

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: August 20, 2020

Time: 9:00 a.m.

Location: Via Videoconference or Phone:

Videoconference: [Join Zoom Meeting](#)

Phone: +1 (408) 638-0968 or +1 (669) 900-6833

Meeting ID: 947 8455 9114

Password: 865290

Due to COVID-19, this meeting will be held via videoconference and phone conference. All members of the public are invited to join this meeting using the above information; anyone wishing to testify may do so during the conference call, or may submit written testimony in advance of the meeting via e-mail, fax, or mail. To avoid excessive noise/feedback, please mute your telephone except to testify.

In person:

Hawai'i State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawai'i 96813

***Note: Commissioners and staff will appear remotely, via videoconference, and members of the public are encouraged to attend via videoconference or telephone. Staff will make every effort to accommodate members of the public who wish to testify in person at the Commission's Conference Room, but staff will limit the number of people allowed in the Conference Room at any given time. If you wish to attend in person, you must wear a mask and must remain more than six feet away from every other person in attendance.*

A G E N D A

CALL TO ORDER

I. Consideration and Approval of the Minutes of the July 16, 2020 Meeting

II. 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 – July 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. Ethics Survey of State Employees

4. Miscellaneous Office Projects / Updates

III. Evaluation of Executive Director Daniel Gluck

1. Report of Permitted Interaction Group ("PIG")

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

IV. Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA)

Discussion of case status.

Attachment 1: Order Denying Application for Transfer

Attachment 2: Dissent from Denial of Application for Transfer

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.

V. 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
JULY 16, 2020 MEETING

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

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: July 16, 2020

Time: 9:00 a.m.

Location: Held via Zoom video and audio conference

Present: State Ethics Commission Members

Ruth D. Tschumy, Interim Chair / Chair (via video conference)
Melinda S. Wood, Commissioner / Vice Chair (via video conference)
Reynard D. Grauly, Commissioner (via video conference)
Wesley F. Fong, Commissioner (via video conference)

State Ethics Commission Staff

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

CALL TO ORDER

Interim Chair Tschumy called the meeting to order at 9:05 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the June 18, 2020 Meeting

Commissioner Fong made and Commissioner Grauly seconded a motion to approve the minutes of the June 18, 2020 Sunshine Meeting. The motion carried unanimously (Tschumy, Wood, Grauly, and Fong voting).

1 **Agenda Item No. II: Elections of Officers for 2020**

2
3 Commissioner Fong nominated Interim Chair Tschumy to serve as Chair.

4
5 Executive Director Gluck stated that Commissioner Gaulty has stepped down as
6 Chair effective June 30, 2020 and will henceforth serve as Commissioner.

7
8 Executive Director Gluck explained that Vice Chair Tschumy is serving as Interim
9 Chair until the election of new officers is complete. He also clarified that the Vice Chair
10 does not automatically become the Chair upon a Chair's resignation, and that an
11 election of both a new Chair and a new Vice Chair are needed. The Commission may
12 elect new officers through a motion or a discussion, according to the Commissioners'
13 preference.

14
15 Commissioner Gaulty shared that he had discussed transitioning the
16 Chairmanship to Interim Chair Tschumy upon the expiration of his second term. He
17 said he agreed to commence a third term as Chair because the Commission was
18 heavily engrossed in the Akana case at that time, and because Interim Chair Tschumy
19 requested any such transition be delayed until a later date due to other personal
20 commitments.

21
22 Commissioner Gaulty said he was hoping the new Commissioner would be
23 appointed in time for this meeting and thus able to participate in this election. He said
24 that moving forward, he hopes the Chairmanship can continue to rotate amongst the
25 Commissioners so that no one person becomes "identified" with the Commission.

26
27 Commissioner Gaulty expressed his support and seconded the nomination for
28 Interim Chair Tschumy to serve as Chair for the remainder of the year or until the next
29 election.

30
31 Interim Chair Tschumy asked if there were any additional nominations for Chair.
32 Interim Chair Tschumy nominated Commissioner Wood as Chair. Commissioner Wood
33 declined the nomination.

34
35 Commissioner Gaulty nominated Commissioner Fong as Vice Chair.
36 Commissioner Fong declined the nomination. Commissioner Fong nominated
37 Commissioner Wood for Vice Chair. Commissioner Wood accepted the nomination for
38 Vice Chair.

39
40 Commissioner Gaulty made and Commissioner Fong seconded a motion to
41 close the nominations. The motion passed unanimously (Tschumy, Wood, Gaulty, and
42 Fong voting).

