

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: January 17, 2024

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 970
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)
Beverley Tobias, Vice Chair (via video conference)
Robert Hong, Commissioner (via video conference)

Excused: Cynthia Thielen, Commissioner

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 (present in conference room)

Members of the Public

Lilly (via video conference)
Doug (via video conference)
Chris Neff (via video conference)

CALL TO ORDER (0:08)

Chair Fong called the meeting to order at 9:02 a.m. Chair Fong, 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 December 20, 2023 Meeting (1:55)

Commissioner Hong noted he was present in the conference room on December 20, 2023.

Commissioner Tobias made, and Commissioner Hong seconded, a motion to approve the minutes of the December 20, 2023 meeting. The motion carried (Fong, Tobias, and Hong voting in the affirmative, Thielen excused).

Agenda Item No. II: Consideration and Approval of the Minutes of the December 20, 2023 Executive Session Meeting (3:47)

Commissioner Hong made, and Commissioner Tobias seconded, a motion to approve the minutes of the December 20, 2023 meeting. The motion carried (Fong, Tobias, and Hong voting in the affirmative, Thielen excused).

Agenda Item No. III: Recognition of Vice Chair Harry McCarthy (4:44)

Chair Fong announced that Vice Chair Harry McCarthy recently passed away and read a resolution in honor of Vice Chair McCarthy. He asked for a motion to adopt it and present a signed copy to Vice Chair McCarthy's family. He noted that Vice Chair McCarthy's passing is a tremendous loss to the Commission.

Commissioner Tobias made, and Commissioner Hong seconded, a motion to adopt the resolution honoring Vice Chair Harry McCarthy and sending a signed copy to his family. The motion carried (Fong, Tobias, and Hong voting in the affirmative, Thielen excused).

Agenda Item No. IV: Election of Officers (9:40)

Chair Fong opened the floor for nominations for Commission Chair.

Commissioner Tobias nominated Wesley Fong. Seeing no additional nominations, nominations were closed.

By unanimous vote, Wesley Fong was re-elected (Fong, Tobias, and Hong in favor, Thielen excused).

Chair Fong thanked all for the vote of confidence.

Chair Fong opened the floor for nominations for Vice Chair. Chair Fong nominated Beverly Tobias. Seeing no additional nominations, nominations were closed.

By unanimous vote, Beverly Tobias was elected (Fong, Tobias, and Hong in favor, Thielen excused).

Vice Chair Tobias thanked everyone for their vote.

Agenda Item No. V: Directors' Report (13:55)

Compliance Director Bonita Chang reported that December was a very productive month for training. She attributed this to the December 31 deadline for state employees to meet the mandatory ethics training requirement. Director Chang further reported that approximately 72% of all employees had completed the required training. She stated that the Commission Staff continues to work with all departments' human resources sections and board administrators to increase training completions. With regards to public disclosure filers, who are required to take a live session, Director Chang reported that nearly 100% had met the training requirement.

Director Chang reported that the online lobbyist training module is now live on the Commission's website. Additionally, two live lobbyist training sessions were held.

Chair Fong commended the staff for their efforts to increase training participation. He asked what the training goals for 2024 are. Director Chang replied that the staff will continue their efforts to increase training completions as well as to brainstorm new strategies. Chair Fong suggested a goal of 85% completion. Director Chang replied that the staff would strive to reach the 85% goal.

Vice Chair Tobias stated that 85% is an admirable goal to reach.

Chair Fong stated that the Commission's mantra is to be proactive in training and enforcement.

Commissioner Hong suggested that a congratulatory message be sent to those agencies and boards with high completion rates.

Director Chang briefly highlighted the proposed 2024 training schedule. She noted that there is at least one live training session each month; except January where two sessions are scheduled. She noted the Commission will try to accommodate additional training requests. In responding to Commissioner Hong's suggestion, Director Chang explained that the staff is looking at ways to recognize agencies and boards with high completion rates and incentivize completion of training.

Chair Fong asked if the training requirement is yearly. Director Chang replied that once you complete your initial training, you would need to take a refresher course once every four years. The lobbyist training requirement is once every two years upon filing a lobbyist registration.

Enforcement Director Kee Campbell reported that in December, 34 new matters were opened and 19 were closed. Chair Fong noted that it appears that there are no open matters older than two years.

Executive Director Robert Harris provided the second quarter expense report. He noted significant expenses related to the 2023 Ethics in Hawai'i Conference and the Commission's office renovation. He highlighted that even with these expenses, the Commission is still under budget.

