

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: March 20, 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)
Beverly Tobias, Vice Chair (via video conference)
Robert Hong, Commissioner (present in conference room)
Cynthia Thielen, Commissioner (via video conference)

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)
Barbara Gash, Investigatory Analyst (present in conference room)
Myles A. Yamamoto, Administrative Assistant (present in conference room)

Members of the Public

Chad
Candice Park, Deputy Attorney General, Office of the Attorney General

CALL TO ORDER (0:00)

Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Tobias, Commissioner Thielen, 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 January 17, 2024 Meeting (2:30)

Commissioner Hong made, and Vice Chair Tobias seconded, a motion to approve the minutes of the January 17, 2024 meeting. The motion carried (Fong, Tobias, and Hong, voting in the affirmative with Thielen excused).

Agenda Item No. II: Consideration and Approval of the Minutes of the February 21, 2024 Meeting (3:24)

Commissioner Thielen made, and Vice Chair Tobias seconded, a motion to approve the minutes of the February 21, 2024 meeting. The motion carried (Fong, Tobias, and Thielen voting in the affirmative with Hong excused).

Agenda Item No. III: Directors' Report (4:19)

Compliance Director Bonita Chang reported that staff are in the midst of the annual financial disclosure filing period for current employee and board filers. Requests for updated lists of employee filers have been sent to each state agency. In addition to providing updates on new employees and changes to existing employees, agencies were asked to provide information regarding total employee headcount and approximate training completion percentage.

Director Chang also reported that the Department of Education is in the process of implementing a new Learning Management System. Staff is working with the DOE to integrate the ethics training modules into this system. She noted that DOE is the largest state agency with over 25,000 employees. Director Chang reported that staff will be participating in a training session for state public charter schools in April.

Executive Director Robert Harris noted that the training percentages shown in the meeting materials are based on the number of certificates of completions that are reported for an agency. The data is based on past completions and may not reflect information maintained by the specific agency or board. He also noted that the information for the boards and commissions is more accurate as staff can comb through the numbers better to determine actual completion rates.

Chair Fong inquired why some agencies have a completion rate over 100%. Director Harris replied that this is due to the inability of the system to screen out duplicate completions thus, if employees took the training multiple times, it would add to the completion percentages. He further noted that the numbers may also reflect both new and outgoing members who have completed training.

Chair Fong asked about progress towards the 85% training compliance goal. Director Chang replied that progress is being made toward that goal. She noted that staff estimates a 75% completion percentage. Director Chang stated that 85% completion is a realistic goal. Reaching out to large agencies like the Department of Education and the University of Hawai'i will help to maximize staff resources to achieve this goal.

Enforcement Director Kee Campbell reported that staff continue to close matters at the same rate that new matters are opened.

Executive Director Robert Harris introduced new Investigatory Analyst Barbara Gash. Analyst Gash previously worked at the Department of Commerce and Consumer Affairs. Analyst Gash then spoke a little about her background. She noted that she has a background in law and financial fraud issues.

Chair Fong welcomed Analyst Gash and asked what additional experience she has in addition to her work with DCCA. Analyst Gash replied that she worked in the Division of Financial Institutions and at the federal level. Additionally, she worked for the Office of Disciplinary Counsel and practiced law.

Vice Chair Tobias and Commissioner Thielen also welcomed Analyst Gash.

Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (15:35)

Executive Director Robert Harris reported that there were no items of note related to the Commission.

Agenda Item No. V: 2024 Legislative Matters (16:15)

Executive Director Robert Harris reported that the Commission's budget has been signed by the Governor.

Director Harris highlighted SB 2219. This bill is an attempt to expand the definition of lobbying to include activities related to contracts and procurement. Some members of the House of Representatives expressed concerns. Director Harris noted that some portions of the bill may need to be sacrificed this session to pass something and come back with revisions next session.

Director Harris highlighted HB 2184. This bill would prohibit those convicted of certain criminal violations or found to violate ethical rules from making a political campaign contribution. Director Harris explained that he had constitutional concerns with the proposed broad range of violations that would bar an individual from making a political contribution. Testimony was submitted suggesting that the potential violations at issue be narrowed. In response to Director Harris' concerns, the bill was amended to remove civil violations from the bill. Director Harris noted that this bill is not part of the Commission's package.

Director Harris highlighted SB 3191. This bill would permanently exempt transfers/commercialization of technology at UH from the ethics code. The current exemption is due to sunset. This bill would eliminate the sunset date. The Commission has not taken a position on this bill. Comments were submitted indicating that UH has not consulted with the Commission to date and that the Commission's analysis and role would be unclear given the exceptions.

