

# SUNSHINE LAW MEETING



## HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

### NOTICE OF MEETING OF THE HAWAI'I STATE ETHICS COMMISSION

Commissioners:

Wesley Fong, Chair

Beverley Tobias, Vice-Chair • Robert Hong • Cynthia Thielen • Roderick Becker

Date: October 16, 2024

Time: 9:00 a.m.

Location: Zoom Videoconference or Phone:

Videoconference: [Join Zoom Meeting](https://us06web.zoom.us/j/81140539901?pwd=bZFWAjlfeUGLPtnKQOytPhR4xhYt3Bm.1)  
<https://us06web.zoom.us/j/81140539901?pwd=bZFWAjlfeUGLPtnKQOytPhR4xhYt3Bm.1>

Phone: +1 (719) 359-4580 or +1 (253) 205-0468

Phone passcode: 736727

Meeting ID: 811 4053 9901

Passcode: RB4aA4

Public Meeting Location:

Hawai'i State Ethics Commission Conference Room  
1001 Bishop Street  
American Savings Bank Tower, Suite 970  
Honolulu, Hawai'i 96813

Pursuant to Hawai'i Revised Statutes section 92-3.7, the State Ethics Commission will meet remotely using interactive conference technology. The public may either attend the meeting in person, at the public meeting location above, or participate remotely by using the above Zoom meeting information. If participating remotely, please mute your phone/device except while testifying. If the Commission's videoconference connection is lost during the meeting, please visit the Commission's website ([www.ethics.hawaii.gov](http://www.ethics.hawaii.gov)) for more information, including reconnection information.

Public meeting materials for this meeting are available on the Commission's website at: [www.ethics.hawaii.gov](http://www.ethics.hawaii.gov).

AGENDA

CALL TO ORDER

I. Introduction of Commissioner Roderick (“Rod”) Becker

*Attachment 1: News Release*

II. Consideration and Approval of the Minutes of the September 18, 2024 Meeting

*Attachment 1: Sunshine Law Meeting Minutes of the September 18, 2024,  
Hawai'i State Ethics Commission Meeting*

III. Directors' Report

1. Education / Training Report

*Attachment 1: 2024 Training Schedule*

2. Guidance and Assignment Statistics – September 2024

*Attachment 2: 2024 Guidance and Assignment Statistics / Website Traffic*

3. Miscellaneous Office Projects / Updates

*Attachment 3: Fiscal Year 2025, Quarter 1 Financial Report*

IV. Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting

V. Discussion of Ethics Oversight of the Judicial Branch

No update. Proposed rule amendments, when available, will be posted at:

[https://www.courts.state.hi.us/legal\\_references/rules/proposed\\_rule\\_changes/proposedRuleChanges](https://www.courts.state.hi.us/legal_references/rules/proposed_rule_changes/proposedRuleChanges)

VI. Request for Information from the National Conference of State Legislatures Regarding State-Level Restrictions on High-Level Government Employees Participating in Political Fundraising

No update. Staff are researching Ohio and Kentucky laws.

VII. Consideration of Commission Manual

*Attachment 1: Staff Overview*

*Attachment 2: Commission Manual 2024*

VIII. Administrative Rules

Review of proposed edits

*Attachment 1: Staff Overview*

*Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapters 4-6*

IX. *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)*

Discussion of case status.

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys and/or the Department of the Attorney General on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

X. Adjournment

### Public Testimony

Anyone wishing to testify may do so during the meeting or may submit written testimony in advance of the meeting by email ([info.ethics@hawaii.gov](mailto:info.ethics@hawaii.gov)), facsimile (fax) (808-587-0470), or U.S. postal mail (State Ethics Commission, 1001 Bishop Street, American Savings Bank Tower, Suite 970, Honolulu, Hawai'i 96813). Public testimony must be related to an item on the agenda, and the testifier must identify the item to be addressed by the testimony. Pursuant to Hawai'i Revised Statutes section 92-3 and Hawai'i Administrative Rules section 21-1-6(c), oral testimony is limited to three minutes per testifier per agenda item, subject to the reasonable discretion of the Chair.

### Auxiliary Aid or Accommodation Due to a Disability

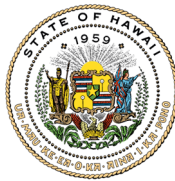
If you require an auxiliary aid or accommodation due to a disability, please contact the State Ethics Commission at (808) 587-0460 or email the Commission at [info.ethics@hawaii.gov](mailto:info.ethics@hawaii.gov) as soon as possible, preferably at least 48 hours prior to the meeting. Last-minute requests will be accepted but may be impossible to fill.

Upon request, this notice is available in alternate/accessible formats.

SUNSHINE LAW MEETING  
AGENDA ITEM I

INTRODUCTION OF COMMISSIONER RODERICK (“ROD”) BECKER

Attachment 1: News Release



## HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

### NEWS RELEASE

FOR IMMEDIATE RELEASE

September 18, 2024

NO. 2024-8

For Additional Information

Contact: Robert Harris, Executive Director  
and General Counsel  
Hawai'i State Ethics Commission  
(808) 587-0460 (Office)  
(808) 220-4306 (Mobile)

### GOVERNOR APPOINTS RODERICK BECKER TO HAWAI'I STATE ETHICS COMMISSION

Governor Josh Green appointed Roderick Becker to fill a vacancy created by Commissioner Harry J. McCarthy's untimely passing. The appointment is effective September 16, 2024.

“We’re pleased to have a full complement of commissioners and are excited to welcome Rod to the Ethics Commission,” said Wesley Fong, Chair of the Hawai'i State Ethics Commission. “His extensive experience and expertise will be instrumental in helping us fulfill our responsibilities under the ethics code and uphold the highest ethical standards for the State of Hawai'i.”

Commissioner Roderick Becker’s work for state and county governments over the last 25 years includes budgeting state resources as staff of the Senate’s Ways and Means Committee and as State Deputy Director of Finance. He also has firsthand experience with government processes such as state procurements and expending state funds as the State Comptroller and in his current position as the State Department of Budget and Finance’s Financial Administration Division Administrator.

“We are fortunate to welcome such a distinguished and experienced professional to the Hawai'i

Telephone: (808) 587-0460 Email: [ethics@hawaii.gov](mailto:ethics@hawaii.gov) Website: <http://ethics.hawaii.gov/>

State Ethics Commission. Rod's deep expertise in financial oversight and state government will be invaluable in upholding and strengthening the ethical standards that guide our public officials, employees, and lobbyists," said Robert D. Harris, Executive Director and General Counsel of the Hawai'i State Ethics Commission.

The Hawai'i State Ethics Commission is responsible for administering and enforcing the state ethics code and lobbyist law. Commissioners are appointed by the Governor from nominations submitted by the Judicial Council and serve 4-year terms, without compensation. Commissioners may not hold any other public office. Commissioners must be U.S. Citizens and residents of the State of Hawai'i. More information on the Ethics Commission and its work can be found at <http://ethics.hawaii.gov> or by following the Commission on Twitter [@HawaiiEthics](https://twitter.com/HawaiiEthics).

[PAU] ###



SUNSHINE LAW MEETING  
AGENDA ITEM II

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE  
SEPTEMBER 18, 2024 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the September 18, 2024  
Hawai'i State Ethics Commission Meeting

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

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Date: September 18, 2024

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at  
[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_videos/](https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/)

Public Meeting Location

Hawai'i State Ethics Commission Conference Room  
1001 Bishop Street  
American Savings Bank Tower, Suite 970  
Honolulu, Hawai'i 96813

Present: State Ethics Commission Members

- Wesley F. Fong, Chair (present in the conference room)
- Beverley Tobias, Vice Chair (via video conference)
- Robert Hong, Commissioner (via video conference)
- Cynthia Thielen, Commissioner (via video conference)
- Roderick Becker, Commissioner (excused)

State Ethics Commission Staff

- Robert D. Harris, Executive Director (via video conference)
- 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 A. Gash, Investigatory Analyst (via video conference)
- Myles A. Yamamoto, Administrative Assistant (present in the conference room)

1 Members of the Public

2  
3 Candace Park, Deputy Attorney General (via video conference)

4  
5  
6 **CALL TO ORDER (0:00)**

7  
8 Chair Fong called the meeting to order at 9:01 a.m. Chair Fong, Vice Chair Tobias,  
9 Commissioner Thielen, Commissioner Hong, and Commission staff were present. All  
10 Commissioners and staff participating via video or audio conference confirmed no one  
11 was in the room with them at their respective remote locations.

12  
13  
14 **Agenda Item No. I: Status of New Commissioner Appointment (3:32)**

15  
16 Executive Director Robert Harris reported Mr. Roderick Becker has been appointed  
17 to fill the Commission's vacancy due to the passing of Commissioner Harry McCarthy. His  
18 appointment was effective as of September 16, 2024. Due to scheduling conflicts,  
19 Commissioner Becker was not available. Director Harris stated that Commissioner Becker  
20 should be present at the October meeting.

21  
22 Chair Fong state that he was pleased that the Commission now had a full  
23 complement of Commissioners.

24  
25  
26 **Agenda Item No. II: Consideration and Approval of the Minutes of the August 21, 2024**  
27 **Meeting (4:48)**

28  
29 Commissioner Thielen made, and Vice Chair Tobias seconded, a motion to approve  
30 the minutes of the August 21, 2024 meeting. The motion carried (Commissioners Fong,  
31 Tobias, Hong, and Thielen voted in the affirmative).

32  
33  
34 **Agenda Item No. III: Directors' Report (5:37)**

35  
36 Compliance Director Bonita Chang reported that staff is in the process of compiling  
37 data related to state agency training compliance and expects to have that data available at  
38 the October meeting. With regards to board and commission training compliance, Director  
39 Chang reported that 95% of public filing board members and 87% of confidential filing  
40 board members have completed training, with an overall training completion rate of 88%.  
41 Director Chang noted that the missing public filing board members may be due to new  
42 members coming on board. A few confidential filing boards have lower rates due to  
43 turnover in board staffing and other factors. Staff will conduct further outreach to these  
44 boards. The vast majority of boards are at 100% including the Commission. Based on

1 Commissioner Hong’s suggestion, staff will be sending letters to board with 100%  
2 compliance to congratulate them on their hard work.

3  
4 With regards to state agencies, Director Chang will continue working with human  
5 resource officers, most of whom have access to their own departmental Learning  
6 Management Systems.

7  
8 Chair Fong stated he is pleased that the boards and commissions have hit the 85%  
9 training goal set earlier.

10  
11 Commissioner Hong commended Director Chang regarding the updated  
12 dashboard. He noted that the information is easier to follow.

13  
14 Director Chang noted between now and the end of the year, staff will focus its  
15 attention on updating the content and curriculum of the training materials to reflect new  
16 statutory changes.

17  
18 Enforcement Director Kee Campbell reported that for the month of August, 27 new  
19 complaints were opened and 17 matters were closed. He noted that a number of cases are  
20 due to be closed soon and expects an uptick in closures next month.

21  
22 Executive Director Robert Harris recognized Computer Specialist Patrick Liu for his  
23 efforts to support updating the Commission’s internal case management system. Director  
24 Harris noted that testing is ongoing, and expects the new system to go live in October.

25  
26 Director Harris noted that he will not be present at the October Commission  
27 meeting.

28  
29  
30 **Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics**  
31 **Commission Since the Last Meeting (13:50)**

32  
33 Executive Director Harris reported on recent articles that covered the enforcement  
34 settlements by the Commission. He also noted reports regarding the Maui Board of Ethics  
35 investigations into Conflicts of Interest regarding grant awards. There were also a number  
36 of candidate questionnaires where candidates addressed question about a commitment  
37 to ethics.

38  
39 Commissioner Thielen reported her recent participation in a panel forum on Pay to  
40 Play politics hosted by Civil Beat at the University of Hawai‘i.

1 **Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (16:26)**  
2

3 Executive Director Robert Harris reported that the Judiciary is proposing to amend  
4 its rules. The drafts will be available for public input and comment on the Judiciary’s  
5 website.  
6

7 Chair Fong noted that Judges and Justices are not subject to the ethics code and are  
8 under the jurisdiction of the Commission of Judicial Conduct. He further noted that judges  
9 in other jurisdictions are subject to both a judicial and ethics code.  
10

11 Director Harris clarified that Judicial Employees are subject to the state ethics code  
12 but not judges and justices.  
13

14  
15 **Agenda Item No. VI: Request for Information from the National Conference of State**  
16 **Legislatures Regarding State-Level Restrictions on High-Level Government Employees**  
17 **Participating in Political Fundraising (20:18)**  
18

19 Executive Director Harris reported that a request for information regarding state  
20 level restrictions on High-Level Government Employees participating in political  
21 fundraising was sent to the National Conference of State Legislatures (“NCSL”). He  
22 reported that NCSL’s information did not contain anything specific to restrictions of high-  
23 level employees. He noted that most regulations concerned contributions by contractors.  
24

25 Commissioner Thielen asked if staff could take a closer look at the Ohio and  
26 Kentucky Laws. She noted that both states have specific laws that deal with the executive  
27 branch. Commissioner Thielen requested a review to see if those laws could be  
28 incorporated into proposed legislation to enact similar restrictions here.  
29

30 Vice Chair Tobias asked how candidates would be able to raise funds for elected  
31 office with a restriction in place. Commissioner Thielen replied that the restriction would  
32 be on employees and not elected officials.  
33

34 Chair Fong asked if there were any state provisions similar to the Hatch Act.  
35 Executive Director Harris explained that the Hatch Act is a federal law that limits the  
36 political activities of federal employees. He further explained that the state has adopted  
37 similar statutory provisions that apply to the Elections and Ethics Commissions.  
38

39 Director Harris expressed constitutional concerns with Commissioner Thielen’s  
40 proposal. He also noted that the proposal may encounter heavy resistance at the  
41 legislature. He further noted that the fair treatment laws were purposely written broadly to  
42 provide the Commission flexibility in dealing with enforcement.  
43

1 Commissioner Thielen suggested reaching back out NCSL to see what, if any, kinds  
2 of challenges were made to the Ohio and Kentucky Laws.