Agenda Item No. VI: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (25:40)

Executive Director Robert Harris reported on three recent articles related to ethics in the media. The first was an editorial written by the Honolulu Ethics Commission regarding gifts of cash or alcohol. The editorial was in response to inquiries from residents regarding giving gifts of gift cards and alcohol to city workers during the holidays. The second article concerned ethics at the legislature and was more specifically related to an ethics complaint concerning a particular legislator. The third article was a discussion in the Star-Advertiser of proposed legislation, while not specifically focused on ethics, the article mentions legislative proposals related to ethics.

Chair Fong noted that he is glad for the increased coverage of ethics in the media. He expressed his appreciation to the Commission and staff for their dedication. He also noted that most of the coverage has been positive.

Agenda Item No. VII: Consideration of Draft 2023 Annual Report (27:52)

Executive Director Robert Harris introduced the draft 2023 Commission Annual Report. He reported that it highlights a spectacular 2023 for the Commission. He noted

the report allows the public to see what the Commission does. Additionally, from a historical perspective, it shows what has changed, why, and when. The report highlights the following areas:

- Increases in training participation
- Enforcement cases and statistics
- The new nepotism law and nepotism cases
- Staff office modernization
- 2023 Ethics in Hawai'i Conference

Chair Fong asked if the report needs to be approved by the Commission and when this report is due. Director Harris replied that historically, the Commission has not approved the report, but he would like the Commission to do so moving forward. The report is normally sent to the Hawai'i State Legislature along with the Commission's budget request.

Vice Chair Tobias asked where the report is housed. Director Harris replied that the reports are located on the Commission website and sent to the State Archives.

Commissioner Hong suggested that the report should highlight the return of \$70,000 to the General Fund.

Chair Fong requested that any comments regarding the Annual Report be sent via email to Director Harris in the next two weeks.

Agenda Item No. VIII: 2024 Legislative Matters (32:55)

Executive Director Robert Harris reported that the Commission previously supported HB 725, which establishes an Office of the Public Advocate. He suggested that the Commission should continue to support the measure should it come up for hearing.

Commissioner Hong asked if the Commission would take on a larger role with respect to public access should this legislation not pass. Director Harris replied that one of the motivations for the legislation was harassment of lobbyists by legislators. Director Harris noted he requested that the House provide their harassment policy. The Public Advocate would provide a mechanism to address allegations of harassment. Another motivation was the possibility that the legislature could target state employees in response to unfavorable testimony. The Commission has some authority over these matters, but they may not fall squarely within the Commission's jurisdiction.

Chair Fong asked if there had been any pushback from agencies or entities. Director Harris replied that some contended that the measure conflicted with the constitutional principle that the Legislature (solely) disciplines itself. He noted this was incorrect. The proposed Public Advocate had no disciplinary powers. The intent is to establish a confidential entity to investigate concerns and, when unable to satisfactorily address the situation, publish any findings. Director Harris noted that his intent is for the Commission to support the legislation should it come up again for hearing.

Agenda Item No. IX: Discussion of Ethics Oversight over the Judicial Branch (38:57)

Executive Director Harris reported that there is no update regarding this since the last Commission meeting.

Chair Fong noted that the Judiciary is receptive to working with the Commission to come up with more transparency and openness.

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) (40:43)

No update.

Agenda Item No. XI: Evaluation of Executive Director Robert Harris (41:41)

Chair Fong suggested that due to absences and vacancies on the Commission, this item be tabled until the Commission has a full slate, perhaps until March. Executive Director Harris noted that there is no deadline for the evaluation to be completed.

Commissioner Hong recommended deferral until March.

Vice Chair Tobias asked if the evaluation affects Director Harris' pay. Director Harris replied that the evaluation does not affect his pay. Vice Chair Tobias concurred with deferring this matter until March.

Chair Fong encouraged the public to apply for the Commission's vacancy. Director Harris noted that with respect to the vacancy on the Commission, the Judicial Selection Commission would have to advertise and submit a list of names for the Governor to consider for appointment.

Compliance Director Bonita Chang noted that the Executive Director's salary is set by statute. Commissioner Hong commended Compliance Director Chang for her work on the Executive Director's evaluation.

Agenda Item No. XII: Adjournment of Sunshine Law Meeting (45:05)

A member of the public, Doug, asked what the Commission is empowered to do. Executive Director Robert Harris replied that the Commission administers and enforces the State Ethics Code and Lobbyist Law. The Commission provides training, advice, and enforcement of those laws.

Doug asked if this includes conflicts of interest. Director Harris replied that the ethics code has a specific definition of conflict of interest. He suggested that Doug submit a complaint to the Commission Staff regarding this. He noted that complaints can be made anonymously.

At approximately 9:52 a.m., Commissioner Hong made, and Vice Chair Tobias seconded, a motion to adjourn the meeting. The motion carried (Fong, Tobias, Hong in favor, Thielen excused).

The meeting was adjourned at 9:52 a.m.

Minutes approved on March 20, 2024.