

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: November 20, 2024

Time: 9:00 a.m.

Location: Zoom Videoconference or Phone:

Videoconference: [Join Zoom Meeting](https://us06web.zoom.us/j/87620856319?pwd=b9pXFYQHqu4woU56IWBCR6ZsDBdTDS.1)
<https://us06web.zoom.us/j/87620856319?pwd=b9pXFYQHqu4woU56IWBCR6ZsDBdTDS.1>
Phone: +1 (669) 444-9171 or +1 (669) 900-6833
Phone passcode: 141525
Meeting ID: 876 2085 6319
Passcode: CVVW6h

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) for more information, including reconnection information.

Public meeting materials for this meeting are available on the Commission's website at: www.ethics.hawaii.gov.

AGENDA

CALL TO ORDER

I. Consideration and Approval of the Minutes of the October 16, 2024 Meeting

*Attachment 1: Sunshine Law Meeting Minutes of the October 16, 2024,
Hawai'i State Ethics Commission Meeting*

II. Directors' Report

1. Education / Training Report

Attachment 1: 2024 Training Schedule

Attachment 2: 2025 Training Schedule

2. Guidance and Assignment Statistics – October 2024

Attachment 3: 2024 Guidance and Assignment Statistics / Website Traffic

3. Miscellaneous Office Projects / Updates

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

*Attachment 1: Hawai'i Legislature Rarely Uses Its Own Process To
Investigate Lawmakers*

IV. Discussion of Ethics Oversight of the Judicial Branch

Attachment 1: Staff Overview

*Attachment 2: Proposal to Amend the Rules of the Supreme Court of Hawai'i
Rules 8.2, 8.3, 8.6, 8.7, 15, the Hawai'i Revised Code of Judicial Conduct
(RCJC) Rules 3.13, 3.14, 3.15, and Financial Disclosure Statement Form (JUD
101)*

Also available at:

<https://www.courts.state.hi.us/wp-content/uploads/2024/10/2024.10.25-MemoCCRO-RSCH-8-15-FDS-RCJC-for-posting-1.pdf>

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

Attachment 1: Staff Analysis and Recommendations Regarding Kentucky and Ohio Laws Prohibiting State Employees from Engaging in Political Activity

VI. Administrative Rules

Review of proposed edits

Attachment 1: Staff Overview

Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 7

VII. Proposed Fiscal Year 2025-26 Budget

Attachment 1: Proposed Ethics Commission Budget Fiscal Year 2025-26 Budget

VIII. Proposed Legislation

Amending the definition of "lobbying" to include communications regarding procurement decisions with certain high-level government officials.

Attachment 1: Relating to Lobbyists

IX. Meeting Calendar

Discussion of proposed meeting schedule for 2025.

Attachment 1: Proposed Meeting Calendar, 2025.

- X. *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.

- XI. *University of Hawai'i Professional Assembly v. Board of Regents of the University of Hawai'i*, S.P. No.: 1CSP-23-0000959

Discussion of the case status and filing of an amicus brief by the Hawai'i State Ethics Commission.

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.

- XII. 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), 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 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

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
OCTOBER 16, 2024 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the October 16, 2024
Hawai'i State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: October 16, 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/

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 (excused)
Cynthia Thielen, Commissioner (via video conference)
Roderick Becker, Commissioner (present in the conference room)

State Ethics Commission Staff

Robert D. Harris, Executive Director (excused)
Kee M. Campbell, Enforcement Director (present in the conference room)
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 (excused)
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 Candice Park, Deputy Attorney General

4
5
6 **CALL TO ORDER (0:11)**

7
8 Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Tobias,
9 Commissioner Thielen, Commissioner Hong, Commissioner Becker, and Commission
10 staff were present as indicated above. All Commissioners and staff participating via video
11 or audio conference confirmed no one was in the room with them at their respective
12 remote locations.

13
14
15 **Agenda Item No. I: Introduction of Commissioner Roderick (“Rod”) Becker (2:54)**

16
17 Enforcement Director Kee Campbell introduced Mr. Roderick Becker as the
18 commission's newest member. Director Campbell noted Commissioner Becker's
19 extensive service, including serving with the Department of Budget and Finance and the
20 Legislature. Director Campbell stated that the staff is excited to work with Commissioner
21 Becker.

22
23 Chair Fong welcomed Commissioner Becker.

24
25 Commissioner Becker thanked Chair Fong for the welcome. He noted that he
26 applied to serve on the commission because of his desire to help. He expressed his
27 excitement about working with everyone.

28
29
30 **Agenda Item No. II: Consideration and Approval of the Minutes of the September 18,**
31 **2024 Meeting (4:24)**

32
33 Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to approve
34 the September 18, 2024 meeting minutes. The motion carried (Commissioners Fong,
35 Tobias, and Thielen voted in the affirmative, with Hong and Becker excused).

36
37
38 **Agenda Item No. III: Directors' Report (5:19)**

39
40 Compliance Director Bonita Chang reported that over 57,000 employees
41 representing 33 state departments are required to complete ethics training. Director
42 Chang reported that the completion rate for “Tier 1” state officials and employees subject
43 to the live training requirement is approximately 98.9%. The overall completion rate for all

1 state employees is approximately 88%. Director Chang reported that the following
2 agencies have a less than 75% completion percentage:

- 3
- 4 • Budget and Finance
- 5 • Department of Accounting and General Services
- 6 • Department of Education
- 7 • Department of Corrections and Rehabilitation
- 8

9 She noted that the DOE is transitioning to a new Learning Management System, and the
10 DCR is newly created and has a large number of vacancies. She suspects this is the reason
11 for the low performance of these agencies. Staff will continue to work with these agencies
12 to increase training completion rates. She further noted that all agencies have access to a
13 Learning Management System, making tracking training easier.

14
15 Director Chang reported that 852 board and commission members require completion
16 of ethics training. She further noted that 95% of the public filing boards and 90% of the
17 non-public filing boards have completed training for an overall completion rate of 93%. The
18 following boards & commissions have a less than 70% completion rate:

- 19
- 20 • Defender Council
- 21 • Island Burial Council-Maui/Lanai
- 22 • Radiologic Technology Board
- 23 • Island Burial Council-Oahu
- 24 • Hawaii Health Systems Corp.-Kauai
- 25 • Hawaii Health Systems Corp.-Maui
- 26 • Island Burial Council-Kauai/Niihau
- 27 • Motor Vehicle Industry Licensing Board
- 28

29 She noted that some of these boards have staffing and administrative and turnover
30 issues but staff will continue to work with the boards.

31
32 Chair Fong said he was pleased that the 85% goal was exceeded.

33
34 Commissioner Thielen was also pleased with the report and overall completion
35 rates. She expressed her concerns that DAGS is one of the low-performing agencies and
36 asked what the reasoning might be. Director Chang replied that it could be due to reporting
37 discrepancies or the number of vacancies in divisions and offices but was unsure of the
38 actual cause. She noted that staff will continue to work with DAGS and the other low-
39 performing agencies to boost numbers.

40
41 Vice Chair Tobias commended staff for surpassing the 85% goal.

1 Director Chang also reported that the staff is working on a certificate to send to the
2 boards, commissions, and agencies with 100% completion. Chair Fong asked if a note
3 signed by him could also be included.
4

5 Enforcement Director Kee Campbell reported that 46 matters were closed and 43
6 new ones opened in September. He noted that staff continues to close issues at a higher
7 rate than are being opened.
8

9 Director Campbell reported that the staff is working on transitioning to a new case
10 management system and ensuring that no active matters slip through the cracks during
11 this transition.
12

13 Director Campbell reported that the commission still remains under budget for the
14 quarter.
15
16

17 **Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics**
18 **Commission Since the Last Meeting (14:28)**
19

20 Enforcement Director Kee Campbell reported on items of note from recent media
21 reports:
22

- 23 • Coverage of the appointment of Commissioner Becker
- 24 • Coverage of the Alcos matter. Director Campbell noted that most of the
25 coverage seemed positive.
- 26 • An article in Civil Beat about the House disciplinary process. Director Campbell
27 noted that this is related to the Alcos matter.
28

29 Chair Fong recommended reading the article related to the House disciplinary
30 process and that this could be a future topic of discussion.
31
32

33 **Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (16:03)**
34

35 Enforcement Director Kee Campbell reported that the Judiciary is in the process of
36 promulgating new ethics rules and there are no further updates.
37

38 Chair Fong noted that this issue came in response to ethics issues surrounding the
39 US Supreme Court. He said that the ethics code does not apply to judges and justices. He
40 further noted that in other jurisdictions, judges and justices are subject to both a judicial
41 code and the jurisdictions' ethics code.
42
43
44

1
2 **Agenda Item No. VI: Request for Information from the National Conference of State**
3 **Legislatures Regarding State-Level Restrictions on High-Level Government Employees**
4 **Participating in Political Fundraising (17:13)**
5

6 Enforcement Director Kee Campbell said that staff is still reviewing the Kentucky
7 and North Carolina Laws as requested by Commissioner Thielen and does not yet have an
8 update.
9

10
11 **Agenda Item No. VII: Consideration of Commission Manual (17:50)**
12

13 Staff Attorney Nancy Neuffer reported that staff have compiled a manual for the
14 commissioners. The guide is meant to serve as a quick reference. She thanked Office
15 Manager Caroline Choi for assistance with formatting.
16

17 Chair Fong asked about the three-part gifts test and what a gift serving a state
18 purpose means. Attorney Neuffer used the examples of a gift of travel to an educational
19 conference or the donation of computers to a school as a gift that serves a state purpose.
20 Attorney Neuffer further noted that social or entertainment-type gifts generally do not serve
21 a state purpose.
22

23 Vice Chair Tobias commended the staff for doing an excellent job in putting the
24 manual together.
25

26 Chair Fong asked about the \$200 gift reporting requirement. Attorney Neuffer
27 explained that any gift over \$200 or gifts from a single source totaling \$200 in a year need to
28 be reported. Chair Fong asked if reporting was the responsibility of the employee. Attorney
29 Neuffer replied that the gift disclosure law is a self-reporting law.
30
31

32 **Agenda Item No. VIII: Administrative Rules (23:55)**
33

34 Enforcement Director Kee Campbell summarized additional sections that staff are
35 updating of the administrative rules. He noted that the commission requires no action at
36 this time.
37

- 38 • Chapter 4: Updating confidentiality procedures for Attorney of the Day.
39 Allowing for a written summary of advice upon request. Provides for the
40 commission to initiate Advisory Opinions without request from an outside
41 entity.

- Chapter 5: Broaden authority to refer the investigation to any agency. Formalizing use of motion for summary judgment. Setting penalty and settlement guidelines.

Agenda Item No. 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) (28:34)

Enforcement Director Kee Campbell reported that there is no update.

Vice Chair Tobias asked if it would be possible to ask the judiciary about the matter when meeting about other things. Director Campbell replied that it would generally not be advisable.

