

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: June 21, 2023
Time: 9:00 a.m.
Location: Held via Zoom video and audio conference
Link: Recorded video available at
<https://www.youtube.com/watch?v=TA0wygrO7JU>

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. Graulty, Vice Chair (present in conference room)
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)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:01 a.m. Chair Fong, Vice Chair Graulty, 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 May 17, 2023 Meeting (2:48)

Commissioner Tobias made and Commissioner Gaulty seconded a motion to approve the minutes of the May 17, 2023, meeting. The motion carried (Fong, Gaulty, Tobias, and Hong voting in the affirmative).

Agenda Item No. II: Executive Director's Report (3:35)

After reviewing the training statistics for May 2023 and the training schedule for the rest of the year, Executive Director Harris observed a decrease in attendance for the live training courses. This decline could be attributed to the fact that only approximately 300 employees are mandated to undergo live training. Despite this, Executive Director Harris confirmed that live trainings will continue to be available. Additionally, Executive Director Harris reported that a significant number of individuals are still opting for self-directed online training.

The Executive Director mentioned that Attachment 2, which presents the overall count of employees who completed the self-directed ethics training, is currently undergoing development. It is important to note that the total count for each department, board, or commission does not consider factors such as employees who have completed the training multiple times. As a result, the overall completion percentage per agency may be significantly skewed, potentially indicating completion rates of over 1000% for some agencies. The Executive Director is reviewing options to clarify this presentation.

Executive Director Harris reported that the commission responded to 122 Attorney of the Day requests, received 51 new assignments, and closed out 49 assignments in the month of May. The Commission also received three anti-fraud, waste, and abuse complaints.

Staff Attorney Bonita Chang reported that staff are in the process of working on Board and Commission updates in preparation for the upcoming financial disclosure deadline. Staff Attorney Chang expressed her appreciation to the staff and board administrators for their efforts in helping ensure that board and commission members filed in a timely manner.

Executive Director Harris reported on his recent trip to Moldova. He explained that the trip was sponsored by the US State Department as a professional fellowship to emerging democracies. During the trip, Executive Director Harris along with the US Embassy gave a presentation on the foundations of good government. He noted that his presentation spurred a lot of questions and discussion. Executive Director Harris

described Moldova as a relatively young democracy that is trying to overcome a long history of corruption. He met officials from Moldova's National Integrity Authority (NIA). NIA functions in a similar role to the commission with a greater focus on bribery. The NIA would like to engage in a cooperative partnership with the commission. He further noted that Moldova is seeking membership in the European Union and that addressing current levels of corruption is key to obtaining membership.

Chair Fong asked what Moldova's relationship with the US is like. Executive Director Harris stated that based on his observations, the State Department is committed to supporting this fledgling democracy. Moldova's proximity to Ukraine may also play a role. He noted that the State Department wants to support Moldova's democratic movement and was supportive of continuing relationship.

Commissioner Grauly asked what support the State Department would provide if the Commission was to enter into an agreement with NIA. Executive Director Harris said he wasn't sure that the State Department would provide support beyond assisting with communications. Commissioner Grauly pointed out that the Legislature may raise concerns given that Moldova is far away from Hawaii and be reluctant to provide financial support for a relationship. Executive Director Harris noted that the agreement may be more ceremonial in nature and responding to inquiries from NIA. He noted that he doesn't anticipate a significant cost.

Commissioner Tobias asked what kind of election process Moldova has. She expressed concern that democratic efforts would be wasted with corrupt elections. Executive Director Harris explained that Moldova has a process like the US. He noted that the country is moving towards a more democratic process. He further noted that the expectation of the US and Europe is that the country will become more democratic over time.

Chair Fong stated that the bottom line in agreeing to a partnership with NIA is, "What is the benefit to the State of Hawaii and the Commission."

Commissioner McCarthy noted that relationships with other countries can be beneficial. He wondered if the Commission was the appropriate agency as opposed to the US State Department. Executive Director Harris replied that Moldova is a small country like Hawaii in terms of size and population. Commissioner McCarthy inquired if this would be a good fit for the Commission. Executive Director Harris noted that this would be a policy call for the Commission. He further noted that this is an opportunity for Hawaii and the Commission to demonstrate leadership in the ethics field.

Staff Attorney Bonita Chang noted that the Commission and staff have hosted international exchanges in the past. She noted that staff had hosted interns to talk about and show our processes and exchange ideas, Chair Fong asked if these involved ceremonial agreements. Staff Attorney Chang replied that she did not believe that there were formal agreements, but that these were more informal meetings and visits.

Commissioner Tobias suggested that the Commission needs to explore what an agreement would entail.

