

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: May 17, 2023

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)
Harry J. McCarthy, Commissioner (via video conference)
Beverly Tobias, Commissioner (present in conference room)
Robert Hong, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)
Susan D. Yoza, Associate Director (excused)
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)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Gaulty, Commissioner McCarthy, Commissioner Tobias, Commissioner Hong and 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.

Agenda Item No. I: Consideration and Approval of the Minutes of the April 19, 2023 Meeting (1:50)

Commissioner Hong made and Commissioner Gaulty seconded a motion to approve the minutes of the April 19, 2023, meeting. The motion carried (Fong, Gaulty, Hong, voting in the affirmative. McCarthy and Tobias excused).

Agenda Item No. II: Consideration and Approval of the Minutes of the April 19, 2023 Executive Session Meeting (3:05)

Commissioner Gaulty made and Commissioner Hong seconded a motion to approve the executive session minutes of the April 19, 2023, meeting. The motion carried (Fong, Gaulty, Hong voting in the affirmative. McCarthy and Tobias excused).

Agenda Item No. III: Executive Director's Report (4:08)

Executive Director Harris reviewed the training statistics for April 2023 and the training schedule for 2023. He noted the overall attendance for the live training sessions is dropping and that changes to the remaining schedule may be considered in order to maximize usefulness of staff attorney time. Director Harris noted a significant increase in online training completions. A total of 7,143 individuals have completed the online training this year to date. Cumulatively, that is the highest number of trainings ever conducted by the Ethics Commission in one year.

Executive Director Harris also reported that he recently met with the Department of Education ("DOE"). He expressed cautious optimism that DOE would unveil a push to have teachers complete their online ethics training this summer.

Executive Director Harris noted that 78 assignments, including 46 complaints and 26 gifts and travel requests were closed in April.

Executive Director Harris provided an update on the Commission's office lease. He noted that the lease extension was signed, but we are still awaiting the final executed agreement. As noted last month, the new lease terms include a provision for rehabbing existing office space to include new carpet and paint. Also, a new public entryway into the conference room will be constructed. Director Harris noted that the construction may result in a temporary move of the Commission's office space for approximately six weeks.

Executive Director Harris provided an update on the Commission's email server upgrade. In 2022, a budget request was made to upgrade the Commission's email

server. Director Harris reported that a transition to using the state's email system "hawaii.gov" has begun. The existing, onsite email server will continue accept email and forward to the new email address. At some point the email addresses ending with "hawaiiethics.org" will be retired.

Executive Director Harris reported that a contract was signed to update the Commission's current file sharing system. Currently, the commission uses an older (2010) version of Microsoft SharePoint that only works on Microsoft Internet Explorer. He noted that Internet Explorer is no longer supported by Microsoft. The plan is to transition to a more modern version of SharePoint in the next 6 months.

Executive Director Harris reported he was selected for a United States Professional Fellows Exchange. He will travel to Moldova from June 5 to June 14, 2023. As part of the Exchange, Director Harris will meet with Moldova government officials and various nonprofit entities about ethics and open government. Chair Fong congratulated Director Harris on his selection. He expressed concerns about certain areas being under Russian influence. Director Harris acknowledged the concern and noted that the locations he will visit have been vetted by the U.S. Government.

Commissioner Hong asked why it appears that only four of the five Commissioners completed online training. Director Harris explained that Commissioners must take a live training. If the Commissioners took the online training, it was in addition to the live training requirement.

Chair Fong asked how many active cases the Commission staff has. He noted a concerned citizen at a previous meeting had stated that the Commission closed only four cases. Director Harris stated he did not have that data readily available, but would report at next meeting. He noted that in the preceding four months the Commission received 85 complaints and 80 requests regarding gifts or travel, for a total of 191 matters. Director Harris noted that one of the features he is looking for with the SharePoint upgrade is the ability to report the average time it takes to resolve cases. Chair Fong expressed his concern that there is a perception of the Commission being overstaffed. He expressed gratitude for the push in informing the public of the Commission's activities, and noted a recent news article that cited nearly all the information shared by the Commission on a recent case. Director Harris, in response, noted that currently, staff have 93 open complaints and 117 additional travel inquiries, assignments, or other projects open.

Chair Fong asked if the staff attorneys do their own investigations or if there was a need to additional investigators. Director Harris replied that past practice had been to hire attorneys who would do their own investigations. Only recently has there been a move towards hiring an investigator. Commissioner Gaulty felt that having attorneys who can do their own investigations sped up the process. Commissioner Tobias and McCarthy concurred. In response, Director Harris noted that in addition to investigations, the Commission staff is responsible to provide advice and education. He noted that typically only the attorneys can offer those services.

Agenda Item No. IV: 2023 Legislative Session (23:59)

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.

Executive Director Harris noted that many of the bills in the Ethics Commission's package were on track to be approved and signed into law. Director Harris called out three measures for specific focus.