3  
4 Director Harris re-emphasized the recommendation to focus on enforcing  
5 prohibitions against contractor contributions. He noted that prohibitions on employees  
6 may prove to be a more difficult task to pass and enforce.

7  
8 Chair Fong asked where the line on prohibited activities would be drawn. Director  
9 Harris replied that the prohibition would be on fundraising activities by employees involved  
10 in procurement. He further noted that he estimates that 10,000 employees may be  
11 affected by a proposed prohibition.

12  
13 Chair Fong requested that this matter remain on the agenda for further discussion.

14  
15 Commissioner Thielen requested that in the request to NCSL to ask how broad the  
16 law in Ohio and Kentucky are. She noted that the law must be constitutional since they are  
17 still in force.

18  
19 Director Harris noted that the Ohio & Kentucky Statutes are very elaborate and  
20 specific. He further noted that Hawaii Statutes are broad with specifics embedded in the  
21 Administrative Rules. He stated that inserting a new provision may require alteration of the  
22 entire ethics statutes.

23  
24  
25 **Agenda Item No. VII: Administrative Rules (39:30)**

26  
27 Executive Director Harris reported that staff has been working on updates to the  
28 administrative rules. He recommended a review of the general concepts of the updates at  
29 this time. He noted that the rules still need to be approved by the attorney general. Public  
30 hearings are also required before approval.

- 31  
32
- Chapter 1: Updates to strike language that relates to the associate director.
  - Chapter 2: Adding language related to subpoenas and enforcement.
  - Chapter 3: Adding definitions of blind trusts and mutual funds. Updating filing procedures.
- 33  
34  
35

36 Director Harris noted that the discussion is for information only and no action is  
37 required by the Commission at this time.

38

1 **Agenda Item No. VIII: Akana v. Hawai'i State Ethics Commission and Daniel Gluck,**  
2 **Civil No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-**  
3 **0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-**  
4 **0453 (BIA) (46:13)**

5  
6 Executive Director Harris reported that there is no update.

7  
8 Chair Fong asked what the anticipated timeline is. Director Harris replied that the  
9 Supreme Court is usually faster at rendering a decision. He anticipates a decision early  
10 next year.

11  
12  
13 **Agenda Item No. IX: Adjournment of Sunshine Law Meeting (47:40)**

14  
15 At approximately 9:49 a.m., Commissioner Hong motioned to adjourn the meeting,  
16 and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias,  
17 Hong, and Thielen voted in the affirmative).

18  
19 The meeting was adjourned at 9:50 a.m.

20  
21 Minutes approved on \_\_\_\_\_.

SUNSHINE MEETING  
AGENDA ITEM III

EXECUTIVE DIRECTOR'S REPORT  
October 16, 2024

**1. Education / Training Report**

*Attachment 1: 2024 Training Schedule*

**2. Guidance and Assignment Statistics – September 2024**

*Attachment 3: 2024 Guidance and Assignment Statistics / Website Traffic*

**3. Miscellaneous Office Projects / Updates**

*Attachment 3: Fiscal Year 2025, Quarter 1 Financial Report*



<b>HAWAII STATE ETHICS COMMISSION</b>			
<b>2024 EDUCATION PROGRAM</b>			
<b>(Ethics Workshops and Presentations)</b>			
<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
1/4/2024	WEBINAR: Lobbyists Law Training	0	50
1/10/2024	WEBINAR: Lobbyists Law Training	0	48
1/18/2024	WEBINAR: General Ethics Training	0	8
1/19/2024	IN PERSON: Training Refresher, Capitol, House Members	51	0
2/6/2024	WEBINAR: Training Refresher, DOH, Kauai	0	13
2/8/2024	<del>WEBINAR: Ethics for Board and Commission Members</del> (CANCELLED)	0	0
3/6/2024	WEBINAR: General Ethics Training	0	7
4/16/2024	WEBINAR: General Ethics Training, Charter Schools	0	64
5/2/2024	WEBINAR: General Ethics Training	0	8
5/13/2024	WEBINAR: Training Refresher, FESTPAC	0	12
6/20/2024	<del>WEBINAR: Training Refresher, Agribusiness Development Corporation</del> (CANCELLED)	0	0
6/24/2024	IN PERSON: Ethics for Board and Commission Members, Hawai'i Workforce Development Council	80	0
7/10/2024	IN PERSON: Ethics for Board and Commission Members, Land Use Commission	10	2
7/24/2024	WEBINAR: General Ethics Training	0	13
8/8/2024	WEBINAR: Ethics for Board and Commission Members	0	15
9/26/2024	WEBINAR: General Ethics Training	0	19
10/23/2024	WEBINAR: Ethics for Board and Commission Members		
11/4/2024	WEBINAR: West Hawai'i Explorations Academy		
11/7/2024	WEBINAR: General Ethics Training		

**HAWAII STATE ETHICS COMMISSION**

**2024 EDUCATION PROGRAM**

**(Ethics Workshops and Presentations)**

<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
12/3/2024	WEBINAR: Ethics for State Government Attorneys		
12/5/2024	WEBINAR: Lobbyists Law Training		
12/6/2024	WEBINAR: Lobbying E-Filing		
<b>TOTAL</b>	<b>22 Presentations</b>	<b>141 participants</b>	<b>259 participants</b>

# Ethics Training Dashboard: State Employees

Hawai'i State Ethics Commission: As of Sept. 30, 2024

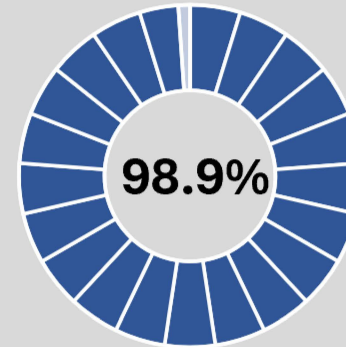
Employees

**57k+**

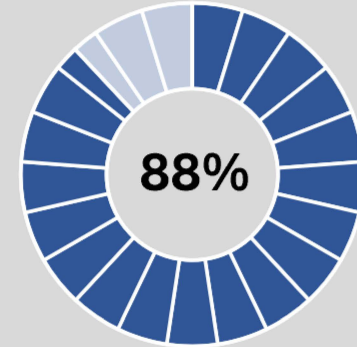
Dept Groups

**33**

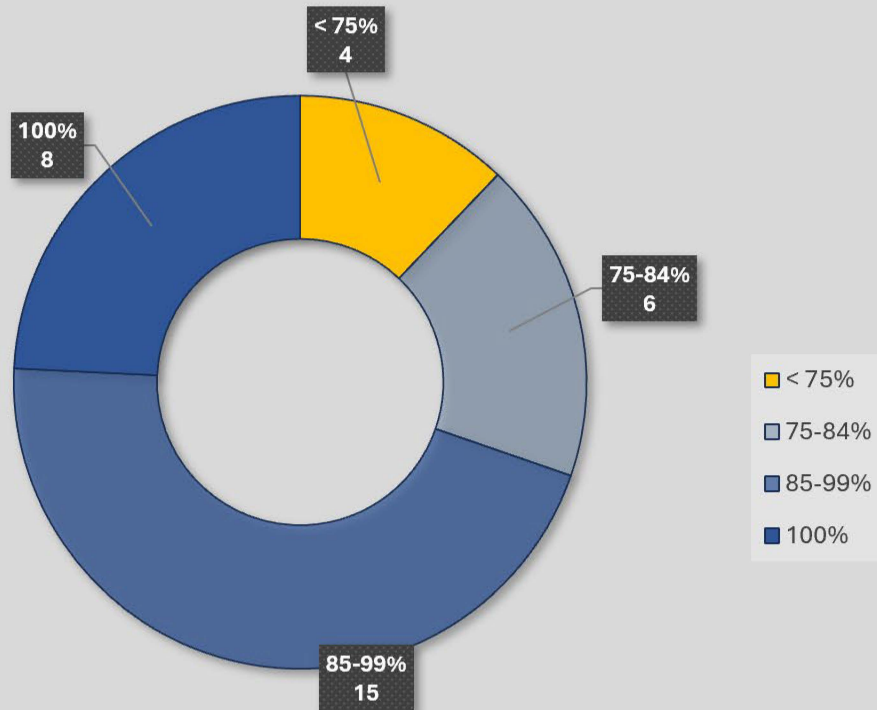
Tier 1 (High Level)



Total



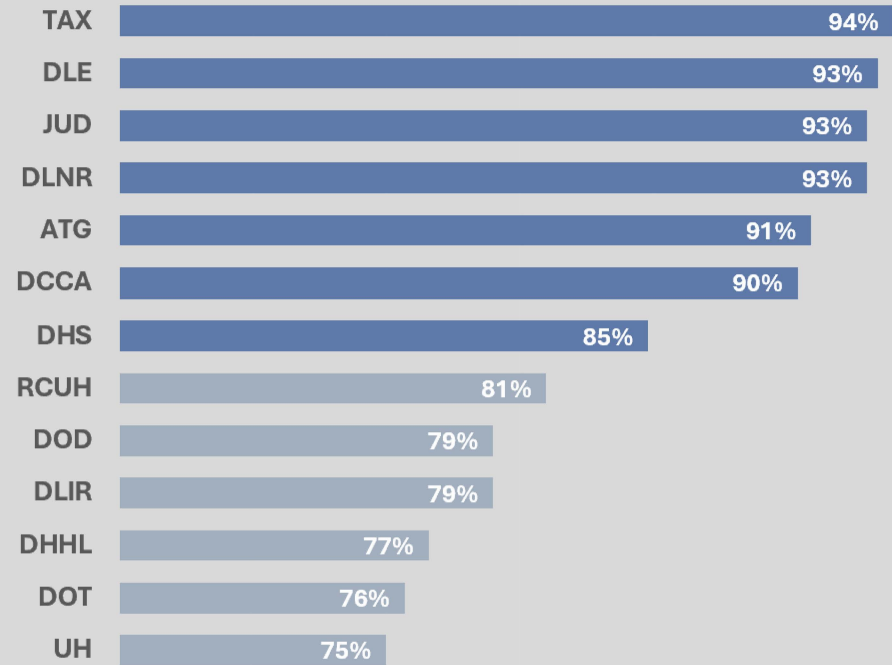
## Comparison: Agency %



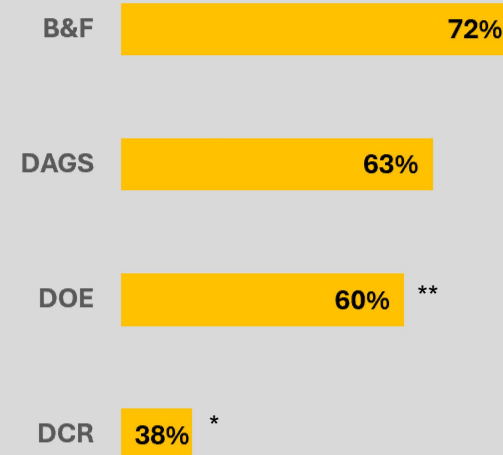
## Top Performers



## Mid-Range



## < 75%

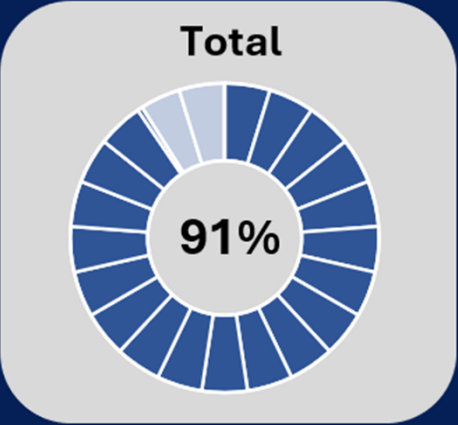
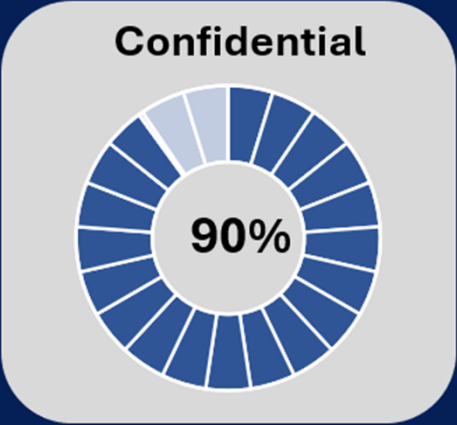
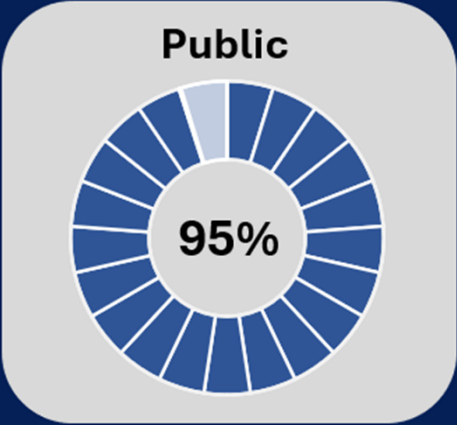


