

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: July 19, 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=IAiDm1qKI8A>

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)
Harry J. McCarthy, Vice Chair (via video conference)
Reynard D. Graulty, Commissioner (via video conference)
Beverly Tobias, Commissioner (via video conference)
Robert Hong, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive 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 (excused)
Jennifer M. Yamanuha, Staff Attorney (via video conference)
Patrick W.C. Lui, Computer Specialist (via video conference)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

CALL TO ORDER (0:13)

Chair Fong called the meeting to order at 9:07 a.m. Chair Fong, Vice Chair McCarthy, Commissioner Graulty, 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: Status of New Commissioner Appointment (2:30)

Executive Director Harris reported two nominees were forwarded to the Governor for further consideration. He noted the Governor has 60 days to formally appoint a commissioner once he receives the nominations, and that approximately 30 days have elapsed. Director Harris noted he reached out to the Governor for an update. The Governor indicated he would make a selection. Director Harris expressed his gratitude that Commissioner Graulty was able to serve for this meeting, and stated he is hopeful that a new commissioner will be in place by the August meeting.

Agenda Item No. II: Election of Officers for 2023 (3:14)

Chair Fong asked if election of new officers is necessary since Commissioner Graulty is still serving. Executive Director Harris explained that under the Commission Rules, that election of officers is supposed to take place in January. In January, the Commission decided that the election of officers would be deferred until July. Based on that decision, an election of new officers should be held.

Chair Fong opened the floor for nominations for Commission Chair.

Commissioner Hong nominated Chair Fong to continue as chair. Seeing no additional nominations, nominations were closed.

By unanimous vote, Chair Fong was re-elected (Fong, Graulty, Tobias, and Hong in favor, McCarthy absent).

Chair Fong thanked all for the vote of confidence. He stated that the current makeup of the Commission is great.

Chair Fong opened the floor for nominations for Vice Chair. Chair Fong suggested that Commissioner McCarthy is most logical choice. He asked if okay to nominate Commissioner McCarthy in absentia. Director Harris replied that he had spoken to Commissioner McCarthy and that he would accept the role if elected. He noted that Commissioner McCarthy is the 2nd most senior commissioner. Commissioner Graulty asked if he could make a nomination as a hold over. Chair Fong confirmed that Commissioner Graulty was able to make a nomination. Commissioner Graulty nominated Commissioner McCarthy. Seeing no additional nominations, nominations were closed.

By unanimous vote, Commissioner McCarthy was elected Vice Chair (Fong, Graulty, Tobias, and Hong in favor, McCarthy absent).

Agenda Item No. III: Consideration and Approval of the Minutes of the June 21, 2023 Meeting (7:33)

Commissioner Hong made the following corrections to the minutes of the June 21, 2023 Meeting:

Page 14, Line 29: Add that the Director is reviewing options to clarify the monthly training statistics.

Page 15, Line 14: Change NIH to NIA.

Page 16, Line 4: Add Ethics Commission in accordance with Article 14 of the State Constitution.

Commissioner Tobias moved, and Commissioner Gaulty seconded a motion to approve the minutes of the June 21, 2023 meeting, as corrected. The motion carried (Fong, Gaulty, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. IV: Directors' Report (12:07)

Executive Director Harris introduced Staff Attorney Bonita Chang as the new Director of Compliance. In this role, Director Chang will be responsible for reporting and training. She will also be responsible for the Commission Quick Guides as well as overall compliance with the Ethics Code.

Executive Director Harris then introduced Staff Attorney Kee Campbell as the new Director of Enforcement. He will oversee the staff attorneys and investigator in the course of their investigations.

Chair Fong & Commissioner Tobias offered congratulations on their promotions. Chair Fong asked who would be the "2nd in Command" since there is no longer going to be an Associate Director. Director Harris replied that there are regular leadership meetings and that there will be a designee in his absence.

Director Harris noted that in the future Director Chang and Director Campbell may present reports germane to their areas. Compliance Director Chang reported that staff recently completed several outreach & trainings to various Human Resource and Board Administration contacts. The goal is to open a dialogue and provide information to the contacts so they can assist the commission in ensuring compliance from their agencies and boards. Director Chang noted that feedback has been positive hopes to continue conversations with the contacts.

Compliance Director Chang also reported that emails were sent to lobbyists regarding the new Lobbyist Training Law and registration requirements. Information was also posted on the Commission Website. She reported that two trainings for lobbyists have been scheduled for January.

Executive Director Harris reported that some live Ethics Training sessions have been cancelled due to low registrations. He noted that the trend is not troubling due to the small number of individuals required to take a live training. Staff is happy to schedule as needed. He noted that 1,438 individuals completed the online training in June. He hopes to see increased numbers as DOE increases participation.

Executive Director Harris reported that the Commission received 20 new complaints, 33 requests for travel & gifts guidance, 2 Judicial Commission Requests, 1 records request, and 2 miscellaneous projects. He also reported that 71 matters were closed.

Director Harris reported that the Commission stayed under budget and that \$70,124 was returned to the State General Fund. This return tracks with the delay in hiring a new staff member and a new investigator.