43
44 Commissioner Wood made and Commissioner Gaulty seconded a motion to
45 elect Interim Chair Tschumy as Chair. The motion passed unanimously (Tschumy,
46 Wood, Gaulty, and Fong voting).

1 Commissioner Graulty made and Commissioner Fong seconded a motion to
2 elect Commissioner Wood as Vice Chair. The motion passed unanimously (Tschumy,
3 Wood, Graulty, and Fong voting).
4
5

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

7

8 *Education / Training Report*

9

10 Executive Director Gluck explained that in-person training sessions remain on
11 hold indefinitely due to COVID-19 restrictions. Staff is working on a video conference
12 training format (utilizing Zoom) that will allow participants to interact with a live trainer
13 and engage in Q&A. Staff plans to deploy video conference training sometime in the
14 next few months and will use this new format to accommodate individuals interested in
15 live training and/or required to attend training by statute.
16

17 Executive Director Gluck also shared that staff is distributing a memo to all state
18 departments to encourage increased participation in the online training program.
19

20 *Guidance and Assignment Statistics – June 2020*

21

22 Executive Director Gluck reported that the office is experiencing an uptick in both
23 Attorney of the Day inquiries and complaints. He noted that an increase in complaints is
24 typical during an election season.
25

26 *Ethics Survey of State Employees*

27

28 Executive Director Gluck shared that staff continues to partner with Professors
29 Ghumman and Nguyen of the University of Hawaii at Manoa Shidler College of
30 Business ("UH") on an ethics survey to be distributed to state employees. Staff has a
31 promising working draft of the survey and plans to submit the survey to UH's
32 Institutional Review Board for approval soon.
33

34 Executive Director Gluck stated that the survey takes approximately 10 minutes
35 to complete. He also shared that the group aims to balance the number of state
36 employees taking the survey with the amount of time it will take each employee to
37 complete the survey; for example, it seems imprudent to invite all 50,000+ state
38 employees to complete a 15 minute survey as that level of response would require
39 12,000 hours of state time.
40

41 Executive Director Gluck shared that the group anticipates a survey sample of
42 approximately 20% of state government workers, with the percentage of employees
43 participating by department likely fluctuating with department size – that is, a larger
44 percentage of employees for a small department, and a smaller percentage of
45 employees for a large department.

1 *Financial Report for FY 2019-2020 (year-end report)*

2
3 Executive Director Gluck reported that the office cut as much spending as
4 possible given the State's current financial crisis, and that over \$50,000 was returned to
5 the General Fund at the end of the most recent fiscal year. At present, Executive
6 Director Gluck has not received any further direction from the Legislature as to whether
7 any additional cuts need to be made. The Commission thus maintains its regularly
8 appropriated budget for the time being, but that is subject to change.
9

10 Executive Director Gluck also stated that while he has not authorized any raises
11 for staff, he hopes to as soon as possible because staff's last salary increase was
12 effective July 1, 2018.
13

14 *Miscellaneous Office Projects / Updates*

15
16 Executive Director Gluck reported that the proposed administrative rules are
17 pending review and approval from the Governor's office, and that there is no confirmed
18 timeline by which to expect a response.
19

20
21 **Agenda Item No. IV: 2020 Legislative Session**

22
23 Executive Director Gluck reported that two of the Commission's proposed bills
24 were approved by the Legislature, HB2124 and HB2125.
25

26 HB2124 enacts tighter post-employment restrictions for high-level state officials
27 and legislators. Executive Director Gluck explained that at present, Cabinet-level
28 officials may leave state government and immediately start lobbying the state
29 Legislature. With HB2124, Cabinet-level officials, Executive Directors of most state
30 boards and commissions, and legislators will be prohibited from lobbying the
31 Legislature, and state agencies on proposed administrative rules, for one year.
32 Executive Director thanked Common Cause for its support of HB2124.
33

34 HB 2125 cleans up the Financial Disclosure law and allows the Commission to
35 mandate electronic filing if the Commission so decides. In addition, while the current
36 statute requires filers to disclose any clients the filer personally represents before a
37 state agency, HB2125 will require filers to also report any clients before the state whom
38 the filer assists, even if that assistance is behind the scenes.
39

40 Executive Director Gluck explained that HB1673, which passed the Legislature
41 as well, will allow the Commission to continue to promulgate administrative rules
42 regarding legislators' conflicts of interests, but directs that those rules be preempted
43 if/when the Legislature implements its own related policy. Executive Director Gluck
44 explained that the Commission has been asking the Legislature to amend the legislative
45 exemption in the Fair Treatment law to replace the phrase "official action" with
46 "legislative function," as it was prior to 2012. Executive Director Gluck stated that the
47 Commission requested this amendment out of a concern that an exemption for "official

