

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: November 19, 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)

Guests

Sandy Ma, Executive Director, Common Cause Hawaii (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 9:05 a.m. and confirmed that all Commissioners were present. Executive Director Gluck said that Staff Attorney Neuffer would be joining the meeting shortly. All other staff were present at this time.

Agenda Item No. I: Consideration and Approval of the Minutes of the October 15, 2020 Meeting

Vice Chair Wood made and Commissioner Fong seconded a motion to approve the minutes of the October 15, 2020 Sunshine Meeting. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

Agenda Item No. II: Consideration and Approval of the Minutes of the October 15, 2020 Executive Session Meeting (Evaluation of Executive Director)

Commissioner Fong made and Commissioner Gaulty seconded a motion to approve the minutes of the October 15, 2020 Executive Session Meeting pertaining to the evaluation of the Executive Director. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

Agenda Item No. III: Consideration and Approval of the Minutes of the October 15, 2020 Executive Session Meeting (Rowena Akana matters)

Vice Chair Wood made and Commissioner Gaulty seconded a motion to approve the minutes of the October 15, 2020 Executive Session Meeting pertaining to the Rowena Akana matters. The motion carried unanimously (Tschumy, Wood, Gaulty, and Fong voting).

Agenda Item No. IV: Executive Director's Report

Education / Training Report

Executive Director Gluck said that staff continues to hold live trainings via Zoom, and that the number of trainings being offered is steadily increasing. Executive Director Gluck said that for larger groups, such as a recent training that hosted 60 to 70 participants, staff has found it useful to have two attorneys present; one attorney to conduct the presentation, and another attorney to monitor chat conversations for questions submitted by the audience.

Executive Director Gluck said that the general ethics training scheduled for Monday, November 23, 2020, will include most of the newly elected legislators and appointees and thus fulfill their mandatory training requirement; a second training will be available in December for the individuals unable to attend. Executive Director Gluck also said that staff will hold trainings for state government attorneys on December 14, 2020 and/or December 15, 2020, and that large turnouts are expected as these trainings will be eligible for continuing legal education credit ("CLE").

Executive Director Gluck said that there are approximately ten general ethics trainings scheduled over the next two months. Staff also plans to schedule trainings on

the Lobbyists Law in January 2021, and will include information on the updated administrative rules, assuming the rules are approved by that time.

Commissioner Fong asked if the Commissioners are exempt from the ethics training requirement. Executive Director Gluck said that, at this time, the Commissioners do not fall within the class of state employees who are mandated to take training by statute. Executive Director Gluck said that, per the Commission's approval at last month's meeting, the Commission will ask the Legislature to introduce a bill in the upcoming legislative session to require all state employees to take online training, and all state employees who file public financial disclosures to take live training. Executive Director Gluck also said that attorneys are required by the Hawai'i State Bar Association to complete one CLE credit in ethics training every three years, but that this training does not necessarily need to be obtained from the Commission. Staff Attorney Campbell explained that participation in the Council on Government Ethics Laws ("COGEL") conference will count towards general CLE requirements, but will not count toward the mandatory ethics CLE requirement.

Guidance and Assignment Statistics – October 2020

Executive Director Gluck said that the number of complaints has greatly increased when compared to this time last calendar year. Executive Director Gluck attributed part of the rise in complaints to the increased visibility of the Commission through recent settlements and increased trainings.

Executive Director Gluck said that the number of complaints does not include the anti-fraud cases that staff are addressing in partnership with the Department of the Attorney General. Executive Director Gluck said that most of the anti-fraud cases have been handled as administrative matters and referred to the respective agency for review and investigation.

Commissioner Fong asked for a general estimate of how many complaints received by the office are credible. Executive Director Gluck approximated that 25% of complaints result in investigations, 25% result in matters that can be resolved through guidance or advice, and 50% do not fall within the Commission's jurisdiction or pertain to the State Ethics Code.