Director Harris provided an update on the renovation and relocation of the Commission offices. He noted that renovation will come at no cost to the state. The work to the offices will include new carpet, paint, lighting, and ceiling tiles. The landlord will also construct new public access to the conference room and a camera system to provide for better security. The work should take around a month and a half to complete during which the staff will be temporarily relocated to another office. He noted that during the renovation, the office staff will have reduced capacity.

Director Harris reported that the commission will soon move to an online phone system. He indicated that the new system should make it easier to move as well as facilitate remote work.

Director Harris also provided a brief update on the new file & case management software. He noted that staff have been busy working with the developers on the new system. He noted that once complete, the new system will better allow for remote work and eliminate the need for a physical file and email server.

Chair Fong complimented that staff for their work in cleaning up the boxes of files. He noted that other agencies would typically have boxes stacked that created a virtual wall and that staff efforts contributed to a more professional looking environment. He asked where commission offices would be temporarily relocated to. Director Harris replied that staff would move to Suite 900, which is on the same floor as the current office.

Commissioner Graulty expressed concerns with having staff move equipment. He questioned whether the Commission had excess funds and whether a mover could be hired. Director Harris replied that Staff will move electronics (i.e. computers, monitors, etc.) and personal items. The Commission's existing landlord would pay professional movers transport all furniture and boxed files. Staff will need to box files and items for the movers.

Commissioner Graulty asked about the artwork in the commission offices. Director Harris replied that the State Foundation on Culture and the Arts will move and temporarily store the artwork. Once the renovations are complete and staff is moved back, the Foundation will return the art.

Agenda Item No. V. 2023 Legislative Session Wrap-Up (27:34)

Executive Director Harris provided a final update of ethics bills that were signed into law by the Governor. The list included the Act numbers for bills signed. He noted that 10% of the legislation enacted into law were Ethics Commission or Foley Commission bills. Director Harris noted that the Nepotism Bill was allowed to become law without the Governor's Signature as Act 261. He noted that this is a highwater mark and recognized the efforts of staff. He noted a lot of the new legislation would need to be integrated into the current rules and guidance.

Vice Chair McCarthy offered his praise of the commission's efforts.

Commissioner Tobias asked about the status of bill that did not pass or were differed. Director Harris replied that these bills are still alive and can be taken up by the Legislature during the next session.

Chair Fong reported he attended the Ethics Bills signing ceremony. He noted that the Governor was very pleased with what had transpired over the session with regards to ethics. Chair Fong noted that Nepotism received a lot of press. He shared how he had received emails from "concerned citizens" congratulating the commission on getting the measure passed.

Vice Chair McCarthy asked why the Governor did not choose to sign the Nepotism Bill. Director Harris replied that the Governor objected to the exemptions for the Legislature and Judiciary branches of government.

Chair Fong shared his concerns about oversight of the Judiciary especially considering the controversies involving the US Supreme Court. Director Harris noted that this is the subject of a later agenda item.

Agenda Item No. VI: Consideration of Recommendation to Stay Enforcement of Nepotism law for Two Months (35:05)

Executive Director Harris noted this agenda item is intended to give agencies and current employees time to resolve current situations prior to taking enforcement action. The stay is intended for current State employees.

Chair Fong clarified that the request was for a two month stay of enforcement. Director Harris agreed, and noted the stay would end on September 11, 2023.

Commissioner Grauly moved, and Commissioner Tobias seconded a motion to stay enforcement of the Nepotism Law for two months for existing State Employees. The motion carried (Fong, Grauly, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. VII: Discussion of the Ethics Commission Office Renovations and Temporary Closure of the Physical Office (September through November 2023) (37:04)

Executive Director Harris reported that Suite 900, where Commission Staff will be temporarily housed during renovations, does not have the same physical security features of the current office. Because of the lack of such features, he requested authorization to close the office for in-person visits for the duration of the renovations and to completely close as necessary during renovations. He noted that staff will still accept email and phone calls. Packages could still be delivered. He also noted that unforeseen circumstance may force complete closure.

Commissioner Tobias moved, and Vice Chair McCarthy seconded a motion to authorize the temporary closing of the office as needed during the office renovations. The motion carried (Fong, Grauly, Hong, McCarthy, and Tobias voting in the affirmative).

Agenda Item No. VII: Status of the State Ethics Conference (September 1, 2023) (39:27)

Executive Director Harris reported that staff, in collaboration with the Honolulu Ethics Commission, have drafted an agenda for the upcoming State Ethics Conference. This draft will be circulated among the Commissioners and the Neighbor Island Commissions and Boards. Current topics include (1) a panel discussion with Claire Conners and Dan Foley to discuss major cases and urgency of addressing ethics in Hawaii, (2) updates from each commission & board about activities and initiatives, and (3) small group discussion on various topics. He asked which Commissioners plan on attending. He also asked for volunteers to assist with transporting Neighbor Island participants.

Chair Fong, Commissioner Grauly, and Commissioner Hong volunteered to assist with pickups.

