

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: April 19, 2023

Time: 9:01 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 (present in conference room)

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 (present in conference room)
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 video conference)
Jared Elster, Staff Attorney (via video conference)

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:01 a.m. Chair Fong, Vice Chair Gaulty, 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 one member of the public was present, and the public meeting notice included instructions for the public if the Commission's video conference connection was lost during the meeting.

Agenda Item No. I: Consideration and Approval of the Minutes of the March 15, 2023 Meeting (3:13)

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

Agenda Item No. II: Executive Director's Report (3:47)

Executive Director Harris reviewed the training statistics for March 2023 and the training schedule for 2023. Director Harris noted that two live trainings were held in the month of March. One of those trainings was held for the Department of Education ("DOE") leadership team, with an associated conversation about how to get DOE staff to take the online, self-directed training course. Director Harris noted that DOE had approximately 20,000 employees and it was a critical agency to engage in ethics training. Director Harris also noted that 4,042 individuals took the online training course. Three months into the year, the total cumulative number of ethics training participants in 2023 already matches the total number of participants in 2022 (which likely was the largest number of ethics training participants in the Commission's history).

Agencies were asked to report on their total number of employees, with an intent of reporting an approximate percentage of employees in each agency who completed the ethics training. Chair Fong asked if the report by the agencies would give the Commission knowledge of who had not completed the mandatory training. Director Harris replied that the public database maintained by the Ethics Commission would provide a listing of those who have completed the training. By getting the total number of employees, the Commission could create an approximate completion percentage for each agency. Chair Fong asked about the consequences of non-compliance as the training is mandated. Director Harris confirmed that the training is mandatory. Director Harris noted that the intent is to get as many employees through the training as possible, and that public reporting of the ethics training completion should encourage overall participation.

Executive Director Harris stated that summaries of training comments and ratings will be provided every six months. This avoids a situation where one training skews the overall training review.

Executive Director Harris provided the overall monthly new matter statistics and highlighted a large number of closed matters in March. Commissioner Fong noted that 24 new complaints were received, and he asked if that was a greater number of complaints than past months. Director Harris noted that a large number of folks went

through the training March (over 4,000), and it was possible the Commission may see an overall increase in the number of complaints.

An update was given regarding the renewal and renegotiation of the Commission's office lease. The current lease expires in June. Negotiations were underway with Commission's current landlord as well as another property location with an intent of securing the best deal. The current proposal in front of the Commission would result physical improvements to the existing space, such as facilitating public access and updating 30+ year-old furnishings.

Director Harris also gave an update of the Commission's quarterly budget status.

Chair Fong recognized the Commission staff for their efforts in cleaning up the office, including removing old files and boxes.

Agenda Item No. III: 2023 Legislative Session (14:00)

Executive Director Harris updated the Commission about the status of legislation that staff have been tracking and reviewed each category of bills. He noted the unusual legislative atmosphere created because of the highly publicized arrests of two former legislators, and the House's leadership in establishing the Commission on Improving Standards of Conduct. Every bill introduced by either the Ethics Commission or the Standards Commission was heard by the House of Representatives.

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

- HB 1514, which includes the Ethics Commission's budget, was 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.
- SB 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 was deferred, however both branches of the Legislature publicly committed to posting the legislative allowance expenditures online. Executive Director Harris recognized Associate Director Susan Yoza for her efforts in drafting this piece of legislation and moving the concept forward.

- HB 141, requiring each state legislator to disclose any financial relationship they have with lobbyists or lobbying organizations, was going to conference committee.
- HB 142, prohibiting lobbyists from making gifts that are otherwise impermissible under the ethics code, was signed into law. Director Harris noted he participated in a signing ceremony with the Governor.
- HB 137, requiring lobbyists to identify the specific bill, resolution, or budget item they lobbied on, was signed into law.
- HB 138, which established a mandatory lobbyist training requirement, was pending before Governor. Executive Director Harris noted the bill was amended so it was effective upon signing, rather than giving the Commission time to institute a new training program.
- HB 140, giving the Commission more discretion with regard to existing document destruction requirements, was signed into law.
- 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 conference committee.
- SB 1187, which expands the post-employment restriction on lobbying for legislators, has been deferred.

Chair Fong concluded by thanking the staff for their efforts in drafting, developing testimony, and helping advocate for these various policy efforts. Chair Fong asked about SB 1187. Director Harris said that SB 1187 was passed by Senate but not scheduled for hearing by the House. Chair Fong asked if the bill would restrict legislators or legislative employees from being employed by the State for 24 months. Director Harris clarified that the bill would restrict lobbying by legislators for 24 months. Chair Fong asked if there was a prohibition about legislators or legislative employees working for the State. Director Harris replied that he does not believe there was an overall state employment restriction. Commissioner Gaulty asked if the 12-month lobbying restriction remained in place. Director Harris indicated that the 12-month lobbying restriction remains in place, and that SB 1187 would have extended it to 24 months. Commissioner Hong thanked Executive Director Harris and the other staff for their efforts at the Legislature.

A member of the public, Kai Lorinc, asked for the Ethics Commission budget. Director Harris replied that the Commission's budget was \$1,400,019. Ms. Lorinc asked how many complaints were resolved this year. Director Harris replied that this information is in our annual report. Citizen Lorinc stated she believed the number was

four. She wanted to know how much of the budget was used on enforcement. She stated that reports were sent to the Commission over one year ago that included complaints of gerrymandering and public corruption without any public resolution. She stated that many of the reported cases have not been resolved, and that corruption is not being addressed. She asked to share her report regarding alleged criminal activity with the Commissioners. Chair Fong asked Ms. Lorinc to send her report and committed to sending the Commission's statistics to her.

