

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: August 17, 2022

Time: 9:00 a.m.

Location: Held via Zoom video and audio conference

Public Meeting Location

Hawaii State Ethics Commission Conference Room
1001 Bishop Street
American Savings Bank Tower, Suite 960
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)
Reynard D. Gaulty, Vice Chair (via video conference)
Robert Hong, Commissioner (via video conference)

Excused: Harry J. McCarthy, Commissioner
Beverley Tobias, Commissioner

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)
Susan D. Yoza, Associate Director (via video conference)
Nancy C. Neuffer, Staff Attorney (via video conference)
Bonita Y.M. Chang, Staff Attorney (via video conference)
Kee M. Campbell, Staff Attorney (via video conference)
Patrick W.C. Lui, Computer Specialist (via audio conference)

CALL TO ORDER

Chair Fong called the meeting to order at 9:01 a.m. and confirmed that in addition to himself, Vice Chair Gaulty, Commissioner Hong, and staff were present. Vice Chair Gaulty, Commissioner Hong, and all staff participating via video or audio conference confirmed no one was in the room with them at their respective remote locations.

Chair Fong announced that if the Commission's videoconference connection was lost during the meeting, the meeting would be recessed and reconvened after the connection was restored; members of the public were asked to check the Commission's website (www.ethics.hawaii.gov) for information about reconnecting to the meeting. Chair Fong also announced that if the meeting was continued to a later date or terminated, information about this would be posted on the Commission's website.

Agenda Item No. I: Consideration and Approval of the Minutes of the July 20, 2022 Meeting

Chair Fong noted that Vice Chair Grauly did not attend the July meeting, and three Commissioners were needed to approve the minutes for that meeting. Chair Fong recommended the approval of the minutes be deferred. By consensus, the Commissioners agreed to defer the approval of the July 20, 2022, minutes to the next Commission meeting.

Agenda Item No. II: *Executive Director's Report*

Executive Director Harris reviewed the training, guidance, and assignment statistics for July.

Executive Director Harris said a general ethics webinar class was scheduled for August 18, 2022, and 250 persons signed up for the class.

Executive Director Harris discussed plans to implement the new mandatory ethics training law for all state employees. He said the office recently started sending emails to specific departments regarding the new law. He reported the plan is to have a slightly phased roll-out to see if there are any issues or problems. Staff will then move forward with full email blasts to all departments. Executive Director Harris said staff will find the best way to get all state employees either trained online or via live training as soon as possible.

Executive Director Harris reported statistics for the month of July for complaints received, requests for advice, and other assignments.

Staff Attorney Chang updated the Commission about the status of candidate financial disclosure filings. She reported that 266 candidates for state office were required to file and 30 candidates did not file on time. The names of candidates who did not file on time were published on July 28, 2022, in a media release. As of August 17, 2022, approximately 22 of the 30 candidates had filed their disclosures. A few of those filers requested waivers for the late-filing fine and those requests will be addressed individually.

Staff Attorney Chang also updated the Commission about financial disclosure filings by state employees and board members. There were about 1800 filers for the

year and a filing rate of approximately 98%. Staff are working with the remaining board filers who have not filed to provide assistance and get them to file their disclosures.

Executive Director Harris added that 13 of the 30 late-filing candidates have already paid their fines.

Agenda Item No. III: Update on Commission to Improve Standards of Conduct

Executive Director Harris said the Commission to Improve Standards of Conduct (“Standards Commission”) issued an interim report at the close of the last legislative session and was asked to file a final report with recommendations in December. The Standards Commission has been looking at ways to improve standards of conduct in different areas, including the Sunshine Law, ethics, and campaign finance. The Standards Commission meets approximately every two weeks and has targeted certain areas of discussion.

Executive Director Harris reported that the Standards Commission’s last meeting focused on the Sunshine Law. The bulk of the discussion was about ways to improve the Uniform Information Practices Act and recent bills to provide free access to government records for public interest groups. There was also a discussion about applying the Sunshine Law to the Legislature.