- HB 141, requiring each state legislator to disclose any financial relationship they have with lobbyists or lobbying organizations, was transmitted to the Governor on 4/29/23. Director Harris noted that a late amendment was added. The measure now exempts lobbying organizations from the reporting requirements. Director Harris expressed concern that this changed the intent of the bill. He committed to working on closing this loophole next legislative session.
- HB 717, the anti-nepotism bill, was transmitted to the Governor on May 3, 2023. Director Harris noted that the law would only apply to executive branch agencies. The legislature, legislative agencies, and judiciary would be exempt.
- SB 1493, which prohibits lobbyists' contributions during the legislative session, was enrolled to the Governor on May 4, 2023. Director Harris noted that the Commission has jurisdiction over lobbyist violations. Commission staff plans to work with the Campaign Spending Commission to alert each other to potential violations.

Chair Fong asked for clarification on the term "enrolled into law." Director Harris replied that the term means that the bill had passed and has become law as an Act.

Chair Fong asked about any disappointments this legislative session. Director Harris replied there were two issues. First was that the Legislature did not provide funds for county ethics boards. Second was a proposed Public Bill of Rights. Director Harris explained that the Public Bill of Rights was proposal concerning interaction between legislators and the public. He stated that the proposal was opposed by the Attorney General's office.

Chair Fong asked about House Resolution 8, urging the counties to provide more funding to their respective ethics boards. Director Harris replied that this was a compromise proposal designed to encourage the Counties to put more focus on ethics issues. Commissioner Gaulty said that the resolution is a step forward and at least it's on the record that ethics needs more help.

Agenda Item No. V: Establishing Interim Process to Implement the Mandatory Lobbyist Training Law (34:07)

Executive Director Harris noted HB 138 was signed into law as Act 20. He noted that the bill was amended to take effect upon enactment. Staff Attorney Bonita Chang stated that, as part of the implementation process, lobbying training webinars will be offered in January prior to the start of session via Zoom, and a self-guided, online training course will be made available later this year.

Staff Attorney Chang noted that the majority of registered lobbyists will not be immediately affected, as the training requirement will only apply when someone is required to file a new lobbyist registration. Staff Attorney Chang anticipates that there may be a limited number of new, first-time lobbyists for the second half of the 2023-2024 legislative biennium. Under the proposed Order to Establish Interim Process to Implement the Mandatory Lobbyist Training Law, these individuals would be allowed (on an interim basis) to register as long as they have signed up for a training session. Once the new training program is made available, all lobbyists will be required to complete the training prior to submitting their registration.

Commissioner Tobias moved, and Commissioner Gaulty seconded a motion to issue an Order Establishing Interim Process to Implement the Mandatory Lobbyist Training Law. The motion carried (Fong, Gaulty, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. VI. Establishing Procedures to Consider Good Cause Exceptions to the Proposed Nepotism Law (37:22)

Staff Attorney Kee Campbell noted HB 717 passed the Legislature, but had not yet been signed into law. In anticipation of the law's enactment, the Commission should establish procedures and a process to consider good cause exceptions to the upcoming anti-nepotism law. Under the proposed draft Order, Staff Attorney Campbell stated that the exceptions would initially be processed by the Commission staff and a determination made. The Commission would get involved if the matter was complex and novel, or if there was a dispute with the initial determination.

Commissioner Hong moved, and Commissioner Tobias seconded a motion to issue an Order Establishing Procedures to Consider Good Cause Exceptions to the Proposed Nepotism Law. The motion carried (Fong, Gaulty, Hong, McCarthy, and Tobias voting in the affirmative).

Executive Director Harris distributed a draft quick guide of the proposed Nepotism Law. He explained that the law may affect current employees. He expressed his desire to have a quick guide ready for any questions. Director Harris noted the distributed draft is not final, and that the proposed final draft should be ready for the

June Commission Meeting. Staff Attorney Campbell added that the highlights of the law are complete, but that scenarios and FAQ's may be added to the final document. It was requested that the Commission adopt the proposed draft Quick Guide with a final guide forthcoming.

Commissioner Hong moved, and Commissioner Tobias seconded a motion to adopt the proposed draft quick guide with a final guide forthcoming. The motion carried (Fong, Gaulty, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. VII: Proposed Increase to the Commission's Administrative Fine Authority (Haw. Rev. Stat. § 84-39 and Haw. Rev. Stat. § 97-7) (45:05)

No update. Chair Fong inquired about the effectiveness of the Commission's enforcement powers. The Commission has authority to issue up to a \$1,000 fine per violation. Chair Fong noted that it appears the Campaign Spending Commission may have stronger financial penalties. Director Harris replied that staff is committed to continuing research on this matter by looking at comparable states and making recommendations.

Commissioner Gaulty noted that fines are not the Commission's strongest enforcement tool. He noted that often publishing the names of violators and publicizing the violation is effective.

Agenda Items 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) (48:59)

There was no update on the Akana case.

ADJOURNMENT OF SUNSHINE LAW MEETING (54:50)

At approximately 9:55 a.m., Commissioner Gaulty made and Commissioner Hong seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

The meeting was adjourned at 9:55 a.m.

Minutes approved on June 21, 2023.