

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: August 16, 2023  
Time: 9:00 a.m.  
Location: Held via Zoom video and audio conference  
Link: Recorded video available at  
[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_videos/](https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/)

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)  
Beverley Tobias, Commissioner (via video conference)  
Robert Hong, Commissioner (via video conference)  
Cynthia Thielen, Commissioner (present in conference room)

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, Compliance Director (via video conference)  
Kee M. Campbell, Enforcement Director (via video conference)  
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 (1:14)**

Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair McCarthy, Commissioner Tobias, Commissioner Hong, Commissioner Thielen 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: Welcome to Commissioner Cynthia Thielen (2:49)**

Executive Director Harris introduced Commissioner Cynthia Thielen and noted her extensive legislative experience and how much it could assist the Commission. Director Harris expressed he looked forward to working with her in the future.

Commissioner Thielen expressed her gratitude to the Governor for the nomination.

**Agenda Item No. II: Consideration and Approval of the Minutes of the July 19, 2023 Meeting (4:33)**

Vice Chair McCarthy moved, and Commissioner Tobias seconded a motion to approve the minutes of the July 19, 2023 meeting. The motion carried (Fong, McCarthy, Tobias, Hong, and voting in the affirmative and Thielen excused).

**Agenda Item No. III: Directors' Report (5:44)**

Compliance Director Bonita Chang reported there was a significant increase in the number of individuals completing the self-directed ethics training, largely due to the Department of Education ("DOE") issuing reminders to DOE personnel at the start of the new school year. Director Chang reported that over 18,000 individuals had completed ethics training year to date. This number represents an almost 300% increase over the previous year. She further noted that in one day alone, there were approximately 2,000 individuals who took the self-directed training. Several live training sessions with DOE has also been scheduled for August. For the remainder of 2023, staff will continue to work with the various agency and board contacts on outreach and training efforts.

Director Chang noted that in light of the disaster in Maui, staff is being mindful and sensitive that various agencies and boards may have been impacted by the fires and the recovery process.

Executive Director Harris emphasized that approximately 54% of state employees have completed a mandatory ethics training. He noted this tremendous accomplishment, while also recognizing many state employees still need to complete the training.

Chair Fong echoed Executive Director Harris' sentiments. He agreed that it was great that we are getting the word out, but more work needs to be done.

Enforcement Director Kee Campbell reported that staff closed 85 matters and received 63 new matters. Director Campbell noted that among the new matters were six to seven Applications for Good Cause Exceptions to the Nepotism Law. He noted that the nepotism decisions are posted on the Commission's website.

Chair Fong acknowledged receiving a number of emails regarding the new Nepotism Law. He noted that there is disappointment that the law only covers the executive branch. Executive Director Harris noted that while the law does not include the legislative or judicial branches, both the House of Representatives and Senate have adopted rules prohibiting nepotism.

Vice Chair McCarthy asked about the nature of the good cause applications. Director Campbell noted some people seek an exemption even though they have already complied with the law. Another frequent situation is where there are a limited number of applicants. He explained that each situation is fact specific and is decided on a case-by-case basis.

Chair Fong asked if the increase in training completions has led to an increase in complaints. Director Campbell replied that while the expectation would be to see an increase, the actual numbers of matters has remained fairly consistent month to month.

Vice Chair McCarthy asked if an employee could be grandfathered in as a nepotism exception. Director Campbell replied that in instances where a person may be so specialized that they are the only person who can perform their position, that this may meet the good cause standard.

Executive Director Harris reported that there have been several inquiries related to fundraising in support of Maui relief. He stated that an email alert was issued stating that emergency proclamations allow for the use of state resources to fundraise for Maui relief. Executive Director Harris cited the example of using the State Capitol to drop off donations. Executive Director Harris noted that staff have also received several phone calls about fundraising to support affected state employees. He stated that the advice given is that it may be appropriate for an agency or division to inform existing employees of an opportunity to contribute (similar to passing a hat for a retirement or other celebration), however fundraising publicly and/or coercing employees to give would not be allowed.

Executive Director Harris reported that the Council on Governmental Ethics Laws (COGEL) Conference will take place in Kansas City in early December. Commissioners Hong and Tobias will attend along with Executive Director Harris, Enforcement Director Kee Campbell, and Staff Attorney Jennifer Yamanuha.

Executive Director Harris reported that a new staff attorney has been hired with a start date of October 2.

**Agenda Item No. IV: Status of the Ethics in Hawai'i Conference (September 1, 2023)**  
**(20:00)**

Chair Fong thanked those who volunteered to assist with transportation of the neighbor island participants.

Executive Director Harris commended the staff for their work in putting together the conference. He reported he hopes to have a final draft of the program out soon. He noted that speakers at the event include the Lieutenant Governor, Honolulu Mayor, Retired Judge Dan Foley, and U.S. Attorney Clare Conners as well as several state agency heads.

