

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: November 15, 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/

Public Meeting Location

Hawaii State Ethics Commission Conference Room
1001 Bishop Street
American Savings Bank Tower, Suite 900
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)
Kee M. Campbell, Enforcement Director (via video conference)
Bonita Y.M. Chang, Compliance Director (via video conference)
Nancy C. Neuffer, Staff Attorney (via video conference)
Jennifer M. Yamanuha, Staff Attorney (via video conference)
Jodi L. K. Yi, Staff Attorney (via video conference)
Patrick W.C. Lui, Computer Specialist (via video conference)
Jared Elster, Investigator (via video conference)
Myles A. Yamamoto, Administrative Assistant (via video conference)

Members of the Public

Vanessa Ott (via video conference)
Blaze Lovell (via video conference)
Chad Blair (via video conference)

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:05 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: Consideration and Approval of the Minutes of the October 18, 2023 Meeting (3:08)

Commissioner Thielen moved, and Commissioner Hong seconded, a motion to approve the minutes of the October 18, 2023 meeting. The motion carried (Fong, Hong, and Thielen voting in the affirmative, with McCarthy and Tobias excused).

Agenda Item No. II: Consideration and Approval of the Minutes of the October 18, 2023 Executive Session Meeting (4:00)

Commissioner Thielen moved, and Commissioner Hong seconded, a motion to approve the minutes of the October 18, 2023 Executive Session meeting. The motion carried (Fong, Hong, and Thielen voting in the affirmative, with McCarthy and Tobias excused).

Agenda Item No. III: Directors' Report (4:55)

Compliance Director Bonita Chang reported approximately 19 letters signed by Chair Fong were sent out on November 1 to the agencies and boards with low completion rates of the required ethics training. In addition, the remaining 60+ individuals required to take a live ethics training course were also directly contacted. She noted that a majority of those individuals have signed up for one of the two remaining live webinars that will be offered in November and December. Director Chang reported that a monthly reminder was sent to agency and board contacts. In addition, Governor Josh Green committed to making a reminder at his next cabinet meeting regarding the training requirements.

As a result of these outreach efforts, there has been a significant increase in the number of completed ethics trainings. Over 1,000 certificates of completion were issued in the past month, with the Department of Education, Research Corporation of the University Hawai'i, University of Hawai'i System, Department of Transportation, and Department of Accounting and General Services reporting a large number of participants. Director Chang acknowledged the important role of media coverage of training efforts by the Commission. The focus for the remainder of the year will be on increased compliance with training requirements by December 31 and developing the new lobbyist training module.

Chair Fong congratulated the staff for their efforts.

Commissioner Thielen expressed her happiness with the result of the outreach efforts and increased participation.

Enforcement Director Kee Campbell reported that staff continues to open and close matters at a good rate. He noted no changes from previous months related to volume.

Executive Director Robert Harris reported that renovations for the Commission offices in suite 970 are nearly complete. Staff will begin moving back into suite 970 on Friday, November 17, continuing on Monday, November 20. He noted that the December Commission meeting will be back in suite 970. Director Harris reported that he met with executive and managerial employees of the HGEA. Discussions centered on ethics and answered questions. Director Harris also reported that a reminder was sent out regarding the Gifts Law and Gift Disclosure requirements.

Chair Fong asked if there is a way of tracking if our training is making an impact, such as lowering the total number of ethics complaints. Director Harris replied that tracking could be done on an annual basis.

Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics Commission since the Last Meeting (11:29)

Executive Director Harris reported that there has been increased coverage of the Commission's activities. Director Harris noted the stories by Civil Beat about the nepotism law and the Commission's training efforts.

Additionally, Director Harris stated that media coverage of the Maui wildfire recovery efforts has prompted staff to issue an alert regarding potential conflict of interest issues that may arise for state officials reviewing the wildfires if they also have relationships with parties involved in the wildfires. The alert reminded officials to be aware of and recuse themselves from matters involving their financial interests related to the Maui wildfires.

Chair Fong thanked the media for their coverage and for raising awareness of the Commission and its activities.

