

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: October 15, 2020

Time: 9:00 a.m.

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

Present: State Ethics Commission Members

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

Deputy Attorney General

Steve Bumanglag (via video conference)

Guests<sup>1</sup>

Natalie Iwasa (via audio conference)  
Sandy Ma, Executive Director, Common Cause (via video conference)  
Lori Wong-Nowinski, Associate Legal Counsel, Honolulu Ethics  
Commission (via audio conference)

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

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<sup>1</sup> Members of the public who testified, or otherwise voluntarily identified themselves, at the meeting are listed.

## **CALL TO ORDER**

Chair Tschumy called the meeting to order at 9:05 a.m. and confirmed that all Commissioners and staff were present.

### **Agenda Item No. I: Consideration and Approval of the Minutes of the September 17, 2020 Meeting**

Commissioner Graulty made and Commissioner Fong seconded a motion to approve the minutes of the September 17, 2020 Sunshine Meeting. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

### **Agenda Item No. II: Consideration and Approval of the Minutes of the September 17, 2020 Executive Session Meeting**

Commissioner Fong made and Commissioner Graulty seconded a motion to approve the minutes of the September 17, 2020 Executive Session Meeting. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

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

#### *Education / Training Report*

Executive Director Gluck said that in-person trainings remain on hold due to COVID-19 precautions. Staff are conducting increased virtual trainings and continue to encourage interested individuals to complete the online ethics training program as well.

#### *Guidance and Assignment Statistics – September 2020*

Executive Director Gluck said that the office has experienced an increase in complaints and “Attorney of the Day” inquiries. Executive Director Gluck noted that the number of complaints is much higher than last year, and that the increase is likely due in part to the recent launch of the anti-fraud hotline, anti-fraud complaint form, and general complaint submission form on the Commission’s website.

#### *Financial Report for FY 2020-2021 (July 1-Sept. 30, 2020)*

Executive Director Gluck said that he is awaiting confirmation from the Legislature regarding any potential budget cuts. There was a rumor that legislative agencies will need to sustain a 10% reduction, however, this has not been confirmed. Executive Director Gluck said that if a 10% reduction is imposed, it appears the office may be able to sustain the reduction without cutting staff’s salaries or imposing furloughs by reducing spending on items such as travel, consulting services, and

upgrades to the e-filing system. In the meantime, the office continues to remain very prudent in its spending and is holding off on any staff raises.

### *Ethics Survey of State Employees*

Executive Director Gluck said that the ethics survey created in partnership with the University of Hawaii has been distributed to a number of state departments and that results are now being received. Executive Director Gluck said that the survey was not yet distributed to the University of Hawai'i or the Department of Education and that there are a few instances in which internal clearances, such as union authorization, must be approved by a department prior to the survey being distributed to certain employees.

In order to provide assurance of anonymity to the survey respondents, the settings for all identifying information associated with a survey response have been removed; all results are therefore completely anonymous and cannot be traced. In addition, all survey response data will be held at the University of Hawai'i, and not with the Commission.

Executive Director Gluck said that staff are also developing a way to distribute the survey via a method other than email in order to reach the approximately 3,000 state employees who are not assigned an email address.

Executive Director Gluck said that all of the departments that have been contacted thus far have expressed their support of the survey and have allowed their employees to complete the survey on state time.

### *Anti-Fraud Hotline*

Executive Director Gluck said that the dedicated anti-fraud phone number, email address, and online complaint form are now available for members of the public to lodge confidential complaints. Executive Director Gluck continues to work in partnership with Hui Chen, Chief Integrity Adviser of the Department of the Attorney General, in order to field, respond to, or route the incoming complaints accordingly. For example, complaints that do not fall under the jurisdiction of the Commission or the Department of the Attorney General may be referred to the respective state agency or county department for appropriate action. Executive Director Gluck estimated that twelve anti-fraud complaints were received in the past few weeks.