Agenda Item No. X: Adjournment of Sunshine Law Meeting (30:18)

At approximately 9:30 a.m., Vice Chair Tobias motioned to adjourn the meeting, and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias, Thielen, and Becker voted in the affirmative, with Hong excused).

The meeting was adjourned at 9:33 a.m.

Minutes approved on ____.

SUNSHINE MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT
November 20, 2024

1. Education / Training Report

Attachment 1: 2024 Training Schedule

Attachment 2: 2025 Training Schedule

2. Guidance and Assignment Statistics – October 2024

Attachment 3: 2024 Guidance and Assignment Statistics / Website Traffic

3. Miscellaneous Office Projects / Updates

HAWAII STATE ETHICS COMMISSION 2024 EDUCATION PROGRAM (Ethics Workshops and Presentations)			
DATE	PRESENTATIONS	IN PERSON PARTICIPANTS	WEBINAR PARTICIPANTS
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	WEBINAR: Ethics for Board and Commission Members (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	WEBINAR: Training Refresher, Agribusiness Development Corporation (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	0	8
11/4/2024	WEBINAR: West Hawai'i Explorations Academy	0	29
11/7/2024	WEBINAR: General Ethics Training	0	9

HAWAII STATE ETHICS COMMISSION 2024 EDUCATION PROGRAM (Ethics Workshops and Presentations)			
DATE	PRESENTATIONS	IN PERSON PARTICIPANTS	WEBINAR PARTICIPANTS
11/8/2024	IN PERSON: Ethics for New House Members	10	0
11/26/2024	WEBINAR: Ethics for State Government Attorneys, Office of the Attorney General		
12/3/2024	WEBINAR: Ethics for State Government Attorneys		
12/5/2024	WEBINAR: Lobbyists Law Training		
12/6/2024	WEBINAR: Lobbying E-Filing		
TOTAL	24 Presentations	151 participants	305 participants

HAWAII STATE ETHICS COMMISSION 2025 EDUCATION PROGRAM (Ethics Workshops and Presentations)			
DATE	PRESENTATIONS	IN PERSON PARTICIPANTS	WEBINAR PARTICIPANTS
1/2/2025	WEBINAR: Lobbyists Law Training		
1/10/2025	WEBINAR: Lobbyists Law Training		
1/23/2025	WEBINAR: General Ethics Training		
3/5/2025	WEBINAR: General Ethics Training		
5/8/2025	WEBINAR: General Ethics Training		
7/18/2025	WEBINAR: Ethics for State Board & Commission members		
8/6/2025	WEBINAR: General Ethics Training		
9/25/2025	WEBINAR: Ethics for State Board & Commission members		
10/22/2025	WEBINAR: General Ethics Training		
11/7/2025	WEBINAR: Ethics for State Board & Commission members		
TOTAL	10 Presentations	0 participants	0 participants

2024	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of In-Person Trainings	1	0	0	0	0	1	1	1	0	0			4
# of People Trained In Person	51	0	0	0	0	80	10	16	0	0			157
# of On-Line Trainings (Self-Directed)	958	707	487	450	423	938	2,393	6,225	1,280	673			14,534
# of Lobbyists Law Trainings	186	52	29	17	17	5	7	8	11	12			344
# of Training Webinars	3	1	1	1	2	0	1	1	1	1			12
# of Participants in Training Webinars	106	13	7	64	20	0	15	15	19	8			267
Attorney of the Day													
	118	89	94	97	97	97	108	79	91	72			942
New assignments													
Advisory Opinion	0	0	0	0	0	0	0	0	0	1			1
Complaint	67	25	39	25	26	27	34	27	43	45			358
Gifts/Invitations/Travel	21	24	30	24	27	39	33	28	33	19			278
Guidance	2	0	2	1	3	1	0	3	2	5			19
Judicial Selection Comm'n	6	0	5	4	1	2	3	4	1	3			29
Training Request	0	0	0	0	0	0	0	0	0	8			8
Record Request	1	1	0	0	1	0	0	1	0	1			5
Project/Other	6	1	1	4	1	2	3	1	4	7			30
Total	103	51	77	58	59	71	73	64	83	89	0	0	728
Closed Assignments													
Advisory Opinion	0	0	0	1	0	0	0	0	1	0			2
Complaint	67	26	26	33	22	38	41	17	46	43			359
Gifts/Invitations/Travel	21	22	35	24	25	37	35	23	40	19			281
Guidance	1	3	0	0	3	1	2	1	1	4			16
Judicial Selection Comm'n	7	0	4	5	1	2	2	3	2	3			29
Training Request	0	0	0	0	0	0	0	0	0	1			1
Record Request	1	1	0	0	1	0	0	1	0	1			5
Project/Other	2	2	2	2	4	2	1	2	3	8			28
Total	99	54	67	65	56	80	81	47	93	79	0	0	721
Anti-Fraud													
	2	5	5	3	4	4	6	6	4	7			46

SUNSHINE LAW MEETING
AGENDA ITEM III

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

Attachment 1: Hawai'i Legislature Rarely Uses Its Own Process To
Investigate Lawmakers

[Let The Sunshine In](#)

Hawaii Legislature Rarely Uses Its Own Process To Investigate Lawmakers

The dormant House Select Standards of Conduct Committee raises questions about whether self-policing really works or if an independent agency is needed.

By [Chad Blair](#)
October 16, 2024 · 9 min read



14



Cory Lum/Civil Beat/2022

When the Hawaii State Ethics Commission last month fined a state legislator \$12,500 for campaign financial disclosure violations, the case was referred to House Speaker Scott Saiki. The

commission can only fine a representative, not discipline them.



But as of this week the commission had not received a formal response from Saiki, even though the rules of the Hawaii House of Representatives on legislative conduct indicate that action is required.

House rules state **that the speaker “shall appoint”** a select committee to investigate complaints for misconduct, disorderly conduct, neglect of duty and violation of **the state’s Code of Ethics**. That law addresses campaign activities, disclosure requirements, gifts, conflicts of interest, fair treatment, nepotism and outside employment, among other things.

House leadership did not respond to Civil Beat’s questions about Rep. David Alcos, who acknowledged violating the law.

House leaders also did not respond to questions about the long-standing special committee to investigate allegations of misconduct. The House Select Committee on Standards of Conduct appears to have rarely convened since its inception 16 years ago.

And House rules state that complaints against representatives cannot be made during an election year from the filing deadline, which was June 4 this year, until one day after the general election, Nov. 5 this year.



Hawaii House leaders appear to have rarely used a special investigative committee when allegations of member misconduct are made. (Chad Blair/Civil Beat/2024)

Saiki **told the Honolulu Star-Advertiser** last month that the standards committee had never met in his seven years as speaker, even though the past decade has seen well-publicized incidents of questionable behavior on the part of legislators such as arrests for drunken driving.

The Alcos ethics case underscores concerns that the Legislature doesn't do much about legislators who behave badly, and whether the public would even hear about it if they did.

Members of both chambers and parties say a big reason is that legislators are reluctant to speak out for fear of retaliation.

"Anyone who complains, forget your bills," said Sen. Les Ihara, a longtime Democratic lawmaker who has pushed for ethical reforms and was the author of a 2007 bill that called for setting up legislative ethics committees. "You do it at your own risk."

Like Ihara, Republican Rep. Gene Ward has served in the Legislature for decades. In 2007 he also pushed for establishing the standards committee.

In spite of its existence, however, Ward could not recall any instances in which the House had activated the standards committee and only two where the House formally acted when a member was charged with misbehaving.

To Ward, that illustrates the House should do a better job minding its own store.

"You got all these rules but you don't enforce them," said Ward, referring not just to matters of ethics but basic legislative protocols such as adhering to rules of order during floor debate.

"We do not objectively look at ourselves, just like one lawyer will refuse or will not sue another lawyer," he said. He added that an outside monitor such as a legislative ombudsman might be needed.

"It sounds like it's a great idea whose time has not yet come," he said.



Former state Sen. J. Kalani English, right, was the subject of both state ethics commission investigations and a federal corruption trial. (Cory Lum/Civil Beat/2020)

Air Ambulances, Cruise Ships, DUIs

The standards committee was established so long ago that several former representatives involved in its drafting told Civil Beat they could not recall exactly what led to its formation.

They include then-House Speaker Calvin Say and then-House Majority Leader Kirk Caldwell, who both said they did recall the House had concerns at the time about nepotism.

Ward initially confused the Select Committee on Standards of Conduct with 2022's **Commission to Improve Standards of Conduct**. The latter, formed following bribery charges against former state Sen. J. Kalani English and former House Rep. Ty Cullen, is better known as the Foley commission because it was chaired by retired judge Dan Foley.

Like the Foley commission, the 2008 standards committee was also inspired **by disconcerting news stories** involving legislators. They included English, who paid a fine **for accepting free rides** on Hawaii Air Ambulance from Oahu to his district in Maui, and state Sen. Brian Kanno, **who tried to retaliate** against Norwegian Cruise Line on behalf of a man who had been fired over allegations of sexual harassment.

Both cases came before the Hawaii State Ethics Commission, which had **just been granted authority** by the Legislature to levy fines for unethical behavior.

Another incident that helped spur the push toward reform came in 2007 when Jon Riki Karamatsu, at the time the House vice speaker, was arrested for losing control of his car and striking a

concrete pillar on Moanalua Freeway. He failed a field sobriety test.

House of Representatives

RULES FOR THE SELECT COMMITTEE ON STANDARDS OF CONDUCT

State of Hawaii
The Thirty-Second Legislature

2023-2024

The cover page in the House rules for the section on investigations. (Screenshot/2024)

Lawmakers gave considerable thought to the powers of the standards committee. The section of the rules on it are so lengthy and detailed they comprise fully one-quarter of the 76-page House rules.

The standards committee is authorized to perform like a court, including calling witnesses, ordering depositions and presenting evidence.

The proceedings would be open to the public through broadcast and the accompanying materials would be posted for viewing. And if the committee decided that the allegations were factual, a member could be censured, expelled and required to pay restitution.

The member could appeal the ruling, but the House could also choose to share information and documents from the committee's work with executive and judicial branch officials.

The standards committee's work is triggered when a House member reports a sworn complaint alleging that a representative has violated a law, the House Code of Legislative Conduct "or any rule of the House relating to conduct of any individual in the performance of duties" as a representative "or has engaged in improper conduct which may reflect negatively upon the House."

The code of legislative conduct, part of the House rules, outlines specific guidelines for members to conduct themselves “in a respectful manner befitting the office with which they as elected officials have been entrusted.” Members must respect and comply with the law and act at all times “in a manner that promotes public confidence in the integrity of the House.”



Rep. Gene Ward has pushed to strengthen ethical oversight of the House. (David Croxford/Civil Beat/2024)

The House has occasionally formed committees when allegations of wrongdoing arise. It’s not clear, however, if it’s the same committee as the standards committee.

Two years ago, for instance, a special House committee **decided not to formally rebuke** Rep. Sharon Har for a driving under the influence arrest in 2021. By that time, a District Court judge had already dismissed the case citing an error made in charging Har and a lack of evidence to proceed.

