

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

STATE OF HAWAI'I

Date: March 15, 2023

Time: 9:01 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. Graulty, Vice Chair (via video conference)
Harry J. McCarthy, Commissioner (via phone call)
Robert Hong, Commissioner (via video conference)

Excused: Beverley Tobias, Commissioner

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)
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)
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 9:01 a.m. Chair Fong, Vice Chair Graulty, Commissioner McCarthy, Commissioner Hong, and all Commission staff were present. All Commissioners and staff participating via video or audio conference confirmed no one was in the room with them at their respective remote locations.

Chair Fong noted that no members of the public were present, and the public meeting notice included instructions for the public if the Commission's video conference connection was lost during the meeting.

Executive Director Harris introduced the Commission's new Investigator, Jared Elster. Executive Director Harris noted that Investigator Elster has extensive police experience and came to the Commission most recently from Windward Community College.

Agenda Item No. I: Consideration and Approval of the Minutes of the February 15, 2023 Meeting

Commissioner Graulty made and Commissioner Hong seconded a motion to approve the minutes of the February 15, 2023, meeting. The motion carried (Fong, Graulty, and Hong voting in the affirmative, McCarthy excused).

Agenda Item No. II: Executive Director's Report

Executive Director Harris reviewed the training statistics for February 2023 and the training schedule for 2023. He noted the Commission held three training sessions in the month of February, including a training with the Governor's office. Executive Director Harris additionally noted that the Department of Human Resources Development had added the self-directed, online ethics training to their learning portal in the beginning of March, and he anticipated a significant increase in the number of participants.

Executive Director Harris also followed up on the effectiveness of the Commission training sessions, a discussion topic from the last meeting. An attachment was included in this month's agenda showed the results of 1,848 responses received from a total of 2,749 attendees participating in an ethics training session. Sixty-one percent of the responses gave the training session a five out of five in quality, thirty-four percent gave the Commission a four out of five, and five percent gave the Commission a three out of five. Executive Director Harris noted that survey responses were very positive, but questions remain about the long-term effectiveness of the training session. He noted the Commission should continue looking at ways to ensure the training is as effective as possible. Some ideas include short "how to" videos on the website, and follow up emails with training participants to ensure ethics remain top-of-mind with all of the participants.

Commissioner McCarthy noted the survey results reflected well on the staff and suggested it may be worthwhile to determine if the results change over time. Chair Fong concurred. He also asked how many employees have taken the training to date.

Executive Director Harris noted that Commissioner Hong had asked a similar question in a past meeting. He added that the plan is to start asking each agency for the total number of employees, with a goal of being able to report a snapshot in time of the

percentage of employees completing the ethics training requirement. He hoped results could be shown in three months or so. He additionally noted that 9,000 state employees completed the training last year. As more departments add the ethics training to their existing learning portal, more employees should be undergoing the training this year. Executive Director Harris especially recognized the University of Hawai'i for its excellent efforts to get its employees through the ethics training.

Commissioner McCarthy asked if the training has already been provided to the Legislature and, if so, what were the survey results. Executive Director Harris replied that both branches of the Legislature have had a training session, but he was not able to provide specific survey results.

Chair Fong asked if there is any penalty if a state employee fails to meet the ethics training requirement. Executive Director Harris stated a live database will be publicized at the end of the year, with the training status for each state employee. The expectation is that every employee required to take a live training will meet the requirement so as to avoid negative publicity. Further, if an ethics violation is being addressed, the failure to meet the requirement will likely be tacked on as an additional charge.

Executive Director Harris recognized staff for hosting a "spring cleaning" with a focus on disposing of records according to the Commission's document retention policy. Documents were also identified for scanning, with an effort to reduce the number of physical files in the office.

Executive Director Harris noted that the Commission's lease expires in June. Looking at the Commission's physical space needs, two employees now work remotely on a full-time basis. The Commission's fiscal year 2024 budget proposes to bring on one additional employee, for a total of 10 employees in the office. The Commission is in the process of eliminating its physical file server and moving its digital files to the cloud. With a small reduction of people in the office and less physical equipment, the Commission has the capacity to modestly downsize the office space currently leased.

Executive Director Harris asked the State Comptroller if there is an existing state office space available. Assuming no space is available, the current plan is to negotiate a small reduction of office space with the current landlord as well as negotiate another lease proposal with the intent of fairly comparing the two options.

Executive Director Harris, on a personal note, notified the Commission that he was selected Reciprocal Professional Fellow with the U.S. State Department Bureau of Education and Cultural Affairs. He will be travelling to Moldova in June and is planning a series of lectures and meetings on ethics and government transparency.

Agenda Item No. III: 2023 Legislative Session

Executive Director Harris updated the Commission about the status of legislation that staff have been tracking. The Commission reviewed each category of bills.

Generally, Executive Director Harris noted that many of the bills in the Ethics Commission's package are largely on track to be approved and signed into law.