Agenda Item No. IV: Proposed Media Policy (31:48)

Executive Director Harris noted that at some point the Commission stopped regularly issuing media releases. Because of the importance of public transparency, Director Harris proposed a uniform policy to publicize Commission decisions as follows.

Hawaii State Ethics Commission welcomes transparency, recognizing its responsibility to improve and maintain public confidence in government official and employees. It shall be the policy of the Commission to issue a media alert with respect to any ethics opinions or decisions, such as an issuance of a settlement agreement or an advisory opinion, with a brief, objective description of the action taken.

Chair Fong agreed with the intent, and expressed concern that the public may not see the work of the Commission. He added that the public and media is interested in the work of the Commission.

Commissioner Hong moved, and Commissioner Graulty seconded a motion to adopt the proposed media policy. Motion carried unanimously (Graulty, Hong, and Fong voting).

Agenda Item No. V: Proposed Increase to the Commission's Administrative Fine Authority (Haw. Rev. Stat. § 84-39 and Haw. Rev. Stat. § 97-7) (37:54)

Chair Fong previously asked Commission Staff to investigate national standards on appropriate fine amounts for ethics violations. Executive Director Harris indicated the research was not yet complete, and that this would become a standing item on the agenda from now on.

Chair Fong stated that concern that fines are not as effective means of deterrence. He inquired about the maximum fine allowed by the City and County of Honolulu's Ethics Commission. Director Harris did not know. Chair Fong noted that each county may be different.

Citizen Lorinc inquired what the maximum fine is. Director Harris replied that the maximum fine per violation was \$1,000 and restitution could also be added.

Agenda Item No. VI: Discussion of an Informational Meeting with the State and County Ethics Commissions or Boards. (41:10)

Staff Attorney Yamanuha stated that she is developing an idea to have a state-wide meeting of State and County Ethics Commissions and, possibly, the Office of Elections and Campaign Spending Commission. The goal of the meeting would be to share best practices and ideas about how we can be more productive and empower counties to do more beyond just financial disclosures. The proposed location is at the Honolulu Ethics Commission offices at Kapalama Hale. Staff Attorney Yamanuha stated that preliminary invitations have been sent. She also stated that a small amount to assist with travel (\$1,000) is available and that staff is looking into options for remote participation. The proposed agenda is for a day-long conference with breakouts and discussions about each commission's functions, goals, and challenges, with speakers from outside groups presenting on topics of interest.

Director Harris noted that the neighbor island commissions don't have much in the way of staffing. He hoped this would be an opportunity to inspire the county ethics commissions to seek additional funding and expand their reach.

Chair Fong asked when the event would take place, who would provide funding, and emphasized that the event should be about sharing ideas and not dictating to the commissions. Staff Attorney Yamanuha replied the date is set for September 1, 2023, with the time to be determined. The Commission would fund \$1,000 out of budget. Additional support would be provided by the Honolulu Ethics Commission. The conference would be a joint learning opportunity. Chair Fong inquired about donations for conference around food. Staff Attorney Yamanuha said staff would inquire about the possibility.

Agenda Items No. VII: 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) (52:40)

There was no update on the Akana case.

Agenda Item No. VIII: Evaluation of Executive Director Robert D. Harris (54:18)

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At 9:55 a.m., Commissioner Graulty made and Commissioner Hong seconded a motion to recess the public 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 (Fong, Graulty, and Hong voting).

All staff were excused with the exception of Executive Director Harris, Associate Director Yoza, and Computer Specialist Lui. No members of the public were present. The Commissioners met in executive session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING (54:51)

At 9:55 a.m., Vice Chair Graulty made and Commissioner Hong seconded a motion to adjourn the executive session and return to the public meeting. The motion carried unanimously (Fong, Graulty, and Hong voting).

The Commission adjourned the executive session and returned to the public meeting. All staff and a member of the public who were in the waiting room returned to the public meeting. Chair Fong stated that the executive session was to review the evaluation of Executive Director Harris. Chair Fong read a statement regarding Executive Director Harris's Evaluation stating the Commission was overall very pleased with his performance and gave him a 4.8 rating out of 5. The Commission gave Director Harris high marks for his positive and collaborative relationship with the Commission, his supervision with the staff, and his accomplishments with the Legislature and media.

Director Harris communicated his sincere appreciation for the opportunity to serve. He appreciated the challenge of navigating the balance between providing education, advice, and enforcement. Director Harris also expressed his hearty appreciation for the efforts of the staff and noted it was a true team effort.

Agenda Item No. IX: Recognition of an Outstanding Commission Employee (57:56)

Chair Fong recognized Associate Director Susan Yoza on the occasion of her retirement. Chair Fong read a Certificate presented on behalf of the Commission to Associate Director Yoza. He noted her exemplary accomplishments, her exceptional professionalism, and outstanding personal commitment to the highest standards of ethical conduct.

Associate Director Yoza stated it has been an honor and privilege to work with the commission and that she was going to miss everyone.

ADJOURNMENT OF SUNSHINE LAW MEETING (1:03:04)

At approximately 10:04 a.m., Commissioner Hong made and Commissioner Gaulty seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Gaulty, and Hong voting).

The meeting was adjourned at 10:04 a.m.

Minutes approved on May 17, 2023.