees and costs from Ms. Kawananaoka incurred in the OHA Lawsuit in the amount of \$10,478.52 received on or about July 1, 2015; in the amount of \$9,521.48 received on or about August 10, 2015; in the amount of \$6,000.00 received on or about March 24, 2016; and in the amount of \$24,125.50 received on or about April 19, 2016. *See* Comm. Ex. S-4. The four aforementioned filings are hereafter referred to collectively as the "Belated Gift Disclosure Filings," where applicable.

26. The Belated Gift Disclosure Filings were amended filings, as Respondent had previously, by the deadline of June 30, 2016, filed her original gifts disclosures but had omitted inclusion of the four above-listed payments by Ms. Abigail Kawananaoka.

27. Respondent did not originally disclose the payment of these legal fees and costs due to her good faith reliance on the advice of her legal counsel, who concluded and informed her that said payments did not constitute "gifts," and therefore did not require reporting, because they were for the provision of a defense to claims that were brought against Respondent in the

OHA Lawsuit in her official capacity, for which OHA and/or the State had refused to provide Respondent a defense attorney, and, therefore, the payments of Respondent's legal fees and costs were in the first instance to the benefit of OHA. *See* Hrg. Tr. vol. 3, 519:7-521:7; Comm. Ex. S-3. *See also* Hrg. Tr. vol. 2, 433:6-434:20.

28. Respondent, nevertheless, decided to make said Belated Gift Disclosures Filings based on abundance of caution and in the interest of full transparency. *See* Hrg. Tr. vol. 3, 519:7-521:7; Comm. Ex. S-3.

Donations Using Trustee Expenditure Allowance
(Counts 49 to 53)

29. On or about February 11, 2014, Respondent made a donation using funds from her Trustee Expenditure Allowance to the Hawaii County Democrats in the amount of \$50.00 (Count 49). *See* Further Statement ¶ 64.

30. The donation was made in response to a solicitation from the organization to assist with the funding of an event that is held on the Island of Hawai'i every year by that organization which is intended to enable local residents, including native Hawaiians, direct access to and communication with their representatives, elected officials and persons wishing to be elected to office. *See* Hrg. Tr. vol. 3, 550:12-552:14; Hrg. Tr. vol. 4, 616:25-619:10, 619:24-6:21-11.

31. Respondent believed in good faith that her donation was to be used for this specific event to help pay for refreshments and/or other costs specific to the event and not for the backing or support of any particular candidate or party. *See* Hrg. Tr. vol. 3, 550:12-551:6.

32. The Hawaii County Democrats solicited such a donation from all OHA Trustees, regardless of party. *See* Hrg. Tr. vol. 4, 633:20-23.

33. Respondent did not attend the event. *See* Hrg. Tr. vol. 3, 550:12-551:6.

34. Respondent made the donation because she believed in good faith that it fell within the OHA mandate set forth in HRS Chapter 10 that OHA Trustees are to meant to use their Trust Allowance Expenditures and are to take all actions in their role as an OHA Trustee for the benefit of native Hawaiians and to promote access to and discourse between native Hawaiians and their elected officials, which she considered this event as fulfilling. *See* Hrg. Tr. vol. 3, 536:20-537:22.

35. At the event, democratic candidates spoke, and all other candidates, from any political party or from no political party, were allowed to hand out information on their platforms and candidacies; and all candidates were able to mix and intermingle and speak with constituents and other attendees. *See* Hrg. Tr. vol. 4, 617:21-619:10, 620:2-17, 628:25-629:23.

36. This expenditure was disallowed by OHA upon their review of Respondent's expenditures. *See* Hrg. Tr. vol. 3, 552:15-23.

37. Upon such disallowance, Respondent paid this amount back to OHA. *See* Hrg. Tr. vol. 3, 552:15-23.

38. On or about February 11, 2014, Respondent made a donation using funds from her Trustee Expenditure Allowance to the Democratic National Committee in the amount of \$50.00 (Count 50). *See* Further Statement ¶ 65.

39. This expenditure was disallowed by OHA upon their review of Respondent's expenditures. *See* Hrg. Tr. vol. 3, 552:24-553:6.

40. Respondent thereafter paid this amount back to OHA. *See* Hrg. Tr. vol. 3, 552:24-553:6.

41. On or about December 5, 2017, Respondent made a donation using funds from her Trustee Expenditure Allowance to the Kanaka Maoli Political Action Committee in the amount of \$500.00 (Count 51). *See* Further Statement ¶ 66.

42. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 69:9-72:19.

43. No testimony was brought out at trial by Complainant regarding this donation except that the donation was made and was not disallowed by OHA; there was no testimony regarding the purposes of the Kanaka Maoli Political Action Committee, its composition, how the donation was used by the Kanaka Maoli Political Action Committee, Respondent's reasons for making the donation or her belief or state of mind regarding how it was intended to be used. *See, e.g.* Hrg. Tr. vol. 1, 69:9-72:19; Hrg. Tr. vol. 3, 461:8-463:16.

44. On or about February 20, 2014, Respondent made a donation using funds from her Trustee Expenditure Allowance to the Hawaiian Human Society in the amount of \$50.00 (Count 52). *See* Further Statement ¶ 68.

45. On or about August 8, 2017, Respondent made a donation using funds from her Trustee Expenditure Allowance to the Hawaiian Human Society in the amount of \$25.00 (Count 53). *See* Further Statement ¶ 69.

46. Neither donation was disallowed by OHA. *See* Hrg. Tr. vol. 3, 537:23-538:12 and 538:22-539:7.

47. The evidence presented by witness Stephanie Kendrick, the Public Policy Advocate Director for the Hawaiian Humane Society, at the hearing on October 26, 2018, demonstrated compellingly and convincingly that the Hawaiian Humane Society:

- a. Was founded 135 years ago by concerned citizens on Oahu, including King David Kalakaua, originally for the welfare of people and animals, including care for orphaned Hawaiian children, unwed mothers, and widows;
- b. Provides services that benefit native Hawaiians and all residents of Hawaii, including but not limited to: (i) low cost and/or free spaying and neutering of pets; (ii) collection of stray/loose animals and their housing and maintenance until

owners are located through such means as scanning for microchips; (iii) collection of feral cats and spaying and neutering and subsequent release (*i.e.*, “catch and release”); (iv) a pet food bank for low income persons; (v) opportunities for volunteering by members of the overall community; (vi) low cost/free adoptions for elderly citizens; (vii) acceptance and housing and care for animals that cannot be cared for by their owners and advertising for adoption of same to members of the community; (viii) education outreach; (ix) public social awareness events; (x) public social events for pet and animal lovers; and

- c. Is currently scheduled to open its first permanent second location in 135 years, set to be opened in the upcoming months in West Oahu, a predominantly Hawaiian area demographically.

See Hrg. Tr. vol. 4, 606:25-611:6, 612:17-613:12.

48. The Hawaiian Humane Society does not specifically track what portion or percentage of its services and funds go to provides services and assistance to native Hawaiians as opposed to all residents, animal and human, of Hawaii. *See Hrg. Tr. vol. 4, 610:23-611:6.*

49. Respondent made these two donations to the Hawaiian Humane Society because she believed in good faith that they fell within the OHA mandate set forth in HRS Chapter 10 that OHA Trustees are to use their Trust Allowance Expenditures and are to take all actions in their role as an OHA Trustee for the benefit of native Hawaiians, and she considered the Hawaiian Humane Society to be an organization that met, promoted and fulfilled these purposes. *See Hrg. Tr. vol. 3, 509:9-15 and 536:2-537:22.*

50. Respondent also believed in good faith that this organization’s services fell within the OHA mandate set forth in HRS Chapter 10 that OHA Trustees are to use their Trust Allowance Expenditures and are to take all actions in their role as an OHA Trustee for the

benefit of native Hawaiians, because, Respondent was aware that a large portion of the persons who utilize the services of the Hawaiian Humane Society are members of the lowest income group in the State, which income groups contains a significant number of native Hawaiians, who Respondent knows choose to use these services because they are free. *See* Hrg. Tr. vol. 3, 536:9-14.

51. Respondent also made the second donation in 2017 relying on OHA's former position vis-à-vis in the absence of any disallowance for her donation to the same organization in 2014, which caused her to reasonably believe that such a donation was permissible. *See* Hrg. Tr. vol. 3, 538:13-539:7.

52. Based on the compelling evidence presented, the Hawaiian Humane Society is found to sufficiently promote the interests of and better the lives of native Hawaiians so as to therefore fall within that group of organizations to whom OHA Trustees are allowed to make donations. *See* Hrg. Tr. vol. 4, 606:25-611:6, 612:17-613:12.

**Expenditures for Food and (Non-Alcoholic) Beverages from Trustee
Expenditure Allowance
(Counts 37 to 48)**

53. At the time of the challenged expenditures on food and beverages by Respondent, OHA had no guidelines or policies regarding Trustee Allowance expenditures on food and beverage other than (a) that expenditures for alcoholic beverages were/are not permitted, (b) that backup information and documentation may be requested by OHA and must be submitted by the Trustee for any expenditure, and (c) that at a certain point in time, specific forms for the submission of expenditures for food and (non-alcoholic) beverages were put in place and had to be filled out and submitted. *See* Hrg. Tr. vol. 1, 193:12-194:9, 276:15-277:22, Hrg. Tr. vol. 3, 543:11-544:2.

54. Respondent is not charged with improper expenditures for alcoholic beverages.

See Further Statement.

55. Respondent is not charged with failing to provide backup information. *See Further Statement.*

56. No submissions for food and beverage expenditures by Respondent were ever disallowed by OHA. *See Hrg. Tr. vol. 2, 382:10-22.*

57. On October 23, 2013, a charge was made and later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$30.52 for a purported staff lunch from Legend Seafood on that date (Count 37). *See Further Statement ¶ 62(a).*

58. Respondent was out of town in New York at the time and was not aware of the charge and did not approve this charge. *See Hrg. Tr. vol. 3, 542:10-21.*

59. Respondent did not become aware of this charge until this case was commenced and she received and reviewed the pleadings. *See Hrg. Tr. vol. 3, 543:3-10.*

60. Respondent provided compelling testimony that a former staff-member who had been involved with other improper expenditures, which also had been discovered at or around this time, improperly and fraudulently made the purchase and submitted it as part of Respondent's quarterly submission to OHA accounting for her Trust Allowance expenditures, which Respondent did not notice when reviewing the submission and its being filed. *See Hrg. Tr. vol. 3, 513:15-516:20.*

61. On March 17, 2014, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$17.80 from Leonard's Bakery (Count 38). *See Further Statement ¶ 62(b).*

62. Then purpose of this food expenditure was for refreshments for a staff lunch that involved Board of Trustees staff, as well as, fiscal department staff, as they were going over an OHA budget. *See* Hrg. Tr. vol. 3, 544:3-23; Comm. Ex. C-44.

63. On July 3, 2014, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$268.59 to 1132 Café & Catering (Count 39). *See* Further Statement ¶ 62(c).

64. The purpose of this food expenditure was for a going away party for one staff member who was leaving OHA. *See* Comm. Ex. C-45.

65. Respondent believed in good faith that the provision of farewell parties for longtime loyal staff members increased morale and productivity among her staff, who then were, in turn, better prepared to complete their tasks and duties and serve the OHA Trust beneficiaries; as such, Respondent in good faith believed when making it that this expenditure was within the OHA mandate of bettering the lives of native Hawaiians. *See* Hrg. Tr. vol. 3, 548:3-549:4.

66. On August 4, 2014, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$31.94 from Liliha Bakery (Count 40). *See* Further Statement ¶ 62(d).

67. The purpose of this expense was for a working breakfast for her staff regarding debriefing of/by her team just after a trip the week prior to South Dakota for OHA business, at which debriefing meeting the staff would go over Respondent's receipts and take notes and report what she/they had worked on and accomplished on said business trip. *See* Hrg. Tr. vol. 3, 544:24-546:2; Comm. Ex. C-46.

68. On February 10, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$61.83 at Zippy's Nimitz (Count 41). *See* Further Statement ¶ 62(e).

69. The purpose of this expenditure was food for a birthday celebration for one of her staff members. *See* Comm. Ex. C-47.

