

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

STATE OF HAWAI'I

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

Agenda Item No. II: Elections of Officers for 2020

Commissioner Fong nominated Interim Chair Tschumy to serve as Chair.

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

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

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

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

Commissioner Graulty expressed his support and seconded the nomination for Interim Chair Tschumy to serve as Chair for the remainder of the year or until the next election.

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

Commissioner Graulty nominated Commissioner Fong as Vice Chair. Commissioner Fong declined the nomination. Commissioner Fong nominated Commissioner Wood for Vice Chair. Commissioner Wood accepted the nomination for Vice Chair.

Commissioner Graulty made and Commissioner Fong seconded a motion to close the nominations. The motion passed unanimously (Tschumy, Wood, Graulty, and Fong voting).

Commissioner Wood made and Commissioner Graulty seconded a motion to elect Interim Chair Tschumy as Chair. The motion passed unanimously (Tschumy, Wood, Graulty, and Fong voting).

Commissioner Grauly made and Commissioner Fong seconded a motion to elect Commissioner Wood as Vice Chair. The motion passed unanimously (Tschumy, Wood, Grauly, and Fong voting).

Agenda Item No. III: Executive Director's Report

Education / Training Report

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

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

Guidance and Assignment Statistics – June 2020

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

Ethics Survey of State Employees

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

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

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

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

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

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

Miscellaneous Office Projects / Updates

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

Agenda Item No. IV: 2020 Legislative Session

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

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

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

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

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

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

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

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

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

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

Agenda Item No. V: Evaluation of Executive Director Daniel Gluck

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

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

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

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

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

ADJOURNMENT OF SUNSHINE LAW MEETING

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

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

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

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

Minutes approved on: August 20, 2020