A member of the public, Ms. Vanessa Ott, submitted written and oral testimony regarding recent Nepotism Good Cause Exception Decisions. Ms. Ott requested that the Commission reconsider two decisions related to spouses potentially supervising each other in the Department of Education. Ms. Ott feels that these decisions set a bad precedent for future cases. She commended Executive Director Harris for other decisions made and hoped to ensure strong enforcement of the nepotism law by the Commission.

Chair Fong thanked Ms. Ott for her testimony and stated that the Commission would take her comments under advisement.

Agenda Item No. V: Proposed Legislation (17:30)

Executive Director Harris covered five proposed bills that staff would introduce on behalf of the Commission in the upcoming 2024 Legislative Session. Director Harris wanted to recognize staff for their work on the proposals.

- **Raising Maximum Fine Amounts**

Director Harris noted that the Commission's current maximum fine amount is \$1,000 per violation. He noted that this is on the lower end of the spectrum, nationally. The proposal would raise the maximum fine to \$5,000 per violation.

- **Modernizing Investigative and Advisory Procedures**

Director Harris noted that this proposal clarifies issues around providing advice to state employees. In particular, the proposal would allow for the Commission to self-initiate Advisory Opinions on recurring topics, where a formal opinion may provide greater clarity and thus improve compliance with the state ethics code.

- **Expanded Definition of Lobbying**

This proposal expands the definition of lobbying to cover certain interactions with high-level officials and agencies. Director Harris noted that this proposal requires close coordination with other agencies to ensure that the legislation prohibits outside influences in agency decisions without negatively affecting their ability to conduct regular day-to-day operations.

- **Changing Gift Disclosure Deadline to match Fiscal Year**

Compliance Director Bonita Chang explained that this proposal seeks to realign the Gift Disclosure filing period with the Fiscal Year (i.e., July-June). Director Chang explained that this will make filings easier as individuals can file their gift disclosures as part of their fiscal year-end activities.

- **Disclosure of Legislator & Lobbyist Relationships**

Director Harris explained that Act 123 was recently signed into law. The law requires legislators to disclose any financial relationships with a lobbyist. Director Harris noted that the Act was amended late in the session to remove the requirement that legislators also disclose financial relationships with a lobbying organization. Director Harris explained that the new proposal would add lobbying

organizations to the existing law with an exception for situations where a legislator did not know of the financial relationship.

Director Harris noted that additional measures may be proposed for consideration by the Commission at the December meeting. In addition, the above proposals will be finalized at that time.

Chair Fong commended staff for their work and for being proactive in getting legislation to address potential issues.

Commissioner Tobias, and Commissioner Hong seconded a motion to support the proposed legislation. The motion carried (Fong, Hong, Thielen, and Tobias voting in the affirmative, with McCarthy excused).

Agenda Item No. VI: Discussion of Ethics Oversight over the Judicial Branch (29:45)

Executive Director Harris reported that staff have initiated conversations with the Judiciary to see where there may be areas that need review. He noted that staff had asked for assistance from the national non-profit, Legal Center, to look at ethics rules and codes of conduct in other states and jurisdictions and to provide options for recommendations.

Chair Fong noted that this topic was brought up based on his concerns about issues raised by the US Supreme Court's recent actions. He noted that the US Supreme Court recently created a code of conduct. He expressed concerns about the self-enforcement of the code by the US Supreme Court. He expressed his happiness that the Hawai'i Judiciary is receptive to further conversations.

Agenda Item No. VII: Meeting Calendar (32:40)

Executive Director Harris provided a proposed 2024 Commission meeting calendar. He noted that the Commission has been meeting on the 3rd Wednesday of the month at 9:00 AM in the Commission's conference room. The proposed calendar reflects that same schedule.

Chair Fong asked if there were any objections to adopting the proposed meeting calendar. Hearing none, the calendar was adopted.

Agenda Item 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) (35:28)

No update.

Chair Fong asked why the appeal is taking so long. Executive Director Harris replied that it is not known what is causing the delay. Vice Chair McCarthy noted that we had previously inquired with the court and received the response that there is no update. He suggested that another inquiry may get additional information.

ADJOURNMENT OF SUNSHINE LAW MEETING (37:33)

At approximately 9:44 a.m., Commissioner Hong made, and Vice-Chair McCarthy seconded, a motion to adjourn the meeting. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

The meeting was adjourned at 9:44 a.m.

Minutes approved on December 20, 2023.