Another special House committee, this one in 2015, determined that Say, who at the time was no longer the speaker, **had not violated residency rules**. Civil Beat **reported at the time** that the legislative committee’s work involved a quasi-judicial hearing, “the first of its kind in Hawaii.”

The residency challenge was the fifth time in nine years Say had been questioned about whether he lived in Palolo Valley, which was in his district, or Pauoa Valley, which was not. The most recent complaint against Say came not from legislators but voters in his district. Say was also exonerated in court.

A Special Commentary Project

Civil Beat opinion writers are closely following efforts to bring more transparency and accountability to state and local government— at the

Legislature, the county level and in the media. Help us by sending ideas and anecdotes to sunshine@civilbeat.org.

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Say, who is retiring from politics this year after serving on the Honolulu City Council, said a standards committee can be useful — even if it hasn’t been used much thus far.

“It will be a great tool for future speakers to consider in using it,” he said. “If there is a complaint filed to the speaker’s office, the select committee will be the committee to investigate.”

The state Senate has a brief section on dealing with misconduct **in its own rules**, including the option of setting up a special investigative committee of its own.

But, like the House, the Senate appears to have infrequently publicly examined its members when complaints arise.

Both have looked into complaints against lawmakers over the past decade including challenges to district residency and verbal and sexual harassment. In 2015, for example, a special committee charged with investigating Sen. Brickwood Galuteria recommended that he **be allowed to keep his seat** despite a constituent complaint alleging he did not actually live in his district of Kakaako and so had committed tax fraud.

Like Say, Galuteria **was ultimately cleared** by outside agencies. He is today a trustee with the Office of Hawaiian Affairs.



Jon Riki Karamatsu on KITV for a report on a DUI charge in April 2015, for which he pleaded guilty. It came seven years after a similar incident that helped spur ethics reform at the Legislature. (Screenshot/2015)

When Scandal Ends Careers

Sometimes it is an outside body such as a court or state agency that has made the final determination on whether a legislator acted in the wrong. Those cases include that of former House Speaker Joe Souki, who **was forced to resign** in 2018 after admitting he sexually harassed numerous women over the years in his office.

Media attention and public shame are also factors, as seen **in a 1989 arrest** of a state senator for soliciting sex in Waikiki that ended his political career, and **the 2005 conviction** of a state representative for sexual misconduct on an airplane.

Several lawmakers have also had to answer to voters who have on more than one occasion declined to reelect lawmakers who served under ethical clouds.

The reluctance to self-police has given rise to the idea that an independent agency be created to provide greater oversight of the Legislature, as it essentially governs itself.

But the Legislature has shown little appetite for the idea. A bill to create **an office of the public advocate** to investigate and report on allegations of misconduct and operations of the Legislature and its members, for example, was killed early in the 2023 session.

If the House decides to take more seriously its responsibility to investigate colleagues when troubles arise, they might want to look to Congress. The House standards committee was modeled on its federal counterpart, which has been known to act.

Last November, for instance, the House Ethics Committee found that there was substantial evidence that GOP Rep. George Santos had violated federal law and engaged in a “complex web” of illegal activity involving his finances, **as CBS News reported**.

Santos, representing New York, soon announced he would not seek reelection. By December, the House — run by the same party as Santos belonged to — expelled him.

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The Sunshine Blog: Crossing The Thin Blue Line

By The Sunshine Editorial Board · October 17, 2024 · 8 min read

SUNSHINE LAW MEETING
AGENDA ITEM IV

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

Attachment 1: Staff Overview

Attachment 2: Proposal to Amend the Rules of the Supreme Court of Hawai'i Rules 8.2, 8.3, 8.6, 8.7, 15, the Hawai'i Revised Code of Judicial Conduct (RCJC) Rules 3.13, 3.14, 3.15, and Financial Disclosure Statement Form (JUD 101)

Also available at: <https://www.courts.state.hi.us/wp-content/uploads/2024/10/2024.10.25-MemoCCRO-RSCH-8-15-FDS-RCJC-for-posting-1.pdf>

SUNSHINE LAW MEETING
AGENDA ITEM IV

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

STAFF OVERVIEW

On October 25, 2024, the Hawai'i State Supreme Court released a draft of proposed amendments to judicial conduct and oversight rules. Staff believes the amendments are a positive indication that the Judiciary is taking ethics oversight seriously. Two key proposals are briefly summarized below. Staff recommends that the Commission submit comments on these proposed amendments. The commentary process is open until January 28, 2025.

I. Administrator Position

The proposed amendments create an administrator position that serves as the attorney to the Commission on Judicial Conduct (CJC) and is appointed by the Supreme Court. The administrator must be a Hawai'i-licensed attorney but may not be a sitting justice or judge. The proposed rule would prohibit the administrator's private practice of law, except for pro bono services, which the CJC may restrict.

While staff are still reviewing the proposed changes, preliminary suggestions include:

- Ensuring independence and objectivity, the CJC should be able to hire, evaluate, and supervise the administrator position instead of the Supreme Court. In a similar vein, allow the CJC to develop a budget and option/ability to hire support staff to assist the administrator as necessary.
- The administrator should not be a recently retired (past 12 months) judge to provide a "cooling-off" period.

II. Gifts disclosures

Additional proposed rule amendments bring judicial gift acceptance and disclosure requirements more in line with those mandated by the State Ethics Code by requiring justices and judges to report the source and amount of expenses covered by an outside entity when the justice or judge is invited to speak at or attend an event such as a conference or seminar. These expenses include full or partial waiver or reimbursement of travel costs, food, lodging, transportation, registration fees, and the like that have been accepted by a justice or judge, their spouse, domestic partner, or guest.

Current judicial rules allow acceptance of such expenses but do not require disclosure.

The proposed rules would essentially treat travel-related expenses like gifts, which, under current judicial rules, must be reported if received in any amount from a party whose interests have come or are likely to go before the judge, or if exceeding \$200 and received from a non-interested source. Similarly, the Gifts Reporting Law in the State Ethics Code requires legislators and employees to disclose gifts from outside entities annually, including travel expenses, if the cumulative annual amount of gifts from any one source is over \$200.

The proposed rule falls more in line with the State Ethics Code standard. Gifts and expenses offered to a legislator or employee may not be accepted under circumstances in which it can reasonably be inferred that the gift is intended to influence or reward any official action on the legislator's or employee's part. Similarly, the proposed rule indicates that gifts and expenses offered to a justice or judge may not be accepted if acceptance would appear to a reasonable person to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office.¹

Staff has no preliminary comments on the proposed rules relating to travel expense disclosures at this time.

JMY/lo

¹ RCJC Rule 3.13.

Re: PROPOSAL TO AMEND THE RULES OF THE SUPREME COURT OF THE
STATE OF HAWAI'I, THE REVISED CODE OF JUDICIAL CONDUCT, AND
THE FINANCIAL DISCLOSURE STATEMENT FORM (JUD 101)

*ADMINISTRATOR TO THE COMMISSION ON JUDICIAL CONDUCT
and JUSTICES & JUDGES ANNUAL PUBLIC DISCLOSURE*

The Supreme Court of Hawai'i seeks public comment regarding proposed amendments to the Rules of the Supreme Court of the State of Hawai'i (RSCH), Rules 8.2, 8.3, 8.6, 8.7, 15, the Hawai'i Revised Code of Judicial Code (RCJC), Rules 3.13, 3.14, 3.15, and the RSCH Financial Disclosure Statement Form (JUD 101).

The amendments to RSCH 8 create an administrator position that would serve as the attorney to the Commission on Judicial Conduct. The amendments to RSCH 15 and the RCJC would require justices and judges to make an annual public disclosure of the sources and amounts of reimbursements of expenses or waivers of fees or charges received by the justice or judge, their spouse, domestic partner or guest, that exceed \$200.00 from a single source, based on their participation in extrajudicial activities permitted by the RCJC.

The Ramseyer version of the proposed rule amendments are attached. For the rule amendments, the proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than January 28, 2025** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to pao@courts.hawaii.gov, or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 8. JUDICIAL DISCIPLINE.

8.2. Jurisdiction and Powers of Commission.

(a) Powers in General. The Commission shall have the power to:

- (1) receive information, allegations, and complaints;
- (2) make preliminary evaluations;
- (3) screen complaints;
- (4) conduct investigations;
- (5) conduct hearings;

(6) recommend dispositions to the supreme court concerning allegations of judicial misconduct or physical or mental disability of judges; ~~and~~

(7) issue advisory opinions~~[-]~~; and

(8) utilize an administrator.

(b) Persons Subject to Discipline. The conduct of any justice or judge, full-time or part-time, shall be subject to the jurisdiction of the Commission, regardless of the justice's or judge's status at the time the conduct is reported to the Commission, including, but not limited to, having resigned or retired from office and provided the conduct is reported to the Commission no later than ninety (90) days after the judge leaves office.

(c) Jurisdiction of Commission.

(1) Notwithstanding any provisions of Rule 2.1 of the Rules of the Supreme Court, only this Commission shall have the authority to exercise powers specified in Rule 8.2 with respect to conduct, whether or not related to mental or physical competence, of any sitting full-time or part-time justice or judge occurring during the time of, and prior to, ~~his or her~~ their tenure on the bench except as otherwise provided in this subsection (c).

(2) Notwithstanding any provisions to the contrary contained herein regarding the jurisdiction of the Commission:

(i) The Disciplinary Board of the Hawai'i Supreme Court may conclude any formal disciplinary proceedings as to said conduct which occurred prior to the judicial tenure of any full-time or part-time justice or judge, and any petition to the supreme court to determine whether any justice or judge is incapacitated from continuing the practice of law by reason of physical infirmity or illness or because of the use of drugs or intoxicants, if such formal disciplinary proceedings were initiated or such petition was filed prior to the judicial tenure of the justice or judge.

(ii) If a sitting part-time district judge is practicing law as an attorney, the Disciplinary Board of the Hawai'i Supreme Court shall have jurisdiction of such judge with respect to said conduct as an attorney and to petition the supreme court to determine whether such judge is incapacitated from continuing the practice of law by reason of physical infirmity or illness or because of the use of drugs or intoxicants and shall exercise the authority and powers prescribed under Rule 2 of the Rules of the Supreme Court.

(iii) The Disciplinary Board shall transmit its findings of fact, conclusions of law, disciplinary action or recommendations, and the entire

record, in formal disciplinary proceedings under (i) and (ii) above to the Commission and if it is satisfied, and if it wishes to take action, the Commission may apply the same findings to support its recommendation for disciplinary action against a justice or judge involved in the said proceedings subject, however, to subsection (4) of this subsection (c).

(3) The resignation or retirement of any full-time or part-time justice or judge before or after the Commission or the Disciplinary Board, or both, have commenced an investigation or a proceeding, and before final action by the supreme court upon any recommendation, shall not deprive the Commission, the Disciplinary Board or the supreme court of jurisdiction.