\*DCR - Department was recently established

\*\*DOE - Department undergoing new Learning Management System transition

# Ethics Training Dashboard: State Boards

Hawai'i State Ethics Commission: As of Sept. 30, 2024



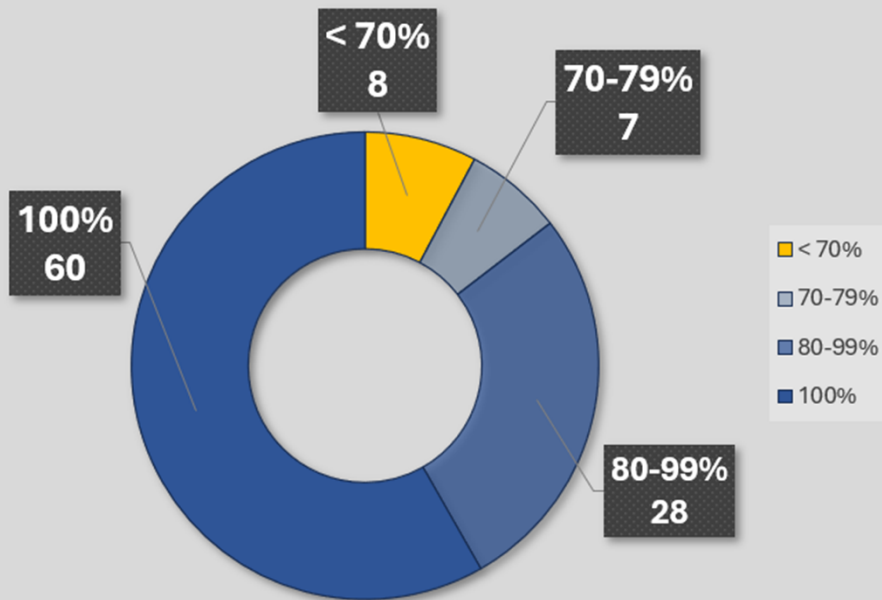
### Public Boards

Board of Agriculture	100%
Board of Land and Natural Resources	100%
Commission on Water Resource...	100%
Hawai'i Housing Finance and...	100%
Hawai'i Public Housing Authority	100%
Hawai'i State Ethics Commission	100%
Land Use Commission	100%
Legacy Land Conservation Commission	100%
Natural Energy Laboratory of Hawai'i	100%
Public Utilities Commission	100%
Stadium Authority Commission	100%
University of Hawai'i Board of Regents	100%
Agribusiness Development Corporation	92%
Board of Education	90%
Natural Area Reserves System...	90%
Hawai'i Community Development...	88%
Hawaiian Homes Commission	73%

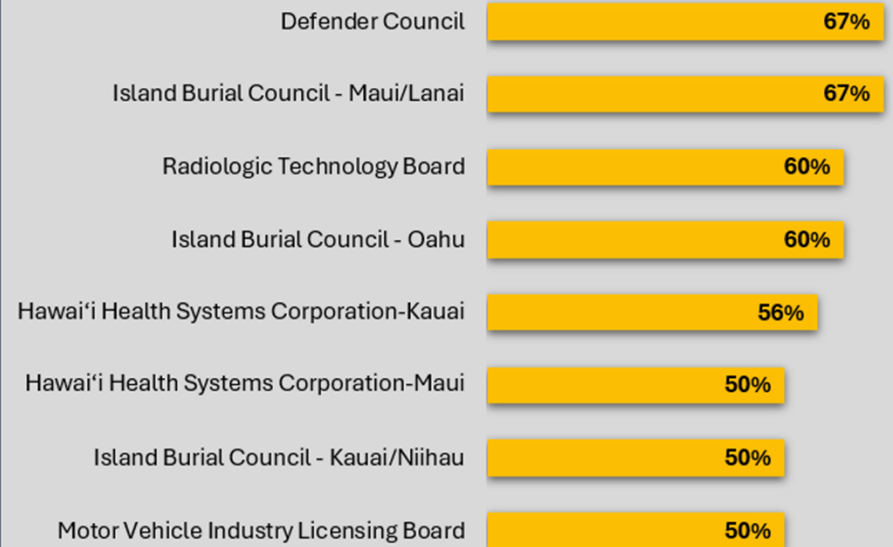
### Confidential Boards - 100%

Acupuncture	Contractors License	Paroling Authority
Barbering & Cosmetology	Council on Revenues	Retirement Savings
<b>Chiropractic Examiners</b>	Crime Victim Comp.	<b>State Fire Council</b>
Dentistry	Deferred Comp. Plan	HTDC
Massage Therapy	DCAB	<b>HTA</b>
Naturopathic Medicine	Elevator Mechanics	<b>Island Burial - Hawai'i</b>
Nursing	<b>ERS</b>	Island Burial - Molokai
Pharmacy	FestPAC	KIRC
Physical Therapy	Optometry	Merit Appeals
Psychology	Veterinary Medicine	<b>Motor Vehicle Repair</b>
Public Accountancy	EUTF	PISCES
Speech Pathology/Audiology	Green Intrastr. Auth.	Pest Control
Geographic Names	HHSC-East Hawai'i	Real Estate
Campaign Spending	Historic Places Rev.	<b>School Facilities Auth.</b>
Civil Rights Comm'n	HHFDC	SFCA
Status of Women	<b>Hurricane Relief Fund</b>	<b>State Public Charter School Comm.</b>

## Comparison: Board Training %

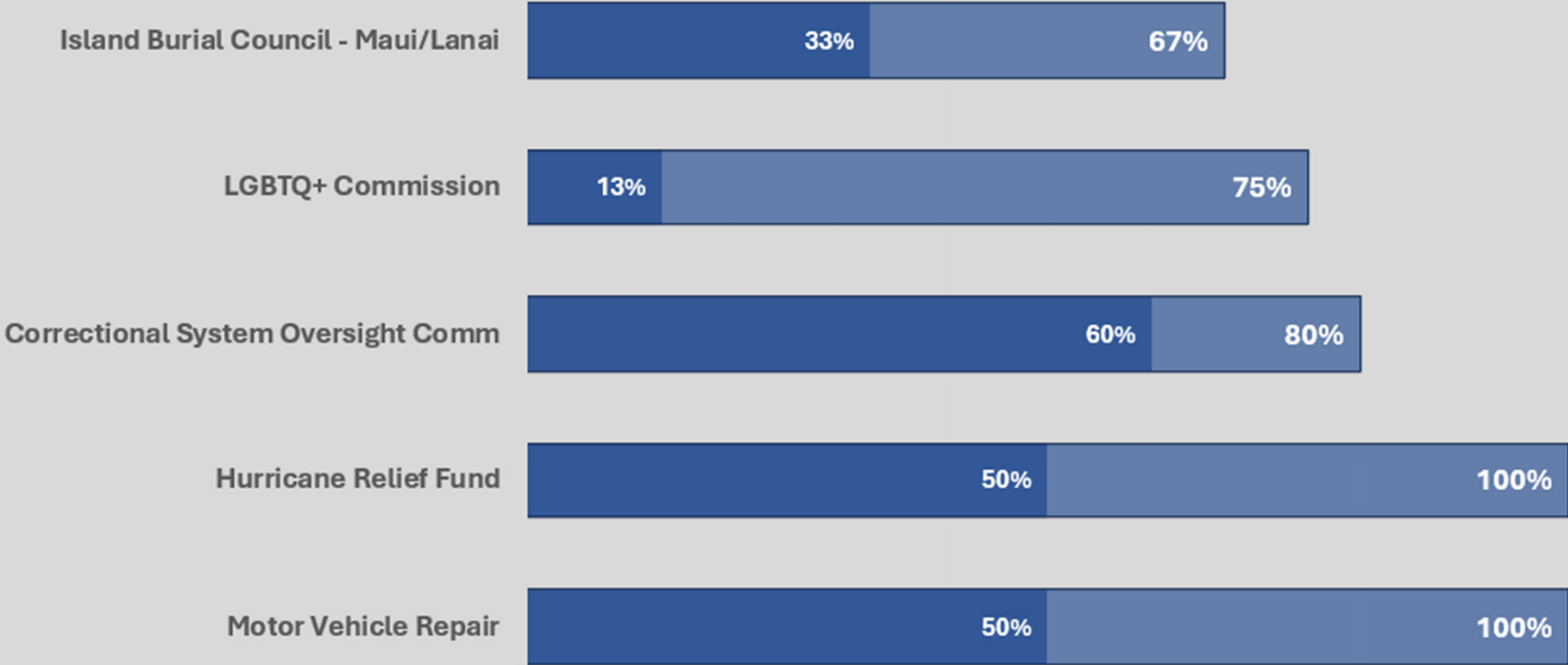


## Boards < 70%





# Board Highlights: Most Improved



2024	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
<b>Training statistics</b>													
# of In-Person Trainings	1	0	0	0	0	1	1	1	0				4
# of People Trained In Person	51	0	0	0	0	80	10	16	0				157
# of On-Line Trainings (Self-Directed)	958	707	487	450	423	938	2,393	6,225	1,280				13,861
# of Lobbyists Law Trainings	186	52	29	17	17	5	7	8	11				332
# of Training Webinars	3	1	1	1	2	0	1	1	1				11
# of Participants in Training Webinars	106	13	7	64	20	0	15	15	19				259
<b>Attorney of the Day</b>	118	89	94	97	97	97	108	79	91				870
<b>New assignments</b>													
Advisory Opinion	0	0	0	0	0	0	0	0	0				0
Complaint	67	25	39	25	26	27	34	27	43				313
Gifts/Invitations/Travel	21	24	30	24	27	39	33	28	33				259
Guidance	2	0	2	1	3	1	0	3	2				14
Judicial Selection Comm'n	6	0	5	4	1	2	3	4	1				26
Training Request	0	0	0	0	0	0	0	0	0				0
Record Request	1	1	0	0	1	0	0	1	0				4
Project/Other	6	1	1	4	1	2	3	1	4				23
<b>Total</b>	<b>103</b>	<b>51</b>	<b>77</b>	<b>58</b>	<b>59</b>	<b>71</b>	<b>73</b>	<b>64</b>	<b>83</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>639</b>
<b>Closed Assignments</b>													
Advisory Opinion	0	0	0	1	0	0	0	0	1				2
Complaint	67	26	26	33	22	38	41	17	46				316
Gifts/Invitations/Travel	21	22	35	24	25	37	35	23	40				262
Guidance	1	3	0	0	3	1	2	1	1				12
Judicial Selection Comm'n	7	0	4	5	1	2	2	3	2				26
Training Request	0	0	0	0	0	0	0	0	0				0
Record Request	1	1	0	0	1	0	0	1	0				4
Project/Other	2	2	2	2	4	2	1	2	3				20
<b>Total</b>	<b>99</b>	<b>54</b>	<b>67</b>	<b>65</b>	<b>56</b>	<b>80</b>	<b>81</b>	<b>47</b>	<b>93</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>642</b>
<b>Anti-Fraud</b>	2	5	5	3	4	4	6	6					

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT  
 FY 2025 (MONTH ENDING: September 30, 2024)  
 Appropriation Symbol: G-25-393-Y6

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
<b>A. PERSONNEL SERVICES</b>							
Staff Salaries	\$ 1,293,238.00	\$ 311,300.50	\$ 0.00	\$ 0.00	\$ 0.00	311,300.50	24.1%
Total Personnel Services	<b>\$ 1,293,238.00</b>	<b>\$ 311,300.50</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 311,300.50</b>	<b>24.1%</b>
<b>B. OTHER CURRENT EXPENSES</b>							
Office Expenses	16,640.00	2,940.10	0.00	0.00	0.00	2,940.10	17.7%
Intrastate Transportation and Travel	9,250.00	180.44	0.00	0.00	0.00	180.44	2.0%
Out-of-State Travel	12,660.00	1,243.23	0.00	0.00	0.00	1,243.23	9.8%
Equipment Rental and Maintenance	34,100.00	435.27	0.00	0.00	0.00	435.27	1.3%
Dues, Subscriptions, Training	20,910.00	2,317.48	0.00	0.00	0.00	2,317.48	11.1%
Newspaper Advertisements	1,100.00	0.00	0.00	0.00	0.00	0.00	0.0%
Comm'n Mtgs, Investigations, Hrgs	12,400.00	838.35	0.00	0.00	0.00	838.35	6.8%
Consulting Services	42,500.00	0.00	0.00	0.00	0.00	0.00	0.0%
Office Rent	131,880.00	16,849.10	0.00	0.00	0.00	16,849.10	12.8%
Total Other Current Expenses	<b>\$ 281,440.00</b>	<b>\$ 24,803.97</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 24,803.97</b>	<b>8.8%</b>
<b>C. CAPITAL OUTLAY</b>							
Office Furniture and Equipment	10,000.00	0.00	0.00	0.00	0.00	0.00	0.0%
Total Capital Outlay	<b>\$ 10,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0.0%</b>
<b>GRAND TOTAL (A+B+C)</b>	<b>\$ 1,584,678.00 <sup>1</sup></b>	<b>\$ 336,104.47</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 336,104.47</b>	<b>21.2%</b>

General Fund Allocation .....	<b>\$ 1,584,678.00</b>
Total Expenditures as of September 30, 2024 .....	\$ 336,104.47
Balance as of September 30, 2024 .....	\$1,248,573.53

<sup>1</sup> \$1,584,678 awarded by Act 2, SLH 2024 - Appropriation 393.

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT  
 FY 2025 (QUARTER ENDING: September 30, 2024)  
 Appropriation Symbol: G-24-395-Y6

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
A. ACCRUED VACATION/VACATION TRANSFERS							
Vacation Payout	\$ 220,000.00 <sup>1</sup>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.0%
Total Accrued Vacation/Vacation Transfers	<b>\$ 220,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0.0%</b>
<b>GRAND TOTAL</b>	<b>\$ 220,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0.0%</b>

Appropriation for Accrued Vacation/Vacation Transfer Payments .....	<b>\$ 220,000.00</b>
Total Expenditures as of September 30, 2024 .....	\$ 0.00
Balance as of September 30, 2024 .....	\$ 220,000.00

<sup>1</sup> Funds for Temporary Hazard Pay appropriated by Act 49, HB 2374, for \$220,000.

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT  
 FY 2025 (QUARTER ENDING: September 30, 2024)  
 Appropriation Symbol: G-24-396-Y6

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
A. ACCRUED VACATION/VACATION TRANSFERS							
Vacation Payout	\$ 16,553.00 <sup>1</sup>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.0%
Total Accrued Vacation/Vacation Transfers	<b>\$ 16,553.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0.0%</b>
<b>GRAND TOTAL</b>	<b>\$ 16,553.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>0.0%</b>

Appropriation for Accrued Vacation/Vacation Transfer Payments .....	<b>\$ 16,553.00</b>
Total Expenditures as of September 30, 2024 .....	\$ 0.00
Balance as of September 30, 2024 .....	\$ 16,553.00

<sup>1</sup> Funds for accrued vacation and vacation transfer payments appropriated by Act 2, SLH 2024, for \$16,553.00, carried over from FY 2024.