Chair Fong asked about HB 1881, which would increase the maximum administrative fine the Commission could issue. Director Harris replied that the bill is alive and before the Senate Ways and Means Committee. He expressed hope that the bill would be heard.

Chair Fong asked about SB 3350 which would require justices, judges, and judicial nominees to file financial disclosures with the commission. Director Harris replied that the bill is still technically alive, however, indications are that the House does not intend to move the bill forward. He expects the bill to die this session. Director Harris noted that the Commission did not take a position on the bill but offered comments.

Chair Fong asked about the bill regarding the use by legislators of state equipment. Director Harris replied that this is also not a part of the Commission's package. The bill would allow the use of state equipment for "bonified" community initiatives. Director Harris noted that the bill failed to cross over. He also noted that he did not believe that this legislation was necessary.

Chair Fong asked about the bill to require the Judicial Council to vet appointments to county boards and commissions. Director Harris replied that the bill was never heard in the House and is thus dead for the session.

Agenda Item No. VI: Proposed 2024 Goals (28:35)

Executive Director Harris reported that staff have developed a series of goals to work towards in 2024. He noted that these goals allow staff to focus on specific areas. The goals are as follows:

- 85% state employee training completion rate;
- Public filing and information modernization;
- Enforcement modernization;

- Office modernization; and
- Increased public engagement.

With regards to meeting the 85% training completion goal, Director Harris explained that staff is working to update and upgrade tracking systems. The hope is to provide better data and reporting to help track completions.

With regards to enforcement modernization, Director Harris cited the hiring of Investigative Analyst Barbara Gash as progress toward this goal.

Concerning office modernization, staff are currently focused on migration to new servers and implementing a new data management system.

Director Harris noted that he hopes that the policy of establishing annual goals will become an annual exercise with staff and the Commission.

Chair Fong noted that each goal is very ambitious and asked how staff plans to increase public engagement. Director Harris noted that this goal may become a regular annual goal. He stated that the focus is on engaging strategic partnerships both within government and the public. He stated this includes neighbor island partners as well.

Commissioner Hong asked if the goals are assigned to specific staff to provide for accountability. Director Harris replied that due to the nature of the goals some are assigned to specific staff by default. He noted that the goals may not be 100% met by the end of the year, but that progress will be made on each.

Chair Fong stated that significant accomplishments of the Commission need to be made public.

Vice Chair Tobias asked if outreach includes outreach to the other county ethics boards and commissions. Director Harris replied that one of the ideas is to hold quarterly sessions with the various county boards. He noted that these sessions may not necessarily be public facing but more geared toward training opportunities for the commissions.

Chair Fong suggested that the Commission reach out to the counties to offer our support and expertise.

Commissioner Hong recommended that outreach be done in a collaborative fashion rather than a top-down approach. Director Harris agreed with the points brought up by Vice Chair Tobias and Commissioner Hong.

Agenda Item No. VII: Discussion of Ethics Oversight over the Judicial Branch (41:14)

Executive Director Harris reported that dialogue continues between the Commission and the Judiciary.

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) (41:40)

Executive Director Harris reported that Ms. Akana had requested and was granted an extension to file an appeal to the supreme court. He believes that the extended deadline has passed. He was unsure if an appeal was filed.

Agenda Item No. IX: Evaluation of Executive Director Robert Harris (43:53)

Chair Fong noted that at the request of Executive Director Harris and in the spirit of openness and transparency, the evaluation of Executive Director Robert Harris will be discussed in the open sunshine session of the commission's meeting.

Chair Fong reported that Executive Director Robert Harris was evaluated in nine categories. They are:

- Providing Legal Counsel to the Commission
- Training
- Enforcement of the Ethics Code & lobbying laws
- Education
- Relations with the media
- Relationship building
- Legislation
- Budget
- Administration and management

Director Harris had an average score of 4.74 with a high score of 5.0 and low of 4.5. His top three categories were legislation, relations with the media, and enforcement.

Commissioner Hong expressed his appreciation to staff for providing input throughout the evaluation process.

Director Harris expressed his appreciation to the Commission and staff. He stated that he is honored to be the executive director. He further stated that he felt the

comments in the evaluation were important and would take them to heart and continue to improve. He noted that the high scores are reflective of the great Commission team.

Commissioner Hong made, and Commissioner Thielen seconded, a motion to adopt the evaluation of Executive Director Robert Harris. The motion carried (Fong, Tobias, Hong, and Thielen voting in the affirmative).

Agenda Item No. X: Adjournment of Sunshine Law Meeting (48:42)

At approximately 9:49 a.m., Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to adjourn the meeting. The motion carried (Fong, Tobias, Hong, and Thielen voting in the affirmative).

The meeting was adjourned at 9:50 a.m.

Minutes approved on April 17, 2024.