70. Respondent believed in good faith at the time of this expenditure that the provision of birthday parties for longtime loyal staff members increased morale and productivity among her staff, who then were, in turn, better prepared to complete their tasks and duties and serve the OHA Trust beneficiaries; as such, Respondent in good faith believed that this expenditure was within the OHA mandate of bettering the lives of native Hawaiians. *See* Hrg. Tr. vol. 3, 548:3-550:11.

71. On January 23, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$66.49 for manapua from an establishment named Royal Kitchen (Count 42). *See* Further Statement ¶ 62(f).

72. The purpose of the refreshments was to provide food at an OHA Board of Trustees Meeting, as Respondent was the Chairperson of the OHA Board of Trustees at this time and was responsible for arranging and providing refreshments at such working meetings for the OHA Trustees. *See* Hrg. Tr. vol. 3, 546:3-18; Comm. Ex. C-48.

73. As well, at such meetings OHA beneficiaries also attended and also partook in said refreshments. *See* Hrg. Tr. vol. 3, 546:3-18.

74. On July 9, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$39.48 for Staff meeting refreshments from Liliha Bakery (Count 43). *See* Further Statement ¶ 62(g).

75. The purpose of this expenditure was to provide food for a staff meeting. *See* Comm. Ex. C-49.

76. On December 2, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$31.01 for food from China Town Express Ala Moana (Count 44). *See Further Statement ¶ 62(h).*

77. The purpose of this expenditure was food for Respondent's staff for a working meeting with her full staff where they were preparing the budget to be submitted in December prior to the opening of the State Legislative session. At said meeting, Respondent and her staff met with the legislative staff to discuss the budget and its submission. *See Hrg. Tr. vol. 3, 547:1-17; Comm. Ex. C-50.*

78. On August 15, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$43.66 for refreshments for staff from Leonard's Bakery (Count 45). *See Further Statement ¶ 62(i).*

79. The purpose of this expenditure was to provide refreshments for staff. *See Comm. Ex. C-51*

80. On October 5, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$43.66 for lunch from Tanaka Saimin (Count 46). *See Further Statement ¶ 62(j).*

81. The purpose of this expenditure was for a working lunch with members of her staff in order to prepare for the next day's OHA Board of Trustees' meeting, including gathering all of the action items that are planned to come at that meeting, prepare the committee reports and plan for everything that will be on the agenda for the OHA Board of Trustees meeting. *See Hrg. Tr. vol. 3, 584:21-587:8; Comm. Ex. C-52.*

82. On February 17, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$25.00 with no specific vendor listed (Count 47). *See Further Statement ¶ 62(k).*

83. The purpose for this expenditure was lunch in office for a staff members' last day of work. *See* Hrg. Tr. vol. 3, 583:12-584:20; Comm. Ex. C-53.

84. Respondent believed in good faith at the time of this expenditure that the provision of such events for longtime loyal staff members increased morale and productivity among her staff, who then were, in turn, better prepared to complete their tasks and duties and serve the OHA Trust beneficiaries; as such, Respondent in good faith believed that this expenditure was within the OHA mandate of bettering the lives of native Hawaiians. *See* Hrg. Tr. vol. 3, 548:3-550:11.

85. On December 5, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$23.72 for a noodle dish from Royal Kitchen (Count 48). *See* Further Statement ¶ 62(l).

86. The purpose of this expenditure was to bring an item for the OHA Annual Potluck Holiday Party. *See* Comm. Ex. C-54.

87. Food and (non-alcoholic) beverages that were for social events that an OHA Trustee was expected to attend were not items that were disapproved by OHA. *See* Hrg. Tr. vol. 1, 193:12-194:9; Hrg. Tr. vol. 3, 549:23-550:11.

88. OHA Trustees were expected to attend the annual OHA Holiday Parties. *See* Hrg. Tr. vol. 3, 549:23-550:11.

89. It was also in the interests of staff morale for the OHA Trustees to attend the OHA Holiday Party. *See* Hrg. Tr. vol. 3, 549:23-550:11.

90. Since morale within OHA, especially among its staff, was and is always a concern, Respondent believed in good faith that the provision of food for and her personal attendance at this event increased morale and productivity among her staff, who then were, in turn, better prepared to complete their tasks and duties and serve the OHA Trust beneficiaries; as

such, Respondent in good faith believed that this expenditure was within the OHA mandate of bettering the lives of native Hawaiians. *See* Hrg. Tr. vol. 3, 549:23-550:11.

Other Miscellaneous Expenditures from Respondent's Trustee Expenditure Allowance
(Counts 7 to 36)

91. On September 18, 2013, Respondent is alleged to have made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$50.00 for a gift card from Apple iTunes (Count 7). *See* Further Statement ¶ 52.

92. Respondent did not make this purchase. *See* Hrg. Tr. vol. 3, 510:7-13.

93. At the time of the purchase, Respondent was not aware of the purchase of the gift card. *See* Hrg. Tr. vol. 3, 512:7-10.

94. This expenditure was not authorized by Respondent. Upon information and belief, the gift card was purchased by a staff member of Respondent's who had Respondent's credit card number for making other authorized purchases, but made this particular charge surreptitiously without Respondent or anyone else on the staff's knowledge. *See* Hrg. Tr. vol. 3, 513:15-515:13.

95. OHA did not disallow this expenditure and never raised this expenditure with Respondent. *See* Hrg. Tr. vol. 1, 130:4-13, 245:6-246:12, 246:21-247:5.

96. On July 15, 2014, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$249.00 for Premier Club membership with Hawaiian Airlines (Count 8). *See* Further Statement ¶ 53.

97. Respondent made this expenditure because when she traveled with staff off-island for OHA business, fees were charged for checked bags, and the annual fee of \$249 was more cost effective than paying for bags individually, on a per bag, per trip basis. *See* Hrg. Tr. vol. 3, 540:3-542:6.

98. Respondent, therefore, believed in good faith and was primarily motivated by the fact that she believed that she would be minimizing expenditure of OHA Trust funds, and, therefore, benefitting the Trust's beneficiaries by spending less of their money. *See* Hrg. Tr. vol. 3, 540:3-542:6.

99. Furthermore, the additional membership advantage of being permitted to board early and sit near the front of the plane also promoted OHA purposes because it enabled Respondent and her staff to exit the plane sooner than others and get to meetings faster. *See* Hrg. Tr. vol. 3, 540:3-542:6.

100. Respondent, therefore, believed in good faith and was also motivated by the fact that she believed this expenditure promoted her conducting OHA business. *See* Hrg. Tr. vol. 3, 540:3-542:6.

101. This expenditure was subsequently disallowed by OHA, and Respondent paid it back in full. *See* Hrg. Tr. vol. 3, 539:12-16, 542:2-6.

102. In Counts 10 through 36 of the Further Statement, Respondent is alleged to have used her Trustee Expenditure Allowance for the provision of home cable television services, as follows:

- a. On November 20, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$127.90 for internet service Surf Pak Xtra package from Oceanic (Count 10). *See* Further Statement ¶ 56(a); Comm. Ex. C-13.
- b. This expenditure was "allowed" by OHA. *See* Hrg. Tr. vol. 1, 80:13-20.
- c. On December 20, 2015, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the

amount of \$127.90 for internet service Surf Pak Xtra package from Oceanic (Count 11). *See* Further Statement ¶ 56(b); Comm. Ex. C-14.

- d. This expenditure was “allowed” by OHA. *See* Hrg. Tr. vol. 1, 82:9-84:21.
- e. On January 22, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent’s Trustee Expenditure Allowance in the amount of \$127.90 for internet service Surf Pak Xtra package from Oceanic (Count 12). *See* Further Statement ¶ 56(c); Comm. Ex. C-14.
- f. This expenditure was “allowed” by OHA. *See* Hrg. Tr. vol. 1, 82:9-84:21.
- g. On February 15, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent’s Trustee Expenditure Allowance in the amount of \$135.78 for internet service Surf Pak Xtra package from Oceanic (Count 13). *See* Further Statement ¶ 56(d); Comm. Ex. C-15.
- h. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 86:10-18.
- i. On March 5, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent’s Trustee Expenditure Allowance in the amount of \$132.43 for internet service Surf Pak Xtra package from Oceanic (Count 14). *See* Further Statement ¶ 56(e); Comm. Ex. C-16.
- j. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 87:20-88:4.
- k. On April 10, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent’s Trustee Expenditure Allowance in the amount of \$134.37 for internet service Surf Pak Xtra package from Oceanic (Count 15). *See* Further Statement ¶ 56(f); Comm. Ex. C-17.
- l. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 89:8-16.

- m. On May 9, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$133.55 for internet service Surf Pak Xtra package from Oceanic (Count 16). *See Further Statement ¶ 56(g); Comm. Ex. C-18.*
- n. This expenditure was "allowed" by OHA. *See Hrg. Tr. vol. 1, 90:22-91:5.*
- o. On June 6, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$133.55 for internet service Surf Pak Xtra package from Oceanic (Count 17). *See Further Statement ¶ 56(h); Comm. Ex. C-19.*
- p. This expenditure was "allowed" by OHA. *See Hrg. Tr. vol. 1, 92:11-18.*
- q. On June 30, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$133.55 for internet service Surf Pak Xtra package from Oceanic (Count 18). *See Further Statement ¶ 56(i); Comm. Ex. C-20.*
- r. This expenditure was "allowed" by OHA. *See Hrg. Tr. vol. 1, 93:21-94:4.*
- s. On August 8, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$133.55 for internet service Surf Pak Xtra package from Oceanic (Count 19). *See Further Statement ¶ 56(j); Comm. Ex. C-21.*
- t. On September 5, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$133.55 for internet service Surf Pak Xtra package from Oceanic (Count 20). *See Further Statement ¶ 56(k); Comm. Ex. C-22.*

- u. The August 8, 2016, and September 5, 2016, expenses were flagged by OHA for review. *See* Hrg. Tr. vol. 1, 95:17-96:7, 99:4-25.
- v. On October 17, 2016, OHA sent a memo to Respondent stating that the \$133.55 charges for internet service SurfPak Xtra package from Oceanic would be disallowed in part, and that only \$47.89 per month would be “allowed”. *See* Hrg. Tr. vol. 1, 97:18-98:3; Comm. Ex. C-11, 12, 22.
- w. In response to the October 17, 2016, memo, Respondent sent a memo to OHA CEO Kamanan Crabbe on November 2, 2016, explaining that she submitted the \$133.55 charge for Oceanic cable services based on the fact that every Oceanic bill in fiscal year 2016 had been approved by OHA. *See* Comm. Ex. C-12, 22.
- x. Via memo dated November 16, 2016, OHA CEO Kamanan Crabbe replied to Trustee Akana with the ultimate decision that her August 8, 2016, and September 5, 2016, expenses would be disallowed in part. *See* Comm. Ex. C-12, 22.
- y. The August 8, 2016, and September 5, 2016, expenditures were disallowed in part by OHA, and Trustee Akana’s balance was adjusted accordingly (“When we amend the reconciliation, there’s no actual reimbursement. It is reimbursed – yeah, it’s just adjusting the ending balance.”). *See* Hrg. Tr. vol. 1, 98:11-22, 99:4-25.
- z. The August 8, 2016, and September 5, 2016, expenditures were the only two Oceanic bills that were disallowed by OHA. *See* Hrg. Tr. vol. 1, 163:18- 164:1; Comm. Ex. C-12.
- aa. It is alleged that on October 22, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent’s Trustee Expenditure

Allowance in the amount of \$136.83 for internet service Surf Pak Xtra package from Oceanic (Count 21). *See* Further Statement ¶ 56(l).

bb. However, on October 22, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic. *See* Hrg. Tr. vol. 1, 100:10-101:13; Comm. Ex. C-23.

cc. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 100:10-101:13.

dd. It is alleged that on November 24, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$136.83 for internet service Surf Pak Xtra package from Oceanic (Count 22). *See* Further Statement ¶ 56(m).

ee. However, on November 24, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic. *See* Hrg. Tr. vol. 1, 102:4-103:12; Comm. Ex. C-24.

ff. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 100:10-101:13.

gg. On December 21, 2016, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 23). *See* Further Statement ¶ 59(a); Comm. Ex. C-25.

hh. This expenditure was "allowed" by OHA. *See* Hrg. Tr. vol. 1, 104:7-14.