Chair Fong echoed Executive Director Harris's praise of the staff. He noted that last conference was 5 years ago and that this conference is being co-sponsored with the Honolulu Ethics Commission.

Vice Chair McCarthy asked about the final program. Executive Director Harris replied that the final draft of the program will be sent to the Commissioners. The final version of the program will be printed and distributed on the day of the event.

Vice Chair McCarthy asked if it would be possible to participate virtually. Executive Director Harris noted that the rooms for the large group meetings have the capability for live streaming so it may possible. He noted that actively participating virtually may not be possible because staff may not be available to moderate online. He also noted that breakout sessions may not be live streamed because the rooms may not be equipped to do so. Chair Fong noted that the rooms are used for Neighborhood Board meetings and that hopefully we will have the same set up which would allow for virtual participation.

Commissioner Tobias asked what the role of the Commissioners would be. Executive Director Harris replied that Commissioner's role is to actively participate and meet and build relationships with the members of the other boards and commissions. Executive Director Harris noted that there is a scheduled breakout session for board and commission members only. He reminded the Commissioners that they can talk generally about things, but need to avoid discussing specific matters that may come before the board due to Sunshine Law Restrictions.

Chair Fong noted that conference is more about learning and absorbing from the other boards and commission as opposed to participating. He encouraged Commissioners to meet and have conversations with the neighbor island members.

**Agenda Item No. V. Discussion of Ethics Oversight over the Judicial Branch**  
**(27:50)**

Executive Director Harris noted that this topic was brought up last meeting, the idea was brought up to begin a conversation with Judiciary regarding ethics. He

reported that in light of the Maui Disaster, that there has been no movement in this regard. He was hopeful that a meeting could be set up in the next couple weeks.

Chair Fong asked what kinds of oversight exist in other jurisdictions. Staff Attorney Yamanuha replied other jurisdictions seem to have independent commissions with oversight authority. She was unsure if there was any overlap between those commissions and a statewide entity. She noted that there is no oversight of the U.S. Supreme Court. Staff Attorney Yamanuha reported that the Hawai'i Judicial Code applied to judges and justices. She further noted that there is some question about the independence of the Commission on Judicial Conduct as they are appointed by the Supreme Court and do not seem to have a limit on the number of terms they can serve. Staff Attorney Yamanuha noted that there may be a role for the Commission. She stated that at this point, it would be best to meet with Judiciary and ask questions. Recommendations may come later.

Chair Fong stated that his concern regarding this topic was about who has oversight and that he is looking forward to the staff report on this matter.

Vice Chair McCarthy asked for clarification about who the Judicial Code applies to. Staff Attorney Yamanuha clarified that the Judicial Code applies to judges and justices.

Vice Chair McCarthy asked about the separation of powers between the judicial and the executive branch. He noted that the judiciary may not appreciate oversight by the executive branch. Executive Director Harris replied that the Commission is not a part of executive branch but is an independent entity administratively attached to the Legislature. He noted that the Commission does not have statutory jurisdiction over judges and justices. He noted that employees of the judiciary are considered state employees and are subject to the Commission's jurisdiction. Vice Chair McCarthy expressed concern that judiciary may not welcome oversight by the Commission. Executive Director Harris agreed and said that it would be more appropriate at this point to provide advice and recommendations after better understanding the current ethics programs in place.

Chair Fong suggested Vice Chair McCarthy be included in the group meeting with Judiciary. He noted Vice Chair McCarthy's experience as a former judge may prove valuable. Executive Director Harris replied that staff will look at ways to facilitate Vice Chair McCarthy's participation.

Commissioner Tobias asked if judiciary employees participate in ethics training sessions provided by the Commission. Staff Attorney Jennifer Yamanuha replied that judiciary employees are subject to the Ethics Code and therefore are required to complete ethics training. She noted that the exception is for judges and justices as they are not subject to the ethics code. Executive Director Harris added that the judiciary is supportive of ethics and our efforts. He noted that this contrasts with the U.S. Supreme Court.

**Agenda Item No. VI: 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) (41:02)**

Executive Director Harris noted that at the last meeting, it was suggested that staff reach out to the court for an update on the status of the case. He reported that there is no update to report. He noted that appeals seem to take about two to three years to reach a decision. He further noted that while this case is not yet an outlier, the case is getting on the older side of the spectrum.

**ADJOURNMENT OF SUNSHINE LAW MEETING (44:05)**

At approximately 9:45 a.m., Vice Chair McCarthy made and Commissioner Hong seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, McCarthy, Tobias, Hong, and Thielen voting).

The meeting was adjourned at 9:45 a.m.

Minutes approved on September 20, 2023.