

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

STATE OF HAWAI'I

Date: April 16, 2020

Time: 9:09 a.m.

Call-in: 808-829-4853, Conference ID 155 364 389#

Present: State Ethics Commission Members

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

State Ethics Commission Staff

Daniel M. Gluck, Executive Director  
Susan D. Yoza, Associate Director  
Nancy C. Neuffer, Staff Attorney  
Virginia M. Chock, Staff Attorney  
Bonita Y.M. Chang, Staff Attorney  
Kee M. Campbell, Staff Attorney  
Patrick Lui, Computer Specialist

## CALL TO ORDER

Chair Graulty called the meeting to order at 9:09 a.m. and stated that all Commissioners were present via videoconference.

Chair Graulty asked whether there were any members of the public joining the meeting. Sandy Ma, Executive Director of Common Cause Hawai'i, identified herself and said she was joining the meeting via telephone.

**Agenda Item No. I: Consideration and Approval of the Minutes of the March 27, 2020 Meeting**

Commissioner Fong made and Commissioner Wood seconded a motion to approve the minutes of the March 27, 2020 Sunshine Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood and Fong voting).

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

*Education / Training Report*

Executive Director Gluck reported that due to the COVID-19 restrictions, in-person training sessions were cancelled. However, the Commission's online training program is still available, and many people are continuing to take the online program. Executive Director Gluck said that staff will reschedule the in-person training sessions when they can be resumed.

*Guidance and Assignment Statistics – February-March 2020*

Executive Director Gluck reported that the number of attorney-of-the-day inquiries has fallen, which he said is not surprising since many state employees are not in the office and are not travelling. However, staff continues to be engaged in work and is making progress on pending investigations and projects.

*Financial Report for FY 2019-2020 (Quarter Ending March 31, 2020)*

Executive Director Gluck reported that the office is currently well below budget. It is unclear, however, what will happen to the Commission's budget in the fourth fiscal quarter. Executive Director Gluck said the office has not yet received any information about possible budget cuts by the Legislature.

*Miscellaneous Office Projects / Updates*

Executive Director Gluck discussed some of the projects that staff is working on, including a second online training module and a YouTube tutorial on how to file a financial disclosure statement.

Chair Graulty said that he has copies of confidential Commission materials that need to be shredded. He said if other Commissioners also have such materials, they can bring them to the Commission's office for shredding by staff. Executive Director Gluck noted that the Commissioners' printed copies will be shredded but the official records themselves will still be maintained by the office in accordance with the Commission's records retention policy.

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

Executive Director Gluck said the Commission is on track to hold a public hearing on its proposed administrative rules on May 7, 2020. Notice of the hearing has been published in the newspaper and posted on the state calendar at the Lieutenant Governor's office. Executive Director Gluck said that testimony received from Common Cause Hawaii and the Civil Beat Law Center will be carried over to the hearing.

Chair Grauly said he objected to staff's proposed testimony for the hearing. He said that the purpose of the hearing is to give the public an opportunity to testify, not to have staff testify. Chair Grauly said that staff's role is to participate in the Commission's decision-making process.

Commissioner Fong agreed with Chair Grauly and said the Commission should focus on what the public has to say at the hearing.

Executive Director Gluck suggested that staff's testimony be withdrawn and staff's comments be submitted in the form of a memorandum regarding certain clarifying amendments to the proposed rules. He explained that staff wanted to ensure that the public has an opportunity to view the clarifying amendments and respond if they can.

Chair Grauly said staff's memorandum should not be part of the public testimony, but it can be submitted and considered during decision-making. He asked Executive Director Gluck to formally withdraw staff's testimony and Executive Director Gluck said he would do this.

Commissioner DeGuzman said that she believed staff's testimony should stand because it provides transparency and assurance to public testifiers that their comments will be considered. She also felt that staff's testimony helps streamline the rulemaking process so the Commission need not hold another public hearing to consider additional comments by testifiers.

Chair Grauly said the public can submit testimony at the hearing and the Commission will consider the testimony and receive staff's input during decision-making. Chair Grauly said the Executive Director has assured him that the Commission's decision-making will be open, transparent and public. Chair Grauly said that if the Commission feels it does not have sufficient information to make a decision, the Commission can re-open the process to accept more public testimony.

### **Agenda Item No. IV: 2020 Legislative Session – measures still alive**

Executive Director Gluck explained that before the Legislature recessed in March, four ethics House bills were in good position and only needed a hearing by the Senate Judiciary Committee before moving on to the full Senate for a vote. He said that he hoped the Legislature would pick up these bills when it reconvenes, but there is no

information yet about what the Legislature will consider. He also said that the budget bill for the legislative agencies (H.B. 2661) was passed by the Legislature and enrolled to the Governor when the Legislature was still in session. The bill may have become law but its status at this time is unclear. Executive Director Gluck explained that the budget bill appropriates funds to the Commission for FY 2020-2021, but the Legislature can still impose budget cuts due to the State's fiscal crisis. Executive Director Gluck informed the Commission that he met with staff and told staff we have not received any information about changes to personnel or salaries, and that no decisions about this have been made. He informed staff that we will do the best that we can with the funds that are given to us.

Chair Graulty said it was good that the Executive Director met with staff. He said that the Governor has proposed a 20% cut in pay for teachers and this may portend what is in store for other state employees. He said that this is a difficult situation nationwide and we must be prepared to make financial sacrifices.

Commissioner Fong asked whether justices and judges were removed from H.B. 2120 (amending the State Ethics Code's conflicts-of-interests law) and Executive Director Gluck replied that the House Judiciary Committee removed them from the bill. Commissioner Fong also asked about H.B. 361, which prohibits the Governor and county mayors from maintaining any other employment or receiving any emolument during their terms of office. Commissioner Fong said that the county ethics boards may be reluctant to take action against the mayors because ethics board members are appointed by the mayors. He asked whether the State Ethics Commission can take action against the mayors if the county ethics boards do not. Executive Director Gluck said he has only testified as to the bill's application to state officials, not county officials. He said that if the Commission would like to take a position as to county officials, he can inform the Legislature of this. He also said that this could raise a constitutional question as to whether the State can regulate county officials.

Chair Graulty suggested that Agenda Item Nos. V, VI and VII all be considered at the same time.

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

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

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

Executive Director Gluck updated the Commission about Rowena Akana's appeal of the Circuit Court Order affirming the Commission's decision. Ms. Akana filed

her opening brief with the Intermediate Court of Appeals. The Commission's answering brief is due on May 6, 2020.

**Agenda Item No. VIII: Office of Information Practices: Opinion Upholding Commission's Denial of Request to Access Government Records**

Executive Director Gluck informed the Commission about two recent decisions by the Office of Information Practices ("OIP"). In each case, OIP reviewed the Commission's denial of a request to access records relating to an investigation that was confidential by statute. Executive Director Gluck said that both OIP decisions upheld the Commission's denial of access to the records in question.

**ADJOURNMENT OF SUNSHINE LAW MEETING**

At 9:40 a.m., Vice Chair Tschumy made and Commissioner DeGuzman seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Graulty, Tschumy, DeGuzman, Wood and Fong voting).

Chair Graulity offered to reopen the meeting if there were any members of the public who wished to testify on anything discussed during the meeting. Hearing no response from any member of the public, Chair Graulity announced that the meeting was adjourned.

Minutes approved on: May 21, 2020