Executive Director Harris said the Standards Commission was meeting that day to focus on the legislative process. Several legislators were invited to the meeting, including Senator Rhoads, Senator Lee, Representative Nakashima, Representative Peralta, and Representative Ward. The discussion topics for the meeting included the following: bill referrals; term limits for committee chairs; the hearing process for bills; disclosure of bill drafts and the authors of the bill drafts; posting testimony in a timely fashion; and extending session time periods or adding recesses to allow for greater public review and participation.

Chair Fong asked whether there was any discussion on how to curtail the rash of unethical conduct by elected officials. Executive Director Harris said there was a lot of discussion about this. He reported that about a month ago, the Standards Commission met with prosecutors from all the counties and representatives from the State Attorney General’s Office and the U.S. Attorney’s Office. These officials are reviewing the criminal laws and there will be proposals to match state laws to some of the federal laws, as well as to make sure there are adequate resources for State criminal investigations.

Executive Director Harris said staff also arranged for a panel discussion of ethics issues and made several recommendations, such as introducing an anti-nepotism law.

Executive Director said most of what has been suggested to date will be incremental improvements and everyone must recognize there are probably no silver bullets.

Commissioner Graulty said he was appalled by the way legislator conflicts of interests are handled with perfunctory rulings by the Senate President and House Speaker. He asked whether there has been any discussion to toughen up conflicts-of-interests rulings.

Executive Director Harris said staff discussed this and were drafting proposed language for House and Senate Rules which would make rulings on conflicts of interests default to requiring recusal from votes, discussions, and meetings. Questions as to whether a member has a conflict would require a full vote by the committee or the full floor for floor votes. Executive Director Harris said the intent would be to require full discussion of conflicts at that time.

Commissioner Graulty said there was a State Ethics Commission bill that was previously signed into law by the Governor. However, when the leaders of both houses realized what they had passed, they asked the Commission to “back off” from the law. Commissioner Graulty asked whether staff could go back to the law that was passed and see if there is a possibility of putting it back into play. Associate Director Yoza said she would research this matter.

Agenda Item No. IV: Sunshine Law Review for Commissioners

Executive Director Harris referred to the Sunshine Law Guide (“Guide”), which was published by the Office of Information Practices (“OIP”). Executive Director Harris encouraged everyone to review the Guide.

Executive Director Harris highlighted some of the key points of the Sunshine Law:

- Discussion of board business cannot take place outside of meetings, with a few narrow exceptions.
- Commissioners can communicate with each other about procedural matters, such as scheduling meetings.
- Commissioners can communicate with non-board members, such as staff and members of the public (on non-confidential matters).
- Two board members can discuss board business so long as there is no commitment to vote and there are no serial communications among board members.

Vice Chair Graulty asked for confirmation that two board members can discuss something, even if it is germane to a matter that came up or will come up at a meeting, so long as there are no more than two members in the discussion and there are no serial communications. Executive Director Harris said this was correct, so long as there is no commitment to vote.

Vice Chair Gaulty also asked whether it was permissible if the Chair called him and asked whether he would serve as Vice Chair, and if he said, "Yes." Executive Director Harris said this would be a permissible conversation because there would not be a commitment to vote – just an indication of interest in a position.

Executive Director Harris said he would try to avoid extensive discussions about board business, even if the discussion is just between two members. Commissioner Gaulty said he felt there should be some leeway because the law allows two board members to have a discussion so long as it is not a serial discussion. Executive Director Harris said the discussions described by Vice Chair Gaulty are fine. He recommended, however, that Commissioners refrain from long conversations about matters likely to come before the Commission as those conversations are supposed to be public as much as possible.

Agenda Item No. V: 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 Harris said there were no updates on the Akana case.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 9:26 a.m., Vice Chair Gaulty made and Commissioner Hong seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Gaulty, and Hong voting).

The meeting was adjourned at 9:26 a.m.

Minutes approved on September 21, 2022.