(4) The Commission shall treat the findings of the Disciplinary Board made as a result of proceedings within (2)(i) or (2)(ii) above, as a new complaint which shall be reviewed in accordance with Rule 8.6, subsections (b) through (i), and if the Commission determines that further proceedings should be had, the Commission shall proceed with the complaint in accordance with Rule 8.7, and with any other applicable provisions of Rule 8.

(d) Administrator. There shall be an administrator to the Commission, whose duties and responsibilities shall be subject to the Commission's direction and supervision.

(1) The administrator shall be an attorney who is licensed to practice law in the State of Hawai'i, and who shall serve as attorney to the Commission. The administrator shall not be a person who is a sitting justice or judge, including part-time judge.

(2) The supreme court shall appoint the administrator. The appointment and removal of the administrator shall require the concurrence of the majority of the supreme court.

(3) The administrator shall not engage in the private practice of law; provided, the administrator may provide pro bono services consistent with Rule 6.1 of the Hawai'i Rules of Professional Conduct, subject to restrictions imposed by the Commission.

[(d)](e) Subpoena and Discovery.

(1) In matters before the Commission the chairperson or, if appointed pursuant to Rule 8.7 of this Rule, special counsel in matters under investigation by special counsel, may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.

A respondent judge may compel by subpoena the attendance of witnesses and the production of documents, books, accounts, and other records after formal disciplinary proceedings are initiated.

Writs of subpoena shall be issued in blank by the clerk of the supreme court upon application by any member of the Commission, special counsel or the respondent, subject to the demonstration of good cause required by Rule 8.2[(d)](e)(3) of this Rule.

(2) The power to enforce process may be delegated by the supreme court to any other court.

(3) There shall be no discovery proceedings except upon the order of the Commission chairperson for good cause shown.

[(e)](f) Rules of Procedure and Forms. The Commission shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings.

8.3. Immunity.

Members of the Commission, the administrator or other staff providing assistance to the Commission, and special counsel appointed by the supreme court shall be absolutely immune from suit for all conduct in the course of their official duties.

8.6. Complaint Procedure.

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including written complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

(3) Upon request of the chief justice of the supreme court, the Commission shall make an investigation under this rule of the conduct or physical or mental condition of a judge.

(b) Privilege. A qualified privilege shall attach to a complaint submitted to the Commission or testimony related to the complaint, and any civil action predicated on such complaint initiated against any complainant or witness, or their counsel, shall be subject to said qualified privilege.

(c) Discretionary Notice. Notice that a complaint has been made may be given to the judge named in the complaint.

(d) Screening of Complaints. Upon receipt of a complaint, the Commission shall determine whether such complaint warrants investigation and evaluation. Complaints determined to be frivolous, unfounded or outside the jurisdiction of the Commission shall not be investigated.

(e) Mandatory Notice. After the determination that a complaint warrants investigation and evaluation, notice that a complaint has been made shall be given to the judge.

(f) Preliminary Investigation and Evaluation. Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the Commission shall conduct a prompt, discreet, and confidential investigation and evaluation. The Commission may delegate one of its members, or the administrator, to conduct such investigation and evaluation.

(g) Determination. After conclusion of the investigation and evaluation, the Commission shall determine:

(1) That there is insufficient cause to proceed against the judge; or

(2) That there is sufficient information to make a disciplinary recommendation to the supreme court; or

(3) That further proceedings regarding the complaint are necessary.

(h) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the file shall be closed. If previously notified of a complaint, a judge shall be notified that the file has been closed.

(2) A closed file may be referred to by the Commission in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

(i) **Dispositions in Lieu of Further Proceedings.** Even though the Commission does not find that further proceedings are necessary, it may recommend to the supreme court that the court:

- (1) Issue a private reprimand; or
- (2) Inform or admonish the judge that [~~his or her~~]their conduct is or may be cause for discipline; or
- (3) Direct professional counseling or assistance for the judge; or
- (4) Impose conditions on the judge's conduct.

8.7. Appointment of Special Counsel.

Upon determining that further proceedings should be had, the Commission shall request the supreme court to appoint special counsel to further investigate the matter. The supreme court, however, may also, upon receipt of the report from the Commission pursuant to Rule 8.6 of these Rules, review the record *de novo* and, in its discretion, appoint special counsel *sua sponte*. In either case, Counsel, upon further investigation, shall either report to the Commission that a formal hearing is not necessary or shall initiate formal disciplinary proceedings as provided in Rule 8.9 of these Rules. The administrator may be appointed as special counsel. The Office of Disciplinary Counsel may be appointed as special counsel, subject to the approval of the chairperson of the Disciplinary Board.

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

Rule 15. Judicial Financial Disclosure.

(a) Filing of annual financial disclosure statement. Every judge shall file in the supreme court clerk's office an annual financial disclosure statement on a form approved by the supreme court. The form may be completed and submitted electronically. This requirement applies to all full time and per diem judges, including justices of the supreme court, but does not apply to retired judges or justices called back for temporary service pursuant to Article VI, Section 2 of the State Constitution.

(b) Time for filing. The financial disclosure statement shall be filed on or before April 30 and shall cover the preceding calendar year or that portion of the year during which the judge held office.

(1) **EXTENSIONS OF TIME.** A judge may apply to the chief clerk of the supreme court for an extension of time to file the financial disclosure statement. An application for extension shall be submitted prior to the deadline for filing the statement. Upon receipt of the request, the clerk shall grant one extension of time to May 30. The clerk shall note on the record that the extension was granted.

(2) **MONITORING BY CHIEF CLERK.** The chief clerk of the supreme court shall make reasonable efforts to monitor the filing of statements under this rule. If a judge has defaulted, filed a late statement, or filed an obviously incomplete statement, the clerk shall promptly notify the judge in writing and shall transmit a copy of the notice to the Commission on Judicial Conduct. The failure of the clerk to give such notice shall not excuse a judge's failure to comply with this rule.

(c) Imposition of discipline for untimely or incomplete statements. A judge who fails to file a timely statement, or who files an incomplete statement, may be subject to discipline pursuant to the procedures set out in Rule 8 of the rules of this court. If ~~however~~ the Commission on Judicial Conduct determines that any default or deficiency was inadvertent or in good faith and that the default or deficiency was promptly corrected by the judge after being called to the judge's attention, the Commission, pursuant to Rule 8.6(g)(1), may decline to proceed against the judge.

(d) Matters to be disclosed. The statement shall include disclosure of the financial interests of the judge and the judge's spouse or domestic partner and any dependent children. Disclosure shall be made of the following types of interests:

(1) The source and amount of all income of \$1,000 or more received, for services rendered, by the judge, the judge's spouse or domestic partner, or the judge's dependent children ~~or~~ by any other person for use or benefit of the judge, the judge's spouse or domestic partner, or the judge's dependent children during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed.

(2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business incorporated, regulated, or licensed to carry on business in the State that has a value of \$5,000 or more or that is equal to 10 percent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed. For purposes of this rule, judges do not need to disclose interests held in the Employees' Retirement System of the State of Hawai'i or other government pension plans.

(3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business, including a nonprofit entity, during the disclosure period, the term of office and the annual compensation.

(4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period, the original amount owed, and the amount outstanding; provided that credit card debt need not be disclosed unless the balance owed exceeded \$10,000 for 6 months or longer during the reporting period.

(5) The postal zip code for the location and the value of any real property in the State in which the person holds an interest valued at \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.

(7) Gifts ~~[not excluded by Rule 3.13(e)]~~ and reimbursements to the judge that must be reported under Rule 3.15(a)(2)-(3) of the Hawai'i Revised Code of Judicial Conduct.

(8) Full-time judges' hours of approved judicial education.

(e) Disclosure of amounts by range; number of stock shares. Where an amount is required to be disclosed, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$25,000; at least \$25,000 but less than \$50,000; at least \$50,000 but less than \$100,000; at least \$100,000 but less than \$150,000; at least \$150,000 but less than \$250,000; at least \$250,000 but less than \$500,000; at least \$500,000 but less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares.

(f) Short form statement. A short form financial disclosure statement approved by the supreme court may be used in odd-numbered years where there are no more than 10 amendments or changes in the information reported for the preceding disclosure period.

(g) Statements open to public inspection. Financial disclosure statements filed pursuant to this rule shall be available for public inspection in the supreme court clerk's office during normal business hours. Each judge's most recent long form statement and subsequent short form statement, if any, shall be accessible through the Judiciary's public web site. The Clerk shall redact from each disclosure statement account numbers and personal information, if provided, that could be used to steal identity, stalk, or put the judge or the judge's

family members in danger, including residential addresses and telephone numbers, and the business address of a spouse or domestic partner, or children.

(h) Filing of statement not to limit ethical responsibilities of a judge.

The filing of a financial disclosure statement pursuant to this rule shall not limit any ethical responsibilities of a judge with respect to financial activities and judicial disqualification. This rule shall not be construed as limiting the ethical or legal responsibilities of a judge as set out in the Hawai'i Revised Code of Judicial Conduct, case law, statutes or any other rule of court.

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII
EXHIBIT B
HAWAII REVISD CODE OF JUDICIAL CONDUCT**

[The proposed additional language is underscored; deleted language is bracketed and stricken.]

**Rule 3.13. Acceptance and Reporting of Gifts, Loans,
Bequests, Benefits, or Other Things of Value**

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to materially impair the judge's independence,* integrity,* impartiality,* temperament, or fitness to fulfill the duties of judicial office.

CODE COMPARISON

*The Hawaii 'i Revised Code of Judicial Conduct
modifies ABA Model Code Rule 3.13 by (1)
substituting "materially impair" for
"undermine" and (2) adding "temperament, or
fitness to fulfill the duties of judicial office."*

(b) Unless otherwise prohibited by law* or by Rule 3.13(a), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification or recusal of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge;

(9) gifts incident to a public testimonial; or

(10) invitations to the judge and the judge's spouse, domestic partner,* or guest to attend without charge:

(A) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(B) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

CODE COMPARISON

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.13(B) by adding paragraphs (9) and (10) from ABA Model Code Rule 3.13(C).

(c) Unless otherwise prohibited by law* or by Rule 3.13(a), a judge may accept the following items and must report such acceptance to the extent required by Rule 3.15:

(1) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge; and

(2) gifts, loans, bequests, benefits, [~~favors, loans,~~] or other things [~~types~~] of value exceeding \$200.00, if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

CODE COMPARISON

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.13(C) by recategorizing public testimonial gifts and event invitations as nonreportable gifts under Rule 3.13(b) and adding paragraph (2).

COMMENT:

[1] *Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Rule 3.13(b) identifies circumstances in which the risk that the acceptance would appear to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office is low and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under Rule 3.13(a) from accepting the gift or required under Rule 3.13(c) to publicly report it.*

[2] *Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an*

appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification or recusal under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Rule 3.13(b)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] RESERVED.

**Rule 3.14. REIMBURSEMENT OF EXPENSES AND
WAIVERS OF FEES OR CHARGES**

(a) Unless otherwise prohibited by Rules 3.1 and 3.13(a) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items from sources other than the judge's employing

entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.