1 action” could be interpreted as a legislator’s complete exemption from the Fair
2 Treatment law. The proposed amendment was rejected, but it was rejected because
3 the Legislature did not believe the amendment was necessary. In its committee report,
4 the Senate Committee on Judiciary explained that the Fair Treatment law is intended to
5 cover legislators – that is, the Commission’s concern was unfounded – and that the
6 exemption for “official action” is only intended to exclude core legislative functions.
7 Therefore, if a future legislator argues that the Fair Treatment law doesn’t apply to a
8 legislator’s actions, the Commission can point to this legislative history to demonstrate
9 that the Fair Treatment law does, in fact, apply to legislators.

10
11 Executive Director Gluck reported that HB361 regarding emoluments for County
12 Mayors and the Governor also passed the Legislature. Executive Director Gluck shared
13 that staff provided testimony on this measure but does not believe it will greatly affect
14 the Commission’s interactions with the Governor.

15
16 Executive Director Gluck reiterated that all the measures discussed have passed
17 the Legislature and are pending approval and enactment by the Governor.

18
19 Executive Director Gluck reported that SB3103, which creates the Schools
20 Facilities Agency, also passed the Legislature and is pending approval by the Governor.
21 Executive Director Gluck stated that the Commission submitted testimony raising ethics
22 concerns, particularly regarding a state official’s ability to accept gifts from the private
23 sector and then disperse state funds to the private sector. The testimony suggested
24 amendments to the bill, and the Legislature adopted the recommended amendments.

25
26 Commissioner Gaulty requested clarification regarding the Commission’s
27 involvement in HB361, and asked for confirmation that County Mayors would not fall
28 under the Commission’s jurisdiction. Executive Director Gluck confirmed that the
29 Commission would not have jurisdiction over County Mayors, and he stated that the
30 Commission’s testimony on HB361 focused only on the Governor and other state
31 officials; no opinion was provided for County officials.

32
33 Sandy Ma of Common Cause asked if the Commission plans to further pursue
34 the amendments previously suggested for HB1673. Executive Director Gluck shared
35 that the Commission may discuss that possibility in the future, but he was inclined to put
36 this matter to rest: he is satisfied with the explanation provided by the Senate
37 Committee on Judiciary, and believes the committee report effectively documents
38 legislative intent regarding the narrow scope of the legislative exemption in the Fair
39 Treatment law.

40 41 42 **Agenda Item No. V: Evaluation of Executive Director Daniel Gluck**

43
44 Commissioner Gaulty recalled that the Commission previously voted to task
45 Chair Tschumy and Vice Chair Wood with the creation of a SurveyMonkey to facilitate
46 the evaluation of Executive Director Gluck.

1 A brief discussion followed regarding the effect of the recent election of officers
2 on Chair Tschumy and Vice Chair Wood's ability to facilitate this evaluation. The
3 Commissioners had no objections to Chair Tschumy and Vice Chair Wood continuing
4 with the SurveyMonkey as previously decided.
5

6 Chair Tschumy and Vice Chair Wood agreed to discuss this matter separately
7 and provide draft questionnaires and/or survey instruments for the Commission's
8 consideration at the next meeting (August 20, 2020).
9

10 In order to formally authorize Chair Tschumy and Vice Chair Wood to reevaluate
11 the evaluation questions and criteria, Associate Director Yoza recommended that the
12 Commission approve by motion the creation of a permitted interaction group ("PIG") and
13 the related appointments to that PIG.
14

15 Commissioner Gaulty made and Commissioner Fong seconded a motion to
16 create a PIG regarding the evaluation of Executive Director Gluck, and to appoint Chair
17 Tschumy and Vice Chair Wood to said PIG. The motion carried unanimously
18 (Tschumy, Wood, Gaulty, and Fong voting).
19
20

21 **ADJOURNMENT OF SUNSHINE LAW MEETING**

22

23 Prior to adjournment, Ms. Ma requested clarification on the upcoming lobbying
24 filing deadlines. Executive Director Gluck stated that the report for the May 1 to
25 December 31, 2020 reporting period will be due on January 31, 2021. Executive
26 Director Gluck also explained that if the Legislature convenes a special session, any
27 lobbying conducted for that special session will need to be reported within 30 days of
28 adjournment sine die of that special session; the May 1-December 31, 2020 report
29 would then report all lobbying activities within that time period except those conducted
30 specifically for the special session. Executive Director Gluck and Staff Attorney Bonita
31 Chang assured that any relevant deadlines or reminders would be communicated.
32