Commissioner Grauly stated that we cannot underestimate Hawaii's leadership when it comes to government ethics. He noted how we were one of the first states to establish a statewide commission and place ethics requirements into our State Constitution. He further stated that the Commission should pursue an agreement if it makes financial sense.

Commissioner Hong agreed with both Commissioners Tobias and Grauly that the Commission needs to understand the financial and political implications of an agreement with NIA. Commissioner McCarthy agreed with all the points raised by his fellow Commissioners.

Commissioner Hong moved, and Commissioner Tobias seconded a motion to pursue formalizing a relationship between the Hawaii State Ethics Commission and Moldova with Executive Director Harris preparing a position statement for the Commission. The motion carried (Fong, Grauly, Hong, McCarthy, Tobias voting in the affirmative).

Agenda Item No. III: 2023 Legislative Session (33:23)

Executive Director Harris updated the Commission about the status of legislation that staff have been tracking and reviewed each category of bills. He noted that the governor will be holding a bill signing ceremony on Friday, June 23 where several ethics bills are expected to be signed.

Agenda Item No. IV: Consideration of Draft Legislation Increasing Commission's Administrative Fine Authority (Haw. Rev. Stat. §§ 84-39 and 97-7) 35:00

Executive Director Harris noted Commission staff had been previously asked to research ethics fines across various jurisdictions. Executive Director Harris reported that, on a national basis, fines ranged from \$1,000 on the low end to \$20,000 on the high end. The average seemed to be around \$5,000 per violation.

Chair Fong asked what, "per violation" means. Would 20 bribes constitute 20 violations? Director Harris replied that yes, 20 bribes would constitute 20 violations. Chair Fong expressed his thanks to the staff for their research.

Commissioner Hong moved, and Commissioner Grauly seconded a motion to approve proposed revisions to Haw. Rev. Stat. §§ 84-39 and 97-7, increasing the administrative fine maximum to \$5,000 per violation. The motion carried (Fong, Grauly, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. V. Consideration of Draft Ethics Commission Guidance on Social Media Use (38:44)

Staff Attorney Nancy Neuffer noted that staff have seen an increase in questions about social media use. Questions have centered around legislators and the use of official legislative social media accounts. Staff Attorney Neuffer stated that the proposed guidance document, "Ethics Commission Guidance on Social Media Use," is meant to help address common situations. Staff Attorney Neuffer further noted that rules on social media may be proposed in the future.

Commissioner Grauly moved, and Commissioner Tobias seconded a motion to adopt "Ethics Commission Guidance on Social Media Use." The motion carried (Fong, Grauly, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. VI: Consideration of Draft Ethics Commission Guidance on Nepotism Law (41.28)

Staff Attorney Kee Campbell noted additional revisions and updates have been made to the draft "Ethics Commission Guidance on the Nepotism Law" that was adopted at the May Commission Meeting.

Executive Director Harris commended Staff Attorney Campbell and Office Manager Caroline Choi for their efforts in developing the quick guide.

Chair Fong asked if the law would retroactively apply. Director Harris replied that the law is not retroactive. However, it would affect current employees. Staff Attorney Campbell noted that the affected employee would have the option to apply for a good cause exception.

Commissioner Hong moved, and Commissioner McCarthy seconded a motion to adopt revised draft "Ethics Commission Guidance on Nepotism Law." The motion carried (Fong, Grauly, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item 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) (45:00)

There was no update on the Akana case.

Agenda Item No. VII: Recognition of Vice Chair Reynard Grauly (47:33)

Chair Fong noted that this is the last Commission meeting for Vice Chair Grauly. He further noted that Commissioner Grauly has served for 8 years and has been both

the Commission Chair as well as Vice Chair. Chair Fong went on to express his thanks to Vice Chair Gaulty for his service to the country, state, and Commission. He also expressed thanks for Vice Chair Gaulty's friendship. Chair Fong then read a Commission resolution presented to Vice Chair Gaulty.

Vice Chair Gaulty expressed his thanks to the Governor for his appointment, Executive Director Harris and the Commission Staff. He noted that it is the staff that puts life into the Ethics Code and expressed his thanks and aloha for their efforts.

Commissioner McCarthy expressed his thanks and gratitude for all the guidance that Vice Chair Gaulty provided.

Commissioner Hong expressed his appreciate for all the work done by Vice Chair Gaulty.

Commissioner Tobias expressed her thanks for his wisdom shared by Vice Chair Gaulty as well as for his humor.

ADJOURNMENT OF SUNSHINE LAW MEETING (55:10)

At approximately 9:58 a.m., Commissioner Tobias made and Commissioner Gaulty seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

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

Minutes approved on July 19, 2023.