(c) ~~[RESERVED.]~~ A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT:

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure ~~himself or herself~~ that acceptance of reimbursement or fee waivers would not appear to a reasonable person to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are

reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification or recusal of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15. REPORTING REQUIREMENTS

(a) A judge shall publicly report the amount or value of:

(1) compensation of \$1000 or more received for extrajudicial activities as permitted by Rule 3.12; and

(2) gifts and other things of value as permitted by Rule 3.13(c).

(3) ~~[RESERVED.]~~ reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(a), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$200.00.

(b) When public reporting is required by Rule 3.15(a), a judge shall report the date, place, and nature of the activity for which the judge received any compensation and the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(c) The public report required by Rule 3.15(a) shall be made annually.

(d) Reports made in compliance with this Rule shall be filed as public documents in the supreme court clerk's office.

CODE COMPARISON

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.15 by harmonizing its provisions with the Hawai'i financial disclosure rule.

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**

FINANCIAL DISCLOSURE STATEMENT FORM (JUD 101)

*[The proposed additional language is bolded and **underscored**;
deleted language is bracketed and stricken]*

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
PROPOSED AMENDED FORM FOLLOWS]*



SUPREME COURT CLERK'S OFFICE
417 SOUTH KING STREET
HONOLULU, HAWAII 96813-2912

FINANCIAL DISCLOSURE STATEMENT

THIS SPACE FOR OFFICE USE ONLY

Before completing this form please read the instructions for Financial Disclosure Statement, including the text of Supreme Court Rule 15. REMINDER: For all items requiring a monetary amount, the following financial range codes may be used.

A - Less than \$1,000
B - At least \$1,000 but less than \$10,000
C - At least \$10,000 but less than \$25,000
D - At least \$25,000 but less than \$50,000
E - At least \$50,000 but less than \$100,000
F - At least \$100,000 but less than \$150,000
G - At least \$150,000 but less than \$250,000
H - At least \$250,000 but less than \$500,000
I - At least \$500,000 but less than \$750,000
J - At least \$750,000 but less than \$1,000,000
K - \$1,000,000 or more

TO BE FILED BY ALL FULL TIME AND PER DIEM JUDGES.

(Type or Print Clearly)

NAME: _____
(LAST) (FIRST) (MIDDLE)

OFFICE ADDRESS: _____
NUMBER, STREET

CITY OR TOWN: _____ ZIP CODE: _____

NAME OF SPOUSE OR DOMESTIC PARTNER:

No. of Dependent Children:
(Do not include names)

JUDICIAL POSITION HELD

DATE OF APPOINTMENT

OFFICE PHONE

CALENDAR YEAR COVERED BY THIS DISCLOSURE: 20____

ITEM RSCH 15(d)(1)	JUDICIAL COMPENSATION	ANNUAL INCOME
-----------------------	-----------------------	---------------

ITEM RSCH 15(d)(1)	JUDGE'S OTHER INCOME (if income for services rendered exceeds \$1,000)
-----------------------	---

EMPLOYER/LAW FIRM	BUSINESS ADDRESS	ANNUAL INCOME
-------------------	------------------	---------------

ITEM RSCH 15(d)(1)	INCOME OF SPOUSE OR DOMESTIC PARTNER AND DEPENDENT CHILDREN (if income for services rendered exceeds \$1,000)
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EMPLOYER	ANNUAL INCOME
----------	---------------

ITEM 4 RSCH 15(d)(1)	ANY OTHER INCOME, FOR SERVICES RENDERED, IN EXCESS OF \$1,000 - INCOME DISCLOSED IN ITEMS 1 - 3 NEED NOT BE REPEATED HERE		
SOURCE	NATURE OF SERVICES RENDERED	AMOUNT	
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 5 RSCH 15(d)(2)	EACH OWNERSHIP OR BENEFICIAL INTEREST, HELD IN ANY BUSINESS CARRYING ON BUSINESS IN THE STATE, HAVING A VALUE OF \$5,000 OR MORE OR EQUAL TO 10% OF THE OWNERSHIP OF THE BUSINESS.		
NAME OF BUSINESS	NATURE OF BUSINESS	NATURE OF INTEREST	ENTER AMOUNT OR NO. OF SHARES
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 6 RSCH 15(d)(2)	OWNERSHIP OR BENEFICIAL INTEREST UNDER ITEM 5 TRANSFERRED DURING THIS DISCLOSURE PERIOD.		
NAME OF BUSINESS	DATE OF TRANSFER	VALUE OF TRANSFER	
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 7 RSCH 15(d)(3)	LIST EACH OFFICERSHIP, DIRECTORSHIP, TRUSTEESHIP OR OTHER FIDUCIARY RELATIONSHIP HELD IN ANY BUSINESS, <u>INCLUDING A NON-PROFIT ENTITY.</u>		
NAME OF BUSINESS	TITLE AND TERM OF OFFICE	COMPENSATION (enter amount or NONE)	
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			

ITEM 8 RSCH 15(d)(4)	LIST CREDITORS, OTHER THAN CREDIT CARD ACCOUNTS, TO WHOM MORE THAN \$3,000 WAS OWED DURING THE DISCLOSURE PERIOD. LIST CREDIT CARD DEBT THAT EXCEEDED \$10,000 FOR SIX MONTHS OR MORE.		
NAME AND ADDRESS OF CREDITOR	ORIGINAL AMOUNT OWED	AMOUNT OWED AT END OF YEAR	
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 9 RSCH 15(d)(5)	REAL PROPERTY IN THE STATE IN WHICH IS HELD AN INTEREST WITH A FAIR MARKET VALUE OF \$10,000 OR MORE.		
POSTAL ZIP CODE OR LOCATION	VALUE		
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 10 RSCH 15(d)(5)	REAL PROPERTY, THE FAIR MARKET VALUE OF WHICH EXCEEDS \$10,000, ACQUIRED DURING THE DISCLOSURE PERIOD.		
POSTAL ZIP CODE OF LOCATION	NATURE OF INTEREST	NAME AND ADDRESS OF PERSON RECEIVING CONSIDERATION	CONSIDERATION GIVEN
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 11 RSCH 15(d)(5)	REAL PROPERTY, THE FAIR MARKET VALUE OF WHICH EXCEEDS \$10,000, TRANSFERRED DURING THE DISCLOSURE PERIOD.		
POSTAL ZIP CODE OF LOCATION	NAME AND ADDRESS OF PERSON FURNISHING CONSIDERATION	CONSIDERATION RECEIVED	
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			

ITEM 12 RSCH 15(d)(6)	CREDITOR INTEREST IN INSOLVENT BUSINESS HAVING A VALUE OF \$5,000 OR MORE.		
NAME OF BUSINESS	NATURE OF BUSINESS	NATURE OF INTEREST	VALUE
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 13 RSCH 15(d)(7); Rules 3.13, 3.14 & 3.15 Revised Code of Judicial Conduct	GIFT(S) AND REIMBURSEMENTS THAT MUST BE REPORTED UNDER RULE [3-13(e)] 3.15(a)(2) and (3) OF THE HAWAII REVISIED CODE OF JUDICIAL CONDUCT		
<u>DATE</u>	SOURCE	DESCRIPTION [OF GIFT]	ESTIMATED VALUE
<input type="checkbox"/> Check here if entry is None <input type="checkbox"/> Check here if you have attached additional sheets			
ITEM 14 RSCH 15(d)(8) & 22(h)	FULL-TIME JUDGES' APPROVED JUDICIAL EDUCATION		
I attended _____ hours of Approved Judicial Education during the reporting period.			
REMARKS:			
<input type="checkbox"/> See attached sheets.			
CERTIFICATION: I hereby certify that the above is a true, correct, and complete statement.			
SIGNATURE:		DATE:	
NOTE: This filing is not valid without a signature.			

SUNSHINE LAW MEETING
AGENDA ITEM V

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

Attachment 1: Staff Analysis and Recommendations Regarding Kentucky and Ohio
Laws Prohibiting State Employees from Engaging in Political Activity

SUNSHINE LAW MEETING
AGENDA ITEM V

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

**Staff Analysis and Recommendations Regarding Kentucky and Ohio Laws
Prohibiting State Employees from Engaging in Political Activity**

The Commission asked staff to examine Kentucky and Ohio laws restricting state employees from engaging in political activity, specifically focusing on whether similar bills should be introduced in Hawai'i.

Kentucky (Ken. Rev. Stat. § 18A.140)¹

This law includes the following restrictions on a specific class of state employees:

- Prohibits discrimination based on political or religious opinions, affiliations, ethnic origin, sex, race, or disability.
- Prohibits using official authority or influence to influence any person's vote or political action.
- Prohibits solicitation of any political contribution or service.
- Prohibits any person from soliciting a political contribution from an employee in the classified service.
- It prohibits employees, board members, or board executive directors from being members of any national, state, or local committee of a political party, officers or members of a committee of a partisan political club, candidates to any paid partisan public office, or taking part in the management or affairs of any political party or campaign.

A large number of Kentucky state employees are exempt from these “classified service employee” restrictions, including the General Assembly, employees of the General Assembly, officers elected by popular vote, members of boards and commissions, officers and employees on the staff of the Governor, the Lieutenant Governor, cabinet secretaries, commissioners, office heads, administrative heads of all boards and commissions, designated principal assistants or deputies, the judicial department, officers and members of the staffs of state universities, officers, teachers, and employees of the local boards of

¹

Available at <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=1375>

education, interim employees, state police troopers, chief district engineers and the state highway engineer, and many more.²

From email correspondence with Susan Clary, Executive Director of the Kentucky Executive Branch Ethics Commission, it appears this statute falls under the personnel chapter and is not enforced by an ethics body. She is unaware of any cases being prosecuted by the Kentucky Personnel Cabinet or the Attorney General's office under this provision. She highlighted a 2016 case involving soliciting funds by Tim Longmeyer, a high-ranking Governor official. However, he was prosecuted under federal bribery statutes and separately under an existing section of the Kentucky Ethics Code.

Ohio (Ohio Rev. Code § 124.57³ and Ohio Admin. Code ¶ 123:1-46-02⁴)

This law prohibits classified state employees from engaging in partisan political activity, including (1) soliciting contributions, (2) being an officer in a political organization, and (3) participating in politics other than voting and expressing political opinions. Examples of permitted activities include:

- Voting;
- Expression of opinion;
- Voluntary financial contributions to political candidates or organizations;
- Attendance at political rallies;
- Signing of nomination petitions;
- Display of political materials at home or on the employee's property;
- Wearing political badges or buttons or displaying political stickers on private vehicles;

Prohibited activities include:

- Candidacy for public office in a partisan election;
- Circulation of nominating petitions for any candidate participating in a partisan election;
- Service in an elected or appointed office in any partisan political organization;
- Campaigning for a candidate, such as writing for publications, distributing political material, or writing or making speeches on behalf of a candidate for partisan elective office;
- Solicitation, either directly or indirectly, of any type of contribution for a political party or candidate;

² See Ken. Rev. Stat. § 18A.115 (available at <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=54676>)

³ Available at <https://codes.ohio.gov/ohio-revised-code/section-124.57>.

