

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

STATE OF HAWAI'I

Date: September 21, 2022
Time: 9:00 a.m.
Location: Held via Zoom video and audio conference

Public Meeting Location

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

Present: State Ethics Commission Members

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

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)
Kee M. Campbell, Staff Attorney (via video conference)
Jennifer M. Yamanuha, 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 9:00 a.m. and confirmed that in addition to himself, Vice Chair Gaulty, Commissioners McCarthy, Tobias, and Hong, and staff were present. All Commissioners 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 video conference 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

Commissioner McCarthy made and Commissioner Hong seconded a motion to approve the minutes of the July 20, 2022, meeting. The motion carried (Fong, McCarthy, Tobias, and Hong voting aye; Grauly abstaining).

Agenda Item No. II: Consideration and Approval of the Minutes of the August 17, 2022 Meeting

Vice Chair Grauly made and Commissioner Hong seconded a motion to approve the minutes of the August 17, 2022, meeting. The motion carried (Fong, Grauly, and Hong voting aye; McCarthy and Tobias abstaining).

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

Executive Director Harris reviewed the training, guidance, and assignment statistics for August and upcoming trainings for September.

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

Executive Director Harris said the Commission to Improve Standards of Conduct ("Standards Commission") will meet every week in October to review draft bills and other proposals. He hopes to present some of the draft bills for the Ethics Commission's review and consideration at the next Commission meeting.

Executive Director Harris discussed proposals to address legislator conflicts of interests. He said one of the proposals is to tighten up language in the House and Senate rules for addressing conflicts such that recusal from votes and discussions would be the default practice where a legislator has a conflict of interest. In narrow circumstances where a legislator is needed for a vote, or where there is a legitimate question as to whether there is a conflict of interest, a full vote by the governing body would be required. This would provide public notice of the issues and vote.

Chair Fong asked staff to summarize the legislative history of Act 119 (2019 Haw. Sess. Laws) and how it evolved to Act 29 (2020 Haw. Sess. Laws). Executive

Director Harris said this was a follow-up to a question that Vice Chair Grauly had raised and asked Associate Director Yoza to explain what happened.

Associate Director Yoza said in 2019, the Legislature passed a bill that became Act 119. The new law required legislators to publicly disclose potential conflicts of interest and gave the Commission rule-making authority for the disclosure of conflicts by legislators. After Act 119 became law, the Commission's former executive director sent a draft administrative rule to the House Speaker and Senate President, asking for their feedback. The draft rule included procedures for the disclosure of conflicts by legislators. Staff did not receive any feedback about the draft rule, but was later informed that the Legislature wanted to repeal the provision in the law that gave the Commission rulemaking authority regarding the disclosure of conflicts by legislators. This led to a new law in 2020, Act 29, which gave rule-making authority to the House and Senate for the disclosure of conflicts by legislators and further provided that any rules issued by the Commission would be pre-empted by the rules adopted by the House and Senate for the disclosure of conflicts by legislators.

Vice Chair Grauly spoke about his experience with conflicts issues as a state representative. He said whenever legislators disclosed conflicts by rising and stating, "Mr. Speaker, I have a conflict," the ruling was always the same – that there was no conflict. Vice Chair Grauly said his experience as a state senator was the same. He felt this made a mockery of the conflict-of-interest rules and left the public in a bad position. He said this issue is bigger than the Ethics Commission and for any change to occur, this issue must be taken up by the Standards Commission.

Executive Director Harris summarized other measures that were drafted by staff for consideration by the Standards Commission, including a nepotism bill and proposed revisions to the House and Senate rules on conflicts of interests. He discussed issues that may be raised by some of these measures, including whether the Ethics Commission or the Legislature has jurisdiction over this area.

Executive Director Harris said the Standards Commission and the Ethics Commission will both have an opportunity to review draft bills and other proposals in October. Further discussion followed as to whether the Commission will have an opportunity to review some of the proposals before they are presented to the Standards Commission. The Commissioners agreed they would like to have this opportunity.

Commissioner McCarthy said he hoped the proposals can be reviewed at the next meeting in October. He said this would be a good opportunity for the Commission to get behind and support the proposals. The other Commissioners agreed. Executive Director Harris said the Standards Commission would gladly accept input from the Ethics Commission on the proposals.

