

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

STATE OF HAWAI'I

Date: August 20, 2020

Time: 9:00 a.m.

Location: Held via Zoom video and audio conference, with the Commission's Chair present in the State Ethics Commission's conference room, American Savings Bank Tower, 1001 Bishop Street, Suite 960, Honolulu, Hawai'i 96813

Present: State Ethics Commission Members

Ruth D. Tschumy, Chair (present in conference room)
Melinda S. Wood, Vice Chair (via video conference)
Reynard D. Graulty, 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)

Guests

Sandy Ma, Executive Director, Common Cause (via video conference)

Note: There was a vacancy on the Commission at the time of this meeting.

CALL TO ORDER

Chair Tschumy called the meeting to order at 9:01 a.m. and confirmed that all Commissioners and staff were present.

Agenda Item No. I: Consideration and Approval of the Minutes of the July 16, 2020 Meeting

Commissioner Fong made and Commissioner Graulty seconded a motion to approve the minutes of the July 16, 2020 Sunshine Meeting. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

Agenda Item No. II: Executive Director's Report

Education / Training Report

There was no discussion on this item.

Guidance and Assignment Statistics – July 2020

Executive Director Gluck reported that staff is working through a number of complaints, including an uptick of complaints related to elections.

Ethics Survey

Executive Director Gluck reported that staff is making great progress on the ethics survey in partnership with the University of Hawai'i ("UH"). Executive Director Gluck said that a draft of the survey was previously circulated to the Commission and requested any feedback the Commissioners may have at this time.

Commissioner Graulty said that he agreed the survey seems academic in nature. Executive Director Gluck stated that while staff and UH jointly contributed to developing the questions, it is understandable that some of the questions will be more suited for academic purposes as the entire project relies on UH's software and survey expertise in order to move forward.

Commissioner Graulty asked for details regarding the recipients of the survey. Executive Director Gluck stated that staff plans to send the survey to all employees in smaller departments (such as the Department of Agriculture, the Department of Hawaiian Home Lands, and the Department of Commerce and Consumer Affairs), and a smaller percentage of employees in larger departments (such as the Department of Education and UH). It is estimated that 10% of all state employees will receive the survey.

Commissioner Fong asked for details on how the information gathered from the survey will be used to benefit the work of the Ethics Commission. Executive Director Gluck stated that a survey like this has never been done before, and that staff anticipates gaining an awareness of the ethics areas that need to be further addressed through enforcement or education, such as (1) the general level of ethics knowledge amongst the state workforce, (2) certain ethics infractions that may be of concern, such

as the receiving of gifts or improper financial relationships between supervisors and subordinates, and (3) any particular state divisions experiencing large or long-standing ethics problems.

Miscellaneous Office Projects / Updates

Executive Director Gluck reported that the new website went live as of August 19, 2020, and thanked Computer Specialist Lui for his work. Executive Director Gluck said that the primary goal of the new website is to make it easier for members of the public to access the various services offered by the Commission.

Executive Director Gluck said that he has contacted the Disability and Communications Access Board regarding the accessibility of the website to those with visual impairments, and is awaiting a response. In the meantime, internal tests have found no major problems with the website's text reader capability.

Executive Director Gluck also said that in order to ease language access issues, new links are included on the homepage through which an individual may request an interpreter.

Executive Director reported that due to COVID-19, various emergency leave options are now available to staff, and staff have been using those opportunities as appropriate.

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

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At 9:19 a.m., Commissioner Graulty made and Commissioner Fong seconded a motion to 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. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

The Commission excused all staff and met in Executive Session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At 9:38 a.m., Commissioner Graulty made and Commissioner Fong seconded a motion to adjourn the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

The Commission adjourned the Executive Session at 9:38 a.m. and returned to the Sunshine Law meeting. Staff also returned to the Sunshine Law meeting.

Agenda Item No. 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)

Executive Director Gluck reported that Rowena Akana appealed the Commission's ruling to the Circuit Court, and the Circuit Court ruled fully in favor of the Commission. Ms. Akana subsequently appealed to the Intermediate Court of Appeals ("ICA"), and after the briefs were lodged, applied for a transfer of the case from the ICA to the Supreme Court. The application for transfer was rejected; the case will remain with the ICA.

Executive Director Gluck said that after the ICA issues its ruling, whichever parties loses the appeal will have the opportunity to apply to the Supreme Court for a writ of certiorari.

Commissioner Grauly asked which attorneys are assisting the Commission in the appeal. Executive Director Gluck said that the lead attorney is Kaliko Fernandes from the Attorney General's Appellate Division, Solicitor General's Office, and Deputy Attorney General Robyn Chun.

Executive Director Gluck said that he anticipates the case will remain with the ICA for at least eight to twelve months. Then, if necessary, there will be a period of thirty to forty days for an application for a writ of certiorari to be filed, an additional thirty to forty days to file a response to the application, additional time for a reply brief, and then thirty days for the Court to decide whether to accept the case.

Commissioner Grauly asked whether Ms. Akana is current on her fine payments to the Commission. Executive Director Gluck said that Ms. Akana is delinquent on her fine payments and that the matter has been referred to the Attorney General's office for collection. Executive Director Gluck said that filings for that case were submitted in February 2020, and that he would provide a further status update at the next Commission meeting (September 17, 2020).

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 9:50 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 9:50 a.m.

Minutes approved on: September 17, 2020