⁴ Available at <https://codes.ohio.gov/ohio-administrative-code/rule-123:1-46-02>.

- Solicitation or sale of political party tickets;
- Participation in a political action committee; and
- Participation in political causes of a partisan nature.

The definition of “classified service” has many exemptions to it. These include 32 express categories, including:

- All officers elected by popular vote or persons appointed to fill vacancies in those offices;
- The members of all boards and commissions;
- The deputies and assistants of state agencies authorized to act for and on behalf of the agency; and
- Employees of the governor’s office.

Classified service employees appear mostly in support positions, such as administrative support, maintenance, and crafts/trades.

The appointing authority of the classified employee has the authority to remove or otherwise discipline a classified employee engaged in partisan political activity. However, such authority is discretionary and not mandatory.

The constitutionality of Ohio Rev. Code § 124.57 in the context of the First Amendment was considered in *Grey v. City of Toledo*, 323 F. Supp. 1281 (N.D. Ohio 1971). There, the court found that the government had a compelling interest in protecting a civil service system based on merit and free from political influence and that interest was sufficient to justify an encroachment upon a public employee’s First Amendment rights.

However, any restriction imposed by the government upon its employees’ political activity must be directly related to the goal of prohibiting partisan political activity, the effect of which interferes with the efficiency and integrity of the public service. If no such relationship exists, the regulation must be struck down as violative of the first amendment rights of the employees. The more remote the relationship between a particular activity and the performance of official duty, the more difficult it is for the government to justify the restriction on the grounds that there is a compelling public need to protect the efficiency and integrity of public service

323 F.Supp. at 1285 (citations omitted). Nonetheless, the Court’s ruling did strike down some provisions.

Of all of the prohibitions contained in Section 2, the one most repressive is subsection (i). Not only is the restriction applicable to both partisan and nonpartisan political discussion, but the City has no legitimate interest in restricting

an employee's right to discuss partisan politics during working hours. This is an unconstitutional gagging of a policeman's right to free speech and expression. The Hatch Act reserves to the employee the right to express his opinion on all political subjects and candidates so long as such activity is not directed towards party success. . . . The City of Toledo cannot go beyond this limitation.

Id. at 1289 (citations omitted).

Analysis: These two statutes may not be models to follow. On the surface, both laws create a bold line prohibiting state employees from being involved in the political process. Nonetheless, the law focuses on employees with less power or influence on government operations. For example, key government officials who have the power to authorize large contracts or negotiate with contractors are largely exempted from the reach of both laws. If the primary purpose of these laws is to foster public confidence in government officials, then excluding key decision-makers from their scope weakens this fundamental goal.

Further, the lack of public enforcement raises questions about the usefulness of these measures.

Recommendations:

Option 1 (Legislation to Ban Political Contributions from Government Contractors).

Staff recommends supporting a legislative measure restricting owners, officers, and immediate family members of any state or county contractor from making political contributions, similar to the language of H.B. 724 S.D. 1 (available at https://www.capitol.hawaii.gov/sessions/session2023/bills/HB724_SD1_.htm). Staff is cautiously optimistic that some version of this bill will pass in the upcoming legislative year. The Campaign Spending Commission has already pledged to introduce such a bill.

The benefits of such a bill are numerous. It would be relatively easy to administer. It would also address concerns about state employees improperly using government contracting to unethical ends. Similar measures in Connecticut, Illinois, and New Jersey have been successful. See, e.g., Lessons for Hawaii: Other States Have Strong Pay-To-Play Laws (available at <https://www.civilbeat.org/2024/05/lessons-for-hawaii-other-states-have-strong-pay-to-play-laws/>)

Option 2 (Expand Language Indicating the Fair Treatment Law Prohibits Political Favoritism).

As noted earlier, the Commission should consider incorporating express rule provisions to interpret the fair treatment provision of the code in a way that clearly prohibits discrimination based on an individual's political activities, affiliations, or lack thereof. By doing so, the Commission would reinforce the principle that government actions and decisions should be free from partisan bias, ensuring that individuals are neither advantaged nor disadvantaged due to their political stance. This approach aligns with the intent of fostering public trust, as it underscores a commitment to neutrality and fairness in the treatment of all citizens. The proposed language is in Agenda Item VI and pasted below:

§ 21-7-10. Fair Treatment. (a) Subject to article III, section 7 of the Hawai'i State Constitution and section 84-13, HRS, legislators and employees shall not use or attempt to use their official positions to solicit, request, accept, receive, or grant unwarranted privileges, exemptions, advantages, contracts, treatment, or benefits, for themselves or others, or to subject others to unwarranted treatment, whether favorable or unfavorable. Among other things, legislators and employees shall not:

...(existing text)

(8) Use or attempt to use their official position to solicit, request, or otherwise extract political contributions or support for any candidate, campaign, or political party from any vendor, contractor, or any other person or business engaged in procurement with their state agency, or over any individual or business that they supervise, regulate, inspect, or otherwise exercise official authority.

(9) Engage in, or knowingly allow a subordinate to engage in, discrimination, favoritism, or retaliation based on an individual's political beliefs, affiliations, or activities, including hiring, promoting, demoting, or otherwise treating individuals or entities differently based on their participation or lack of participation in political activities.

SUNSHINE LAW MEETING
AGENDA ITEM VI

ADMINISTRATIVE RULES

Review of proposed edits

Attachment 1: Staff Overview

Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 7

SUNSHINE LAW MEETING
AGENDA ITEM VI

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 proposed draft revisions to Chapter 7 are submitted to get the commission's input on the current direction of the proposed language. 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.

Proposed Revisions:

1. **Definitions and New Terms:** Expanded definitions include "charitable organization," "prohibited source," "protocol gift," and "widely attended event." Of key note:
 - a. **Nominal Value:** This refers to items worth a small, insignificant amount, capped at five dollars. This threshold helps determine what small gifts, such as coffee, may be accepted for certain events.
 - b. **Prohibited Source:** Defines a prohibited source and uses this term consistently throughout the chapter rather than several separate definitions.
2. **Gift Acceptance Guidelines:** Detailed provisions outline when gifts are prohibited, focusing on gifts from "prohibited sources" or those that may influence official duties. Additional criteria are provided for accepting protocol gifts, competitively awarded grants, modest awards, and gifts from family or during personal events. Guidelines also address "nominal" gifts and permissible food/beverages at events.
 - a. **Protocol Gift:** Defined as a tangible gift given to the State to honor a special relationship, occasion, or event, reflecting respect and goodwill. Examples include cultural, commemorative, or symbolic gifts celebrating diplomacy or state functions. Protocol gifts are permissible but must be

registered with the Hawaii State Archives to remain with the state and kept appropriately.

- b. **Modest Coworker Gifts.** Modest gifts from fellow employees are allowed for personal occasions like retirement, illness, or family emergencies. The gift must align with the occasion and avoid any impression of favoritism or influence over the employee's official duties. Its purpose should be goodwill or support, not to gain any advantage.
3. **Widely-Attended Events:** Legislators and employees may attend widely attended events with specific criteria, such as minimum attendance, relevance to official duties, and a per-person cost cap of \$100.
4. **Presumption of Gift Acceptance.** Establishes a presumption that any item of value received by an employee or legislator is a gift unless they provide clear evidence of payment, such as a receipt or bank statement. Without sufficient proof, the item is classified as a gift, ensuring transparency and preventing conflicts of interest.
5. **Interests Affected by Official Action.** This rule presumes that any gift a legislator or employee receives due to their state position is intended to influence their official actions. The recipient must show clear evidence that the gift was given for unrelated reasons to rebut this presumption. The commission may assess if the gift aims to generate goodwill or reward official action, helping prevent undue influence.
6. **Fair Treatment and Misuse of Position:** Provisions reinforce the prohibition against using an official position for personal gain or to grant unwarranted privileges. The proposed changes add prohibitions against using a state position to solicit political contributions or support from those with whom one has an official relationship. They also prohibit discrimination, favoritism, or retaliation based on an individual's political beliefs or activities, ensuring fair treatment in all official interactions.
7. **Social Media Usage:** Specific restrictions are introduced for state-managed social media, including prohibitions against promoting private businesses, political campaigning, and reposting content to benefit private or campaign efforts indirectly.
8. **Honoraria:** Defines "honorarium" and outlines when state employees may accept it, conditions under which it is prohibited, and reporting requirements.

RDH/lo

Venue Name	Venue Cost	Venue Per Person	Meal Per Person Cost	Total Event Cost per person
Natsunoya Tea House	\$150	\$3	\$36-\$47	\$39-\$50
Hyatt Regency Waikiki	\$4,375	\$87.50	\$70-\$106	\$157.50-\$193.50
Sheraton Princess Kaiulani	\$2,000	\$40	\$160	\$200
Hilton Hawaiian Village	\$400	\$8	\$80.75-\$121.25	* \$88.75-\$129.25
Hilton Waikiki Beach	\$4,434	\$88.68	N/A	\$88.68
Café Julia/YWCA Laniakea	\$1,000-\$1,800	\$20-\$36	\$55-\$70	\$75-\$106
Averages	\$2,022.71	\$40.45	\$82.89	\$112.77
*Does not include AV charges				

HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 7

STATE ETHICS COMMISSION

GIFTS AND FAIR TREATMENT

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

§ 21-7-1. Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Charitable organization" means an entity organized under section 501(c)(3) of the Internal Revenue Code.

"Gift" means anything of value and includes, but is not limited to, money, gift cards, food, services, loans, travel, lodging, training, entertainment, hospitality, things, gratuities, favors, or discounts.

"State purpose" means reasonably related to conducting one's official state duties.

"State resources" means state time, equipment, facilities, money, electronic mail, letterhead, and other assets and resources, including state personnel.

"Nominal" means an item worth a small or insignificant amount of money, not exceeding five dollars.

"Prohibited source" refers to any person or entity that, in relation to an employee, legislator, or their agency:

- (1) Engages in regulated activities overseen by the employee's or legislator's agency, including businesses and industries that require agency licensing, compliance checks, or inspections.
- (2) Holds or seeks a contract with the agency of the employee or legislator, or is reasonably expected to pursue such a contract.
- (3) Has a direct financial interest that could be significantly affected by the employee's or legislator's official action. This does not apply to

those with general interests, such as a broad class of taxpayers.

- (4) Requests or seeks an official action from the employee, legislator, or their agency on a specific matter beyond routine administrative actions.
- (5) Is involved in lobbying activities aimed at the intended recipient or their agency within the past twelve months or is reasonably likely to direct such lobbying activities at the recipient or their agency within the next twelve months.

"Protocol gift" means a tangible gift of any value given to the State to honor a special relationship, celebrate an occasion, or mark a significant event and convey respect and goodwill. An example of a protocol gift might include a painting, sculpture, crafts, textiles, books, manuscripts, or commemorative items that reflect the culture of the giver or mark a specific event or visit.