SUNSHINE LAW MEETING  
AGENDA ITEM IV

DISCUSSION OF MEDIA REPORTS CONCERNING ETHICS OR THE ETHICS COMMISSION  
SINCE THE LAST MEETING

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM V

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM VI

REQUEST FOR INFORMATION FROM THE NATIONAL CONFERENCE OF STATE  
LEGISLATURES REGARDING STATE-LEVEL RESTRICTIONS ON HIGH-LEVEL GOVERNMENT  
EMPLOYEES PARTICIPATING IN POLITICAL FUNDRAISING

No update. Staff are researching Ohio and Kentucky laws.



SUNSHINE LAW MEETING  
AGENDA ITEM VII

CONSIDERATION OF COMMISSION MANUAL

Attachment 1: Staff Overview

Attachment 2: Commission Manual 2024

**CONSIDERATION OF COMMISSIONERS' MANUAL**  
Consideration of Reference Manual for Commissioners' Use

**STAFF OVERVIEW**

Attached is a Commissioners' Manual prepared by the staff. The manual is a plain language guide to Ethics Commission procedures and laws. It is based on similar types of manuals from other jurisdictions and is intended as a convenient reference guide.



Hawai'i State  
Ethics Commission

# COMMISSIONERS' MANUAL

2024

(808) 587-0460  
<https://ethics.hawaii.gov>  
ethics@hawaii.gov

**OPERATION OF THE COMMISSION** **01**

- General Operation of the Commission
- Administration of the Law
- Meetings
- Political Activity by Commissioners

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**GENERAL DUTIES OF THE COMMISSION** **03**

- Guidance and Advisory Opinions
- Education
- Administration of Financial, Gifts, and Lobbying Disclosures
- Enforcement
- Contested Case Hearings

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**THE ETHICS CODE** **10**

- Application
- The Gifts Law
- Gifts Disclosures
- Fair Treatment
- Nepotism
- Conflicts of Interest
- Contracts
- Post-Employment
- Miscellaneous Provisions

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**THE LOBBYISTS LAW** **21**

- What is Lobbying?
- Requirements and Prohibitions Under the Lobbyists Law
- Lobbyists Registration
- Lobbying Expenditures and Contributions Reports

<https://ethics.hawaii.gov>



# Operation of the Commission

## General Operation of the Commission

The Ethics Commission operates through a twelve-person staff headed by an Executive Director, an Enforcement Director, and a Compliance Director. Responsibility for the Commission's day-to-day operations is delegated to the Executive Director. The Commission oversees the Executive Director.

## Administration of the Law

The Commission administers two laws: Hawai'i Revised Statutes ("HRS") Chapter 84, the State Ethics Code, and HRS Chapter 97, the Lobbyists Law. The Ethics Code applies to all state elected officials, employees, and members of state boards and commissions. The Lobbyists Law applies to individuals and organizations who lobby before the state legislature and state agencies. For both sets of laws, the Commission takes the following actions:

- It conducts educational programs, both mandatory and voluntary;
- It provides general guidance on the application of the law;
- It issues advice to individuals subject to these laws;
- It enforces the laws; and
- It suggests and promotes legislation to effectuate the purposes of these laws.

## Meetings

### A. Scheduling and Conduct of Commission Meetings

The Commission meets monthly. The Commission may vote on a meeting schedule. Currently, it meets every third Wednesday at 9:00 a.m. The meetings are conducted by the Chair or, in his or her absence, the Vice Chair. The Commission members annually vote for the Chair and Vice Chair.

### B. Format

On a meeting day, the Commission holds two separate back-to-back meetings: a public meeting and an adjudicatory meeting.

#### 1. Public Meeting

Content. The public meeting is open to the general public and must comply with Hawai'i's Sunshine Law. In this meeting, the Commission considers most of its business. This includes educational matters, the issuance of general guidance, consideration of legislation, and matters not specific to a particular set of facts or parties. HRS § 92-3.

Executive Session. During a public meeting, the Commission may hold an Executive Session that is closed to members of the public in limited circumstances. HRS § 92-5. To hold an Executive Session, a majority of the Commissioners must vote to have the Executive Session. The Commission must also publicly state the reason for holding the Executive Session. HRS § 92-4. Furthermore, before going into Executive Session, the Commission must allow public testimony on the specific agenda item. HRS § 92-3. Upon returning to the public session, the Commission must then give a brief summary of what occurred during the Executive Session.

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HRS § 92-4(b). If the agenda item requires an action or vote by the Commission, the vote generally must be conducted during the public portion of the meeting.

Notice. Notice of a Public Meeting must be posted at least six calendar days before the meeting. The notice must include the agenda and the meeting's date, time, and place. HRS § 92-7.

Minutes. The Commission must keep written minutes of its Public Meetings. Minutes are public records and must be made available within thirty days after the meeting, even if they have not yet been approved. HRS § 92-9.

Discussion of Commission Business Outside of a Meeting is Generally Prohibited. The Sunshine Law prohibits Commissioners from discussing matters before the Commission, or matters reasonably likely to come before the Commission in the foreseeable future, outside of the public meeting. This means that Commissioners may not meet, email, call, or otherwise communicate with each other about public meeting matters outside of a meeting. This does not mean that Commissioners may not socialize with each other or may not discuss adjudicatory matters with each other. However, public meeting matters must be discussed in a public meeting in full view of the public. There are some limited exceptions to this requirement. For example, two Commissioners are allowed to discuss public matter as long as there is no commitment to vote in a certain way. Also the Commission may form a Permitted Interaction Group of two Commissioners, or less than would form a quorum, to investigate a particular issue. Staff is available to advise Commissioners on permitted interactions.

## 2. Adjudicatory Meeting

Content. The Adjudicatory Meeting is closed to the public. In this meeting, the Commission considers confidential matters, usually involving the resolution of a matter specific to an individual or identified group of individuals. These include such items as the issuance of Advisory Opinions, approval of settlement agreements, consideration of Charges, and other matters related to the adjudicatory functions of the Commission or that are otherwise confidential. HRS § 92-6.

Notice. An Adjudicatory Meeting is not required to be noticed because it is not open to the public.

Minutes. The Commission is not legally required to keep minutes of the Adjudicatory Meeting, but this is done to record the proceedings.

## 3. Quorum

A quorum—a majority of the Commission members—is required to conduct business. HRS § 92-2.

## Political Activity by Commissioners

Commissioners and staff may not actively participate in political management or political campaigns. Staff is available to advise Commissioners on what activities are prohibited. HRS § 84-35.5.



# General Duties of the Commission

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## Guidance and Advisory Opinions

### A. Guidance

Commission staff may provide guidance to any individual on whether the facts and circumstances of their specific situation may constitute a violation of the Ethics Code or the Lobbyists Law. Commission staff respond to both telephone and written requests for advice. Guidance provided by staff advising that certain conduct is permissible is binding on the Commission in any subsequent enforcement proceeding unless material facts were omitted in the request for guidance. Hawai'i Administrative Rules ("HAR") § 21-4-1.

The Commission may also provide general guidance, like the quick guides on its website, to help the public understand the law. These guides are primarily educational and instructive for the public, and do not have the force and effect of law.

### B. Advisory Opinions

Advisory Opinions are formal written opinions that are issued by the Commission. A person may request an Advisory Opinion as to whether the facts and circumstances of their situation would constitute a violation of the Ethics Code or the Lobbyists Law. A request for an Advisory Opinion must be in writing. A request is deemed filed when the Commission has received all relevant facts that are necessary to the Commission's determination. Once a request has been filed, the Commission must issue an opinion within thirty days.

The Commission may issue a general advisory opinion addressing common situations or problems. A general advisory opinion is similar to ethics guidance, but it is public and has the force and effect of law for everyone.

Advisory Opinions are signed by all members of the Commission who agree with the opinion. Commissioners may also issue concurring or dissenting opinions. An opinion is binding on the Commission in any subsequent enforcement proceeding.

The Commission issues two versions of the Advisory Opinion: (1) a confidential, unredacted version of the Advisory Opinion to the requester; and (2) a public version that redacts or removes information identifying the requester. This second version is posted on the Commission's website and is available to the public to provide guidance as to how the Commission construes the law.

HRS § 84-31(2); HRS § 97-6(3); HAR § 21-4-1.

## Education

The Commission staff conducts education about ethics and lobbying laws. All state employees, legislators, and members of state boards and commissions are required to take ethics training and must repeat it every four years. Legislators, high-level state employees, and members of 17 boards are required to take a live training session, which is about 90 minutes long. All other state employees and state board members can take a self-directed, online training course, which is about 30 minutes long. HRS §§ 84-42 and -43.

The Commission also oversees a mandatory lobbyists training program. Under this requirement, all lobbyists are required to take a training course prior to registering as state lobbyist and must repeat it every two years. HRS § 97-2.2.

## **Administration of Financial, Gifts, and Lobbying Disclosures**

Commission staff administers financial, gifts, lobbying registrations and expenditure reports, and other types of disclosures that are required to be filed under the State Ethics Code or the Lobbyists Law. Disclosures are filed using the Commission's electronic filing system. In addition to managing the filing process, staff provides general information and assistance to filers and members of the general public.

## **Enforcement**

### **A. Commission's Role in Enforcement Proceedings**

On adjudicatory matters, the Commissioners function much like a panel of judges in determining whether or not there has been a violation of the Ethics Code or Lobbyists Law. This means that the Commission must be unbiased and neutral in evaluating cases. To preserve the Commission's neutrality and ensure that it does not prejudice a case, the Commission is shielded from details about any ongoing investigations or potential settlement agreements. Staff will seek the Commission's approval to authorize an investigation, and then staff will conduct the investigation. When the investigation is completed, staff will bring the matter to the Commission for further action, or closure. If a settlement agreement is appropriate, staff will negotiate and then present the proposed settlement agreement to the Commission for final approval, denial, or amendment. HRS §§ 84-31, 32; HRS § 97-6; HAR § 21, chapter 5.

### **B. Investigations**

Upon receipt of a complaint or other information that indicates a possible violation, staff may conduct a preliminary investigation, which may include reviewing publicly available documents or documents maintained by the state, and interviewing state employees and/or legislators.

The Commission may authorize a more formal investigation by issuing a Resolution to Open Investigation. A Resolution to Open Investigation is a document that defines the nature and scope of the investigation. It must be signed by at least three members of the Commission.

Once a Resolution to Open Investigation has been issued by the Commission, staff may extend its investigation to include interviews of non-state employees. It also gives the Commission the power to issue subpoenas. A subpoena must be signed by one member of the Commission, typically the Chair.

Investigations are confidential. By law, State agencies must cooperate with a Commission investigation.

HRS § 84-31(3) - (4); HRS § 97-6(1) & (4); HAR §§ 21-5-2 to 21-5-2.3

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### C. Complaints and Charges

A complaint is a broad term encompassing both informal allegations of violations and formal charges. Informal complaints can take many forms. Informal complaints may be submitted by telephone, email, mail, or other means, and may be done on an anonymous basis. The Commission also provides an online form on its website that allows members of the public to file a complaint.

A charge is a more formal allegation of a violation. It may be filed by a member of the public or initiated by the Commission. The person who alleges the violation is referred to as the complainant, and the person who is alleged to have committed the violation is referred to as the respondent.

The Commission may issue a charge on its own initiative if it believes that a violation has occurred. Staff drafts the charge on behalf of the Commission, which must be signed by at least three members.

A member of the public may file a formal charge by filing a short written statement of facts constituting the alleged violation, including the name of the respondent and the complainant's name and contact information. The charge must be signed by the complainant, under oath, declaring that the allegations are true and correct to the best of the complainant's knowledge.

HRS § 84-31(b); 97-6(b); HAR § 21-5-2; 21-5-2.1

### D. Settlement Agreements

The Commission may close a charge or settle a charge at any time. A settlement agreement between the Commission and the respondent ends the dispute upon certain agreed-upon terms. Staff negotiates a proposed settlement agreement with the respondent. The proposed settlement agreement will then be presented to the Commission for review. Staff will typically present the Commission with two documents: a formal Settlement Agreement, which spells out the allegations and the proposed settlement terms, and a draft Resolution of Investigation/Charge document, which is a summary of the settlement that will be published on the Commission's website.

The Commission then reviews the proposed settlement and may reject, amend, or approve it. If rejected, the Commission may proceed toward a contested case hearing or direct staff to negotiate another settlement. If amended, staff will present the amendments to the respondent for their agreement. The case will be settled upon the terms proposed in the settlement documents if approved. At that time, the Chair of the Commission, or the Chair's delegate, will sign the formal Settlement Agreement on behalf of the Commission.

HAR § 21-5-12

## E. Charges

Enforcement proceedings must begin within six years of the alleged violation. A proceeding is begun when a charge is filed by a member of the public or issued by the Commission. This is called tolling the statute of limitations. Stated differently, the Commission has six years to investigate and file a charge for an alleged violation.

Once a charge has been issued, the Commission must serve the charge upon the respondent. The respondent then has 20 days to respond to the allegations in the charge. The response is referred to as an answer.

After reviewing the answer, the Commission has several options. It may close the charge, settle the charge, issue an Informal Advisory Opinion offering guidance to the respondent, or issue a further statement of the alleged violation.

The Commission issues a further statement of alleged violation if, after reviewing the answer, the Commission determines there is probable cause to believe a violation has occurred and that further proceedings are merited. A further statement of alleged violation operates as an amended charge. The respondent is served with a copy of the further statement and has twenty days to file an answer to the further statement.

After an answer to the further statement is filed (or the deadline has passed), the Commission may then issue a notice of hearing. This hearing is referred to as a contested case or evidentiary hearing, and functions like a mini-trial where the Commission hears relevant evidence pertaining to the charge. The contested case hearing must be held within 90 days of the issuance of the notice of hearing, and the respondent must receive notice at least 15 days prior to the hearing. The further statement and its answer become public once the Commission issues the notice of hearing.

Upon issuance of the further statement, the Commission will issue a firewall order that will effectively divide staff into two groups: Charge Counsel and Commission Counsel. Charge Counsel's role is to prosecute the charge. Commission Counsel advises the Commission. Charge Counsel may not engage in ex-parte communications about the case with the Commission or Commission Counsel. This means that Charge Counsel may not communicate with the Commission or with Commission Counsel about the case without the participation of the respondent.