- ii. On January 20, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 24). *See Further Statement ¶ 59(b); Comm. Ex. C-26.*
- jj. This expenditure was "allowed" by OHA. *See Hrg. Tr. vol. 1, 106:18-23.*
- kk. On February 13, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 25). *See Further Statement ¶ 59(c); Comm. Ex. C-27.*
- ll. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 107:23-108:3.*
- mm. On March 15, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 26). *See Further Statement ¶ 59(d); Comm. Ex. C-28.*
- nn. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 109:1-6.*
- oo. On April 20, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 27). *See Further Statement ¶ 59(e); Comm. Ex. C-29.*
- pp. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 110:6-11.*
- qq. On May 20, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the

amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic

(Count 28). *See* Further Statement ¶ 59(f); Comm. Ex. C-30.

rr. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 111:9-14.

ss. On June 25, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 29). *See* Further Statement ¶ 59(g); Comm. Ex. C-31.

tt. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 112:11-16.

uu. On July 21, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 30). *See* Further Statement ¶ 59(h); Comm. Ex. C-32.

vv. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 113:9-14.

ww. On August 24, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 31). *See* Further Statement ¶ 59(i); Comm. Ex. C-33.

xx. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 115:12-17.

yy. On September 10, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$82.00 for internet service Surf Pak Xtra package from Oceanic (Count 32). *See* Further Statement ¶ 59(j); Comm. Ex. C-34.

zz. This expenditure was not disallowed by OHA. *See* Hrg. Tr. vol. 1, 116:14-19.

aaa. On October 10, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 33). *See Further Statement ¶ 59(k); Comm. Ex. C-35.*

bbb. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 118:24-119:4.*

ccc. On November 20, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 34). *See Further Statement ¶ 59(l); Comm. Ex. C-36.*

ddd. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 120:3-8.*

eee. On December 13, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 35). *See Further Statement ¶ 59(m); Comm. Ex. C-37.*

fff. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 121:5-10.*

ggg. On December 30, 2017, Respondent made a charge which was later submitted to OHA as an expense from Respondent's Trustee Expenditure Allowance in the amount of \$80.00 for internet service Surf Pak Xtra package from Oceanic (Count 36). *See Further Statement ¶ 59(n); Comm. Ex. C-38.*

hhh. This expenditure was not disallowed by OHA. *See Hrg. Tr. vol. 1, 122:9-15.*

103. With respect to all of the alleged Oceanic cable internet service charges (Counts 10 to 36), Respondent in good faith believed these charges were within her discretionary Trustee Expenditure Allowance because they were used primarily for working from home, which

involved communicating with her own office and other offices, and monitoring national and local news for issues related to OHA, native Hawaiian beneficiaries, and Hawai'i in general. *See* Hrg. Tr. vol. 3, 560:15-562:20.

CONCLUSIONS OF LAW

To the extent that any of the following Conclusions of Law contain Findings of Fact, they shall also be deemed Findings of Fact. To the extent that any of the following Conclusions of Law contain mixed factual findings and legal conclusions, each shall be given full effect as both a Finding of Fact and a Conclusion of Law.

Furthermore, all of the conclusions of law, rulings and determinations set forth in the Commissioners' Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent filed October 16, 2018, are hereby incorporated herein as if fully set forth.

Belated Filing of Gift Disclosure Forms **(Counts 1 to 4)**

104. HRS § 84-11.5 requires all state employees, including OHA Trustees, to file a gift reporting disclosure on or by June 30th of any given year disclosing all gifts received during the previous twelve (12) months.

105. Because:

- a. the vast majority of the legal services and costs provided and paid for and in issue in this case were incurred to advance the collective issues, not individual issues, regarding what trustees may do or should not do; and
- b. OHA had previously provided a legal defense to other OHA Trustees sued in their official capacities;
- c. because OHA refused to provide a defense to Respondent in the OHA Lawsuit, the payment by Ms. Kawananaoka of the above-listed legal fees and costs incurred in the defense of Respondent in the OHA Lawsuit benefitted, first and foremost, OHA;

the payments of legal fees and costs by Ms. Abigail Kawananaoka to the firm of Bickerton Dang on behalf of Respondent, therefore, do not constitute gifts that required reporting, and Respondent's belated reporting thereof was unnecessary and did not constitute a violation of the timing of gift reporting set forth in HRS § 84-11.5.

Acceptance of Legal Services Paid for by Another
(Counts 5 to 6)

106. Hawai'i State Ethics Commission Advisory Opinion No. 2018-2 sets forth the factors that the Commission will consider when determining whether a "gift" is prohibited as wrongful under the State Ethics Code. These are the factors that must be applied to the facts before the Commission regarding Respondents receipt of legal services paid for by Ms. Abigail Kawananaoka in the OHA Lawsuit.

107. Specifically, per Advisory Opinion No. 2018-2, because:

- a. the relationship between Ms. Kawananaoka and Respondent predated the provision of the legal services; and
- b. the gift of legal services was not solicited by the Respondent; and
- c. the gift of the legal services given by Ms. Kawananaoka was not given in return for anything from the Respondent or for a promise of any future benefit to be given by the Respondent; and
- d. the gift of legal services did not result in any official or unofficial acts taken by the Respondent that provided a benefit to the Ms. Kawananaoka; and
- e. the gift or legal services were not intended to affect Respondent's performance of her official duties; and
- f. the gift of legal services did not affect Respondent's performance of her official duties; and
- g. Ms. Kawananaoka did not have any direct interest in the outcome of the specific case in relation to which the legal fees were provided; and

- h. because Ms. Kawanakoa had valid and unrelated reasons for making the offer and paying for the legal services and had a history of doing the same for others in similar circumstances;

the acceptance of the legal services provided to Respondent by Bickerton Dang in relation to the OHA Lawsuit that were directed to be paid for by Ms. Kawanakoa, and which were paid by Mr. Wright, her Trustee, were not improper and did not violate HRS §84-11; as such, Complainant did not carry its burden in proving and Respondent compellingly demonstrated, that the payments were not made “under circumstances in which it can reasonably be inferred” that (1) the payments were intended to influence Respondent’s official duties, *or* (2) that the payments were made as a reward for some official action taken or promised. This conclusion of law is based on the specific factors set forth in Advisory Opinion No. 2018-2 as applied to the facts of this specific case.

108. Furthermore, because:

- a. the vast majority of the legal services and costs provided and paid for and in issue in this case were incurred to advance the collective issues, not individual issues, regarding what trustees may do or shouldn’t do; and
- b. OHA had previously provided a legal defense to other OHA Trustees sued in their official capacities;
- c. because OHA refused to provide a defense to Respondent in the OHA Lawsuit, the payment by Ms. Kawanakoa of the above-listed legal fees and costs incurred in the defense of Respondent in the OHA Lawsuit benefitted, first and foremost, OHA;

said payments, therefore, did not constitute “gifts” to the Respondent that required reporting in the first instance.

Other Miscellaneous Expenditures from Respondent’s Trustee Expenditure Allowance
(Counts 7 to 36)

109. Regarding that charge dated September 18, 2013, in the amount of \$50.00 for a purported gift card from Apple iTunes (Count 7), because the compelling evidence demonstrated

that Respondent did not make the expenditure, was not aware of the expenditure and did not knowingly present the expenditure for allowance/disallowance by OHA, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

110. This specific expenditure and count is unlike most of the others because of its surreptitious nature and the Respondent's unawareness of it, and liability is precluded on these specific facts.

111. Furthermore, specific intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) ("Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary..."); Salmond, *Jurisprudence* (10th ed. 1947) 387 ("Every attempt is an act done with intent to commit the offence so attempted."); HRS § 705-500 ("A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...").

112. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis the iTunes card expenditure, she is not liable for an attempt to violate HRS § 84-13.

113. Regarding that charge dated July 15, 2014, in the amount of \$249.00 for Premier Club membership with Hawaiian Airlines (Count 8), because Respondent made this expenditure in an effort to save money from the Trust account to the advantage of Trust beneficiaries, since when she traveled with staff off-island for OHA business, fees were charged for checked bags, and the annual fee of \$249 was far more cost effective than paying for bags individually, on a per bag, per trip basis, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

114. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the

law seeks to prevent... an intent to bring it to pass is necessary..."); Salmond, Jurisprudence (10th ed. 1947) 387 ("Every attempt is an act done with intent to commit the offence so attempted."); HRS § 705-500 ("A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...").

115. Furthermore and therefore, because Respondent believed in good faith and was primarily motivated by a desire to minimize expenditure of OHA Trust funds and did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

116. Furthermore, regarding tangential benefits that Respondent received pertaining to this expenditure, such as being permitted to board flights early and/or sit near the front of the plane, because this enabled Respondent and her staff to exit the plane sooner than others and get to meetings faster, Respondent was also motivated by OHA work-related considerations in that regard and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

117. Furthermore and lastly, because Respondent reimbursed the amount of this expenditure back to OHA after it had been disallowed, the expenditure on or about July 15, 2014, from her Trustee Expenditure Allowance for Premier Membership with Hawaiian Airlines in the amounts of \$249.00 (Count 8) did not violate HRS § 84-13.

118. Regarding that charges dated between November 20, 2015, through June 30, 2016, in amounts varying between \$127.90 and \$135.78 for the purported internet service Surf Pak Xtra package from Oceanic (Counts 10-18), because Respondent made these expenditures primarily to engage in work as an OHA Trustee from home, to communicate with her own office

and other offices, and to monitor national and local news for issues related to OHA and native Hawaiian beneficiaries, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis these expenditures, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

119. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

120. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis these expenditures, she is not liable for an attempt to violate HRS § 84-13.

121. Regarding that charges dated August 8, 2016, and September 5, 2016, in the amounts of \$133.55 for the purported internet service Surf Pak Xtra package from Oceanic (Counts 19-20), because Respondent made these expenditures primarily to engage in work as an OHA Trustee from home, to communicate with her own office and other offices, and to monitor national and local news for issues related to OHA and native Hawaiian beneficiaries, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis these expenditures, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

122. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

123. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis these expenditures, she is not liable for an attempt to violate HRS § 84-13.

124. Furthermore, because Respondent reimbursed the amount of the disallowed portions of these expenditures back to OHA, the expenditures on or about August 8, 2016, and September 5, 2016, in the amounts of \$133.55 for the purported internet service Surf Pak Xtra package from Oceanic (Counts 19-20) did not violate HRS § 84-13.

125. Regarding that charges dated October 22, 2016, and November 24, 2016, in the alleged amounts of \$136.83 for the purported internet service Surf Pak Xtra package from Oceanic (Counts 21-22), because Respondent submitted only \$80.00 as expenses from Respondent's Trustee Expenditure Allowance to OHA, Complainant has failed to carry its burden on the Counts as alleged.

126. These specific expenditures (Counts 21-22) are outliers and unlike others because Complainant's failure to carry its burden on the counts as alleged in the Further Statement, and are therefore precluded.

127. Regardless, Respondent made these expenditures primarily to engage in work as an OHA Trustee from home, to communicate with her own office and other offices, and to monitor national and local news for issues related to OHA and native Hawaiian beneficiaries, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis these expenditures, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

128. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

129. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis these expenditures, she is not liable for an attempt to violate HRS § 84-13.

130. Regarding that charges dated between December 1, 2016, through December 30, 2017, in amounts of \$80.00 for the purported internet service Surf Pak Xtra package from Oceanic (Counts 23-36), because Respondent made these expenditures primarily to engage in work as an OHA Trustee from home, to communicate with her own office and other offices, and to monitor national and local news for issues related to OHA and native Hawaiian beneficiaries,

Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis these expenditures, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

131. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

132. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis these expenditures, she is not liable for an attempt to violate HRS § 84-13.

**Expenditures for Food and (Non-Alcoholic) Beverages from Trustee
Expenditure Allowance
(Counts 37 to 48)**

133. Regarding that charge dated October 23, 2013, in the amount of \$30.52 for a purported staff lunch from Legend Seafood on that date (Count 37), because Respondent did not make the expenditure, was not aware of the expenditure and did not knowingly present the expenditure for allowance/disallowance by OHA, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

134. This specific expenditure is unlike most others because of its surreptitious nature and the Respondent's unawareness of it, and liability is precluded on these specific facts.

135. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) ("Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary..."); Salmond, *Jurisprudence* (10th ed. 1947) 387 ("Every attempt is an act done with intent to commit the offence so

attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

136. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

137. Regarding that charge dated March 17, 2014, in the amount of \$17.80 for refreshments from Leonard’s Bakery (Count 38), because Respondent purchased this food for a working lunch with her staff and staff from the fiscal department on the OHA budget, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed were allowed by OHA at this time, and because Respondent, therefore did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- e. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- f. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- g. Using state time, equipment or other facilities for private business purposes; or
- h. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

138. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

139. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

140. Regarding that charge dated July 3, 2014, in the amount of \$268.59 for a going-away party for one staff member (Count 39), because Respondent purchased this food for the purpose of keeping up office morale as a way of retaining a well-functioning staff, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator

or employee inspects or supervises in the legislator's or employee's official capacity.

141. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

142. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

143. Regarding that charge dated August 4, 2014, in the amount of \$31.94 for breakfast for staff from Liliha Bakery (Count 40), because Respondent purchased this food for a working meal while her staff were conducting a debriefing after her trip to South Dakota on OHA business, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed were allowed by OHA at the time of this, and because Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;

- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

144. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

145. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

146. Regarding that charge dated February 10, 2015, in the amount of \$61.83 for a staff “birthday celebration” from Zippy’s (Count 41), because Respondent purchased this food for the purpose of keeping up office morale as a way of retaining a well-functioning staff, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

147. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

148. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

149. Regarding that charge dated January 23, 2015, in the amount of \$66.49 for manapua for staff from Royal Kitchen (Count 42), because Respondent purchased this food as the OHA Chairperson for a working meeting with the OHA Board of Trustees, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed

were allowed by OHA at the time of this, and because Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

150. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

151. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

152. Regarding that charge dated July 9, 2015, in the amount of \$39.48 to provide food for a staff meeting from Liliha Bakery (Count 43), because Respondent purchased this food for a work meeting, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed were allowed by OHA at the time of this, and because Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

153. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

154. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

155. Regarding that charge dated December 2, 2015, to provide food for staff from Chinatown Express Ala Moana (Count 44), because Respondent purchased this food for a working meeting with her staff regarding preparing the budget, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed were allowed by OHA at the time of this, and because Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

156. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, Jurisprudence

(10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

157. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

158. Regarding that charge dated August 15, 2016, for refreshments for her staff from Leonard’s Bakery (Count 45), because Complainant has failed to carry its burden of showing how these staff refreshments were not work-related and were for improper, personal improper benefit, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

159. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279,

49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, Jurisprudence (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

160. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

161. Regarding that charge dated October 5, 2016, for a staff lunch from Tanaka Saimin (Count 46), because Respondent purchased this food for a working lunch with members of her staff in order to prepare for the next day’s OHA Board of Trustees’ meeting, Respondent did not violate HRS § 84-13, in that reasonably-priced food and non-alcoholic beverages purchased in connection with OHA functions or events or meetings where work was conducted or discussed were allowed by OHA at the time of this, and because Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator

or employee inspects or supervises in the legislator's or employee's official capacity.

162. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

163. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

164. Regarding that charge dated February 17, 2017 in the amount of \$25.00 (without vendor information), for food that had been purchased for celebrating a staff member's last day of work (Count 47), because Respondent purchased this food for the purpose of keeping up office morale as a way of retaining a well-functioning staff, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or

- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

165. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

166. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

167. Regarding that charge dated December 5, 2017, in the amount of \$23.72 for food to provide at an OHA holiday party from Royal Kitchen (Count 48), because Respondent understood it to be her duty to attend this OHA-related event, and because she purchased this food specifically for this event and for the purpose of keeping up office morale as a way of retaining a well-functioning staff, Respondent did not violate HRS § 84-13, in that Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this expenditure, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;

- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes; or
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

168. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

169. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this expenditure, she is not liable for an attempt to violate HRS § 84-13.

Donations Using Trustee Expenditure Allowance (Counts 49 to 53)

170. In making a donation on or about February 11, 2014 from her Trustee Expenditure Allowance to the Hawaii County Democrats in the amount of \$50.00 (Count 49), Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this donation, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes;
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

171. Charge Counsel did not present any evidence to contradict these conclusions or to demonstrate any personal benefit received or bestowed by Respondent, proper or improper.

172. Based on the compelling evidence that was presented, it is determined that Respondent's donations to the Hawaii County Democrats fall within the OHA mandate and the purpose for the Trust Expenditure Allowance, that being the benefit of native Hawaiians and promoting and fostering access to and communication with their elected officials.

173. Because this donation supported an event that falls within the OHA mandate set forth in HRS Chapter 10 that OHA Trustees are to use their Trust Allowance Expenditures and are to take all actions in their role as an OHA Trustee for the benefit of native Hawaiians and to promote access to and foster discourse between native Hawaiians and their elected officials, which is what this event specifically promoted, and because Respondent made this donation based on her good faith belief that it fell within the OHA mandate set forth in HRS Chapter 10, the donation on or about February 11, 2014 from her Trustee Expenditure Allowance to the Hawaii County Democrats in the amount of \$50.00 (Count 49) did not violate HRS § 84-13.

174. Furthermore, because Respondent reimbursed the amount of this donation back to OHA after it had been disallowed, the donation on or about February 11, 2014 from her Trustee

Expenditure Allowance to the Hawaii County Democrats in the amount of \$50.00 (Count 49) did not violate HRS § 84-13.

175. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

176. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this donation, she is not liable for an attempt to violate HRS § 84-13.

177. In making a donation on or about February 11, 2014, from her Trustee Expenditure Allowance to the Democratic National Committee in the amount of \$50.00 (Count 50), Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this donation, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes;
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator

or employee inspects or supervises in the legislator's or employee's official capacity.

178. Charge Counsel did not present any evidence to contradict these conclusions or to demonstrate any personal benefit received or bestowed by Respondent, proper or improper.

179. Accordingly, and also because Respondent reimbursed the amount of this donation back to OHA after it had been disallowed, the donation on or about February 11, 2014, from her Trustee Expenditure Allowance to the Democratic National Committee in the amount of \$50.00 (Count 49) did not violate HRS § 84-13.

180. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

181. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this donation, she is not liable for an attempt to violate HRS § 84-13.

182. In making a donation on or about December 5, 2017, from her Trustee Expenditure Allowance to the Kanaka Maoli Political Action Committee Event in the amount of \$500.00 (Count 51), Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this donation, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes;
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

183. Furthermore, Charge Counsel did not present any evidence as to the purpose of the Kanaka Maoli Political Action Committee event, how the donation was used, why Respondent made this donation or Respondent's state of mind; accordingly, Charge Counsel failed to demonstrate that any personal benefit was received or bestowed by Respondent, proper or improper, and therefore failed to carry its burden on this count.

184. Accordingly, and also because Respondent reimbursed the amount of this donation back to OHA after it had been disallowed, the donation on or about December 5, 2017, from her Trustee Expenditure Allowance to the Kanaka Maoli political Action Committee event in the amount of \$500.00 (Count 51) did not violate HRS § 84-13.

185. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) ("Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary..."); Salmond, *Jurisprudence* (10th ed. 1947) 387 ("Every attempt is an act done with intent to commit the offence so attempted."); HRS § 705-500 ("A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...").

186. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this donation, she is not liable for an attempt to violate HRS § 84-13.

187. In making two donations on or about February 20, 2014, and August 8, 2017, from her Trustee Expenditure Allowance to the Hawaiian Humane Society in the respective amounts of \$25.00 and \$50.00 (Counts 51-52), Respondent did not secure any unwarranted personal benefit and did not grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, in that, more specifically, vis-à-vis this donation, she was not:

- a. Seeking other employment or contract for services for oneself by the use or attempted use of her office or position;
- b. Accepting, receiving, or soliciting compensation or other consideration for the performance of her official duties or responsibilities;
- c. Using state time, equipment or other facilities for private business purposes;
- d. Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

188. Charge Counsel did not present any evidence to contradict these conclusions or to demonstrate any personal benefit received or bestowed by Respondent, proper or improper.

189. Based on the compelling evidence presented at the Hearing, it is determined that Respondent's donations to the Hawaiian Humane Society fall within the OHA mandate and the purpose for the Trust Expenditure Allowance, that being the benefit of native Hawaiians.

190. Because the Hawaiian Humane Society is an organization that is found to fall within the OHA mandate set forth in HRS Chapter 10 that OHA Trustees are to use their Trust Allowance Expenditures and are to take all actions in their role as an OHA Trustee for the benefit of native Hawaiians, and because Respondent made these donations based on her good faith belief that they fell within the OHA mandate set forth in HRS Chapter 10, the donations from her Trustee Expenditure Allowance to the Hawaiian Humane Society in the amounts of \$25.00 and \$50.00 (Counts 50-51) did not violate HRS § 84-13.

191. Intent is a necessary element of any violation of a law, ordinance, rule or statute based on attempt. *See e.g., Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518 (1905) (“Where acts are not sufficient in themselves to produce a result which the law seeks to prevent... an intent to bring it to pass is necessary...”); Salmond, *Jurisprudence* (10th ed. 1947) 387 (“Every attempt is an act done with intent to commit the offence so attempted.”); HRS § 705-500 (“A person is guilty of an attempt to commit a crime if the person... [i]ntentionally engages in conduct which would constitute the crime...”).

192. Furthermore and therefore, because Respondent did not have the intent to secure any unwarranted personal benefit and did not intend to grant any unwarranted privileges, exemptions, contracts, or treatment for herself or for any others, vis-à-vis this donation, she is not liable for an attempt to violate HRS § 84-13.

193. Finally, because OHA did not disallow the donation made in 2014, said lack of disapproval provided sufficient basis for Respondent to believe that a donation to the same organization, in a close amount (\$50 as opposed to \$25) was not improper.

194. For this reason as well, Respondent is not liable for an attempt to violate HRS § 84-13 in connection with her 2017 donation to the Hawaiian Humane Society.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

195. On Counts 1 to 4 regarding the alleged belated reporting of gifts by Respondent, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent failed to report the alleged “gifts” of legal fees from Ms. Kawananakoa in violation of HRS § 84-11.5.

196. Furthermore, on Counts 1 to 4, because Ms. Kawananakoa was sued in her official capacity, because OHA refused to provide Respondent with legal representation in connection with those claims, and because the payments of legal fees in issue were shown to have been used primarily for the Respondent’s defense of those claims, the payment of the legal fees for Respondent’s defense benefitted the Commission and/or the State in the first instance, and therefore did not constitute a “gift” that required reporting.

197. On Counts 5 and 6 regarding alleged wrongful acceptance of gifts in the form of the payment of legal fees, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent accepted a “gift” of legal fees from Ms. Kawananakoa in violation of HRS § 84-11.

198. Furthermore, on Counts 5-6, because OHA refused to provide Respondent with legal representation in connection with those claims, and because the payments of legal fees in issue were shown to have been used for the Respondent’s defense of those claims, the payment of the legal fees for Respondent’s defense benefitted the Commission and/or the State in the first instance, and therefore did not constitute a “gift.”

199. Furthermore, on Counts 5 and 6, based on the specific facts of this case and based on the considerations set forth in the Hawai’i State Ethics Commission Advisory Opinion No.

2018-2, the acceptance of the legal services provided to Respondent by Bickerton Dang in relation to the OHA Lawsuit that were paid for by Ms. Kawanakoa through her Trustee were not improper and did not violate HRS §84-11.

200. On Count 7, regarding the purchase of an iTunes gift card, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to secure an unwarranted personal benefit to herself or another person, in violation of HRS § 84-13.

201. On Count 8, regarding the purchase of a Hawaiian Airlines Premier Club Membership, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to secure an unwarranted personal benefit to herself or another person, in violation of HRS § 84-13.

202. On Count 10 to 36², regarding the purchase of cable services, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to secure an unwarranted personal benefit to herself in violation of HRS § 84-13.

203. On Counts 37 to 48, regarding the purchases of food and (non-alcoholic) beverages, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to secure an unwarranted personal benefit to herself or another person, in violation of HRS § 84-13.