"State purpose" means reasonably related to conducting one's official state duties.

"State resources" means state time, equipment, facilities, money, electronic mail, letterhead, and other assets and resources, including state personnel.

"Widely attended event" means an organized, planned event where over 25 people who are not employees, legislators, or lobbyists are invited and reasonably expected to attend, and written materials, including a printed program and invitation, are available well before the event.

§ 21-7-2. Prohibited gifts. (a) An employee or legislator shall not solicit, accept, or receive any gift, directly or indirectly, if a reasonable person may conclude that the gift is being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties.

(b) In determining whether a gift is prohibited, the commission shall examine the circumstances surrounding the offer of the gift and consider:

(1) The donor's relationship to the recipient. Except as specifically provided in this chapter, a gift is generally not allowed when it comes from a prohibited source~~[prohibited where the recipient is in a position to take official action specifically affecting the donor, such as where the donor is a party to a contested case hearing before the recipient, regulated by the recipient or the recipient's agency, involved in procurement with the recipient or the recipient's agency, or~~

~~a lobbyist seeking legislative or administrative action from the recipient or the recipient's agency];~~

(2) The value of the gift. Generally, the higher the value of the gift, the more likely the gift is prohibited; and

(3) Whether the gift supports a state purpose. Generally, cash, gift cards, food and drink, and complimentary admission to events or venues ~~[that are]~~ primarily intended as entertainment, such as concerts, movies, sporting events, or golf tournaments, do not serve any state purpose and are more likely to be prohibited.

§ 21-7-3. Acceptable items. (a) The following items generally may be accepted and need not be reported on a gifts disclosure statement:

(1) A lei, other than a money lei, offered in connection with a celebration, commemoration, or event;

(2) Discounts, services, or other benefits offered to the public at large. This may include discounts, services, or other benefits offered to government employees as a group, provided that the same discounts, services, or other benefits are offered on similar terms to other large groups of employees;

(3) Bona fide competitively awarded grants or scholarships;

(4) Promotional items having no resale value, such as branded pens, calendars, hats, or tote bags;

(5) Rewards or prizes given to competitors in contests or events, including random drawings, offered to the public or a segment thereof, where the legislator or employee receiving the reward or prize does not attend the contest or event in an official capacity, unless a reasonable person would conclude that the reward or prize was offered to the legislator or employee because of the legislator's or employee's state position;

(6) Acceptance of a protocol gift on behalf of the state and registered with the Hawai'i State Archives within thirty days of receipt and either transferred or maintained according to its direction;

~~[(6)]~~ (7) A gift provided by any other state, a political subdivision of any other state, or the United States, provided that the gift serves a bona fide state purpose and that tangible and durable items of more than nominal value, such as artwork or jewelry, shall consult with the state archivist to determine whether it should be treated as a protocol gift according to subsection (6); ~~[belong to the State rather than the individual recipient];~~

~~[(7)]~~ (8) Modestly priced awards, plaques, and other ceremonial items of the type customarily bestowed in connection

with bona fide ceremonies and otherwise reasonable under the circumstances;

~~[(8)]~~ (9) Gifts received by a spouse or dependent child of the legislator or employee solely because of the spouse's or child's own employment, volunteer activities, or personal relationships, where a reasonable person would not believe that the gift was intended to influence or reward the legislator or employee; ~~[and]~~

(10) Modest gifts from fellow employees in connection with special occasions such as retirement, illness, or family emergencies. These gifts must be reasonable in value, appropriate to the occasion, and should not create any perception of favoritism or undue influence in relation to the employee's official duties. Gifts should primarily serve as gestures of goodwill or support during significant personal events, rather than as a means of fostering an advantage;

(11) Nominally priced food and drinks, such as coffee and donuts, provided to all participants attending a general meeting or event; and

~~[(9)]~~ (12) An unsolicited gift of nominal value given as a token of appreciation to a teacher, medical professional, or similar kind of service provider, ~~[such as a holiday gift given to a teacher by a student or guardian,~~ where the gift is offered by an individual in the individual's personal capacity, and the gift is given under circumstances in which no reasonable person would conclude that the gift was given to influence the recipient's state duties with respect to the offeror.

Example 1. A small, nominal gift, such as a hand-drawn card, given by a student or guardian to a teacher as a gesture of gratitude.

Example 2. Home-baked or homegrown food items with nominal value, offered by a constituent to a legislator.

(b) Gifts given under circumstances in which no reasonable person would conclude that the gift was being given to influence or reward the recipient for the performance or nonperformance of the recipient's state duties may generally be accepted, but may be reportable pursuant to section 84-11.5, HRS.

§21-7-4 Invitations to Widely Attended Events. (a) A legislator or employee may attend a widely attended event where:

- (1) The organizing event sponsor offers complimentary admission;

- (2) At least 25 persons who are not employees, legislators, or prohibited sources are reasonably expected to attend;
- (3) Attendance at the event is genuinely accessible to the general public or individuals from throughout a given industry or profession;
- (4) The event is related to an employee or legislator's official duties and responsibilities; and
- (5) The per-person cost is no more than \$100.

(b) For purposes of this section, "complimentary attendance" means a waiver of all or part of conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. It does not include entertainment collateral to the event, or food or refreshments that are not taken in a group setting with substantially all the other attendees. It does not include interstate travel, lodging, or items of more than nominal value. It does not include admission to a sporting, entertainment, or other purely recreational event.

(c) The commission shall consider the event advertising, the number of registered attendees, and the number of attendees to determine whether 25 persons were reasonably expected to attend. If less than 25 people attend the event and it was not reasonable to expect 25 people to attend the event, the legislator or employee must reimburse the cost per person of the event.

(d) Per-person cost shall be determined by the fair market value of the food, entertainment, beverages, and all other related event expenses (other than charitable contributions) by the number of persons reasonably expected to attend the event, so long as that number does not differ significantly from the number of people who attend the event. At the request of the commission, an invited employee, or a legislator, the event sponsor must provide the per-person cost along with detailed supporting information, including the actual or estimated costs of food, entertainment, beverages, and any other related event expenses. Failure to provide this information creates a presumption that the per-person cost exceeds \$100.

§ 21-7-5. Offers of travel. (a) An offer of economy-class travel expenses, modest food and non-alcoholic beverages, and educational programming in connection with a bona fide

professional development program, conference, or business meeting, generally may be accepted if receipt thereof is consistent with subsections (b) and (c) and section 21-7-2, provided that the recipient shall report the travel pursuant to section 84-11.5, HRS.

(b) The following economy-class travel expenses, including modest meals and lodging, generally may be accepted and need not be reported on a gifts disclosure statement:

(1) Travel expenses paid for by the United States, any of its states or territories, or any political subdivision thereof;

(2) Travel expenses provided pursuant to a grant to or a contractual agreement with the State, provided the benefit supports a bona fide state purpose;

(3) Travel expenses provided to individuals to serve as chaperones to groups of public school students on student educational tours, where the tours are paid for by students or their guardians and are approved by the State of Hawaii Department of Education, and where the travel expenses are paid for by the organizing tour company or with a portion of fees collected from other travelers, provided that the tours are otherwise consistent with the December 2016 Settlement Agreement in HSTA v. Hawaii State Ethics Commission.

(c) In determining whether an offer of travel is acceptable, the commission shall consider:

(1) The donor's relationship to the recipient. Generally, an offer of travel may not be accepted where the donor is a prohibited source ~~[lobbies, seeks business with, or is regulated by the recipient's agency]~~;

(2) The value of the trip, including all travel costs sponsored by the donor; and

(3) Whether the travel supports a state purpose. Generally, offers of travel to events that lack significant educational content may not be accepted. Likewise, offers to attend entertainment events, such as golf, cruises, sporting events, or luxury meals, generally may not be accepted, even if they occur as part of an otherwise acceptable event.

§ 21-7-6. Valuation of gifts. (a) The value of a gift is its fair market value, which is the cost that a member of the public would reasonably expect to incur to purchase the gift, including any tax-deductible portion.

(b) If the gift is a seat at a table for an event, the value of the gift is the cost of the table sponsorship divided by the number of seats at the table.

§ 21-7-7. Imputing gifts to others. (a) Where an offeror of a gift does not specify a recipient within an office, and the legislator or supervisor of the receiving office knows or reasonably should know of the gift, the gift is presumed to be a gift to the legislator or supervisor.

(b) A gift to a family member of a legislator or employee is presumed to be a gift to a legislator or employee where:

(1) The gift is offered because of the family member's relationship to the legislator or employee; and

(2) The legislator or employee knows or reasonably should know of the gift.

§21-7-XXX Presumption of Gift Acceptance. (a) Any item of value provided to an employee or legislator by any individual or entity shall be presumed to be a gift unless the employee or legislator can establish with clear and convincing evidence that they paid for the item. Clear and convincing evidence should indicate the financial transaction's date, amount, and nature that might substantiate the payment claim, such as returned checks, detailed receipts, bank or credit card statements, or electronic payment records.

(b) In the absence of sufficient evidence to rebut the presumption, the item shall be deemed a gift.

§21-7-XXX Interests Affected by Official Action. (a) Any gift or gifts received by a legislator or employee because of their state position is presumed to be given due to the potential of the employee or legislator to take action affecting the source's interest.

(b) To rebut the presumption that the source of a gift or gifts has an interest that may be affected by official action or lack of action by the legislator or employee, the recipient of the gift must provide clear and convincing evidence that the gift was given for reasons unrelated to a potential to affect official action or lack of action. In evaluating the presumption, the commission may consider whether the gift is given to generate goodwill and influence or reward official action taken by the agency.

§ 21-7-8. Submission of gifts disclosure statement. Gifts disclosure statements shall be filed using forms and methods prescribed by the commission. The commission may require that gifts disclosure statements be filed using an electronic filing system.

§ 21-7-9. Public information. Gifts disclosure statements are public records and the contents of a gifts disclosure statement are public information, except as otherwise provided by law.