Vice Chair Wood asked if staff continues to write and distribute "The High Road" newsletter. Executive Director Gluck confirmed that the newsletter is published and circulated about four times per year, and that the next issue will be sent out within the week and will include a gifts reminder for the holidays.

At 9:16 a.m., Staff Attorney Neuffer joined the meeting.

Ethics Survey of State Employees

Executive Director Gluck said that staff is continuing to follow up with the Legislature, the Legislative Reference Bureau, and the Department of Budget and Finance to coordinate the distribution of the survey to those agencies. All other state agencies have received the survey, and over 2,200 responses have been received to date.

Anti-Fraud Hotline

There was no discussion on this item.

Miscellaneous Office Projects / Updates

Executive Director Gluck congratulated Computer Specialist Patrick Lui for attaining his 20th employment anniversary with the State of Hawai'i, and 15th employment anniversary with the Commission.

Executive Director Gluck said that an assistant for the Hawai'i Supreme Court apologized for the delay in appointing a new Commissioner and assured him that the Judicial Council is continuing to work on filling the vacancy.

Agenda Item No. V: Proposed Budget: 2021-2022

Executive Director Gluck said that, because he is awaiting direction from the Legislature regarding funding for next year, the proposed budget provided to the Commission at this time is a placeholder. The numbers in the proposed budget reflect the budget for last year, with adjustments made to cover a 3.5% increase in salaries and an anticipated increase in rent.

Executive Director Gluck asked for the Commission's review and approval of the proposed budget, with the understanding that the budget may need to be revised significantly over the next few months. Executive Director Gluck said he will present any future changes to the Commission accordingly, but that he recommends moving forward with the placeholder budget at this time to ensure the Commission's internal budgeting processes are continuing as needed.

Commissioner Grauly made and Commissioner Fong seconded a motion to approve the proposed budget for fiscal year 2021-2022 as is, and allow for future changes. The motion carried unanimously (Tschumy, Wood, Grauly, and Fong voting).

Agenda Item No. VI: Update: Proposed Administrative Rules

Executive Director Gluck said that the proposed administrative rules remain pending before the Office of the Governor. Executive Director Gluck said that the Office

of the Governor is aware that approving the rules by the end of November will allow the rules to go into effect in December, and in turn provide Commission staff time to train lobbyists on the new requirements prior to the start of the 2021 legislative session. Executive Director Gluck said he is hoping the rules will be approved before the Commission's next meeting.

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

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At 9:23 a.m., Commissioner Gaulty 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, Gaulty, and Fong voting).

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

At 9:57 a.m., Executive Director Gluck joined the meeting and met with the Commissioners in Executive Session for his evaluation.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At 10:11 a.m., Commissioner Gaulty 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, Gaulty, and Fong voting).

The Commission adjourned the Executive Session and returned to the Sunshine Law meeting at 10:13 a.m. All staff and members of the public also returned to the Sunshine Law meeting.

Vice Chair Wood said that the Commission gave Executive Director Gluck an above satisfactory score of 4.72 out of a maximum score of 5. Vice Chair Wood said that the Commissioners discussed a few slight adjustments but are otherwise very happy and satisfied with Executive Director Gluck's performance.

Chair Tschumy thanked Vice Chair Wood for her coordination of the evaluation process.

Executive Director Gluck recommended that the Commission convene an Executive Session to discuss agenda item no. VIII. However, out of consideration for

the members of the public participating in the meeting, Executive Director Gluck recommended that the Commission remain in public session and address agenda items IX, X, and XI first. There were no objections.

Agenda Item No. IX: Extension of Financial Disclosure Deadline for Newly Elected Legislators

Executive Director Gluck said that all legislators are required to file a financial disclosure by January 31 of each year. Executive Director Gluck also said that, because all new filers are required to file within 30 days of assuming office, this year's newly elected legislators also must file their initial disclosure forms by December 3, 2020. Executive Director Gluck said that the financial disclosure law is not entirely clear as to whether both of these filing requirements should be applied to newly elected legislators.

