

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: June 19, 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 (excused)
Robert Hong, Commissioner (via video conference)
Cynthia Thielen, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)
Kee M. Campbell, Enforcement Director (excused)
Bonita Y.M. Chang, Compliance Director (present in the conference room)
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 A. Gash, Investigatory Analyst (via video conference)
Myles A. Yamamoto, Administrative Assistant (present in the conference room)

Members of the Public

Chad Blair
Candace Park – Deputy Attorney General

CALL TO ORDER (Part I) (0:00)

Chair Fong called the meeting to order at 9:02 a.m. Chair Fong, 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 May 15, 2024 Meeting (Part I) (3:55)

Commissioner Thielen made, and Commissioner Hong seconded, a motion to approve the minutes of the May 15, 2024 meeting. The motion carried (Fong, Thielen, and Hong, voting in the affirmative with Tobias excused).

Agenda Item No. II: Directors' Report (Part I) (5:01)

Compliance Director Bonita Chang reported that May 31 was the deadline for existing employees and board and commission members to file annual financial disclosures. She further noted that June 14 was the deadline for all candidates to file their candidate financial disclosures. She expressed her thanks to the staff for fielding calls and assisting with contacting filers. She noted that staff contacted approximately 135 employee and board filers, as well as approximately 169 candidate filers. Director Chang reported that the staff is assessing fines and drafting fine notices for late and non-filings. She further noted that efforts will shift to assisting new board filers starting July 1.

Director Chang reported that the staff will return their focus to training compliance once the filing season is complete. She noted that the focus will be on larger and lower-performing agencies. She reported that the Department of Corrections and Rehabilitation has increased their training completion to 36%. She noted this may be due to personnel who took the training with a prior agency. Staff will continue to work with DCR's HR personnel to increase their training compliance percentage. Director Chang reported that staff will be updating and reporting training information to the commission every quarter. In addition, the staff is coordinating with department HR and board administrators to have ethics training included as part of the onboarding process for new employees and members.

Executive Director Robert Harris reported that 59 new matters were opened for the month, a majority of which were gift and complaint matters. He further reported that 56 matters were closed.

Executive Director Harris reported that the commission received correspondence from the Maui Board of Ethics seeking assistance and input about staffing levels and salaries. He further noted that the commission has submitted testimony to the Maui County Council in support of the Maui Board of Ethics' efforts.

Chair Fong thanked Executive Director Harris and staff for assisting the Maui Board of Ethics. He noted that a lack of staff was one of the issues the Maui Board of Ethics and other boards pointed out during the recent state ethics conference. He further noted that since then, the Maui Board of Ethics has sought to increase staff and the number of terms board members can serve. He said that the number of terms Maui board members can serve was recently increased to two terms. Executive Director Harris reported that measures related to staffing the Maui Board of Ethics are moving through the Maui County Council.

Executive Director Harris reported no updates regarding the Commission's vacancy. He expects the Judicial Council to forward names to the Governor for review shortly.

Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (Part I) (14:53)

Director Harris noted coverage of the commission's previous meeting, conflicts of interest, and the fine related to former members of the State Foundation on Culture and the Arts.

Chair Fong noted coverage in Civil Beat about the "Sesame Street Clause" mentioned in the previous commission meeting. He said that the coverage resonated with the public.

Agenda Item No. IV: 2024 Legislative Matters (Part I) (18:41)

No updates.

Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (Part I) (19:21)

No updates. Chair Fong noted that the Judiciary is receptive to the Commission's suggestions.

Agenda Item No. VI: Discussion of Proposed Ethics Updates Based on Civil Beat/New York Times

Article (available at <https://www.civilbeat.org/2024/04/inside-the-late-nightparties-where-hawaii-politicians-raked-in-money/>) (Part I) (20:18)

Executive Director Harris reported that the Commission previously said it wanted greater transparency and prohibitions on employees from conducting political activities or campaigning.

Commissioner Thielen proposed bill language that would make it illegal/unethical for employees involved in contract awarding or administration to participate in political fundraising. She further requested that this proposal be included in the Commission's legislative package.

Executive Director Harris replied that staff can examine the proposed language. He expressed concerns about possible legal and constitutional issues. He noted that contracting is spread among multiple agencies and officials and that the proposal may have widespread unintended consequences.

Chair Fong asked if his understanding was correct that the proposal would seek to bar anyone involved in contracting from fundraising. He expressed concerns about the breadth of the proposal.

Commissioner Hong agrees with the proposal and suggests letting staff examine the proposal and report back.

Agenda Item No. VII: Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA) (Part I) (31:26)

Executive Director Harris reported that many filings have been made in this matter. He reported that OHA has been allowed to file an amicus brief. He further reported that Ms. Akana has also made several filings. He noted that the Commission's responses to each have also been filed.

Chair Fong asked what the next deadline is. Director Harris replied that oral arguments are scheduled for July 16. Chair Fong asked how long after that a decision would take. Director Harris replied that typically, the court moves quickly after that point and is hopeful that a decision will be reached a couple of months following oral arguments.

Chair Fong asked if the court's decision would be final or if there would be additional steps. Director Harris replied it was likely the Supreme Court's decision would resolve the pending legal issues.

Agenda Item No. VIII: Discussion of Haw. Rev. Stat. § 97-5 (Lobbying Restricted Activities) (Part I) (36:41)

Executive Director Harris reported that a law was passed regarding the enforcement authority of the Campaign Spending Commission and the Ethics Commission. He recommended convening an executive session to discuss the Commission's rights, liabilities, and immunities.

At 9:39 a.m., Commissioner Thielen made and Commissioner Hong seconded a motion to recess the public meeting and convene an executive session pursuant to Haw. Rev. Stat. §97-5 to discuss the Commission's rights, liabilities, and immunities. The motion was carried unanimously (Fong, Hong, and Thielen voted in the affirmative, with Tobias excused).

The Commissioners and legal counsel met in executive session.

The Commission adjourned the executive session and returned to the public session of the Sunshine Law meeting at 9:55 a.m. Staff also returned to the meeting.

Executive Director Harris summarized the executive session, stating that the Commission discussed establishing a policy of deferring to the Campaign Spending Commission to take the primary lead in enforcing campaign spending/lobbying law violations of Haw. Rev. Stat. § 11-356 and Haw. Rev. Stat. § 97-5. The Commission would retain its jurisdiction and discretion to intervene as necessary.

Commissioner Hong made, and Commissioner Thielen seconded, a motion to adopt a policy to defer to the Campaign Spending Commission to take the primary lead in enforcing campaign spending/lobbying law violations of Haw. Rev. Stat. §§ 11-356 & 97-5. The motion carried unanimously (Fong, Hong, and Thielen voted in the affirmative, with Tobias excused).

Agenda Item No. IX: Adjournment of Sunshine Law Meeting (Part II) (2:24)

At approximately 9:58 a.m., Commissioner Thielen made a motion to adjourn the meeting, and Commissioner Hong seconded. The motion carried (Fong, Hong, and Thielen voted in the affirmative, with Tobias excused).

The meeting was adjourned at 9:59 a.m.

Minutes approved on July 17, 2024.