204. On Count 49, regarding the contribution to the Hawaii County Democrats, Complainant has failed to carry its burden of proof by the preponderance of the evidence that

² Count 9 was dismissed without prejudice by the Commission per the Amended Stipulation and Order Re: (1) Certain Procedures and processes for Hearing, (2) Admissibility of Exhibits, and (3) Voluntary Withdrawal of Charge Without Prejudice, dated October 16, 2018.

Respondent used or attempted to use her official position to unfairly benefit a political party, in violation of HRS § 84-13.

205. On Count 50, regarding a contribution to the Democratic National Committee, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to unfairly benefit a political party, in violation of HRS § 84-13.

206. On Count 51, regarding a contribution to the Kanaka Maoli Political Action Committee event, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to unfairly benefit a political party, in violation of HRS § 84-13.

207. On Counts 52 and 53, regarding two contributions to the Hawaiian Humane Society, Complainant has failed to carry its burden of proof by the preponderance of the evidence that Respondent used or attempted to use her official position to secure an unwarranted personal benefit to herself or another person, in violation of HRS § 84-13.

DATED: Honolulu, Hawai'i, December 14, 2018.



JAMES J. BICKERTON
BRIDGET G. MORGAN
STEPHEN M. TANNENBAUM
JEREMY K. O'STEEN

Attorneys for Respondent
ROWENA AKANA

BEFORE THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,

COMPL-C-15-00236

Complainant,

vs.

CERTIFICATE OF SERVICE

ROWENA AKANA;

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following party at their last known address in the manner and on the date herein below indicated:

Daniel Gluck, Esq.
Virginia Chock, Esq.
HAWAII STATE ETHICS COMMISSION
1001 Bishop Street,
ASB Tower, Suite 970
Honolulu, HI 96813

**Via Hand Delivery
and by E-mail**

DATED: Honolulu, Hawai'i, December 14, 2018.



JAMES J. BICKERTON
STEPHEN M. TANNENBAUM
BRIDGET G. MORGAN
JEREMY K. O'STEEN

Attorneys for Respondent
ROWENA AKANA

EXHIBIT 7

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Attorney General of Hawai'i

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Attorneys for Appellee

HAWAI'I STATE ETHICS COMMISSION



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

ROWENA AKANA,

Appellant

v.

HAWAI'I STATE ETHICS COMMISSION,
STATE OF HAWAI'I

Appellee.

CIVIL NO. 19-1-0379-03 JHA
(Agency Appeal)

ORDER AFFIRMING THE HAWAI'I STATE
ETHICS COMMISSION'S (1) FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER, DATED
FEBRUARY 5, 2019, AND (2) ORDER
REGARDING JURISDICTIONAL AND
CONSTITUTIONAL ISSUES RAISED BY
RESPONDENT, DATED OCTOBER 16, 2018

HEARING:

Date: September 6, 2019

Time: 10:00 A.M.

Judge: Honorable James H. Ashford

ORDER AFFIRMING THE HAWAI'I STATE ETHICS COMMISSION'S (1) FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, DATED FEBRUARY 5,
2019, AND (2) ORDER REGARDING JURISDICTIONAL AND CONSTITUTIONAL
ISSUES RAISED BY RESPONDENT, DATED OCTOBER 16, 2018

Pursuant to Hawai‘i Revised Statutes (“HRS”) § 91-14 and Rule 72 of the Hawai‘i Rules of Civil Procedure, Appellant Rowena Akana (“Appellant”) appealed the (1) Findings of Fact, Conclusions of Law, and Decision and Order, dated February 5, 2019 (the “Decision & Order”), and (2) Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent, dated October 16, 2018 (the “October 16 Order”), issued by Appellee Hawai‘i State Ethics Commission (the “Commission”). Oral argument on the appeal was heard before the Honorable James H. Ashford on September 6, 2019 at 10:00 a.m. Stephen M. Tannenbaum, Esq., and Jeremy K. O’Steen, Esq., appeared on behalf of Appellant, and Kaliko‘onalani D. Fernandes, Esq., and Robyn B. Chun, Esq., appeared on behalf of the Commission, with Daniel M. Gluck, Esq., Executive Director of the Commission also present.

The Court, having reviewed the briefs submitted by the parties and the records and files herein, and having heard the argument of counsel, affirms the Decision & Order and the October 16 Order.

First, Appellant argues that the Commission lacks the authority to regulate an Office of Hawaiian Affairs (“OHA”) trustee’s exercise of powers, and that the Commission exceeded its authority and jurisdiction in proceeding against Appellant for violations of HRS Chapter 84, the State Ethics Code. That argument is rejected.

The State Ethics Code applied to Appellant. There is no dispositive comparison or analogy between the facts in this case and the facts in *Boyd v. Hawaii State Ethics Commission*, 138 Hawai‘i 218, 378 P.3d 934 (2016), on which Appellant relies. Appellant has not shown any conflict of law, including through her reliance on HRS §§ 10-4(3), 10-4.5, and 10-16, and Appellant’s assertions of OHA’s exclusive authority have not been established. Appellant also relies on *Kealoha v. Machado*, 131 Hawai‘i 62, 315 P.3d 213 (2013); while *Kealoha* limits the

court's role in supervising OHA trustees' acts, it does not support Appellant's arguments regarding the Commission's authority.

Second, Appellant argues that the Commission deprived her of due process by allegedly denying her an evidentiary hearing concerning the Commission's authority and jurisdiction. There was no denial of due process. Appellant did not request a separate evidentiary hearing on the Commission's authority and jurisdiction. She did not object to the Commission's October 16 Order, or the lack of a separate evidentiary hearing on the Commission's jurisdiction and authority, and instead raised the issue for the first time in this appeal, in connection with her Motion for Additional Evidence to Be Taken. There is nothing in the record to suggest that Appellant could not have offered evidence or argument on the Commission's authority or jurisdiction during the multi-day contested case hearing that occurred before the Commission in October 2018; Appellant apparently chose not to offer any such evidence or argument.

Third, Appellant argues that HRS § 84-31 requires that written charges be issued by the Commission as a prerequisite to investigation. She points to HRS § 84-31(a)(6) in support of her argument, but that section simply sets out the applicable statute of limitations and defines when a proceeding is deemed to have been initiated for statute of limitations analysis. It does not impose the filing of a written charge as a prerequisite to investigation. Appellant also points to HRS § 84-31(b) in support of her argument, but nothing in that section imposes a written charge as a prerequisite to investigation, either.

HRS § 84-31 does contain an express prerequisite to investigation, and that is a formal resolution, supported by a vote of three or more members of the Commission. When the Legislature imposed a clear, specific prerequisite in this instance, but did not clearly express a

written charge as another prerequisite, the Court will not impose or infer the application of the written charge prerequisite Appellant advocates.

Fourth, Appellant argues that her equal protection rights were violated by the Commission. Appellant's Motion for Additional Evidence to Be Taken, referenced in her Opening Brief, was denied in June 2019. There is no evidence in the record to support Appellant's equal protection claim, and Hawai'i authority does not support Appellant's "class of one" theory. As a result, Appellant's equal protection claim is rejected.

Fifth, Appellant argues that the administrative fines imposed by the Commission in the Decision & Order are unconstitutionally excessive. That argument is rejected. Proportionality is not lacking in light of the numerosity of the violations and the nature of the violations.

Sixth, Appellant challenges the Commission's findings of fact and conclusions of law regarding certain expenditures from Appellant's Trustee Annual Allowance, discussed at pages 14 to 31 of the Opening Brief. This challenge lacks merit.

Appellant asserts that because her Trustee Annual Allowance account was reconciled every year, any disallowed expenditures were repaid, such that those expenditures were effectively never made. That assertion is rejected. Appellant's repayment of improper expenditures does not equate to those expenditures never occurring. Moreover, HRS § 84-13 prohibits a state employee from using – and also attempting to use – the employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others.

With respect to the specific expenditures raised in the Opening Brief, the Court cannot find that there is a lack of reliable, probative, and substantial evidence on the whole record. The

Commission, as the fact finder, can make determinations as to credibility, including regarding testimony before the Commission.

The Court also rejects Appellant's argument that OHA, and not Appellant, should be held accountable for any mismanagement of Appellant's Trustee Annual Allowance funds. That proposition is not supported by any applicable law or policy.

It is also not dispositive that some of the expenditures from Appellant's Trustee Annual Allowance at issue in this case were not disallowed by OHA. The fact that OHA staff might not have caught every improper expenditure does not mean that those expenditures did not occur, or that they are not actionable under the State Ethics Code.

Lastly, Appellant challenges the Commission's determination that she violated HRS § 84-11 by accepting gifts paid towards her legal fees. There is no basis for error in the Commission's decision on this topic. The Court rejects Appellant's argument that she received no benefit from a third party paying \$21,000 in her legal fees, and that only her attorneys benefited. Payment of \$21,000 of a legal obligation is receipt of \$21,000 in actual value. There is no basis to disagree with the Commission's conclusion that Appellant's acceptance of the \$21,000 in legal fees violated the State Ethics Code.

Based on the foregoing and for the reasons stated on the record at the hearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decision & Order and the October 16 Order are affirmed.

DATED: Honolulu, Hawai'i, _____

SEP 20 2019

JAMES H. ASHFORD

THE HONORABLE JAMES H. ASHFORD



APPROVED AS TO FORM:



STEPHEN M. TANNENBAUM

JEREMY K. O'STEEN

Attorneys for Appellant

ROWENA AKANA

EXHIBIT 8

CLARE E. CONNORS 7936
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Attorneys for Appellee
HAWAII STATE ETHICS COMMISSION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ROWENA AKANA,

Appellant,

vs.

HAWAII STATE ETHICS
COMMISSION, STATE OF HAWAII,

Appellee.

Civil No. 19-1-0379-03 JHA
(Agency Appeal)

AMENDED FINAL JUDGMENT

Non-hearing Motion
JUDGE: Honorable James H. Ashford

AMENDED FINAL JUDGMENT

In accordance with Rule 58 of the Hawai'i Rules of Civil Procedure,
and pursuant to the *Order Affirming the Hawai'i State Ethics Commission's*
(1) Findings of Fact, Conclusions of Law, and Decision and Order, dated
February 5, 2019, and (2) Order Regarding Jurisdictional and Constitutional

Issues Raised by Respondent, dated October 16, 2018, entered by the Court on September 24, 2019, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

(1) Final Judgment is hereby entered in favor of Appellee Hawai'i State Ethics Commission and against Appellant Rowena Akana in the amount of \$23,106.53, the total amount of the administrative fine assessed by Appellee Hawai'i State Ethics Commission against Appellant Rowena Akana; and

(2) Final Judgment is hereby entered in favor of Appellee Hawai'i State Ethics Commission and against Appellant Rowena Akana on all claims in this action.

This Final Judgment resolves all claims by and against all parties in this action. There are no claims, parties, or issues remaining.

DATED: Honolulu, Hawai'i, November 27, 2019.

/s/ James H. Ashford



THE HONORABLE JAMES H. ASHFORD

APPROVED AS TO FORM:

Stephen M. Tannenbaum, Esq.
Jeremy O'Steen, Esq.
Attorneys for Plaintiff
ROWENA M. AKANA

Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-0379-03 JHA, Circuit Court of the First Circuit; Amended Final Judgment

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Attorneys for Defendant
 ROWENA AKANA

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IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
STATE OF HAWAI'I

STATE OF HAWAI'I, Ethics Commission, by
 and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
 (ASSUMPSIT)

DEFENDANT ROWENA AKANA'S
ANSWER TO PLAINTIFF STATE OF
HAWAI'I, ETHICS COMMISSION'S
COMPLAINT, FILED JANUARY 2, 2020;
DEMAND FOR JURY TRIAL;
 DEFENDANT ROWENA AKANA'S
COUNTERCLAIM AGAINST PLAINTIFF
STATE OF HAWAI'I, ETHICS
COMMISSION; CERTIFICATE OF
SERVICE

DEFENDANT ROWENA AKANA'S ANSWER TO PLAINTIFF STATE OF HAWAI'I,
ETHICS COMMISSION'S COMPLAINT, FILED JANUARY 2, 2020

COMES NOW Defendant ROWENA AKANA ("Ms. Akana"), by and through her
 counsel, Bickerton Law Group, LLLP, and submits her Answer to the Complaint (the
 "Complaint") filed by Plaintiff STATE OF HAWAI'I, ETHICS COMMISSION, by and through
 its Attorney General ("Plaintiff") on January 2, 2020, and allege and avers as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted against Ms. Akana.