Executive Director Harris said the intent is to get the best proposals possible with a final report from the Standards Commission and a blessing from the "blue ribbon" committee endorsing it. This will have a fair amount of public and media attention and there will be some level of pressure on the Legislature to consider the proposals.

Vice Chair Graulty noted that time is of the essence and said the Commission could schedule a special meeting to review the draft proposals if necessary.

Vice Chair Graulty made and Commissioner Tobias seconded a motion for the Commission to review the draft proposals before they are presented to the Standards Commission. The motion carried unanimously (Fong, Graulty, McCarthy, Tobias, and Hong).

Executive Director Harris said he would check on the Standards Commission's timeframe. If it does not appear there will be time for the Ethics Commission to review the proposals before they are presented to the Standards Commission, he will schedule a special meeting by the Ethics Commission. He explained that he might put all of the Ethics Commission concepts together for review at that time, including mandatory education and gifts rules for lobbyists.

Chair Fong said he believed what the Ethics Commission is doing is very important for the state and he hoped the counties would also follow through. He thanked staff for its work on this.

Agenda Item No. V: Consideration of Collection Efforts for Candidates Who Failed to File Disclosure Statements Under Haw. Rev. Stat. § 84-17(j)

Executive Director Harris said the State Ethics Code requires candidates to file a financial disclosure statement and if they fail to file on time, they must be assessed a \$50.00 fine and their names must be published. He said the names of the delinquent candidates were posted on the Commission's website.

Executive Director Harris said that out of 30 candidates who were fined, 11 candidates have not paid their fines. He said six candidates still have not filed a disclosure statement, including one candidate who is running in the general election. Out of the 11 candidates with unpaid fines, five are still in the running.

Executive Director Harris said two letters were sent to each of these candidates, and some phone calls have been made as well. He said staff's collection efforts should continue with one more letter to the candidates and more phone calls.

Executive Director Harris explained that the Commission's governing statute states these fines shall be collected by the Commission and deposited into the general fund. He asked the Commission to discuss how far it wishes to go in its collection efforts. He said this was a policy matter for the Commission to decide. He also said he had some concerns about spending hundreds of dollars to chase a \$50 fine.

Vice Chair Graulty recommended the Commission publicize the name of the individual who is still running for office. He said that publicity will force that person to

comply. He said posting the person's name on the Commission's website was a first step and the media might help with further publicity.

Vice Chair Gaulty said the other candidates who are no longer running for office presented a dilemma because the Commission did not want to spend a lot of money or state resources to collect \$50. He asked whether the Commission can just refer those cases to the Attorney General's office for collection.

Executive Director Harris said the Commission would first have to issue an order and this would require further proceedings. Once the Commission issues an order, it can refer the matter to the Attorney General's office. He said it was his understanding that a bench warrant might be issued against the person. He also said the Attorney General's office indicated it will handle collection efforts if the Commission asks.

Executive Director Harris said staff will do more follow-up and will place calls to each of the remaining candidates. He said staff can also issue another press release.

Chair Fong said if all these things are done and the candidates still have not paid their fines, he would refer the matter to the AG's office for collection. Vice Chair Gaulty and Commissioner Tobias agreed.

Commissioner Hong said he agreed with Executive Director Harris and believed it was overkill to refer these cases to the Attorney General's office. Commissioner Hong said the first step should be to publicize the list of candidates for the media. The next step should be referring this to the House or Senate Ethics Committee whose job is to provide oversight if the candidates are elected. He said this would be better than having the Attorney General's office chase down \$50.00 with a bench warrant. He also said the Commission might face a backlash for spending thousands of dollars to collect a \$50 fine.

Vice Chair Gaulty made and Commissioner McCarthy seconded a motion for staff to follow up as discussed by Executive Director Harris, and any remaining candidates who have not paid their fines will be referred to the Attorney General's office. The motion carried (Fong, Gaulty, McCarthy, and Tobias voting aye; Hong voting nay).

Agenda Item No. VI: 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)

There was no update on the Akana case.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 10:03 a.m., Commissioner McCarthy made and Commissioner Tobias seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Graulty, McCarthy, Tobias, and Hong voting).

The meeting was adjourned at 10:03 a.m.

Minutes approved on October 19, 2022.