HRS § 84-31(b) and (c); HRS § 97-6(b) and (c). HAR § 21-5-2.7

## Contested Case Hearings

### A. General Process

Contested case hearings are conducted according to HRS chapter 91, the Hawai'i Administrative Procedures Act ("HAPA"). During the contested case process, the Commission acts in a quasi-judicial role. Commission Counsel will advise and guide the Commission throughout the process, while Charge Counsel and the respondent will present their respective case before the Commission.

The Chair serves as the presiding officer if the Commission hears the matter directly. Alternatively, the Commission may appoint a hearing officer to adjudicate the case.

The contested case hearing process generally is divided into three sections: pre-hearing, hearing, and post-hearing.

HRS § 91-9 to -12, -14, and -15

## **B. Motions**

Motions may be filed by the parties during any stage of the hearing process. In most cases, motions will generally be filed and heard prior to the date of the contested case hearing, according to a pre-hearing schedule set by the Commission. A motion is essentially a request for the Commission to rule on either a substantive legal issue or a procedural matter.

The party filing the motion must file it with the Commission and serve it on the opposing party. An order setting a hearing on the motion is then issued by Commission, specifying the hearing date and briefing deadlines. Typically, a motion schedule follows this format:

- Motion;
- Memorandum in Opposition (this is in response to the Motion);
- Reply to Memorandum in Opposition (this is Movant's reply to any arguments raised in the Memorandum in Opposition); and
- Hearing on the motion

HAR § 21-5-6.5

## **C. Pre-Hearing Matters**

### **1. Status Conferences**

The Commission may request a status conference at any time. Status conferences allow the parties to provide information to the Commission and discuss possible settlement.

HAR § 21-5-3.5

### **2. Pre-Hearing Conference**

The Commission may schedule a pre-hearing conference to discuss procedural matters with the parties. Unless the Commission orders otherwise, the parties will file a pre-hearing conference statement that discloses the party's theory of the case, the facts the party intends to prove, and the identity of the witnesses the party intends to call. The parties will also provide the exhibits they intend to introduce.

The Commission may issue a pre-hearing order to address procedural matters such as filing deadlines.

HAR § 21-5-8

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## D. Contested Case Hearings

Contested case hearings are open to the public. Commission Counsel will guide the Commission in the conduct of the hearing. The presiding officer convenes and conducts the hearing. The general hearing process is as follows:

### 1. Opening Statements

The parties have the opportunity to make opening statements. The presiding officer may impose reasonable time limits on these statements or request them in writing.

### 2. Examination of Witnesses

Witnesses are examined in the following order:

- Direct examination by the party calling the witness.
- Cross-examination by the other party is limited to issues raised on direct examination.
- Redirect examination is limited to issues raised on cross-examination.
- Recross examination is limited to issues raised on redirect examination.
- Witnesses may also be examined by the Commission at any time.

### 3. Closing Arguments

The parties have the opportunity to make final closing arguments. Charge Counsel (or the complainant in the case of a charge initiated by a member of the public) will present first, followed by the respondent.

Rebuttal arguments are limited to matters raised by the other party during that party's final or closing argument. In addition, the presiding officer may impose reasonable time limits with respect to hearing final arguments, or may ask for them in writing.

### 4. Evidentiary Standard

In conducting a contested case hearing, the Commission is generally not bound by the rules of evidence and may admit any oral or documentary evidence relevant to the charge, provided that the Commission's findings must be based on competent and substantial evidence. Charge Counsel, or the party bringing the charge, has the burden of proof and the burden of persuasion.

HRS § 84-31(c); 97-6(c); HAR § 21-5-7.1

## E. Post Hearing

At the conclusion of a hearing, the Commission will issue a written decision. The decision must be signed by three or more Commissioners. Commissioners may also issue concurring or dissenting decisions.

The decision sets forth the Commission's final decision and order on the underlying charges, including separate findings of fact and conclusions of law. The Commission may direct the prevailing party to submit proposed findings of fact and conclusions of law.

Once the decision is rendered, the Commission shall notify the parties by delivering or mailing a certified copy of the decision and order, findings of fact, and conclusions of law.

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If there is a finding of a violation, the Commission has the power to impose an administrative fine of up to \$5,000 per violation. In addition, any contract entered into by the State in violation the ethics law is voidable, and the Attorney General is authorized to enforce all legal and equitable remedies available to it.

The Commission, however, does not have the authority to discipline or remove state employees or officials. The Commission's role is to issue a post-hearing written complaint and refer the matter either to the governor or, in the case of a legislator, to the legislature. In the case of former employees, the complaint is referred to the Attorney General. The complaint is a statement of facts alleging a violation of the Ethics Code. It must be issued within 30 days of the rendering of the Commission's final decision. The legislature or the governor will notify the Commission of any disciplinary action taken or the fact that no disciplinary action was taken.

The Commission's decisions may be appealed to the Circuit Court and from there, could be appealed to the appellate courts.

HRS §§ 84-16, -32, -33, and -39; HRS § 97-7; HAR §§ 21-5-9 and -9.1





# The Ethics Code

The purpose of the Ethics code is to preserve the public's confidence in state government and state employees. Toward this end, the Ethics Commission is mandated to liberally construe the Ethics Code to promote high standards of ethical behavior.

Haw. Const. art. XIV; HRS Chapter 84, Preamble, HRS § 84-1

## Application

The Ethics Code applies to all state legislators and employees, including members of boards and commissions, even if they are volunteers. It does not apply to state judges and justices, who are under a separate code of judicial ethics administered by the Hawai'i Supreme Court. State legislators and members of State-created task forces are exempt from certain provisions of the Ethics Code.

HRS § 84-2

## The Gifts Law

The Gifts law prohibits state employees and legislators from accepting gifts if it is reasonable to infer that the gift is intended to influence the employee or legislator in performing their state duties, or to reward them for state action. HRS § 84-11.

The law does not have a dollar amount threshold. It is based on appearances. If a reasonable person could infer that a gift is intended for an improper purpose, the gift is prohibited. In determining whether or not a gift is prohibited, the Commission considers three factors:

### 1. The relationship between the donor and the recipient.

A gift is generally prohibited if the recipient is in a position to take state action specifically affecting the donor. Such gifts appear to be attempts to influence or reward the recipient for state action. Relationships in which gifts are generally prohibited include lobbyists and legislators, regulated entities and those who regulate them, contractors or vendors and the potential purchaser, anyone involved in a contested case hearing and those state employees taking part in the hearing.

### 2. The value of the gift.

The more valuable a gift is, the more likely it is offered for an improper purpose.

### 3. Whether or not the gift supports a state purpose.

Gifts that support a state purpose are more likely to be acceptable. For example, a gift of travel to a conference that educates a state employee on a useful topic in their state position will likely serve a state purpose.

HAR § 21-7-2(b)



### Types of Permissible Gifts:

There are certain gifts that are generally acceptable under the Commission's rules. This generally applies to specific cases where no reasonable person would view the gift as being offered for an improper purpose. Permissible types of gifts include:

- Lei
- Discounts, services, or other benefits that are offered to the public at-large
- Grants or scholarships
- Promotional items with no resale value, such as pens or calendars
- Rewards or prizes that are won in the recipient's personal capacity
- Gifts that serve a state purpose and are offered by a governmental entity
- Modestly priced awards, such as a plaque
- Gifts received by a spouse or child that is clearly offered because of the spouse or child's own relationship
- Unsolicited gifts of nominal value offered as a token of appreciation to a teacher, medical professional, or similar service provider (e.g., small holiday gifts offered by students to teachers)



HAR § 21-7-3

### Common Types of Gifts:

#### Tangible Items

These are typically things like gift baskets and other tangible items. In determining whether or not a gift of this type is acceptable, the Commission will review the gift by analyzing it under the three factors test: (1) the relationship between the donor and the intended recipient; (2) the value of the gift; and (3) whether acceptance of the gift serves a state purpose.

#### Invitations to Events

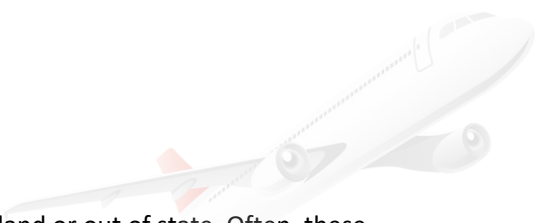
These may include invitations to conferences, grand openings, sporting events, cultural celebrations, community celebrations, and entertainment events. Again, these types of gifts are analyzed using the three factors test:

*The relationship between the donor and the recipient:* Invitations are sometimes offered by lobbyists or others with interests before the state. For example, a lobbyist may invite a legislator to a luncheon event that discusses issues of interest, or a non-profit organization that also lobbies may invite a legislator to a cultural celebration. Invitations from lobbyists, state contractors, those regulated by the State, and others with interests that may be affected by the intended recipient of the invitation raise significant concerns.

*The value of the gift:* In determining the value of attendance at an event, the Commission looks at what a public member would pay to attend. This is typically the ticket price.

*Whether acceptance of the invitation would serve a state purpose or provide a state benefit:* Sometimes, state officials are invited to events for protocol purposes. For example, a legislator may be asked to give a speech at a nonprofit banquet held to honor volunteers, or the governor may be asked to present awards to notable citizens at a similar event. The Commission has adopted a rule allowing for protocol invitations provided, among other things, that the primary purpose of the event is to raise money or awareness for a charitable organization, the tax-deductible value of attendance is fairly low, the event is open to the public, and no reasonable person would view the invitation as being an attempt to influence the state official.

HAR § 21-7-4, -6



### Gifts of Travel

State employees and legislators may be invited to travel interisland or out of state. Often, these trips are to attend conferences. If a non-state entity or donor is paying for some or all of the travel expenses, the recipient can request ethics guidance via an online Travel Questionnaire that is posted on the Commission's website.

Upon receipt of a request for travel guidance, staff will review the information submitted and provide verbal or written guidance to the requesting party. When reviewing gifts of travel, the main factors are who is paying for the travel, the relationship between the donor and the recipient or the recipient's state agency, and the purpose of the travel.

Often, as in the case of attendance at a conference, acceptance of the travel provides a significant state benefit that allows acceptance. The recipient is instructed to file a gift disclosure if the travel expenses are greater than \$200.

HAR § 21-7-5

### **Gifts Disclosures**

State legislators and employees must publicly disclose gifts that meet certain threshold requirements. If a legislator or employee receives, from a single source, one or more gifts valued at more than \$200, and the source has interests that may be affected by the action of the legislator or employee, then those items must be reported on a gift disclosure form.

Gifts disclosures are due on an annual basis by July 31, and covers gifts received during the preceding fiscal year (July 1 through June 30).

Some gifts are exempt, such as gifts from close relatives, exchanges of approximately equal value on holidays or special occasions, political campaign contributions, and gifts that, within 30 days, are returned or given to a public body or charity.

Gift disclosures are public documents and are published on the Commission's website.

HRS § 84-11.5; HAR §§ 21-7-8 and -9

### **Fair Treatment**

The Fair Treatment law prohibits a state employee or legislator from using his or her state position to unfairly benefit or advantage him or herself or anyone else. Examples of violations of this section include:

- Purchasing supplies from a personal friend without going through any procurement process
- Accepting the offer of a personal discount on a tablet from the employee's IT provider
- Taking home a state lawn mower for personal use

There are also several specific provisions under the Fair Treatment law that expressly prohibits certain types of actions or conduct:

1. *Using Position to Gain Employment.*

The first subsection prohibits a state employee or legislator from using his or her state position to try to get private work. This does not mean a state employee cannot refer to their state employment in a resume. It does, however, prohibit the use of their state position to create an





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unfair advantage. For example, a state procurement officer may not meet with one of the employee's state contractors and suggest that the contractor hire the employee for private part-time work.

#### 2. "Double" Compensation for Official Work.

The second subsection prohibits a state employee or legislator from accepting private compensation for performing their state duties. For example, a state employee who gives educational speeches as part of his or her job may not accept an honorarium for giving such a speech.

#### 3. Misappropriating State Resources.

The third subsection prohibits a state employee or legislator from using resources for private business activities. State resources include state time, facilities, equipment, vehicles, and email. Private business activities include work for a private company, private employer, or non-profit organization conducting private sales, fundraising activities, and political campaign work. Examples of violations include:

- A state employee who owns a real estate company uses a state computer to research property listings.
- A state employee makes ribbon leis for graduation ceremonies and sells them at work.
- A state employee sells candy at work to benefit their halau.
- A state employee uses state email to endorse a candidate for legislative office.

#### 4. Financial Transactions with Subordinates.

The fourth subsection prohibits a state employee or legislator from engaging in a substantial financial transaction with a subordinate or a person or business the employee or legislator supervises or inspects. For example, a state supervisor may not sell his or her car to a subordinate. Similarly, a state inspector may not enter into a private business partnership with a business he or she inspects.

Exceptions to the Fair Treatment Law. There are two exceptions to the Fair Treatment law.

First, legislators are exempt from this law when engaging in official legislative action. Official legislative action refers to core law-making activities such as introducing bills and resolutions and debating and voting on measures. This exception is based on the State Constitution, which provides legislators with broad immunity for any actions taken when engaged in a legislative function.

Second, members of state task forces are also exempt from this law when engaging in official task force action.

Both legislators and task force members must disclose interests that may be affected by their actions.

HRS § 84-13; HAR § 21-7-10

## Nepotism

The Nepotism law prohibits most state employees from hiring, supervising, or contracting with a relative or household member. The law applies to all employees and state officials within the executive branch, Department of Education, University of Hawai'i, and the Hawai'i Health Systems Corporation; it does not apply to employees and agencies within the legislative and judicial branches.

The Nepotism law primarily covers the following employment and procurement actions:

- Appointing, hiring, retaining, demoting, discharging, or terminating a relative or household member;
- Supervising a relative or household member; and
- Contracting with or taking official action involving a contract with a business if the employee knows or reasonably should know a relative or household member is an executive officer or holds a substantial ownership interest.