SECOND DEFENSE

2. In response to the allegations contained in **paragraph 1** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

3. In response to the allegations contained in **paragraph 2** of the Complaint, Ms. Akana states the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complaint. By way of further response, Ms. Akana states that that “Exhibit 1” appears to be a copy of a Complaint filed by the Hawai‘i State Ethics Commission (“Commission”) on February 5, 2019, in COMPL-C-15-00236, which is document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

4. In response to the allegations contained in **paragraphs 3** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

5. In response to the allegations contained in **paragraph 4** of the Complaint, Ms. Akana states that “Exhibit 2” referenced therein appears to be a Charge filed by the Commission on April 19, 2018, in case number COMPL-C-15-00236, which is a document that speaks for

itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

6. In response to the allegations contained in **paragraph 5** of the Complaint, Ms. Akana states that “Exhibit 3” referenced therein appears to be an Answer filed by Ms. Akana on May 23, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

7. In response to the allegations contained in **paragraph 6** of the Complaint, Ms. Akana states that “Exhibit 4” referenced therein appears to be a Further Statement of Alleged Violation filed by the Commission on July 19, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

8. In response to the allegations contained in **paragraph 7** of the Complaint, Ms. Akana states that “Exhibit 5” referenced therein appears to be an Answer to the Further Statement of Alleged Violation filed by Ms. Akana on August 1, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

9. Ms. Akana admits the allegations contained in **paragraph 8** of the Complaint.

10. In response to the allegations contained in **paragraphs 9, 10, 11, and 12** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

11. In response to the allegations contained in **paragraph 13** of the Complaint, Ms. Akana states that “Exhibit 6” referenced therein appears to be a Post-Hearing Proposed Findings of Facts and Conclusions of Law filed by Ms. Akana on December 14, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

12. In response to the allegations contained in **paragraph 14** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

13. In response to the allegations contained in **paragraph 15** of the Complaint, Ms. Akana repeats and realleges her responses to paragraph 2 of the Complaint.

14. In response to the allegations contained in **paragraphs 16, 17, 18, 19, 20, and 21** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete. By way of further response, to the extent those paragraphs reference documents therein, such documents speak for themselves. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with such documents.

15. In response to the allegations contained in **paragraph 22** of the Complaint, Ms. Akana states that “Exhibit 7” referenced therein appears to be an Order Affirming the Hawaii State Ethics Commission’s (1) Findings of Facts, Conclusions of Law, and Decision and Order, dated February 5, 2019, and (2) Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent, dated October 16, 2018, entered by the Court on September 24, 2019, in case

number 19-1-0379-03 JHA, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

16. In response to the allegations contained in **paragraph 23** of the Complaint, Ms. Akana states that “Exhibit 8” referenced therein appears to be an Amended Final Judgment, entered by the Court on November 27, 2019, in case number 19-1-0379-03 JHA, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

17. In response to the allegations contained in **paragraphs 24 and 25** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

THIRD DEFENSE

18. Ms. Akana denies any and all allegations contained in the Complaint which are not specifically admitted herein, including, but not limited to, the allegations in the Prayer for Relief, and all other allegations not previously addressed in this Answer.

FOURTH DEFENSE

19. Ms. Akana gives notice that some or all of Plaintiff’s claims are barred by the applicable statute of limitations and/or repose.

FIFTH DEFENSE

20. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of laches.

SIXTH DEFENSE

21. Plaintiff is barred from maintaining this action against Ms. Akana based upon the defenses of waiver, release, equity, estoppel, unclean hands, and/or unjust enrichment.

SIXTH DEFENSE

22. Plaintiff is barred from maintaining this action against Ms. Akana based upon the defenses of consent, compromise and release, waiver, and/or ratification.

SEVENTH DEFENSE

23. Ms. Akana gives notice that Plaintiff's recovery, if any, is barred by Plaintiff's failure to mitigate damages.

EIGHTH DEFENSE

24. Ms. Akana gives notice that Plaintiff's injuries, claims and/or damages, if any, were caused by other parties, instrumentalities or agencies over which Ms. Akana has no control and for which she is not responsible.

NINTH DEFENSE

25. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of accord and satisfaction.

TENTH DEFENSE

26. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of knowledge and/or acquiescence.

ELEVENTH DEFENSE

27. Ms. Akana gives notice that she intends to rely on the defenses of setoff, offset, and/or recoupment.

TWELFTH DEFENSE

28. Ms. Akana gives notice that she intends to rely on the defense of failure to join indispensable party or parties.

THIRTEENTH DEFENSE

29. Ms. Akana gives notice that she intends to rely upon any other matter constituting an avoidance or affirmative defense as set forth in DRCP 8 and 12, and that she intends to seek leave to amend her answer to allege those defenses of which she may become aware during the course of discovery or trial of this action.

WHEREFORE, Ms. Akana prays as follows:

- A. That the Complaint be dismissed with prejudice against her;
- B. That she be awarded her costs and reasonable attorneys' fees; and
- C. That the Court award such other and further relief as it deems just and proper.

DATED: Honolulu, Hawai'i, January 31, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
STEPHEN M. TANNENBAUM
JEREMY K. O'STEEN

Attorneys for Defendant
ROWENA AKANA

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAI'I

STATE OF HAWAI'I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
(ASSUMPSIT)

DEFENDANT ROWENA AKANA'S
COUNTERCLAIM AGAINST PLAINTIFF
STATE OF HAWAI'I, ETHICS
COMMISSION

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**DEFENDANT ROWENA AKANA'S COUNTERCLAIM AGAINST PLAINTIFF STATE
OF HAWAI'I, ETHICS COMMISSION**

COMES NOW Defendant ROWENA AKANA ("Ms. Akana"), by and through her
counsel, Bickerton Law Group, LLLP, and submits her Counterclaim against Plaintiff STATE
OF HAWAI'I, ETHICS COMMISSION, by and through its Attorney General ("Plaintiff"), and
allege and avers as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over Plaintiff and this action brought pursuant to
Section 604-5 of the Hawai'i Revised Statutes ("HRS").

2. Venue is proper in this Court.

FACTUAL ALLEGATIONS

3. Ms. Akana was an Office of Hawaiian Affairs Trustee-at-Large for twenty-eight
(28) years, and was previously its Chairwoman from 1998 to 2000 and again from December
2016 to February 2017. Ms. Akana sat on OHA's Board of Directors for much of the time she
served as OHA Trustee.

4. The Office of Hawaiian Affairs (“OHA”) was founded in 1978 and describes itself as a Hawaii “public agency with a high degree of autonomy... responsible for improving the well- being of Native Hawaiians”, as governed by its Board of Trustees.

5. Ms. Akana was been responsible for numerous OHA programs intended to benefit the people of Hawaii, such as: Quality Homes for the Pacific; The Hawaiian Registry Program; the Annual Commitment to Scholarships; the Native Hawaiian Revolving Loan Fund (for local start-ups); the Aha Opio Program (for high school leadership); Aha Kupuna (educational program for Native Hawaiian senior citizens); and numerous others. In addition, she serves on a number of boards of national organizations that work with persons and groups in Hawai`i to benefit Native Hawaiians and the citizens of Hawaii, such as serving on: the Governors’ Interstate Indian Council Board of Directors; and as the Pacific Representative for the American Indian Alaska Native Tourism Association, to name but two.

6. Throughout her tenure with OHA, Ms. Akana was also known as an activist for transparency and the provision of information to OHA beneficiaries – whose interests she was obligated to put first – and for public access to OHA’s decision-making process, decisions and records. She did not hesitate to publicly criticize OHA and/or certain of its Trustees and Board Members for decisions that she believed in good faith were not in the best interests of OHA beneficiaries.

7. In doing so, she accumulated a fair number of political supporters, as well as opponents and critics.

8. Plaintiff herein the Hawai`i State Ethics Commission (the “Commission”) is a legislative agency of the State of Hawai`i created under and governed by Hawai`i Administrative Rules (“HAR”), Title 21, put in effect to carry out the provisions of Hawai`i Revised Statutes

(“HRS”), Chapter 84 and holding the powers, duties and authority as set forth in Revised Ordinances of Honolulu (“ROH”), Chapter 3, Article 6, Section 3-6.3.

9. In May 2018, the Commission brought charges against Ms. Akana in a Commission complaint entitled *Hawaii State Ethics Commission vs. Rowena Akana*, bearing the matter number COMPL-C-15-00236. This proceeding is hereafter referred to as the “Expenditures and Gifts Charges” or the “Expenditures and Gifts Proceeding.”

10. Ms. Akana believes the Expenditures and Gifts Charges, among other matters, were motivated by a cabal of core OHA-Trustees and members of the OHA Board of Trustee who were politically opposed to Ms. Akana and who were able to persuade and influence the Commission to bring a retaliatory action against Ms. Akana for – whether accurate or not – her having allegedly revealed certain OHA communications, in the context to her opposition to a certain business transaction that OHA was involved in, which communications were purportedly intended to have been privileged and confidential and as a result of her filing suit against her co-Trustees, in response to which her co-Trustees counter-sued her.

11. The charges in the Expenditures and Gift Proceeding included alleged violations for having received “gifts” in the form of payment of legal fees by a third-party to Ms. Akana’s lawyers for the fees and costs incurred in defending against the previously mentioned lawsuit vis-à-vis her fellow OHA Trustees on transparency issues and access to information for OHA beneficiaries.

12. However, the acceptance of payments of some of the attorneys’ fees for Ms. Akana did not constitute “gifts to Ms. Akana.” This is because a lawsuit by or against a governmental official in his or her official capacity is not a suit by or against that official personally or individually, United States Fid. & Guar. Co. v. Goudeau, 272 S.W.3d 603, 608

(Tex. 2008), and the prosecution or defense of said lawsuit inures to the benefit of the State, rather than the individual, since it is the State that is spared the expense of having to provide a defense.

13. Thus, the Commission has no authority or jurisdiction to seek recovery of the acceptance of these “gifts” in this action.

COUNT I – UNJUST ENRICHMENT

14. Plaintiff State of Hawai‘i received significant savings by failing and/or refusing to bear the expense of having to pay Ms. Akana’s lawyers for the fees and costs incurred in defending against the previously mentioned lawsuit vis-à-vis her fellow OHA Trustees on transparency issues and access to information for OHA beneficiaries.

15. Plaintiff State of Hawai‘i, Ethics Commission, appreciates and has knowledge of such benefits.

16. Under principles of equity and good conscience, it would be unjust for Plaintiff State of Hawai‘i, Ethics Commission to be permitted to retain the savings at the expense of Ms. Akana.

WHEREFORE, Ms. Akana prays for judgment against Plaintiff as follows:

A. That this Honorable Court enter judgment in the amount of \$21,513.15 in favor of Defendant Rowena Akana and against Plaintiff State of Hawai‘i, Ethics Commission; and

B. That the Court award such other and further relief as it deems just and proper.

DATED: Honolulu, Hawai'i, January 31, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
STEPHEN M. TANNENBAUM
JEREMY K. O'STEEN

Attorneys for Defendant
ROWENA AKANA

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Attorneys for Defendant

ROWENA AKANA

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IN THE DISTRICT COURT OF THE FIRST CIRCUIT**HONOLULU DIVISION****STATE OF HAWAI'I**STATE OF HAWAI'I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
(ASSUMPSIT)

DEFENDANT ROWENA AKANA'S **FIRST AMENDED ANSWER TO PLAINTIFF STATE OF HAWAI'I, ETHICS COMMISSION'S COMPLAINT**, FILED JANUARY 2, 2020; DEFENDANT ROWENA AKANA'S **FIRST AMENDED COUNTERCLAIM AGAINST PLAINTIFF STATE OF HAWAI'I, ETHICS COMMISSION; DEMAND FOR JURY TRIAL**; CERTIFICATE OF SERVICE

DEFENDANT ROWENA AKANA'S FIRST AMENDED ANSWER TO PLAINTIFF STATE OF HAWAI'I, ETHICS COMMISSION'S COMPLAINT, FILED JANUARY 2, 2020

COMES NOW Defendant ROWENA AKANA ("Ms. Akana"), by and through her counsel, Bickerton Law Group, LLLP, and submits her First Amended Answer to the Complaint

(the “Complaint”) filed by Plaintiff STATE OF HAWAI‘I, ETHICS COMMISSION, by and through its Attorney General (“Plaintiff”) on January 2, 2020, and allege and avers as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted against Ms. Akana.