Natalie Iwasa said that she supports this anti-fraud initiative and was pleased to hear that this project is being implemented jointly with the Department of the Attorney General. Ms. Iwasa said there is a great need for anti-fraud accountability at the state level and that in the past, she was only able to find a single state department with a hotline available to the public. Ms. Iwasa also encouraged the Commission to publicize the anti-fraud resources more widely as the anti-fraud website did not appear immediately when she recently searched for it on Google. Ms. Iwasa welcomed the Commission to contact her with any questions or assistance given her background as a Certified Public Accountant and a Certified Fraud Examiner.

Executive Director Gluck thanked Ms. Iwasa and welcomed any assistance others could provide to distribute the anti-fraud resources via social media. Executive Director Gluck also said that he, Attorney General Clare Connors, and Ms. Chen participated in a Hawaii Public Radio talk show to raise awareness of these resources.

#### *Miscellaneous Office Projects / Updates*

Executive Director Gluck recognized and commended Staff Attorney Virginia Chock and Staff Attorney Nancy Neuffer for their employment anniversaries with the Commission, celebrating 25 years and 30 years respectively.

Executive Director Gluck said that the number of staff returning from working remotely to working in the office will increase from 1-2 per day to 3-4 per day, and that the office will be open to the public as of Monday, October 19, 2020.

Sandy Ma asked if staff planned to hold an ethics training for lobbyists. Executive Director Gluck said that lobbyist trainings are generally held in December or January prior to the legislative session, and that additional sessions may be scheduled this year given the anticipated changes to the administrative rules.

Ms. Ma suggested that the Commission consider distributing the survey to members of the public. Executive Director Gluck agreed that while the survey is focused on state employees at present, it would be a worthwhile endeavor to survey members of the public in the future.

#### **Agenda Item No. IV: Proposals for 2021 Legislative Session**

##### *Proposal to strengthen post-employment law*

Executive Director Gluck said that staff has prepared a post-employment bill based on the bill from last session vetoed by the Governor (HB2124). Executive Director Gluck said that the Governor's main objection to HB2124 was the application of the bill to several volunteer boards and commissions; staff has therefore excluded these volunteer board and commission members from the proposed language for next session.

Executive Director Gluck said that regardless of this new proposed bill, board and commission members will still be subject to regular post-employment restrictions, such as the inability to represent anyone before their respective board for up to twelve months after leaving the board. Restrictions set forth in the new bill would apply to cabinet members, executive directors, legislators and legislative staff.

Commissioner Fong asked if staff plans to contact the Office of the Governor to discuss this proposal given the veto of HB2124. Executive Director Gluck said that if the Commission is inclined to move forward with this bill, he will contact the Office of the

Governor prior to the start of the legislative session to ensure the current language satisfies the concerns previously raised.

*Proposal to require ethics training for additional employees*

Executive Director Gluck said that this bill proposes to (1) require additional high-level state officials to take mandatory in-person training within 90 days of assuming office, and require all mandatory trainees to repeat ethics training once every four years thereafter, and (2) mandate online ethics training for all state employees within 90 days of assuming office, and require that all state employees repeat ethics training once every four years thereafter. Executive Director Gluck said that state officials who are currently mandated to take training by statute are only required to take ethics training once. In addition, Executive Director Gluck said that he is working with the Legislative Reference Bureau on how to best apply these provisions to different employee classifications and to both new and existing employees.

Commissioner Fong asked for clarification regarding who is required to take mandatory ethics training. Executive Director Gluck said that a “state employee” is defined as basically anyone with a state title, including board and commission members, with the exception of judges and justices. Currently, only certain high-level state employees are mandated to complete a “live” ethics training.

If this bill were to pass, the list of state officials who are mandated to take in-person training would expand to include any state employee who files a public financial disclosure. All other state employees would also be required to take training, but would have the option to fulfill this requirement via a “live” training class or the online ethics training program. In contrast, the high-level state employees who are mandated to take in-person training will not be able to fulfill their training requirement by completing the online training program.