A relative includes a parent, grandparent, stepparent, child, grandchild, stepchild, foster child, adopted child, sibling, half-sibling, stepsibling, parent's sibling, first cousin, sibling's child, spouse, spouse's parent, child-in-law, or sibling-in-law, or any individual who has become a member of the employee's immediate family through the Hawaiian hanai custom.

A household member is anyone who resides in the employee's dwelling unit.

Thus, for example, a state employee cannot approve the hire of the employee's cousin. Similarly, the employee also cannot participate in the potential hire's interview panel. The law does not prohibit the agency from hiring a relative or household member but does prohibit an employee from being involved in a hiring process that involves a relative or household member.

The law also prohibits an employee from supervising a relative or household member, which may require an employee to be transferred or otherwise removed from a position.

The Nepotism Law provides that the Commission can grant waivers from this law for good cause. Staff receives letters from employees or agencies seeking exemptions from this law. Staff reviews these requests and may grant an exception if there is a substantial reason for doing so.

In evaluating these requests, staff look at:

- The difficulty in staffing the position as demonstrated by factors, including:
  - The recruitment process, including how long the position was advertised and where it was advertised.
  - The location of the position (more remote locations may be more difficult to staff).
  - Any unique qualifications required by the position.
- Whether the agency has made substantial good faith efforts to mitigate concerns about the effect of nepotism, including establishing a recusal plan. Whether the benefits to the public in granting the request outweigh the drawbacks.
- Staff may bring requests for a waiver to the Commission for their input or decision when it is unclear whether the waiver should be granted.

HRS § 84-13.2

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## Conflicts of Interests

The Conflicts of Interests law regulates conflicts between a state employee's state duties or actions and the employee's private financial interests. The Conflicts of Interests law contains several sections, including the following:

### A. HRS § 84-14(a): Official Action/Disqualification

This section prohibits a state employee (it does not apply to legislators) from taking state official action directly affecting a business or undertaking in which the employee has a financial interest. In other words, if a state employee has a financial interest in a business, the state employee cannot take official action directly affecting that business.

Official action has a specific definition. It means any action that requires discretion. This includes not only final decision-making but also recommendations or suggestions.

Financial interest also has a specific definition. It includes:

- An ownership interest in a business. A creditor interest in an insolvent business.
- An employment, or prospective employment for which negotiations have begun.
- An ownership interest in real or personal property.
- A loan or other debtor interest.
- A directorship or officer-ship in a business.

Notice that a financial interest may include a volunteer position that does not financially benefit the employee. Whether or not it is compensated, any directorship or officership position is a financial interest. Further, an employee's financial interests include not only their personal financial interests but also those of their spouse or dependent children. Thus, if the employee's spouse is employed by a company, then the employee has a financial interest in that company.

Business is defined to include both profit and non-profit organizations.

Examples of conflicts requiring recusal:

- An employee works part-time for a company and is called upon to review a proposal submitted by that company.
- A state board member is asked to review a funding request from a non-profit organization, and the board member's spouse works for the non-profit.
- A state employee owns a substantial amount of stock in an IT company and is asked to recommend whether that IT company should provide services for the State.

HRS §§ 84-3 and -14(a)

### B. HRS § 84-14(b): Acquisition of New Financial Interests

This provision prohibits a state employee (it does not include legislators) from acquiring a financial interest in a business or other undertaking if there is reason to believe that the employee will be called upon to take official state action directly involving that business or undertaking. The "reason to believe" standard means that there is a reasonable likelihood. In other words, a state employee cannot acquire a new financial interest where there is a reasonable likelihood that it will create a future conflict of interest.

Examples of prohibited actions under this provision include:



- A state inspector who periodically inspects a care home seeks a part-time job at the care home.
- A state board member who considers applications from a non-profit organization is asked to become a member of the non-profit's board of directors.
- A state employee who oversees a contract for her agency seeks a part-time position with the contractor.

HRS § 84-14(b); HAR § 21-8-2

**C. HRS § 84-14(c): Assisting or Representing Another for Contingent Compensation**

This provision prohibits a state legislator or employee from assisting or representing another person or business before either a state or county agency for contingent compensation on any transaction involving the state.

This provision rarely comes up. An example of a prohibited activity is a state legislator acting as a private real estate sales agent for a client selling property to the state or a county.

HRS § 84-14(c)

**D. HRS § 84-14(d): Assisting or Representing Another Before your Agency or on Matters in which you have Participated or will Participate**

This provision prohibits a state legislator or employee from being compensated to assist or represent another person or business on:

- A matter in which the legislator or employee has participated or will participate; or
- With respect to a state employee on a matter before the employee's agency and with respect to a legislator on a matter before the legislature.

This provision applies to the assistance or representation of others, whether a business or another person. It is intended to prohibit these others from hiring state employees to assist them in transactions involving the State in the belief that employing state legislators or employees will give them special consideration.

Examples of prohibited actions under this section include:

- A state employee seeks to represent a private client on an application before the employee's department.
- An organization seeks to hire a legislator to serve as their lobbyist.
- A state board member is employed by an IT company. The department to which the board is attached enters into a contract with the company, and the company directs the board member to work on the contract.

HRS § 84-14(d); HAR § 21-8-3



## Contracts

The Ethics Code contains two provisions about contracts. The first requires public notice of certain contracts; the second prohibits a state agency from entering into a contract in certain situations where a potential contractor is assisted or represented by a state employee or former state employee.

### A. Public Notice of Certain Contracts.

This provision requires a state agency to post public notice of its intent to enter into a contract with a state employee or legislator or a business controlled by a state employee or legislator if the value is in excess of \$10,000, and the contract did not go through a competitive bid or proposal process.

This provision is intended to provide public notice of sole-source contracts awarded to state employees or legislators. These contracts are not prohibited, but the intent is to make them public and to provide some scrutiny of them.

HRS § 84-15(a)

### B. Prohibition on Agencies Entering into Certain Contracts.

This provision prohibits a state agency from entering into a contract with any person or business where that person or business is represented or assisted by someone who has been an agency employee within the past two years and who participated in the matter with which the contract is directly concerned. For example, if a state employee worked on a Request for Proposals for a project and then, within two years, was hired by a business to assist in submitting a response to the RFP, then the agency is prohibited from contracting with that person or business. This section is intended to prohibit the appearance (or actuality) of a business gaining an unfair advantage by hiring an involved state employee. It could result in the cancellation of the contract.

HRS § 84-15(b)

## Financial Disclosures Law

### A. Financial Disclosure Law

The Financial Disclosure law, HRS § 84-17, requires state elected officials, members of state boards and commissions, and state employees who hold certain positions to file an annual "Disclosure of Financial Interests" with the Commission. The purpose of such filings is to ensure governmental accountability and transparency by identifying financial interests that may conflict with a state official's duties and responsibilities to the public.

### B. Who Must File?

Under the statute, the following persons are required to file a regular financial disclosure with the Commission:

- State elected officials (governor, lieutenant governor, state legislators, Office of Hawaiian Affairs trustees, and constitutional convention delegates).
- State board and commission members who serve on boards that are not solely advisory and whose original terms of office are more than one year.
- State employees who hold certain state positions (e.g., directors and deputies of major departments, division chiefs, fiscal or purchasing officers, hearing officers, etc.).

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In addition, during an election year, candidates for state elective office are required to file a candidate financial disclosure.

HRS §§ 84-17(b) and (c)

### C. Filing Deadlines

Initial filers must file an initial disclosure within 30 days of being elected, appointed, or hired to a state position that is subject to the financial disclosure requirements.

Thereafter, filers are required to file an annual disclosure with the Commission. State legislators must file by January 31, and employee and state board filers must file by May 31. Filers must also file an “exit disclosure” within thirty days of terminating their state position unless they have filed a disclosure with the past 180 days.

In an election year, candidates for state elective offices are required to file a candidate financial disclosure no later than ten days after the Office of Election’s nomination filing deadline pursuant to HRS § 12-6.

HRS § 84-17(b); HAR § 21-3-8

### D. Public Availability of Financial Disclosures

The majority of the financial disclosure statements are confidential. However, certain high-ranking officials are subject to a public disclosure requirement:

- The governor, the lieutenant governor, members of the legislature, candidates for and delegates to the constitutional convention. Trustees of the Office of Hawaiian Affairs, and candidates for state elective office.
- Directors of state departments and their deputies.
- The administrative director of the State.
- The president, vice president, assistant vice presidents, chancellors, members of the board of regents, and provosts of the University of Hawaii.
- Members of the board of education, superintendent, deputy superintendents, state librarian, and deputy state librarian of the department of education.
- Administrative director and deputy director of the courts.
- Administrator and assistant administrator of the Office of Hawaiian Affairs.
- Members of the following state boards and commissions:
  - Agribusiness Development Corporation
  - Board of Agriculture
  - State Ethics Commission
  - Hawaii Community Development Authority
  - Hawaiian Homes Commission
  - Hawaii Housing Finance and Development Corporation
  - Board of Land and Natural Resources
  - State Land Use Commission
  - Legacy Land Conservation Commission
  - Natural Area Reserves System Commission
  - Natural Energy Laboratory of Hawaii
  - Hawaii Public Housing Authority
  - Public Utilities Commission
  - Commission on Water Resource Management Commission
  - Stadium Authority

HRS § 84-17(d)

## E. What Financial Interests Must Be Reported?

Candidates for elected office are only required to report their own financial interests. All other filers must additionally report their financial interests, as well as financial interests held by their spouse and dependent children.

The types of financial interests that must be reported include:

- The source and amount of all income of \$1,000 or more for services rendered.
- The amount and identity of every ownership or beneficial interest in a business with a value of \$5,000 or more or equal to ten percent ownership.
- Officership, directorship, or trusteeship positions.
- Creditors to whom the value of \$3,000 or more is owed, excluding retail installments for purchasing consumer goods.
- Real property held, transferred, or obtained.
- The names of clients assisted before state agencies.
- Any creditor interest in an insolvent business having a value of \$5,000 or more.

In addition to these types of financial interests, legislators are required to disclose lobbying affiliations, such as a business partner, employer, an officer or director of the legislator's employer, or any registered lobbyist who is a client of the legislator and provided at least \$5,000 of income during the preceding calendar year.

HRS § 84-17; HAR § 21-3-3

## Post-Employment

To prevent "influence peddling," a state employee or legislator is prohibited from taking certain actions for a period of time after leaving state employment. The restrictions are intended to prevent the appearance that those who immediately hire former state employees or legislators to represent them are gaining an unwarranted advantage in their dealings with the State.

### A. Confidential Information

A former employee or legislator cannot use or disclose confidential state information. This restriction is in place for as long as the information is confidential. HRS § 84-18(a).

### B. Representation by a Former Legislator

A former legislator cannot be paid to represent another person or business on a matter in which the legislator participated, on a matter involving action by the legislator, or on any rule-making action. This restriction is in place for one year after the legislator leaves their state position.

"Represent" means communicating and includes making phone calls, participating in meetings, signing letters or proposals, and sending emails. This provision prohibits a company from hiring a former legislator to serve as their lobbyist.

HRS §§ 84-18 (b) and (g)

### C. Representation by a Former Employee

This is very similar to the restriction on former legislators. For one year after leaving state service, a former employee may not be paid to represent another person or business on a matter in which the employee participated or on a matter before their former agency or

subdivision thereof. Again, this restriction is in place for one year after the employee leaves their state position.

The term “agency or subdivision thereof” does not necessarily mean the former employee’s department. In determining what the former employee’s former agency or subdivision was, the Commission may consider:

- The size of the agency.
- The likelihood the employee would have an unfair advantage before the agency.
- The former employee’s position within the agency.
- Whether the former employee will communicate with former colleagues in the agency.
- Whether the former employee has confidential information that will provide an unfair advantage.
- Any other factors that could reasonably give the appearance of impropriety.

HRS § 84-18(c) HAR § 21-9-1

#### **D. Ban on Lobbying for Certain High Ranking Former Employees**

Certain former employees, such as the Governor, Lieutenant Governor, cabinet members, and members of highly influential state boards, are prohibited from lobbying for one year after leaving their state position. For example, the former director of a department cannot be hired to lobby the legislature on any matter.

HRS § 84-18(e)

#### **E. Post-Employment Exceptions**

There are two exceptions to the Post Employment Law:

First, the law does not apply to former employees employed for less than 181 days. (However, the employee is still prohibited from disclosing any confidential information.) Thus, for example, a person who was employed as a legislative session worker and leaves employment after the session is not prohibited from serving as a paid lobbyist before the legislature.

Second, the law does not prohibit a state agency from contracting with a former employee or legislator to act on a matter on behalf of the State. This exception allows the State to hire a former employee back to continue or finish working on a project.

HRS § 84-18(d) and (f)

## **Miscellaneous Provisions**

#### **A. Use of Washington Place**

Washington Place is the official residence of the Governor. The Ethics Code prohibits the Governor from using Washington Place for campaign events.

HRS § 84-13.5

#### **B. Prohibition on Governor Holding Outside Employment**

The Ethics Code prohibits the Governor from having other employment, maintaining a controlling interest in a business, or receiving any other wages, honorarium, stipend, or allowance.

HRS § 84-14.5







# The Lobbyists Law

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## What is Lobbying?

There are generally two types of lobbying activities that are subject to regulation under the State Lobbyists Law, HRS Chapter 97.

### Direct Lobbying

Direct Lobbying is communicating directly or through an agent with any official in the legislative or administrative branch to attempt to influence legislative or administrative action. Legislative action is essentially action on a matter before the legislature. It includes bills, resolutions, and appointments. Administrative action is rulemaking.

Examples of direct lobbying include:

- Meeting with a legislator to advocate for the passage of a bill.
- Sending a letter to the Governor asking him or her to veto a bill.
- Testifying on a bill before a legislative committee.
- Testifying before a state agency on a proposed rule.

### Indirect or Grassroots Lobbying

Indirect lobbying is soliciting others to communicate with a legislative or administrative official to attempt to influence legislative or administrative action.

Examples of indirect or grassroots lobbying include:

- Buying an advertisement that tells the public to contact their legislator about a bill.
- Establishing a website directing the public to contact a legislator about certain bills.

