

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Hawai'i State Ethics Commission
Honorable Reynard D. Gaulty, Chair
Honorable Ruth D. Tschumy, Vice Chair

RE: Testimony on Proposed Administrative Rules
Public Hearing: March 19, 2020 at 9:30 a.m.

Dear Chair and Members of the Commission:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit the following comments on the State Ethics Commission's proposed administrative rules.

1. *Public Access to Adjudicatory Hearings.* Proposed Rule 21-1-9.5 restates HRS § 92-6 that the Commission's adjudicatory hearings are not subject to the Sunshine Law. But nowhere in the proposed rules does the Commission restate HRS §§ 84-31(c) and 97-6(c) that "the hearings shall be open to the public." The Rules should reflect that the adjudicatory hearings are open to the public. **And the Law Center would encourage the Commission to promulgate a rule that the notice of hearing will be publicly posted with the charge and related records in a reasonably timely manner to facilitate public access to the proceedings.** A "public" adjudication is meaningless if the public does not know that the hearing will take place.

2. *Confidentiality by Rule.* Proposed Rule 21-1-12(c) provides that Commission meetings are open unless matters made confidential by statute, rule, or other law will be considered in executive session. The Commission cannot hold executive sessions under the Sunshine Law for matters made confidential *by rule*. See OIP Op. No. 92-04 at 7-9 (administrative rules cannot exempt information from public records law); S. Stand. Comm. Rep. No. 1580, in 1999 Senate Journal at 1646 (adding confidentiality law exception to Sunshine Law to "make the State's public meeting laws consistent with UIPA"). **The phrase "or these rules" should be deleted.**

Thank you again for the opportunity to provide comments on the Commission's proposed administrative rules.



Hawaii

Holding Power Accountable

www.commoncause.org/hi

TO: Hawaii State Ethics Commission
FROM: Sandy Ma, Executive Director
 Common Cause Hawaii
DATE: March 6, 2020
RE: Comments on Title 21, Hawaii Administrative Rules

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii works to restore faith in our government and our democracy through ethics, accountability, and transparency reforms.

Common Cause Hawaii thanks the Commission and staff for holding remote public hearings on the proposed administrative rules. By providing remote hearing access, the Hawaii State Ethics Commission is keeping the public informed and fully apprised in the decision-making process.

Common Cause Hawaii submits the following comments, questions, and concerns regarding the proposed administrative rules:

- 1) Pg. 1-7, Deleted § 21-1-9 – Common Cause Hawaii is concerned that Commission documents, specifically referenced under subsections (d) and (e), will not be made available to the public. We are concerned that the transparency of Hawaii State Ethics Commission may suffer if people will not be able to access deleted advisory opinions and decisions of the Commission (subsection (d)) and copies of public records (subsection (e)).
- 2) Pgs. 3-6 through 3-7, § 21-3-4:
 - a. Common Cause Hawaii is unclear as to why the filer's business address, telephone number, spouse, and civil union partner are not to be posted on the Commission's website as part of the public's access to disclosure statements. Such information will provide for transparency and accountability and assist with identification and determination of potential conflicts of interests.
 - b. § 21-3-4 does not state when disclosure forms will have to be made public on the Commission's website. Is there an outside date for posting of disclosure forms?
- 3) Pg. 3-8, § 21-3-9 provides for administrative fines. What are they? Are the fines listed anywhere?
- 4) What is the difference between individual and person, if any, as used in the proposed administrative rules, e.g., § 21-4-1?
- 5) Pg. 5-3, § 21-5-2.1 – This section references a section 21-5-1.5. However, there does not appear to be a section 21-5-1.5.
- 6) Pg. 7-2, § 21-7-2(a) – Common Cause Hawaii proposes including the spouse, civil union partner, and immediate family members of employees and legislators from being able to accept gifts. Gifts to such individuals have the effect of influencing employees and/or legislators and should also be prohibited under § 21-7-2.
- 7) Pg. 7-7, § 21-7-9(a)(5)(A)-(B) – Common Cause Hawaii is concerned about the exception embodied in these subsections which may swallow the rule against using state resources for fundraising.
- 8) Pg. 8-1, § 21-8-1 – Common Cause Hawaii suggests a mandatory disclosure requirement for employees if this were to occur, unless already required elsewhere.
- 9) Pgs. 8-1 through 8-2, § 21-8-2 – Common Cause Hawaii suggests a mandatory disclosure requirement, unless already required elsewhere, if an employee acquires a financial interest in a business or other undertaking directly involved in official action to be taken by the employee or where there is a reasonable likelihood



the employee may take official action affecting the business or undertaking.

- 10) Pg. 8-2, § 21-8-3 – Common Cause Hawaii suggests a mandatory disclosure requirement for legislators or employees if this were to occur, unless already required elsewhere.
- 11) Pg. 10-6, § 21-10-7(b)(1)(E) and (F) – These sections provide that expenditures for entertainment, events, meals, receptions, food, and beverages must be disclosed on expenditure statements for lobbying by a person who files such statements. Common Cause Hawaii requests clarification. Common Cause Hawaii holds educational public events, such as ethics, campaign finance, constitutional convention discussions, etc. Elected officials and/or their staff attend such events and/or speak at such events. Is Common Cause Hawaii required to file expenditure statements for entertainment, events, meals, receptions, food, and beverages for such public events which are not intended to be lobbying events?
- 12) Pg. 10-7, § 21-10-8(a)(3) and (a)(7) – This section provides that expenditures for the purpose of lobbying, including grassroots lobbying, such as discussing lobbying strategy, must be disclosed. Common Cause Hawaii requests clarification. Common Cause Hawaii has membership events, which are open to the public, where it discusses its priority issues for session. Does this count as lobbying where food and beverage expenses must be disclosed? Are internal discussions, such as reporting to supervisors, boards, members, etc. considered discussing lobbying strategy, and must be disclosed?

Thank you for this opportunity to provide comments, questions, and concerns regarding the proposed administrative rules.



In the past, the Ethics Commission made (what I consider) arbitrary decisions on when to divulge the name of a violator or not. I understand the need to keep all information confidential during an investigation (new sec. 21-5-2.2, HAR) but at the point the matter is pursued as a violation and/or brought before the Commission, the names should be made public. Apologies for the late notice.

(Anonymous)



**Testimony to the Hawaii State Ethics Commission
on Proposed Amendments to Chapters 21-1 to 21-6, HAR
and Proposed Adoption of Chapters 21-7 to 21-10, HAR**

Dear Chair Grauly and Members of the Hawaii State Ethics Commission:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our support of the proposed rules and to express our appreciation for pursuing these important rule changes. The areas the Commission oversees require clear rules that implement and interpret the statutes to ensure that oversight is fair, consistent, and transparent. The three new proposed chapters, in particular, provide such clear parameters.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO strongly encourages all nonprofits to get involved in advocacy to help advance their missions. As a result, nonprofits need clear guidance on the lobbying law. The proposed Chapter 21-10, "Lobbying," provides such guidance, particularly in defining what activities constitute lobbying.

Thank you for the opportunity to submit this written testimony.

Mahalo,

Lisa Maruyama
President and CEO