- HB 1514, which includes the Ethics Commission's budget, has been transmitted to the Governor.
- SB 182, which amends the fines imposed and procedures relating to late financial disclosure statements, was referred to the House judicial committee. Executive Director Harris did not anticipate significant obstacles to its moving forward.
- HB 136, which requires each chamber of the Legislature to post online a report of the legislative allowance expenditures for each member, was referred to the Senate. Executive Director Harris noted it may not move forward, however both branches of the Legislature have committed to post the reports regardless. Executive Director Harris recognized Susan Yoza for her efforts in drafting this piece of legislation and moving the concept forward.
- Executive Director Harris noted that the following bills have all passed out of their respective committees and now require a Senate floor vote:
 - HB 141 (requiring each state legislator to disclose any financial relationship they have with lobbyists or lobbying organizations).
 - HB 142 (prohibiting lobbyists from making gifts that are otherwise impermissible under the ethics code).
 - HB 137 (requiring lobbyists to identify the specific bill, resolution, or budget item they lobbied on).
 - HB 138 (establishing a mandatory lobbyist training requirement).
 - HB 140 (giving the Commission more discretion with regard to existing document destruction requirements)
- SB 805, which amends the definition of lobbying to include communication efforts at the executive branch level, was held at the Ethic Commission's request. Staff committed to researching the issue during the interim period and proposing new language at next year's legislative session.
- HB 717, the anti-Nepotism bill, was set for hearing that afternoon. Executive Director Harris acknowledged Staff Attorney Kee Campbell for his advocacy on the bill. Executive Director Harris did not anticipate any significant hurdles with the bill moving forward.

- SB 1187, which expands the post-employment restriction on lobbying for legislators, has moved to the House Judiciary Committee.

Executive Director Harris concluded by thanking the staff for their efforts in drafting, developing testimony, and helping advocate for these various policy efforts.

Agenda Item No. IV: Discussion of Adjudicatory Procedure

Executive Director Harris noted some questions had arisen about the Commission's adjudicatory process. He believed it would be helpful to briefly explain how the Commission investigates complaints. He noted that when a new matter is received by the office, the Commission's staff conducts a preliminary investigation. Staff review is typically limited to public records and discussions with existing state employees.

If there is reasonable suspicion or similar standard of belief that a violation of the State Ethics Code occurred, staff then asks the Commission to issue a Resolution to Investigate. At this point, the investigation, including the ability to issue subpoenas, broadens. If the investigation demonstrates that there is probable cause that a violation occurred, staff can ask the Commission to issue a Charge. If a Charge is issued, it would be served on the state employee, board or commission member, or elected official. This individual would have an opportunity to respond. If necessary, a further statement of violation could be issued, and a notice of hearing established. At that point, the Commission would hold a contested case to determine findings of fact and conclusions of law.

At any point, a complaint could be settled. Any settlement would need to be approved by the Commission, and it has been the policy of the Commission for the settlements to be filed publicly with a few narrow exceptions.

Executive Director Harris noted that much of the investigation process is confidential under existing law. The Commission's administrative rules allow the Executive Director, on a confidential basis, to disclose a matter to law enforcement or an agency administrator for further action as warranted.

Chair Fong observed that department heads should be notified if any of their employees commit an ethical violation. Commissioner Graulty noted that the Commission can and will notify a department head if an ethical violation is proven. But at the Charge stage, the Commission is still investigating. Nothing has been proven yet. Chair Fong agreed.

Chair Fong asked about filing a Charge against someone being prosecuted for a criminal matter. Executive Director Harris noted the Ethics Commission has concurrent jurisdiction in such a situation and can pursue a Charge if the appropriate evidentiary standard has been met. However, the Commission typically avoids proceeding with an investigation if a criminal proceeding is underway so as to avoid interfering with the

criminal trial. In this situation, the Commission typically stays the Charge until the criminal proceeding is complete.

Chair Fong raised the idea of increasing the potential fine for an ethics violation. Executive Director Harris agreed to work on a proposed bill for next year, based on the review of comparable fines in other states. Chair Fong asked for an update at next month's meeting.

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)

There was no update on the Akana case.

Agenda Item No. VI: Consideration and Approval of the Minutes of the January 19, 2023 Executive Session

Commissioner Hong made and Commissioner McCarthy seconded a motion to go into executive session to consider the minutes of the January 19, 2023, executive session meeting. The motion carried unanimously (Fong, Graulty, McCarthy, and Hong voting).

Upon returning from the executive session, Chair Fong noted for the record that the minutes of the January 19, 2023, executive session meeting were approved unanimously.

Agenda Items No. VII: Evaluation of Executive Director Robert Harris

Due to the absence of one of the Commissioners, the Commission postponed this agenda item till the next meeting.

ADJOURNMENT OF SUNSHINE LAW MEETING

At approximately 9:59 a.m., Commissioner McCarthy made and Commissioner Hong seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Graulty, McCarthy, and Hong voting).

The meeting was adjourned at 10:00 a.m.

Minutes approved on April 19, 2023.