HRS § 97-1

## Requirements and Prohibitions Under the Lobbyists Law

The Lobbyist Law is primarily a disclosure law. First, it requires individuals who meet certain threshold requirements to register as lobbyists with the Commission. Second, the law requires registered lobbyists and other individuals and organizations that meet certain requirements to file lobbying expenditures and contributions reports with the Commission, periodically.

There are also a number of restrictions and mandates:

Lobbyists are prohibited from accepting or agreeing to accept contingent compensation. For example, a lobbyist cannot accept a bonus for succeeding in passing a bill.

Lobbyists and their clients are prohibited from giving a gift to a legislator or state employee that is otherwise prohibited under the State Ethics Code. In other words, if the Ethics Code prohibits a legislator from accepting a gift, then reciprocally, a lobbyist is likewise prohibited from giving the gift.

Lobbyists are required to take a mandatory training course prior to registering as a lobbyist, and must retake training at least every two years.

HRS §§ 97-2, -2.2, -3, -5, and -5.5

## Lobbyists Registration

An individual must register as a lobbyist if he or she is paid to lobby and meets other threshold requirements. Specifically, an individual must register if he or she:

- Receives or expects to receive \$1,000 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying;

### OR

- Lobbies for pay or other consideration, and either:
  - Engages in lobbying more than five hours in any month;
  - Engages in lobbying over ten hours in any calendar year; or
  - Makes expenditures of \$1,000 or more of the person's or any other person's money, lobbying during a lobbying reporting period.

Individuals must register with the Commission within five days of becoming a lobbyist. Each registered lobbyist must also renew their registration within ten days prior to the start of the legislative biennium (which begins every odd-numbered year).

There is no fee to register as a lobbyist. Lobbyists registration is administered via the Commission's electronic filing system.

HRS §§ 97-1, -2, -2.5

## Lobbying Expenditures and Contributions Reports

The Lobbyists Law requires the periodic filing of lobbying expenditures and contribution reports with the Commission. The purpose of these reports is to provide transparency regarding the amounts and types of expenditures and contributions being made by the lobbyist and their clients for the purposes of lobbying.

All registered lobbyists must file these reports. In addition, individuals or organizations engaged in lobbying must file a report if they either:

- Employ or contract for the services of a lobbyist or
- Spend \$1,000 or more of their own or any other person's money during a lobbying reporting period for the purpose of lobbying.

These reports are due three times per year:

- January 31, covering May 1 through December 31 of the previous year.
- March 31, covering January 1 through the last day of February.
- May 31, for the period covering March 1 through April 30.

Also, if there is a Special Session and an individual or organization lobbies, they must file a report covering the period of May 1 through sine die (the last day) of the Special Session.

Lobbying expenditure reports are filed via the Commission's electronic filing system.

HRS § 97-3

### Types of Reportable Expenditures

Types of expenses that are reportable include:

- Drafting or providing testimony
- Discussing lobbying strategy
- Advertising
- Monitoring bills when the purpose is to engage in lobbying
- Time spent waiting to testify when the person waiting is:
  - Being paid to lobby during that waiting time and is not performing other work unrelated to that lobbying activity;
  - Preparing, reviewing, or strategizing on the testimony; or
  - is otherwise engaged in lobbying.

HAR § 21-10-8

### Types of Reportable Contributions

The reports must also include contributions made for the purpose of lobbying. In some cases, legal protections prohibit the disclosure of a contributor. The reports generally require disclosure when the contributor knows, or reasonably should know, that the primary purpose of the contribution is to support lobbying.

Reportable contributions include:

- An individual gives \$50 to a nonprofit organization whose primary purpose is lobbying.
- A trade organization asks its member organizations to contribute funds to the trade organization's lobbying effort.

HAR § 21-10-6



SUNSHINE LAW MEETING  
AGENDA ITEM VIII

ADMINISTRATIVE RULES

Review of proposed edits

Attachment 1: Staff Overview

Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapters 4-6

## PROPOSED ADMINISTRATIVE RULES

**STAFF OVERVIEW**

Due to recent legislative changes to the ethics code, staff have begun drafting revisions to the commission's existing administrative rules. Amending administrative rules is a lengthy process that, among other things, requires a public hearing to allow all interested persons the opportunity to provide testimony.

The attached proposed draft revisions to chapters 4-6 intend to get the commission's input on the current direction. No approval is necessary at this stage. The commission will have several other opportunities to review the proposed revisions before they become final. Other chapter revisions will be given to the commission in future meetings.

1. Proposed Revisions to Chapter 4.

This revision addresses recent statutory changes impacting the advice process. Section 21-4-1 provides that:

- **Confidentiality.** All requests for advice, including any related materials, are confidential. This revision also establishes grounds for waiving confidentiality.
- **Written summary of advice provided.** It indicates that the advice requestor can ask for a written summary of the advice provided. The Commission must treat that written summary as confidential, but the requestor may disclose it.
- **Commission advisory opinions.** It provides that the Commission may self-initiate an advisory opinion where the matter is of general interest and importance.

Other technical amendments are included.

2. Proposed Revisions to Chapter 5.

Commission investigations are confidential to protect the complainant and respondent until the factual basis of the allegation can be established, and a more formal stage of the Charge process begins. A proposed revision to section 21-5-2.2 allows the executive director to refer a matter, on a confidential basis, to any governmental agency as deemed appropriate. This enables the Commission to better refer criminal or administrative matters to an appropriate agency, particularly when the matter may not fall under the Commission's jurisdiction.

A proposed revision to section 21-5-2.5 clarifies that legal counsel can withdraw freely until a notice of hearing is issued. After a notice of hearing is issued, the Commission or hearing officer must approve the withdrawal of legal counsel. This prevents unnecessary gamesmanship and delays in the legal proceedings.

The proposal also revises section 21-5-2.7, requiring a respondent to file an answer. It establishes a basis for the Commission to find a default where it is determined the respondent has waived the right to contest a Charge. Such a rule revision allows the Commission to dispose of matters more effectively when a party is not responding despite having notice and an opportunity to do so.

To minimize costs, increase efficiency, and speed up legal proceedings, staff also propose establishing procedures around filing a motion for summary judgment (“MSJ”). The newly proposed section 21-5-6.6 allows all parties to file an MSJ. It provides the timeline for such a motion, the substantive basis for considering the MSJ, and a mechanism for continued discovery.

To comply with Haw. Rev. Stat. chapter 91, a proposed revision to section 21-4-7 allows parties to comment on a hearing officer’s recommended order.

A proposed revision to section 21-5-12 gives the Commission the authority to establish settlement guidelines to help ensure fairness and consistency when settling matters before it.

Other technical amendments are included throughout the chapter.

### 3. Proposed Revisions to Chapter 6.

No revisions are currently proposed for Chapter 6.

RDH/lo

## HAWAII ADMINISTRATIVE RULES

## TITLE 21

## LEGISLATIVE AGENCIES

## CHAPTER 4

## STATE ETHICS COMMISSION

## ADVISORY OPINIONS

[Proposed revisions are indicated below. Unamended rules are not included.]

**§ 21-4-1. Request for guidance; request for advisory opinion.** (a) The executive director may provide confidential guidance to any individual as to whether the facts and circumstances of a particular case constitute or would constitute a violation of chapter 84, chapter 97, section 11-8, or section 11-316, HRS, provided that nothing herein shall establish an attorney-client relationship between the person seeking advice and the executive director. The request and related materials are confidential unless the requesting person waives confidentiality. A waiver may be expressed verbally or in writing. In addition, if the executive director determines that their advice was misstated or misrepresented by any person, then they may find that the requesting person waived confidentiality. In responding to a request, the executive director may provide a written summary to the requesting person, which is confidential unless the recipient waives confidentiality. Internal notes, papers, emails, responses, and any other associated materials are confidential unless waived by the executive director. Any written guidance rendered by the executive director advising that certain conduct is or was permissible shall, until amended or revoked, be binding upon the commission in any subsequent enforcement proceeding concerning the individual who sought the guidance and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person requesting guidance. Nothing in this subsection shall prevent the executive director or the commission from investigating alleged violations of chapter 84 or 97, HRS.

(b) Any individual seeking formal written guidance from the commission itself may request an advisory opinion. All requests for advisory opinions made to the commission shall be in writing and shall contain:

- (1) The name of the requester;
- (2) The state agency for which the requester works, if applicable;
- (3) The requester's position in the state agency, if applicable;
- (4) The nature and duties of the requester's state employment, if applicable;
- (5) The date of the request;
- (6) The requester's mailing address and electronic mail address;
- (7) The requester's telephone number;
- (8) A complete statement of the facts and circumstances upon which the commission can make a determination; and

- (9) The signature, digital or otherwise, of the requester.
- (c) A request for an advisory opinion is considered filed when the commission has received all information deemed necessary by the commission. When the opinion is requested regarding a situation involving another person as set forth in subsection (d), the filing shall not be deemed completed until that other person has had a reasonable opportunity to review the facts submitted and to present that person's view of the factual circumstances.
- (d) A person may only request an advisory opinion regarding the person's own conduct, except as follows:
  - (1) A supervisor may request an advisory opinion as to whether the supervisor should act to prevent a subordinate from violating the code of ethics;
  - (2) An agency may request an advisory opinion as to whether it is permitted to enter into a contract pursuant to section 84-15 or 84-18, HRS;
  - (3) A person may request an advisory opinion as to whether anyone acting on behalf of or in connection with that person is in compliance with chapter 97, HRS; and
  - (4) As provided by sections 11-8 and 11-316, HRS, or otherwise provided by law.
- (e) At the commission's request, t[~~F~~]he person who is the subject of a request for an advisory opinion may appear before the commission pursuant to section 21-1-6 of these rules.
- (f) The commission may render an advisory opinion interpreting the laws it enforces if it deems the opinion to be of sufficient general interest and importance.
- (g) Consideration of the rendering of [request for] an advisory opinion is an adjudicatory function of the commission.

[Eff July 13, 1981; am and comp Nov 28, 2020 ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84- 31, 92-3, 92-6, 97-6)

**§ 21-4-2. Rendering of advisory opinion.** (a) An advisory opinion shall be in writing and signed by all commissioners subscribing to the opinion. It shall be considered rendered when it is signed and delivered, personally, ~~[o~~r~~]~~ via electronic mail, or first-class mail. If there is no requesting party, the advisory opinion is rendered when posted on the commission's website.

(b) Any commissioner who agrees with the commission's opinion but for different reasons than as stated may file a written concurring opinion which may be placed at the end of the majority opinion.~~;~~ ~~[any]~~ Any member of the commission who disagrees with the commission's opinion may file a written dissenting opinion, which ~~[shall]~~ may be placed at the end of the majority opinion or at the end of the concurring opinion, if any.

(c) An unredacted advisory opinion shall be issued to the person requesting the opinion within thirty days of the request being filed with the commission pursuant to section 21-4-1(c). The person requesting the opinion may authorize the commission to publish the unredacted advisory opinion; however, the commission retains the discretion to redact the opinion prior to publication.

(d) The commission shall provide the person requesting the opinion with a draft redacted opinion via electronic mail or first-class mail within forty-five days of rendering the unredacted opinion. The person requesting the opinion shall have fifteen days from receipt of the redacted opinion in which to provide comments to the commission. The commission shall have thirty days from the expiration of the fifteen-day period or receipt of comments, whichever



comes first, in which to publish the redacted opinion. The commission may extend these deadlines by request or on its own motion for good cause shown.

[Eff July 13, 1981; am and comp Nov 28, 2020] (Auth: HRS §§84-31(a)(5), 97- 6(a)(5)) (Imp: HRS §§84-31, 97-6)

HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 5

STATE ETHICS COMMISSION

INVESTIGATIONS, CHARGES, CONTESTED CASES, AND SETTLEMENT  
AGREEMENTS

**[Proposed revisions are indicated below. Unamended rules are not included.]**

**§ 21-5-2. Investigations; charges initiated by the commission.** (a) Any individual may submit information to the executive director alleging a violation of chapter 84 or 97, HRS. Such information may be offered anonymously and need not be provided under oath.

(b) The executive director may investigate any matter upon the receipt of information indicating a possible violation of chapter 84 or 97, HRS. The executive director may also investigate any matter at the request of the commission or on the executive director's own initiative.

(c) The executive director may refer any complainant to another agency as appropriate.

(d) The executive director shall determine whether and how to investigate a matter and whether to request from the commission a resolution to investigate the matter pursuant to subsection (e). At any time prior to requesting a resolution to investigate, the executive director may close any investigation.

(e) In investigating any matter prior to obtaining a resolution to investigate from the commission, the executive director may review publicly available documents or documents maintained by the State; the executive director may also interview legislators, employees, other appointed or elected officials, or the alleged violator. Investigations ~~[shall not extend to interviews]~~ may request or subpoena information from ~~[of]~~ other persons if ~~[unless]~~ the commission, in its discretion, issues a resolution to investigate.

(f) A resolution to investigate issued by the commission shall define the nature and scope of the investigation and be supported by a vote of three or more members of the commission.

(g) If, after investigation, at least three commissioners decide that a charge should be initiated, the charge shall be issued in writing and signed by at least three commissioners.

[Eff July 13, 1981; am and comp  
2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

] (Auth: HRS §§84-31(a)(5), 91-

**§ 21-5-2.1. Charges initiated by a member of the public.** (a) Any individual may file a charge with the commission. All charges shall contain a short and simple statement of the facts constituting the alleged violation, the name or other identification of the respondent, and the name and contact information of the individual filing the charge. The charge shall be signed by the person making the charge under oath, declaring under penalty of perjury that the allegations are true and correct to the best of the person's knowledge. The executive director may investigate such charges pursuant to law~~[section 21-5-1.5]~~.

(b) Where it appears that a document submitted to the commission is intended to be a charge, but the document does not comply with subsection (a), the commission shall notify the filer of the insufficiency. The executive director may investigate the matter in accordance with section 21-5-2 but shall not treat the document as a charge until the insufficiency is corrected.