33 Executive Director Gluck also noted that staff has been auditing past lobbying
34 filings to identify any missing reports, and those organizations with missing reports have
35 been filing them with the Commission.
36

37 At approximately 9:38 a.m., Commissioner Gaulty made and Commissioner
38 Fong seconded a motion to adjourn the Sunshine Law Meeting. The motion carried
39 unanimously (Tschumy, Wood, Gaulty, and Fong voting).
40

41 The meeting was adjourned at 9:38 a.m.

42
43 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

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 Assignments Statistics / Website Traffic

SUNSHINE MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT
August 20, 2020

1. Education / Training Report

All in-person trainings have been postponed indefinitely due to COVID-19.

Attachment 2: 2020 Training Attendance / Schedule

Attachment 3: Online Training Completions by Department

2. Guidance and Assignment Statistics – July 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. Ethics Survey of State Employees

4. Miscellaneous Office Projects/Updates

- a. Website enhancements

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	32
2/24/2020	General Ethics Training, DCCA, Non-Supervisors	58
2/25/2020	General Ethics Training, DCCA, Supervisors	24
2/25/2020	General Ethics Training, DCCA, Non-Supervisors	61
2/27/2020	General Ethics Training, DCCA, Supervisors	24
2/27/2020	General Ethics Training, DCCA, Non-Supervisors	69
3/17/2020	General Ethics Training, Hilo (CANCELLED)	
3/20/2020	General Ethics Training, DOT, Harbors (2 sessions) (CANCELLED)	
3/24/2020	General Ethics Training, Honolulu (CANCELLED)	
3/25/2020	General Ethics Training, Lihue (CANCELLED)	
4/6/2020	General Ethics Training, Kona (CANCELLED)	
4/21/2020	General Ethics Training, DLNR, DOFAW (CANCELLED)	
4/28/2020	General Ethics Training, DOH Executive Committee, Honolulu (CANCELLED)	
5/8/2020	General Ethics Training, Kahului (CANCELLED)	
5/12/2020	General Ethics Training, Pearl City (CANCELLED)	

10/20/2020	General Ethics Training, Honolulu	
xx/xx/2020	General Ethics Training, DOT, Harbors (supervisors)	
TOTAL	22 Presentations	549 participants

Department/Agency	# of Completions
Department of Health (DOH)	171
Department of Transportation (DOT)	151
Department of Education (DOE)	149
Department of Land and Natural Resources (DLNR)	63
Department of Human Services (DHS)	59
Department of Accounting and General Services (DAGS)	59
Department of Business, Economic Development and Tourism (DBEDT)	51
Department of the Attorney General (ATG)	48
University of Hawaii-Manoa (UOHM)	44
University of Hawaii-West Oahu (UOHW)	42
Department of Public Safety (DPS)	39
Hawaii Health Systems Corporation (HHSC)	38
Department of Defense (DOD)	38
Department of Labor and Industrial Relations (DLIR)	34
Department of Agriculture (DOA)	34
Department of Commerce and Consumer Affairs (DCCA)	33
Judiciary (JUD)	29
Other (Please fill-in "Other Department/Agency")	28
University of Hawaii-System (UOH)	18
Office of the Governor (GOV)	7
University of Hawaii-Community Colleges (UOHC)	6
Research Corporation of the University of Hawaii (RCUH)	5
Office of the Lieutenant Governor (LTG)	4
Public Charter School (SPCSC)	4
Department of Human Resources Development (DHRD)	3
Office of the Auditor (AUD)	3
Department of Taxation (TAX)	1
Hawaii State Public Library System (HSPLS)	1
Department of Budget and Finance (B&F)	1
Senate (SEN)	1

Total Certificate of Completions Issued

1,164

As of August 10, 2020

2020

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec Year to date

Training statistics

# of In-Person Trainings	4	6	0	0	0	0	0							10
# of People Trained In Person	281	268	0	0	0	0	0							549
# of On-Line Training	403	182	190	76	49	33	153	78						1164

Attorney of the Day

148	96	79	61	72	51	86								593
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New assignments

Advisory Opinion	0	0	0	0	0	0	0							0
Complaint	7	7	8	8	8	5	17							60
Gifts/Invitations/Travel	16	12	3	1	0	0	0							32
Guidance	2	2	0	2	0	1	3							10
Judicial Selection Comm'n	1	5	3	2	2	1	2							16
Training Request	0	0	0	0	0	0	0							0
Record Request	1	1	2	0	0	3	0							7
Project/Other	3	3	3	1	1	1	2							14
Total	30	30	19	14	11	11	24	0	0	0	0	0	0	139