Ms. Ma inquired if there was a particular reason why the time period of four years was selected. Executive Director Gluck said that staff believed four years was frequent enough to be useful but not overly burdensome, and that the timeframe is completely open to further discussion.

*Proposal to prohibit official action on contracts to companies owned by certain family members*

Executive Director Gluck said that this bill proposes to prohibit individuals from awarding contracts to relatives within three degrees of consanguinity. The conflicts of interests law currently restricts an individual from taking action on their own financial interests, which includes one’s personal interests and that of a spouse or dependent child. This bill would therefore expand the conflicts of interests law so that an individual could not award a contract to a parent, sibling, adult child, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law.

Vice Chair Wood made and Commissioner Fong seconded a motion to approve the proposed bills, subject to additional edits by staff for style and clarity, for introduction to the Legislature. The motion carried unanimously (Tschumy, Wood, Grauly, and Fong voting).

**Agenda Item No. V: Update: Proposed Administrative Rules**

Executive Director Gluck said that staff completed a few additional steps requested by the Office of the Governor in order to finalize the rules. The Office of the Governor anticipates that the rules will be approved and filed within the next two weeks. The rules will go into effect ten days after being filed with the Office of the Lieutenant Governor. Staff plans to begin publicizing and educating relevant parties of the updated rules shortly after the changes go into effect.

**Agenda Item No. VI: Evaluation of Executive Director Daniel Gluck**

**RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION**

At 9:35 a.m., Commissioner Grauly made and Commissioner Fong seconded a motion to recess the public Sunshine Law meeting and 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, Grauly, and Fong voting).

The Commissioners met in Executive Session. All staff and members of the public were excused.

**ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING**

At 9:42 a.m., Commissioner Grauly 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, Grauly, and Fong voting).

The Commission adjourned the Executive Session at 9:42 a.m. and returned to the Sunshine Law meeting. All staff and members of the public also returned to the Sunshine Law meeting.

Chair Tschumy asked whether there were any members of the public who wished to testify on this agenda item. There were none.

Vice Chair Wood said that there was nothing to report at this time, and that a complete report would be provided at the November 19, 2020 meeting.

**Agenda Item No. VII: *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); *State of Hawaii, Ethics Commission v. Rowena Akana*, Civil No. 20-1-0453 (BIA)**

Executive Director Gluck said that the appeal by Rowena Akana of the Commission's ruling remains pending with the Intermediate Court of Appeals ("ICA"). Executive Director Gluck said that the Commission's 2019 ruling was appealed to the Circuit Court and that the Circuit Court affirmed the Commission's ruling in full. Ms. Akana subsequently filed a notice of appeal with the ICA, and after briefs were filed, requested that the case be transferred to the Supreme Court. The Supreme Court denied the transfer. The case therefore remains with the ICA, and it is anticipated that the ICA will rule on the briefs in approximately one year. If the ICA upholds the Circuit Court's appeal, Ms. Akana will have the option to file a petition for writ of certiorari with the Supreme Court, and the Supreme Court would have 30 days to rule on that petition.

Executive Director Gluck said that Deputy Attorney General Steve Bumanglag ("Deputy AG Bumanglag") was available to provide the Commission with information on the collections proceedings.

Deputy AG Bumanglag joined the meeting.

**RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION**

At 9:49 a.m., Vice Chair Wood made and Commissioner Gaulty seconded a motion to recess the public Sunshine Law meeting and convene an Executive Session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

The Commissioners, staff and Deputy AG Bumanglag met in Executive Session. All members of the public were excused.

**ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING**

At 10:08 a.m., Commissioner Gaulty made and Vice Chair Wood seconded a motion to adjourn the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

Deputy AG Bumanglag left the meeting.

**ADJOURNMENT OF SUNSHINE LAW MEETING**

At approximately 10:09 a.m., Commissioner Gaulty made and Vice Chair Wood seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

The meeting was adjourned at 10:09 a.m.

Minutes approved on: November 19, 2020