SECOND DEFENSE

2. In response to the allegations contained in **paragraph 1** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

3. In response to the allegations contained in **paragraph 2** of the Complaint, Ms. Akana states the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complaint. By way of further response, Ms. Akana states that that “Exhibit 1” appears to be a copy of a Complaint filed by the Hawai‘i State Ethics Commission (“Commission”) on February 5, 2019, in COMPL-C-15-00236, which is document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

4. In response to the allegations contained in **paragraphs 3** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

5. In response to the allegations contained in **paragraph 4** of the Complaint, Ms. Akana states that “Exhibit 2” referenced therein appears to be a Charge filed by the Commission on April 19, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

6. In response to the allegations contained in **paragraph 5** of the Complaint, Ms. Akana states that “Exhibit 3” referenced therein appears to be an Answer filed by Ms. Akana on May 23, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

7. In response to the allegations contained in **paragraph 6** of the Complaint, Ms. Akana states that “Exhibit 4” referenced therein appears to be a Further Statement of Alleged Violation filed by the Commission on July 19, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

8. In response to the allegations contained in **paragraph 7** of the Complaint, Ms. Akana states that “Exhibit 5” referenced therein appears to be an Answer to the Further Statement of Alleged Violation filed by Ms. Akana on August 1, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

9. Ms. Akana admits the allegations contained in **paragraph 8** of the Complaint.

10. In response to the allegations contained in **paragraphs 9, 10, 11, and 12** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law

to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

11. In response to the allegations contained in **paragraph 13** of the Complaint, Ms. Akana states that “Exhibit 6” referenced therein appears to be a Post-Hearing Proposed Findings of Facts and Conclusions of Law filed by Ms. Akana on December 14, 2018, in case number COMPL-C-15-00236, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

12. In response to the allegations contained in **paragraph 14** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

13. In response to the allegations contained in **paragraph 15** of the Complaint, Ms. Akana repeats and realleges her responses to paragraph 2 of the Complaint.

14. In response to the allegations contained in **paragraphs 16, 17, 18, 19, 20, and 21** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete. By way of further response, to the extent those paragraphs reference documents therein, such documents speak for themselves. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with such documents.

15. In response to the allegations contained in **paragraph 22** of the Complaint, Ms. Akana states that “Exhibit 7” referenced therein appears to be an Order Affirming the Hawaii State Ethics Commission’s (1) Findings of Facts, Conclusions of Law, and Decision and Order,

dated February 5, 2019, and (2) Order Regarding Jurisdictional and Constitutional Issues Raised by Respondent, dated October 16, 2018, entered by the Court on September 24, 2019, in case number 19-1-0379-03 JHA, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

16. In response to the allegations contained in **paragraph 23** of the Complaint, Ms. Akana states that “Exhibit 8” referenced therein appears to be an Amended Final Judgment, entered by the Court on November 27, 2019, in case number 19-1-0379-03 JHA, which is a document that speaks for itself. Ms. Akana denies any and all interpretations and/or allegations therein to the extent they are inconsistent with the document.

17. In response to the allegations contained in **paragraphs 24 and 25** of the Complaint, Ms. Akana states that the allegations therein are statements and/or conclusions of law to which no response is necessary. Ms. Akana denies that the characterization of those statements and/or conclusions of law are accurate or complete.

THIRD DEFENSE

18. Ms. Akana denies any and all allegations contained in the Complaint which are not specifically admitted herein, including, but not limited to, the allegations in the Prayer for Relief, and all other allegations not previously addressed in this Answer.

FOURTH DEFENSE

19. Ms. Akana gives notice that some or all of Plaintiff’s claims are barred by the applicable statute of limitations and/or repose.

FIFTH DEFENSE

20. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of laches.

SIXTH DEFENSE

21. Plaintiff is barred from maintaining this action against Ms. Akana based upon the defenses of waiver, release, equity, estoppel, unclean hands, and/or unjust enrichment.

SIXTH DEFENSE

22. Plaintiff is barred from maintaining this action against Ms. Akana based upon the defenses of consent, compromise and release, waiver, and/or ratification.

SEVENTH DEFENSE

23. Ms. Akana gives notice that Plaintiff's recovery, if any, is barred by Plaintiff's failure to mitigate damages.

EIGHTH DEFENSE

24. Ms. Akana gives notice that Plaintiff's injuries, claims and/or damages, if any, were caused by other parties, instrumentalities or agencies over which Ms. Akana has no control and for which she is not responsible.

NINTH DEFENSE

25. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of accord and satisfaction.

TENTH DEFENSE

26. Plaintiff is barred from maintaining this action against Ms. Akana based upon the doctrine of knowledge and/or acquiescence.

ELEVENTH DEFENSE

27. Ms. Akana gives notice that she intends to rely on the defenses of setoff, offset, and/or recoupment.

TWELFTH DEFENSE

28. Ms. Akana gives notice that she intends to rely on the defense of failure to join indispensable party or parties.

THIRTEENTH DEFENSE

29. The State breached its duties to provide a defense to Ms. Akana when sued in her official capacity only and based on that breach any recovery by the State of sums expended in the defense of that official capacity counterclaim would be iniquitable.

Ms. Akana gives notice that she intends to rely upon any other matter constituting an avoidance or affirmative defense as set forth in DRCP 8 and 12, and that she intends to seek leave to amend her answer to allege those defenses of which she may become aware during the course of discovery or trial of this action.

WHEREFORE, Ms. Akana prays as follows:

- A. That the Complaint be dismissed with prejudice against her;
- B. That she be awarded her costs and reasonable attorneys' fees; and
- C. That the Court award such other and further relief as it deems just and proper.

DATED: Honolulu, Hawai'i February 3, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
STEPHEN M. TANNENBAUM
JEREMY K. O'STEEN

Attorneys for Defendant
ROWENA AKANA

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAI'I

STATE OF HAWAI'I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
(ASSUMPSIT)

DEFENDANT ROWENA AKANA'S **FIRST
AMENDED COUNTERCLAIM** AGAINST
PLAINTIFF STATE OF HAWAI'I, ETHICS
COMMISSION

**DEFENDANT ROWENA AKANA'S FIRST AMENDED COUNTERCLAIM
AGAINST PLAINTIFF STATE OF HAWAI'I, ETHICS COMMISSION**

COMES NOW Defendant ROWENA AKANA ("Ms. Akana"), by and through her counsel, Bickerton Law Group, LLLP, and submits her First Amended Counterclaim against Plaintiff STATE OF HAWAI'I, ETHICS COMMISSION, by and through its Attorney General ("Plaintiff"), and allege and avers as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over Plaintiff and this action brought pursuant to Section 604-5 of the Hawai'i Revised Statutes ("HRS").

2. Venue is proper in this Court.

FACTUAL ALLEGATIONS

3. Ms. Akana was an Office of Hawaiian Affairs Trustee-at-Large for twenty-eight (28) years, and was previously its Chairwoman from 1998 to 2000 and again from December 2016 to February 2017. Ms. Akana sat on OHA's Board of Directors for much of the time she served as OHA Trustee.

4. The Office of Hawaiian Affairs (“OHA”) was founded in 1978 and describes itself as a Hawaii “public agency with a high degree of autonomy... responsible for improving the well- being of Native Hawaiians”, as governed by its Board of Trustees.

5. Ms. Akana was been responsible for numerous OHA programs intended to benefit the people of Hawaii, such as: Quality Homes for the Pacific; The Hawaiian Registry Program; the Annual Commitment to Scholarships; the Native Hawaiian Revolving Loan Fund (for local start-ups); the Aha Opio Program (for high school leadership); Aha Kupuna (educational program for Native Hawaiian senior citizens); and numerous others. In addition, she serves on a number of boards of national organizations that work with persons and groups in Hawai‘i to benefit Native Hawaiians and the citizens of Hawaii, such as serving on: the Governors’ Interstate Indian Council Board of Directors; and as the Pacific Representative for the American Indian Alaska Native Tourism Association, to name but two.

6. Throughout her tenure with OHA, Ms. Akana was also known as an activist for transparency and the provision of information to OHA beneficiaries – whose interests she was obligated to put first – and for public access to OHA’s decision-making process, decisions and records. She did not hesitate to publicly criticize OHA and/or certain of its Trustees and Board Members for decisions that she believed in good faith were not in the best interests of OHA beneficiaries.

7. In doing so, she accumulated a fair number of political supporters, as well as opponents and critics.

8. Plaintiff herein the Hawai‘i State Ethics Commission (the “Commission”) is a legislative agency of the State of Hawai‘i created under and governed by Hawai‘i Administrative Rules (“HAR”), Title 21, put in effect to carry out the provisions of Hawai‘i Revised Statutes

(“HRS”), Chapter 84 and holding the powers, duties and authority as set forth in Revised Ordinances of Honolulu (“ROH”), Chapter 3, Article 6, Section 3-6.3.

9. In May 2018, the Commission brought charges against Ms. Akana in a Commission complaint entitled *Hawaii State Ethics Commission vs. Rowena Akana*, bearing the matter number COMPL-C-15-00236. This proceeding is hereafter referred to as the “Expenditures and Gifts Charges” or the “Expenditures and Gifts Proceeding.”

10. Ms. Akana believes the Expenditures and Gifts Charges, among other matters, were motivated by a cabal of core OHA-Trustees and members of the OHA Board of Trustee who were politically opposed to Ms. Akana and who were able to persuade and influence the Commission to bring a retaliatory action against Ms. Akana for – whether accurate or not – her having allegedly revealed certain OHA communications, in the context to her opposition to a certain business transaction that OHA was involved in, which communications were purportedly intended to have been privileged and confidential and as a result of her filing suit against her co-Trustees, in response to which her co-Trustees counter-sued her.

11. The charges in the Expenditures and Gift Proceeding included alleged violations for having received “gifts” in the form of payment of legal fees by a third-party to Ms. Akana’s lawyers for the fees and costs incurred in defending against the previously mentioned lawsuit vis-à-vis her fellow OHA Trustees on transparency issues and access to information for OHA beneficiaries.

12. However, the acceptance of payments of some of the attorneys’ fees for Ms. Akana did not constitute “gifts to Ms. Akana.” This is because a lawsuit by or against a governmental official in his or her official capacity is not a suit by or against that official personally or individually, United States Fid. & Guar. Co. v. Goudeau, 272 S.W.3d 603, 608

(Tex. 2008), and the prosecution or defense of said lawsuit inures to the benefit of the State, rather than the individual, since it is the State that is spared the expense of having to provide a defense.

13. Thus, the Commission has no authority or jurisdiction to seek recovery of the acceptance of these “gifts” in this action.

14. In addition to the sums expended on her behalf by others to defend against claims made against her solely in her official capacity, Ms. Akana expended funds of her own in excess of \$10,000 in defense of said claims made against her in her official capacity, which can and should be reimbursed to her by the State.

COUNT I – UNJUST ENRICHMENT

15. Ms. Akana repeats and realleges the allegations set forth above.

16. Plaintiff State of Hawai‘i received significant savings by failing and/or refusing to bear the expense of having to pay Ms. Akana’s lawyers for the fees and costs incurred in defending against the previously mentioned lawsuit vis-à-vis her fellow OHA Trustees on transparency issues and access to information for OHA beneficiaries.

17. Plaintiff State of Hawai‘i, Ethics Commission, appreciates and has knowledge of such benefits.

18. Under principles of equity and good conscience, it would be unjust for Plaintiff State of Hawai‘i, Ethics Commission to be permitted to retain the savings at the expense of Ms. Akana.