Executive Director Gluck said that the purpose of this proposed Order is to extend the December 3, 2020 initial filing deadline for newly elected legislators to align with the annual deadline of January 31. This will prevent new legislators from having to file two substantially similar disclosures within a period of two months, and will ease the filing process administratively.

Executive Director Gluck noted that all legislators were required to file a candidate disclosure earlier in 2020, and that candidate disclosures include much of the same information as regular financial disclosures. Executive Director Gluck also said that upcoming enhancements to the e-filing system will improve the financial disclosure e-filing process upon launch in December.

Sandy Ma, Executive Director of Common Cause Hawai'i (Common Cause), asked if there was a statutory requirement for newly elected legislators to file a disclosure by the December 3, 2020 deadline. Executive Director Gluck said that it is not entirely clear if the legislature intended to have both filing deadlines apply to newly elected legislators. Executive Director Gluck said that staff is able to administer filings for both deadlines, but noted this would require new legislators to file two disclosures in two months.

Staff Attorney Chang said that prior to recent years, legislators were subject to an annual filing deadline in April, not January. The two deadlines were therefore not as much of an issue for newly elected legislators, as there was a greater length of time between their first filing deadline and their annual filing deadline. Staff Attorney Chang said that in order to ease the filing process for new legislators this year and minimize any confusion, staff recommends having new legislators file once with all other legislators in January. Staff Attorney Chang also said that postponing the December filing deadline for new legislators will help the December launch of the e-filing system enhancements go more smoothly.

Staff Attorney Chang also said that the pending administrative rules do not address this issue, and that any changes to the filing deadlines for newly elected legislators will have to be made by the Legislature.

Ms. Ma said that because the law seems unclear, Common Cause's position is to err on the side of caution and require new legislators to comply with both filing requirements.

Vice Chair Wood asked if a statutory requirement could nullify the Commission's vote on this matter. Executive Director Gluck said that the Commission has the authority to carry out its statutory obligations and that the statute is somewhat vague as to whether both filing deadlines apply to new legislators. Executive Director Gluck said that while he understands the position of Common Cause, staff believes the administrative efficiencies gained by extending the deadline will outweigh the disadvantages, especially given that most of the information disclosed by new legislators will not change during the short period between the two filing deadlines.

Commissioner Graulty made and Commissioner Fong seconded a motion to approve the Order authorizing an extension of the filing deadline for newly elected legislators from December 3, 2020 to February 1, 2021. The motion carried (Tschumy, Graulty, and Fong voting aye; Wood abstaining).

Chair Tschumy, Commissioner Graulty, and Commissioner Fong authorized staff to affix their electronic signature to the approved Order.

Agenda Item No. X: COGEL 2020 Virtual Conference Schedule

Executive Director Gluck referred to the COGEL conference schedule for 2020. Executive Director Gluck said that both live and on-demand sessions will be available this year, and asked the Commissioners to contact staff if they are not receiving the conference's informational emails.

Agenda Item No. XI: Meeting Calendar

Executive Director Gluck said that in years past, the Commission has canceled its December meeting to accommodate travel for the COGEL conference. Given that the conference is online this year, Executive Director Gluck recommended that the December 17, 2020 meeting be held as scheduled. The Commission by consensus agreed.

Executive Director Gluck also asked for the Commission's consideration of the proposed meeting calendar for 2021. The Commissioners briefly discussed whether to continue to schedule meetings at 9:00 a.m. on the third Thursday of every month.

Commissioner Graulty made and Commissioner Fong seconded a motion to approve the proposed meeting calendar for 2021. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

Agenda Item No. VIII: 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)

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At 10:31 a.m., Commissioner Graulty 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)(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, Graulty, and Fong voting).

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

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At 10:38 a.m., Vice Chair Wood made and Commissioner Graulty 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 and returned to the Sunshine Law meeting at 10:38 a.m.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 10:40 a.m., Vice Chair wood made and Commissioner Graulty seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Tschumy, Wood, Graulty, and Fong voting).

The meeting was adjourned at 10:40 a.m.

Minutes approved on: December 17, 2020