Vice Chair McCarthy asked for the date of the conference. Director Harris replied the conference is on Friday Sept. 1.

Chair Fong asked where the conference is going to be held and who is paying for it and is the commission paying airfare for the outer islands. Director Harris replied that the conference will be at Kapalama Hale, a City & County of Honolulu facility located in Iwilei. Director Harris noted that the Commission is assisting in paying airfare for

neighbor island participants. He was not sure if the commission should continue this practice, should this become an annual conference.

Commissioner Graulty suggested being moderate with respect to refreshments and food for the conference, and also suggested looking into the feasibility of chartering a shuttle to pick up neighbor island participants.

Vice Chair McCarthy asked if the conference is one day and whether the commission is expected to make a presentation. Director Harris replied that the conference is one day. He noted that the commission will make a presentation on things that it is working on. There will also be breakout sessions on various topics. Those will be led by various agencies. Commissioner Graulty stated that historically the agenda consisted of a plenary session followed by breakout session on various topics with a closing session at the end. Director Harris stated that registration is tentatively scheduled for 8:00 a.m./8:30 a.m. with the formal start tentatively at 9:00 a.m. The conference is scheduled to end around 3:00 p.m.

Vice Chair McCarthy asked about an email with additional information and an invitation. Director Harris replied that the draft agenda will be circulated. The plan is to also have the agenda printed and distributed on the day of the event.

Chair Fong clarified that the State and the Honolulu Ethics Commissions are jointly hosting. He stated that it was great that this Conference is happening and emphasized that ethics is a big topic now.

Vice Chair McCarthy suggested that Nepotism and the new law be added to the topics.

Commissioner Graulty asked about inviting the Mayor. Chair Fong stated he assumed that the Governor would be invited along with the Mayor. Director Harris replied that he was open to the possibility, but he noted the agenda is already fairly tight. Should they be invited, he would look into how best to incorporate them into the agenda. Commissioner Graulty suggested avoiding the legislature and judiciary since they are not covered by the nepotism law. He also suggested possibly inviting Dan Foley. Chair Fong stated that he would like to give the Governor and Mayor the opportunity to appear since the State and Honolulu Ethics Commissions are sponsoring the event.

Vice Chair McCarthy suggested that a letter be sent to the neighbor islands to see if they had big topics they would like to discuss and see if there are common themes.

Chair Fong stated that if anyone has suggestions related to the conference, to email them the Executive Director Harris.

Agenda Item No. IX: Discussion of the Commission’s Jurisdiction over Hawai’i Judges and Justices in Light of Recent U.S. Supreme Court Ethics Concerns (55:02)

Staff Attorney Yamanuha reported that this discussion was in response to an inquiry from Chair Fong about what oversight existed in Hawaii over Judges and the judiciary in light of the controversies at the U.S. Supreme Court. Attorney Yamanuha reported that the State Supreme Court does not currently have a mechanism for complaints or code of ethics. She noted that Hawaii has a commission that has jurisdiction over judges and the judiciary, but not the Hawai’i Supreme Court. The commission consists of seven members. Based on her research, Attorney Yamanuha suggests that the Commission open a dialogue with the judiciary related to ethics.

Chair Fong asked if the commission that oversees judges and the judiciary is the same commission that vets Commission nominees. Attorney Yamanuha replied they are not the same. The commission that oversees ethics for Judiciary is the Commission on Judicial Conduct. Attorney Yamanuha noted that the Commission is appointed by the Hawai’i Supreme Court and that the Court has the final say on disciplinary matters. Commissioner Gaulty asked who the current commission members are. Attorney Yamanuha noted the names of the Chair and Vice Chair. She noted that some have been on for a while and that there does not appear to be a limit on the number of term one can serve.

Staff Attorney Yamanuha noted that seven cases were referred to the Supreme Court and two cases pertained to matters that may be covered by the Ethics Commission.

Chair Fong asked if it would be correct to conclude that there is no oversight of the Hawai’i Supreme Court, but there is oversight over the rest of Judiciary. Staff Attorney Yamanuha said that is correct. Commissioner Gaulty concurred.

Chair Fong asked if the Commission should have jurisdiction over the Supreme Court. Executive Director Harris replied that he understands the importance of the question and is aware of the unintended consequences of reaching into judicial oversight. He stated that the intent would be to have a dialogue with Judiciary to understand current processes and things we may not have seen. Chair Fong requested that this item remain on the agenda.

Agenda Item No. X: 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) (1:03:00)

There was no update on the Akana case.

Chair Fong asked what is delaying things. Executive Director Harris replied that he was unsure but noted that there is a backlog of pending cases at the court.

Vice Chair McCarthy suggested contacting the Clerk of the Court to get a status update. Director Harris replied that he would do so, but he will first check with the Deputy Attorney General handling the case to ensure that it is okay to do so.

ADJOURNMENT OF SUNSHINE LAW MEETING (1:06:05)

At approximately 10:13 a.m., Commissioner Gaulty made and Vice Chair McCarthy seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

The meeting was adjourned at 10:15 a.m.

Minutes approved on August 16, 2023.