COUNT II – SUBROGATION AND IMPLIED CONTRACT

19. Ms. Akana repeats and realleges the allegations set forth above.

20. Ms. Akana has personally paid for and/or arranged for the payment of sums that the State of Hawaii should have paid for or., alternatively, has had to pay for or arrange for the payment of private counsel because the State failed in its obligation to provide her with a defense when a State agency brought claims against her in her official capacity.

21. Under equitable principles of subrogation and implied contract, the State of Hawaii is liable to her for those sums expended by her or on her behalf.

WHEREFORE, Ms. Akana prays for judgment against Plaintiff as follows:

A. That this Honorable Court enter judgment in excess of \$31000.00 in favor of Defendant Rowena Akana and against Plaintiff State of Hawai'i, Ethics Commission; and

B. That the Court award such other and further relief as it deems just and proper.

DATED: Honolulu, Hawai'i, February 3, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
STEPHEN M. TANNENBAUM
JEREMY K. O'STEEN

Attorneys for Defendant
ROWENA AKANA

**IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
STATE OF HAWAI‘I**

STATE OF HAWAI‘I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
(ASSUMPSIT)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Defendant ROWENA AKANA, by and through her attorneys BICKERTON LAW GROUP, LLLP, hereby demands trial by jury on all issues so triable raised by the State’s claims and Defendant’s counterclaims herein.

DATED: Honolulu, Hawai‘i, February 3, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
STEPHEN M. TANNENBAUM
JEREMY O’STEEN

Attorneys for Defendant
ROWENA AKANA

IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
STATE OF HAWAI'I

STATE OF HAWAI'I, Ethics Commission, by
and through its Attorney General,

Plaintiff,

v.

ROWENA AKANA,

Defendant.

CIVIL NO. 1DRC-20-0000134
(ASSUMPSIT)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following party in the manner and on the date herein below indicated:

CLARE E. CONNORS, ESQ. (*clare.e.connors@hawaii.gov*)
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JEFS

Attorney for Plaintiff
STATE OF HAWAI'I, ETHICS COMMISSION

DATED: Honolulu, Hawai'i, February 3, 2020.

/s/ James J. Bickerton
JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
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Attorneys for Defendant
ROWENA AKANA

SUNSHINE LAW MEETING
AGENDA ITEM IX

OFFICE OF INFORMATION PRACTICES: OPINION UPHOLDING COMMISSION'S
DENIAL OF REQUEST TO ACCESS GOVERNMENT RECORDS

Briefing by Executive Director Gluck regarding the Office of Information Practices' Opinion Letter No. F20-02 (U Appeal 18-5), upholding the Commission's 2018 denial of a request to access government records.

Attachment 1: OIP Opinion Letter No. F20-02



DAVID Y. IGE
GOVERNOR

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CHERYL KAKAZU PARK
DIRECTOR

The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to sections 92F-27.5 and 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Christine Paul Russi
Agency: Hawaii State Ethics Commission
Date: February 4, 2020
Subject: Redacted Investigation (U APPEAL 18-5)

REQUEST FOR OPINION

Requester and her spouse (Requester) sought a decision as to whether the Hawaii State Ethics Commission (SEC) properly denied her request for a redacted copy of an investigation file (Investigation) under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

Unless otherwise indicated, this decision is based solely upon the facts presented in emails from Requester to OIP dated August 7 and September 4, 2017; emails from the SEC to OIP dated September 5, 2017 with attachment, and September 6, 2017; a letter with enclosures to the SEC from OIP dated September 8, 2017; a letter to OIP from the SEC dated October 27, 2017; and records provided for *in camera* review.

QUESTION PRESENTED

Whether the SEC properly denied access to a redacted copy of the Investigation.

BRIEF ANSWER

Yes. The State Ethics Code, chapter 84, HRS (Ethics Code), includes a confidentiality provision at section 84-31(b), HRS, that protects SEC investigation files from disclosure. Sections 92F-13(3) and 92F-22(5), HRS, allow agencies to withhold records that are subject to a confidentiality statute, whether they are government records subject to Part II of the UIPA or personal records subject to Part III.

FACTS

Requester submitted a complaint to the SEC on May 18, 2017, against two former Hawaii State government employees, alleging violations of the Ethics Code. In an email to the SEC dated June 5, 2017, Requester made a request for “a redacted copy of the investigation of our complaint[.]” The SEC denied the request in a Notice to Requester dated June 8, 2017, citing section 92F-13(4), HRS,¹ as its authority to withhold “[c]onfidential investigation materials.” Requester then appealed the denial to OIP. OIP’s *in camera* review of the Investigation shows that it contains written correspondence between Requester and the SEC, and other records of the SEC staff’s work on the Investigation.

DISCUSSION

The UIPA requires generally that agencies must make government records available to the public for inspection and copying, subject to the exceptions to disclosure in section 92F-13, HRS. HRS § 92F-11 (2012 and Supp. 2019). Section 92F-13(4), HRS, which was invoked by the SEC, states that government agencies are not required to disclose “[g]overnment records which, pursuant to a state . . . law . . . are protected from disclosure[.]”

¹ In response to this appeal, the SEC also invoked section 92F-13(2), and (3), HRS, as allowing it to withhold the redacted investigation. Respectively, these sections allow agencies to withhold records (1) that would not be discoverable, or (2) when disclosure would result in the frustration of a legitimate government function. OIP’s *in camera* review of the Investigation does show that a portion contains attorney work product, which is protected from disclosure under section 92F-13(2), HRS. See OIP Op. Ltr. No. F14-01 at 6 n. 4 (recognizing that documents prepared by an attorney in anticipation of litigation are an attorney’s work product and as such deemed a privileged matter not subject to discovery. Hawaii Rules of Civil Procedure Rule 26(b)(3) (1980)). However, because section 92F-13(4), HRS, allows the SEC to withhold access, OIP need not reach the issue of whether either of these additional exceptions to disclosure apply.

I. Confidentiality Statute

OIP has previously recognized in dicta that SEC investigations are not public because the Ethics Code contains a confidentiality statute that protects SEC investigations. OIP Op. Ltr. No. 98-1 at 7 n. 5, citing HRS § 84-31(b). In relevant part, the Ethics Code states that “[t]he commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public.” HRS § 84-31(b) (2012).

In accordance with section 84-31(b), HRS, the SEC asserted in response to this appeal that its longstanding practice is to treat all complaints, and all records relating to any investigation of a complaint, as confidential until either the SEC and the respondent reach a settlement agreement that includes publication of the respondent’s name as a condition of settlement, or the SEC issues the public notice of a contested case hearing under section 84-31(c), HRS. This section states that, upon issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator’s written response thereto shall become public records. HRS § 84-31(c) (Supp. 2019). OIP agrees that section 84-31(b), HRS, is a confidentiality statute intended to protect SEC investigations from disclosure prior to the commencement of contested case proceedings or as otherwise agreed to by the SEC and a party.

II. Personal Records Analysis

The SEC only invoked exceptions to disclosure of government records under the UIPA’s Part II. However, because Requester lodged the complaint that is part of the Investigation, OIP must also consider the applicability of Part III of the UIPA relating to personal record² requests, which are requests for records about the

² The UIPA defines “personal record” as:

any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual’s education, financial, medical, or employment history, or items that contain or make reference to the individual’s name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

HRS § 92F-3 (2012) (setting forth the UIPA’s definitions).

individual³ who is requesting them. Agencies must disclose personal records to the individual they pertain to unless an exemption in section 92F-22, HRS, applies. OIP finds that Part III of the UIPA applies to at least a portion of the Investigation because Requester initiated the complaint. As such, the portion of the Investigation that is “about” Requester is the joint personal record⁴ of Requester and others identified therein, such as the individuals who were complained about, Requester’s spouse, individuals who are or were employed at the SEC, and others mentioned briefly. OIP Op. Ltr. No. F13-01 at 16.

Under the analysis set forth in OIP Opinion Letter Number F13-01, which explains how to respond to a request for joint personal records, OIP finds that the Investigation is partly Requester’s joint personal record subject to the UIPA’s Part III and partly a government record subject to Part II. However, OIP need not determine which specific portions of the Investigation are subject to Part II and Part III because the confidentiality statute at section 84-31(b), HRS, controls either way and requires the SEC to withhold access of the entire Investigation.

As discussed above, section 84-31(b), HRS, is a confidentiality statute intended to protect SEC investigations from disclosure prior to the commencement of contested case proceedings or as otherwise agreed to by the SEC and a party. Section 92F-13(4), HRS, which the SEC relied upon, allows an agency to withhold from public disclosure records made confidential by a State statute. OIP therefore concludes that under Part II of the UIPA, section 92F-13(4), HRS, allows the SEC to withhold any portion of the Investigation that is not Requester’s personal record from public disclosure. With respect to the portion that is Requester’s personal record and thus analyzed under Part III of the UIPA, section 92F-22(5), HRS, states that agencies are not required to grant an individual access to personal records when they are “[r]equired to be withheld from the individual to whom it pertains by statute[.]” Consequently, section 92F-22(5), HRS, allows the SEC to withhold any portion of the Investigation that is her personal record from Requester.

OIP distinguishes the decision here from OIP Opinion Letter Number 09-03 (Opinion 09-03). The record requester in Opinion 09-03 was an architect who sought the investigative file for a pending disciplinary proceeding against the architect. The agency invoked the Part III exemption at section 92F-22(4), HRS, which states that an agency need not disclose personal records that include “investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.” OIP

³ The UIPA defines “individual” as “a natural person.” HRS § 92F-3.

⁴ For an extensive discussion of what constitutes a “joint personal record,” see OIP Opinion Letter Number F13-01.

found that, under section 92F-22(4), HRS, an agency may only withhold records compiled for law enforcement purposes when disclosure would frustrate the agency's ability to prosecute or pursue such actions or proceeding. OIP Op. Ltr. No. 09-03 at 3. OIP concluded that the agency was generally allowed under section 92F-22(4), HRS, to withhold its investigative records, but the responsive records included records that were either public records or records possessed or submitted by the architect. Id. at 4. For those records, OIP found the agency should have provided access unless disclosure would have compromised a legitimate function. Id.

Here, as in Opinion 09-03, the records at issue comprise an investigation file and include records provided to the agency. However, the basis for withholding in Opinion 09-03 was the ongoing investigation exemption set out in section 92F-22(4), HRS. In contrast, a confidentiality statute governs disclosure here. OIP's interpretation of section 92F-22(4), HRS, as being applicable only when disclosure would frustrate the agency's ability to prosecute or pursue an action or proceeding cannot be applied to the confidentiality statute at issue here, which does not include the same limitations as section 92F-22(4), HRS, and, more importantly, is not part of the UIPA and thus cannot be assumed to have been intended to promote the UIPA's policies and purpose. Because the SEC must comply with its confidentiality statute, the SEC may withhold personal records from the subject individual without having to determine whether disclosure of the personal records would result in any frustration of a government function.

III. Redaction

Finally, the fact that Requester explicitly sought a redacted copy of the Investigation is irrelevant because the confidentiality statute at section 84-31(b), HRS, applies to the entire Investigation, and as discussed above, protects both government records and personal records from disclosure. Providing a redacted copy would not protect the identities of those named in the Investigation because the production of redacted pages would itself reveal the existence of an Investigation. Thus, under the UIPA exception in section 92F-13(4), HRS, and the exemption in section 92F-22(5), HRS, the SEC is not required to disclose even a redacted copy of the Investigation because it is protected by the confidentiality statute at section 84-31(b), HRS.

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access under Part II of the UIPA within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

Requester is entitled to seek assistance directly from the courts under Part III of the UIPA after Requester has exhausted the administrative remedies set forth in section 92F-23, HRS. HRS §§ 92F-27(a), 92F-42(1). An action against the agency denying access must be brought within two years of the denial of access (or where applicable, receipt of a final OIP ruling). HRS § 92F-27(f).

If the court finds that the agency knowingly or intentionally violated a provision under Part III of the UIPA, the agency will be liable for: (1) actual damages (but in no case less than \$1,000); and (2) costs in bringing the action and reasonable attorney's fees. HRS § 92F-27(d). The court may also assess attorney's fees and costs against the agency when a requester substantially prevails, or it may assess fees and costs against Requester when it finds the charges brought against the agency were frivolous. HRS § 92F-27(e).

For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This opinion constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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APPROVED:



Cheryl Kakazu Park
Director