

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: December 17, 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. 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 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)

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.

**Agenda Item No. I: Consideration and Approval of the Minutes of the November 19, 2020 Meeting**

Commissioner Fong made and Vice Chair Wood seconded a motion to approve the minutes of the November 19, 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 November 19, 2020 Executive Session Meeting (Evaluation of Executive Director)**

Commissioner Gaulty made and Commissioner Fong seconded a motion to approve the minutes of the November 19, 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 November 19, 2020 Executive Session Meeting (Rowena Akana matters)**

Vice Chair Wood made and Commissioner Gaulty seconded a motion to approve the minutes of the November 19, 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 in-person trainings remain on hold due to COVID-19. Staff continues to provide live, online trainings via Zoom and conducted four sessions in the previous two weeks, reaching 425 participants. Two of the trainings were designed specifically for government attorneys and offered continuing legal education credit for ethics. Executive Director Gluck said that both staff attorneys and administrative staff are doing a great job in coordinating and facilitating the online trainings, and that in order to accommodate the high demand, the office recently upgraded its Zoom account to host an increased number of participants.

*Guidance and Assignment Statistics – November 2020*

Executive Director Gluck said that the number of complaints received is substantially larger than last year, and that staff remains very busy on investigations and complaint matters.

*Ethics Survey of State Employees*

Executive Director Gluck said that the collection of responses to the ethics survey is now complete and approximately 2,300 responses were gathered in total. Executive Director Gluck is working with the researchers from the University of Hawai'i to draft a paper discussing the survey results; the group plans to submit the paper for publication in January 2021.

### *Anti-Fraud Hotline*

Executive Director Gluck said that the anti-fraud hotline continues to receive a steady number of submissions. Executive Director Gluck said that staff are working on a few anti-fraud complaints, but that the majority of the complaints received through the anti-fraud hotline have not pertained to the ethics code. Executive Director Gluck also noted that a few users have filed duplicate complaints via both the anti-fraud complaint form and the Commission's direct complaint form.

### *Miscellaneous Office Projects / Updates*

Staff Attorney Chang said that enhancements to the Commission's online e-filing system will be launched in the very near future. The enhancements will improve the filing process for both financial disclosures and lobbyist reporting and will include additional features such as automatic reminders and an online lobbyist termination form. Staff Attorney Chang said that staff are also updating the Commission's e-filing instructional guides and website to reflect the new changes.

Staff Attorney Chang said that staff will hold training sessions in January 2021 to educate lobbyists on the new features of the e-filing system and the substantive updates to the administrative rules.

Executive Director Gluck said that the new enhancements will address existing quirks in the system and provide a more streamlined experience for the users. He also said there are only about twelve lobbyists who continue to file using the paper forms, and that the new administrative rules permit the Commission to disallow the use of paper forms in the future. In the meantime, staff are encouraging lobbyists who file paper forms to transition to the e-filing system.

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

Executive Director Gluck said there is still great uncertainty surrounding the budget for fiscal year 2021-2022, and that he is awaiting word from the Legislature regarding potential funding cuts.

Executive Director Gluck said that, per the request of the Speaker of the House, he created two proposed placeholder budgets. The first proposed budget assumes no cuts to funding and is substantially the same as the budget approved by the Commission at the November 19, 2020 meeting. The second proposed budget attempts to accommodate a 10% cut. Executive Director Gluck said it appears the office can sustain a 7% reduction in funding without having to cut staff salaries. Executive Director Gluck also provided a memo sent to the Speaker of the House explaining the proposed cuts and detailing the Commission's prudent spending record thus far.

Commissioner Groulx asked for information regarding the current lease agreement for the Commission's office. Executive Director Gluck said that the Commission is about halfway through its lease agreement, and that he will consider requesting a discount in rent and/or the ability to stop rent payments if funds are not allocated by the Legislature.

### **Agenda Item No. VI: Update: Administrative Rules**

Executive Director Gluck said that the updated administrative rules took effect as of November 28, 2020. Executive Director Gluck said that although he inquired about the status of the rules on many occasions, he was not notified that the rules were approved by the Governor and had already taken effect ten days after being filed with the Office of the Lieutenant Governor. Staff informed affected parties, including lobbyists and members of the Legislature, about the approved rules as soon as possible.

Executive Director Gluck said that because the changes to the administrative rules were open for discussion for a long time, he has not received any great backlash or criticism from lobbyists regarding transitioning to the new requirements. However, several members of the Legislature seemed quite upset about the changes, and Executive Director Gluck was meeting with the majority caucuses of both the House of Representatives and the Senate to address their concerns.

Executive Director Gluck said that in his meeting with the majority caucus of the House of Representatives, he fielded numerous questions and complaints, including: (1) questions about the applicability of the gifts law in numerous hypothetical scenarios, (2) questions about gifts between legislators and/or to legislative staff, (3) contentions that the gifts reporting law, which requires that all gifts over \$200 be disclosed, implies that gifts under \$200 may be accepted, (4) questions about the influence of campaign donations, and (5) questions about attending community events. The overall sentiment was that the new administrative rules are an "extreme" interpretation of the law and an unreasonable overreach by the Commission. Executive Director Gluck was also questioned about the Commission's authority to promulgate the rules and the timing of the rules' implementation.

Executive Director Gluck said that he believes the Commission promulgated the rules correctly and that there were no errors with the rules or their development. Executive Director Gluck said that while it may take some time for the affected parties to adjust to the new rules, he believes the rules are good for ethics and he remains committed to answering the Legislature's questions as best as possible.

Commissioner Fong asked for clarification on a few hypothetical gifts and for any feedback the office has received from lobbyists. Executive Director Gluck said that while legislators cannot accept Christmas gifts from lobbyists, such as a box of chocolate macadamia nuts, legislators are allowed to accept a certain number of tickets to a non-profit's annual event (up to a certain dollar amount), lei, and small gifts of no

market value, such as branded pens and calendars. Executive Director Gluck said that he has received questions from lobbyists about the rules, but overall they seem amenable or neutral to the changes.

Staff Attorney Chang and Executive Director Gluck said that legislators also expressed concern that no one will attend a non-profit's briefing if the non-profit is unable to provide participants food. Staff Attorney Chang said that the new rules will help to level the playing field; non-profits who do not have the resources to give gifts or food to legislators will no longer have that disadvantage in comparison to well-funded lobbyists.

Executive Director Gluck said that while the applicability of gifts rules hinge on whether the giver is a lobbyist "seeking action" from the Legislature, the general rule he communicated to the legislators is to not accept gifts or free food and/or to pay for their own meals. He also confirmed that the gifts rules apply to all state employees, and not just legislators.

#### **Agenda Item No. VII: 2021 Legislative Session**

Executive Director Gluck said that, given the Legislature's current focus on COVID-19 – as well as the Legislature's reaction to the new administrative rules – he recommends that the Commission refrain from introducing legislation in the 2021 regular session.

Commissioner Grauly made and Vice Chair Wood seconded a motion to refrain from introducing any legislation in the 2021 regular session. The motion carried unanimously (Tschumy, Wood, Grauly, 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)**

Executive Director Gluck said that the Department of the Attorney General has been busy with other cases and has not filed anything since the Commission's last meeting.

#### **ADJOURNMENT OF SUNSHINE LAW MEETING**

At approximately 9:34 a.m., Commissioner Fong made and Commissioner Grauly seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Tschumy, Wood, Grauly, and Fong voting).

The meeting was adjourned at 9:34 a.m.

Minutes approved on: January 21, 2021.