Closed Assignments

Advisory Opinion	0	1	1	0	0	0	0							2
Complaint	8	3	9	11	10	8	10							59
Gifts/Invitations/Travel	22	5	11	5	1	1	3							48
Guidance	4	1	5	2	1	3	21							37
Judicial Selection Comm'n	1	4	2	0	6	1	2							16
Training Request	1	0	0	0	0	0	0							1
Record Request	3	2	1	0	0	1	0							7
Project/Other	3	1	2	5	1	1	1							14
Total	42	17	31	23	19	15	37	0	0	0	0	0	0	184

Dataset Views

Disclosures	97	91	64	58	84	76	76								546
Lobbyist Registrations	364	276	221	113	127	119	131								1,351
Organization Expenditures	67	51	27	11	12	21	39								228
Lobbyist Expenditures	53	44	25	17	24	15	26								204
Ethics Advice	108	112	66	39	59	54	56								494
Total	689	574	403	238	306	285	328	0	0	0	0	0			2,823

SUNSHINE LAW MEETING
AGENDA ITEM III

EVALUATION OF EXECUTIVE DIRECTOR DANIEL GLUCK

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM IV

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

Attachment 1: Order Denying Application for Transfer

Attachment 2: Dissent from Denial of Application for Transfer

Electronically Filed
Supreme Court
SCAP-19-0000668
24-JUL-2020
09:36 AM

SCAP-19-0000668

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ROWENA AKANA,
Petitioner/Appellant-Appellant,

vs.

HAWAI'I STATE ETHICS COMMISSION,
Respondent/Appellee-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CAAP-19-0000668; CASE NO. 19-1-0379-03)

ORDER DENYING APPLICATION FOR TRANSFER

(By: Recktenwald, C.J., Nakayama, J., and Circuit Judge To'oto'o,
in place of Pollack, J., recused, and McKenna, J., dissenting,
with whom Wilson, J., joins)

Upon consideration of petitioner Rowena Akana's
application for transfer, filed on June 19, 2020, respondent
Hawai'i State Ethics Commission's opposition, filed on June 26,
2020, and the record,

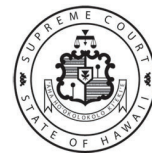
IT IS HEREBY ORDERED that the application for transfer
is denied.

DATED: Honolulu, Hawai'i, July 24, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Fa'auuga To'oto'o



Electronically Filed
Supreme Court
SCAP-19-0000668
24-JUL-2020
09:44 AM

SCAP-19-0000668

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

ROWENA AKANA,
Petitioner/Appellant-Appellant,

vs.

THE HAWAI‘I STATE ETHICS COMMISSION,
Respondent/Appellee-Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-19-0000668; CIV. NO. 19-1-0379)

DISSENT

(By: McKenna, J., in which Wilson, J., joins)

I respectfully dissent. I would grant the application for transfer.

First, I believe this case qualifies for a mandatory transfer under Hawai‘i Revised Statutes (“HRS”) § 602-58(a)(1) on the grounds it raises “[a] question of imperative or fundamental public importance[.]”

The 1978 constitutional convention resulted in the addition of the section calling for creation of the Office of Hawaiian Affairs (“OHA”):

There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are native Hawaiians, in accordance with law. The board members shall be native Hawaiians. There shall be not less than 9 members of the board of trustees; provided that each of the following Islands have at least one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The Board shall select a chairman from its members.

This case raises fundamental and imperative questions regarding the OHA's self-governance under the Hawai'i Constitution and statutes. At minimum, this case qualifies for a discretionary transfer under HRS § 602-58(b)(1) as it raises "question[s] of first impression or a novel legal questions."

Moreover, I believe this court should also consider its powers under HRS §§ 602-5(a)(1) and (5):

(a) Except as otherwise provided, the supreme court shall have jurisdiction and powers as follows:

(1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it . . . by transfer as provided in this chapter;

. . . .

(6) To make and award such . . . orders . . . as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.

Whether or not the majority agrees this case qualifies for a mandatory transfer, this court clearly has jurisdiction and the power to accept this case as a discretionary transfer. As the issues presented in this case will almost invariably again be raised to this court, I believe justice is promoted by

a more expeditious final determination of the legal issues raised.

DATED: Honolulu, Hawai'i, July 24, 2020.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