[Eff ] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 97-6)

**§ 21-5-2.2. Confidentiality in investigations.** (a) The executive director shall investigate all matters confidentially and shall not disclose non-public details of an investigation except as necessary to conduct the investigation, provided that the executive director may, on a confidential basis and at any time, disclose information or refer any matter to a~~[ny]~~ governmental ~~[law enforcement]~~ agency~~[ and may likewise disclose information or refer any administrative matter to the relevant agency administrator for further action as warranted]~~.

(b) The commission's records relating to a charge or investigation are otherwise confidential and are not open to inspection by any person except as specifically required by law and court order~~[chapter 84 or 97, HRS, or these rules]~~.

(c) The executive director may, during the pendency of an investigation, request persons, including legislators and employees, to refrain from disclosing information regarding the investigation as ~~[that the legislator or employee learns from the commission or its staff if the executive director determines that such request is]~~ necessary to maintain the integrity of the investigation or for another compelling reason. Such request shall be as limited in time and scope as is necessary and practicable under the circumstances. Nothing herein shall prevent disclosure to one's own attorney or other representative, or for the purpose of ~~[any legislator or employee from discussing a matter with the legislator's or employee's attorney,]~~ lodging a complaint with any governmental entity as allowed by law, or exercising the constitutional right to free speech.

(d) At the conclusion of an investigation, the executive director may notify the complainant and the alleged violator or respondent that the investigation has been closed. The executive director may reveal additional information regarding the resolution of an investigation if necessary to prevent retaliation against the complainant or witnesses, to provide guidance on or to prevent other violations of chapter 84 or 97, HRS, or for other good cause as directed by the commission.

(e) Nothing in these rules shall require the commission to reveal the source of any matter under investigation or the source of any information.

**§ 21-5-2.3. Cooperation with commission investigations.** (a) Every department, division, board, bureau, commission, or other agency of the State shall cooperate and assist the commission in the performance of the commission's duties.

(b) In response to a request for documents by the commission, every department, division, board, bureau, commission, or other agency of the State shall provide such documents within ten business days unless extenuating circumstances exist. Extenuating circumstances exist when:

(1) The request requires extensive efforts to search, review, or segregate the records, or otherwise prepare the records for copying and transmittal to the commission;

(2) The agency requires additional time to respond to the request to avoid an unreasonable interference with its other statutory duties or functions; or

(3) A natural disaster or other situation beyond the agency's control prevents the agency from responding to the request within ten business days.

(c) When extenuating circumstances are present or the requested records are voluminous, the responding agency may, in good faith, elect to make the records available in increments and shall disclose each increment within ten business days of the prior incremental disclosure.

(d) The head of each department, division, board, bureau, commission, or other agency of the State shall be responsible for ensuring such cooperation and assistance.

(e) If the commission requests cooperation with an investigation or seeks to conduct an investigatory interview, and such cooperation is not forthcoming~~[from any agency or individual]~~, the commission may, but need not:

(1) Draw a negative inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Exclude other evidence offered by the party failing to produce the requested information or witness; or

(4) Take such other action as it deems appropriate.

**§ 21-5-2.5. Legal counsel.** (a) A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearing officer.

(b) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(c) After the commission has issued a notice of hearing, ~~[W]~~ withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the commission or hearing officer and shall be subject to the guidelines of the Hawaii rules of professional conduct and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the contested case hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

**§ 21-5-2.7. Procedure upon issuance of charge; further statement of alleged violation.** (a) Upon issuance of a charge by the commission or a member of the public, the commission shall notify the respondent of the charge in writing in accordance with section 21-2-4(d).

(b) The respondent shall have twenty days after service thereof to answer the charge in writing. Requests to extend the time to answer shall be made pursuant to section 21-2-3. The answer shall specifically admit, deny, or explain the charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense.

~~(c) [The answer shall specifically admit, deny, or explain the charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense.~~

~~(d)~~—]After reviewing the answer and conducting any further investigation as warranted, the commission may close the matter, settle the matter on any terms it deems fair and in the public interest, issue an informal advisory opinion, or issue a further statement of alleged violation.

~~(e)~~(d) Upon issuance of a further statement of alleged violation, the commission shall enter an order erecting a firewall between the commission and its counsel, on one side, and the executive director, as charge counsel, on the other. Neither charge counsel nor the respondent shall have ex parte communications with the commission or its counsel by discussing or sharing information about substantive matters pertaining to the case. The executive director shall independently supervise and direct how the case against the respondent will be presented, argued, and otherwise conducted. Legal staff designated as commission counsel shall not be subject to supervision or direction by the executive director or other charge counsel on matters relating to the case.

~~(f)~~(e) The executive director shall prosecute each case, provided that, when the party filing the charge is not the commission, that party may move to prosecute the case. Such motion shall be filed no later than five days following publication of the notice of hearing as set forth in section 21-5-5. In considering the motion, the commission shall consider whether the movant has the ability to prosecute the case, whether the further statement of alleged violation includes allegations beyond those included in the charge, and whether granting the motion is in the public interest.

~~(g)~~(f) The respondent shall have twenty days after service of the further statement of alleged violation to answer in writing. The answer shall specifically admit, deny, or explain the charges filed against the respondent and shall set forth any other matter constituting an avoidance or affirmative defense.

(g) The respondent's failure, after proper service of notice, to provide a written answer pursuant to subsection (b) within twenty-one days or a further period granted by the commission, or to appear at a contested case hearing, or to otherwise defend against noticed charges, shall constitute a default, and the respondent shall be deemed to have waived the right to contest the charges. In such an event, the commission will issue a final order and pursue enforcement of the final order, pursuant to sections 84-31 and 84-32, HRS, and may impose penalties and assessments authorized by section 84-39, HRS. For good cause shown, the commission may set aside an entry of default or a default decision.

**§ 21-5-3.5. Status conference.** At any time, the commission may request a party's [the respondent's] attendance at a status conference to obtain further information from the

party[respondent], discuss settlement with the party [respondent], or otherwise seek a fair and efficient resolution of any matter.

[Eff  
HRS §§84-  
31, 91-2, 91-9, 97-6) ] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp:

**§ 21-5-6.5. Motions.** (a) All motions other than those made during a hearing shall be made in writing, [shall] state the relief sought, and [shall] be accompanied by an affidavit, [or] declaration, or memorandum setting forth the grounds upon which the motion[s-are] is based. The commission, or presiding officer if applicable, shall set the time for filing all motions, [and opposing] replies, and memoranda, if any, and hearing.

(b) Copies of all motions, affidavits, declarations, and memoranda shall be served on all other parties to the hearing within the time set by the commission or presiding officer. The original shall be filed with the commission with a certificate of service.

(c) Failure to serve or file an affidavit, declaration, or memorandum in opposition to a motion or failure to appear at the hearing on the motion, if held, shall be deemed a waiver of objection to the granting or denying of the motion unless otherwise ordered by the commission.

**§21-5-6.6 Motion for Summary Judgment.** (a) Any party to a charge proceeding may move for a summary decision on all or any part of the charge after service of the charge and at least thirty days before a hearing has been set pursuant to section 21-5-5, or as allowed by the commission. Any other party may, within twenty days after service of the motion, answer or countermove for summary decision. A reply may be filed five days after the filing of an answer. The commission or presiding officer may set the matter for argument at its discretion.

(b) The commission may grant such a motion if the pleadings and supporting evidence show no genuine issue regarding any material fact and that a party is entitled to a summary decision.

(c) Any evidence submitted herein shall be supported with personal knowledge by a declaration or affidavit, which shall set forth facts and show affirmatively that the individual is competent to testify to the matters stated therein.

(d) When a motion for summary judgment is filed and supported as provided by this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or declaration, must set forth specific facts showing there is a genuine issue of material fact. Should a party be unable to present evidence necessary to establish an issue of material fact but can articulate a colorable claim that such evidence exists, the commission may deny the motion for summary judgment or order a continuance to permit evidence to be obtained.

(e) The commission shall consider any motion for summary judgment on a confidential basis unless a notice of hearing has been issued as set forth in section 21-5-5. Should the commission grant the motion for summary judgment and adjudicate all counts of the charge or further statement of violation, any filed documents or evidence related to the motion, such as the order, answer, or transcripts, shall be made public. Should the commission grant the motion for summary judgment and adjudicate part of the charge or further statement of violation, any

filed documents or evidence related to the motion, such as the order, answer, or transcripts, shall be made public after the matter is resolved in its entirety.

**§ 21-5-7. Contested hearings; procedures.** (a) The commission may conduct the hearing or, in its discretion, may delegate the conduct of the contested hearing to a hearing officer, in which case the commission shall select such hearing officer.

(b) The presiding officer shall convene and conduct the hearing.

(c) Before the presentation of the case, the parties shall have the opportunity to make opening statements, provided that the presiding officer may order that opening statements be made in writing rather than orally at the hearing. Reasonable time limits may be imposed by the presiding officer for the opening statements. The usual order of making opening statements shall be as follows:

(1) Opening statement by the executive director or complainant; and

(2) Opening statement by the respondent. The respondent may reserve the opportunity to make the opening statement until after the executive director or complainant has presented its case. Opening statements may be waived by a party.

(d) Witnesses shall be examined as follows:

(1) Direct examination by the party calling the witness;

(2) Cross examination by the other party, limited to the issues raised on direct examination;

(3) Redirect examination by the party calling the witness, limited to the issues raised on cross examination;

(4) Recross examination by the other party, limited to the issues raised on redirect examination; and

(5) Examination of the witness by the commission or hearing officer at any time.

(e) After all the evidence has been presented, the presiding officer shall give the parties the opportunity to summarize. The usual order of final arguments shall be as follows:

(1) Final argument by the executive director or complainant;

(2) Final argument by the respondent; and

(3) Rebuttal argument by the executive director or complainant. Rebuttal arguments shall be limited to countering whatever may be said by the other party during that party's final argument.

Reasonable time limits may be imposed by the presiding officer for the final arguments. Final arguments may be waived by either party. The presiding officer may order that final arguments be made in writing rather than orally at the hearing.

(f) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents and briefs, ensure the orderly conduct of any proceeding, and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing.

(g) To avoid unnecessary or repetitive evidence, the presiding officer may limit the number of witnesses, the extent of direct examination, cross examination, redirect examination, or recross examination, or the time for testimony upon a particular issue.

(h) Any procedure in a contested case may be modified or waived by stipulation of the parties.

(i) If a hearing officer issues a recommended order, the parties shall have an opportunity to file exceptions and present arguments based on the record before the commission makes a final decision.

(i) Within a reasonable time after final arguments have been completed and all requested memoranda submitted, including the proposed findings of fact, proposed conclusions of law, and, if applicable, recommended order of the hearing officer and any responses to it, ~~if applicable,~~ the commission shall render an order, decision, or ruling.

(j) Within ten days after entry of an order, decision, or ruling, the commission may entertain a written petition to reconsider or rehear its final order, decision, or ruling. The petition shall be granted or denied with reasonable expedition. Denial of such petition shall be in writing.

**§ 21-5-7.1. Rules of evidence.** Any oral or documentary evidence that is relevant and material to the charge may be admitted, provided that the commission's findings must be based upon competent and substantial evidence in accordance with chapters 84 or 97 [~~section 84-31(e), HRS~~]. Effect shall be given to the rules of privilege recognized by law. The presiding officer may take notice of judicially recognizable facts.

**§ 21-5-10. Record of hearing.** (a) The record of the hearing shall be compiled in conformance with chapter 91, HRS [~~section 91-9, HRS~~]. The commission shall make provisions for an audio, video, or stenographic recording of the testimony, or some combination thereof, but it need not be transcribed unless requested for purposes of rehearing or court review.

(b) Any person, prior to any request for judicial review, may request that the commission cause a transcript of the testimony to be prepared, provided that the requesting person shall be responsible for the cost of preparing the transcript.

(c) If judicial review is requested, the commission shall cause a transcript of the hearing to be prepared as part of the record on appeal. Any person seeking a copy of that transcript may request one from the commission pursuant to chapter 92F, HRS.

[Eff July 13, 1981; am and comp ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§84-31, 91-9, 97-6)

**§ 21-5-12. Settlement.** (a) The commission may resolve a matter at any time pursuant to a settlement agreement deemed to be fair and in the public interest.

(b) Settlement procedure:



- (1) The executive director may negotiate a tentative settlement agreement with any alleged violator, subject to the commission's approval. At any time, the executive director may, with the consent of the alleged violator, present the matter to the commission to obtain its inclination regarding proposed terms of an agreement;
  - (2) Upon request, the alleged violator shall be provided an opportunity to address the commission as to the proposed terms of an agreement;
  - (3) Upon approval of the settlement agreement, the alleged violator and the chairperson, or another commissioner so authorized by a majority of the commission, shall sign the agreement; and
  - (4) The commission may issue a resolution that serves as a final disposition of the matter.
- (c) Force and effect of agreement:
- (1) The agreement resolves only those matters directly raised in the settlement agreement itself. The commission reserves the right to investigate and charge the alleged violator regarding matters not raised in the settlement agreement unless the agreement expressly provides otherwise;
  - (2) The settlement agreement does not resolve any matter against any alleged violator not a party to the agreement; and
  - (3) By entering into a settlement agreement, the alleged violator waives any right to appeal any action taken by the commission in connection with the matter.
- (d) Settlement agreements and resolutions are presumptively public, but the commission may enter a confidential settlement agreement after considering the following factors:
- (1) The nature of the violation;
  - (2) The alleged violator's position and duties;
  - (3) Whether the alleged violator has been involved with prior commission proceedings;
  - (4) The manner in which the matter was brought to the commission's attention;
  - (5) The alleged violator's level of cooperation with the commission's investigation;
  - (6) The alleged violator's acknowledgement of wrongdoing and commitment to avoid future violations; and
  - (7) Any other mitigating or aggravating factors.
- (e) The commission may publish guidelines regarding suggested settlement terms and factors to consider in setting administrative penalties for violations of chapters 84 and 97, HRS.

[Eff \_\_\_\_\_ ] (Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-32, 91-2, 91-8.5, 91-9, 97-6)

SUNSHINE LAW MEETING  
AGENDA ITEM IX

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)

Discussion of case status.

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.