§ 21-7-10. Fair treatment. (a) Subject to article III, section 7 of the Hawai'i State Constitution and section 84-13, HRS, legislators and employees shall not use or attempt to use their official positions to solicit, request, accept, receive, or grant unwarranted privileges, exemptions, advantages, contracts, treatment, or benefits, for themselves or others, or to subject others to unwarranted treatment, whether favorable or unfavorable. Among other things, legislators and employees shall not:

(1) Take unwarranted action or withhold warranted action against an individual, or threaten to do so, for lodging a complaint with the commission, where a reasonable person would conclude that the action or lack of action, or threat thereof, was intended as retaliation for lodging a complaint or cooperating with a commission investigation;

(2) Use or attempt to use their official position to seek or secure private employment or contracts for services for themselves or others, provided that legislators and employees may offer professional references for their current and former employees;

(3) Accept, receive, or solicit compensation, honoraria, other consideration, or gifts for the performance of their official duties or responsibilities except as provided by law;

(4) Use state resources for private business purposes, including, but not limited to, the use of state resources for:

(A) Political campaign activities;

(B) Advertising or publicizing the sale of goods or services;

(C) Taking or responding to sales orders or inquiries;

(D) Preparing or sending invoices;

(E) Collecting payments;

(F) Producing or delivering goods or services;

(G) Arranging or conducting private business meetings;

(H) Requesting or directing other state personnel to assist with private business activities; or

(I) Otherwise furthering a private business interest, except where the State has made a state facility or resource available for rent, purchase, or use by private organizations or individuals on generally equal terms and such use serves a state purpose;

(5) Use state resources for fundraising, except:

(A) As approved by the Governor, the Speaker of the House and President of the Senate, the Chief Justice, the Board of Directors of the Office of Hawaiian Affairs, or the President of the University of Hawaii, where such fundraising serves a significant state purpose and where the commission has been notified in writing with a clear indication of the duration of the approval; or

(B) In conjunction with a nonprofit organization that exists for the sole purpose of assisting and supporting a state facility or program, including but not limited to a state charter school;

(6) Solicit or engage in a substantial financial transaction with a subordinate or a person or business the legislator or employee inspects or supervises in an official capacity; or

(7) Abuse their position within state government to sexually harass another individual.

(8) Use or attempt to use their official position to solicit, request, or otherwise extract political contributions or support for any candidate, campaign, or political party from any vendor, contractor, or any other person or business engaged in procurement with their state agency, or over any individual or business that they supervise, regulate, inspect, or otherwise exercise official authority.

(9) Engage in, or knowingly allow a subordinate to engage in, discrimination, favoritism, or retaliation based on an individual's political beliefs, affiliations, or activities, including hiring, promoting, demoting, or otherwise treating individuals or entities differently based on their participation or lack of participation in political activities.

(b) In all but the most extraordinary circumstances, acceptance of a gift in compliance with section 84-11, HRS, and sections 21-7-1 to 21-7-6 will comport with the fair treatment law; however, solicitation or acceptance of a substantial number of individual gifts may raise fair treatment concerns even if each individual gift is acceptable.

§21-7-XXX Use of State Social Media Accounts. (a) Social media refers to an online service that permits users to create, share, repurpose, and publish information for the purpose of community interaction. Social media services include, but are not limited to Facebook, Twitter/X, and Instagram. State social media accounts are social media accounts that are established and managed by a government agency, employee, or legislator using state resources. State social media accounts are intended

to serve official functions, disseminate information, engage with the public, and promote transparency and communication on matters related to government activities, policies, and services. Legislators and employees shall not use state social media accounts for private business purposes, including:

(1) Advertising, endorsing, or otherwise promoting a private business, including a non-profit organization, except that a legislator or employee may acknowledge an event that benefits the community sponsored by an organization. An event that benefits the community provides resources, support, aid, or information to the community and whose purpose is not primarily to raise funds or promote the sponsoring organization. Such events may include a training course that teaches CPR, a community book drive to benefit a public school, or a community clean-up day.

(2) Political campaigning, including:

(A) Linking to a candidate campaign site;

(B) Linking to a site that contains candidate campaign information, such as information on a candidate fundraising event;

(C) Posting campaign information, such as information on a candidate's campaign event or details on how to contact a campaign committee; and

(D) Endorsing a candidate.

(3) Posting material for the purpose of later reposting it on a private account in order to benefit a candidate campaign or other private endeavor. In determining whether material is posted for the purpose of later reposting it in order to benefit a candidate campaign or other private endeavor, the commission shall consider the following factors:

(A) The frequency with which material is posted and reposted;

(B) The types of sites that are reposting the material;

(C) The content of the posted and reposted material; and

(D) The timing of the posting of the material.

§21-7-XXX Honoraria. (a) Honorarium shall mean a payment or something of economic value given to a state employee in exchange for services related to their state employment upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

(b) An honorarium may be accepted by any state employee, except those required to file public financial disclosures, if:

(1) The employee's state agency does not regulate or have contracts with the source of the honorarium;

(2) State personnel, time, equipment, or other resources are not used in preparing or offering the service for which the honorarium is offered; and

(3) The state employee's agency approves the honorarium before acceptance.

(c) An honorarium must be reported as income on an employee's financial disclosure statement.

(d) If an honorarium is prohibited, an employee may donate it to their state department instead of accepting it personally, and need not report the honorarium on their financial disclosure statement.

SUNSHINE LAW MEETING
AGENDA ITEM VII

PROPOSED FISCAL YEAR 2025-26 BUDGET

Attachment 1: Proposed Ethics Commission Budget Fiscal Year 2025-26
Budget

Hawai'i State Ethics Commission - Budget Projections for FY 2025-2026

	2024-2025 Base Budget	2025-2026 Estimated Budget	Increases/ Decreases From FY25	% Increase/ Decrease From FY25
TOTAL BUDGET (excluding vacation payouts)	\$ 1,584,678	\$ 1,551,515	-\$ 33,163	-2.1%
PERSONNEL				
Staff Salaries	1,266,787	1,266,787	-	0.0%
Cost Adjustments for staff salaries	-			
Vacation Payouts/Transfer	16,553	16,553		
TOTAL PERSONNEL (excluding vacation payouts)	1,266,787	1,266,787	0	0.0%
MATERIALS AND SUPPLIES				
Office Expenses:				
Office Supplies	3,500	3,500	-	0.0%
Postage	1,500	1,500	-	0.0%
Telephone & Internet ¹	11,640	600	(11,040)	-94.8%
Subtotal:	16,640	5,600	(11,040)	-66.3%
Intrastate Transportation and Travel				
Commissioners / Staff	8,500	8,500	-	0.0%
Car Mileage and Parking	750	750	-	0.0%
Subtotal:	9,250	9,250		0.0%
Out-of-State Travel²				
Airfare (8 @ \$1,000 ea.)	6,000	8,000	2,000	33.3%
Lodging and per diem for 5.5 days (8 @ \$145/day x 5.5 days)	4,800	6,380	1,580	32.9%
Excess Hotel and Increases in per diem/airfare	1,700	2,267	567	33.3%
Taxi/bus fare	160	240	80	50.0%
Subtotal:	12,660	16,887	4,227	33.4%
Equipment Rental and Maintenance				
Copier ³	3,600	-	(3,600)	-100.0%
Computer Equipment Maintenance	3,500	3,500	-	0.0%
Misc. (time clock, projector, etc.)	700	-	(700)	-100.0%
Investigation Software	3,100	2,500	(600)	-19.4%
Software License Renewals	22,000	22,000	-	0.0%
Teams Calling and O365 licensing ⁴	-	7,012	7,012	100%
Videoconferencing Software	1,200	1,200	-	0.0%
Subtotal:	34,100	36,212	2,112	6.2%
Dues, Subscriptions, Training				
COGEL Membership	470	470	-	0.0%
COGEL Registration (6 x \$600)	3,600	3,600	-	0.0%
Attorney Registration Fees	3,400	3,400	-	0.0%
Training Expenses	7,500	10,000	2,500	33.3%
Legal Reference Publications	4,900	4,900	-	0.0%
Newspapers Subscriptions, etc.	240	324	84	35.0%

	2024-2025 Base <u>Budget</u>	2025-2026 Estimated <u>Budget</u>	Increases/ Decreases <u>From FY25</u>	% Increase/ Decrease <u>From FY25</u>
Disruptive Behavior Training	800	800	-	0.0%
Subtotal:	20,910	23,494	2,584	12.4%
Newspaper Advertisements	1,100	1,100	-	0.0%
	1,100	1,100	-	0.0%
Commission Meetings, Investigations and Hearings				
Subpoena Fees	900	900	-	0.0%
Court Reporter	7,500	7,500	-	0.0%
Witness Fees, Travel, Mileage	1,500	1,500	-	0.0%
Hearings Officer	1,500	1,500	-	0.0%
Commission Meeting Expenses	1,000	1,000	-	0.0%
Subtotal:	12,400	12,400	-	0.0%
Consulting Services⁵				
Computer Consulting	42,000	25,000	(17,000)	-40.5%
Other Services (developing training videos)	500	8,000	7,500	1500.0%
Subtotal:	42,500	33,000	(9,500)	-22.4%
Office Rent⁶	158,331	131,785	(26,546)	-16.8%
TOTAL MATERIALS AND SUPPLIES:	307,891	269,728	(38,163)	-12.4%
CAPITAL OUTLAY				
Office Furniture & Equipment⁷	10,000	15,000	5,000	50.0%
TOTAL CAPITAL OUTLAY:	10,000	15,000	5,000	50.0%
GRAND TOTAL:	\$ 1,584,678	\$ 1,551,515	\$ (33,163)	-2.1%

¹ Reduced expenses by consolidating tracking to internet only, following the switch from Hawaiian Telcom to Teams calling and T-Mobile data plan. This line now only tracks internet expenses.

² Increased Out-of-State Travel expenses in anticipation of sending additional enforcement staff to specialized training.

³ Terminated Ricoh copier lease while increasing digitization, reducing the need for paper printouts.

⁴ New line for Microsoft Teams Calling and O365 licenses for 12 users.

⁵ Reduced need for enhancements to the existing e-filing system. To comply with new lobbying and ethics training requirements, additional online training materials will be developed.

⁶ FY24-28 Lease rent renegotiated in 7th amendment to office lease representing a decrease in cost. Rent generally increases 2.5% each fiscal year, CAM typically increases 2.68% each calendar year.

⁷ To maximize new office space, some additional equipment purchases are anticipated in 2025-2026.

SUNSHINE LAW MEETING
AGENDA ITEM VIII

PROPOSED LEGISLATION

Amending the definition of "lobbying" to include communications regarding procurement decisions with certain high-level government officials.

Attachment 1: Relating to Lobbyists

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2025
STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

RELATING TO LOBBYING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that transparent
2 disclosure of lobbying activities is in the public
3 interest. Under the lobbying law, chapter 97, Hawaii Revised
4 Statutes, "lobbying" an administrative agency only regards
5 formal rulemaking or other actions governed by section 91-3,
6 Hawaii Revised Statutes. Including procurement discussions in
7 the definition of "lobbying" promotes government transparency by
8 providing the public with additional information regarding
9 lobbying at the administrative agency level and promotes a level
10 playing field for all businesses.

11 Accordingly, the purpose of this Act is to enhance
12 government transparency by:

13 (1) Establishing certain presumptions regarding testimony
14 when provided by a lobbyist;

15 (2) Making certain contracts voidable when entered into in
16 violation of state lobbying law; and

H.B. NO.

(3) Expanding the definition of "lobbying" in section 97-1, Hawaii Revised Statutes, to include certain communications with high-level government officials regarding procurement decisions.

SECTION 2. Chapter 97, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§97- Presumption of lobbying on behalf of private clients. Any individual with a substantial ownership interest in or a paid employee, officer, or director of an organization, who actively participates in lobbying activities that directly benefit that organization shall be presumed to be receiving compensation from the organization for their lobbying efforts.

§97- Contracts voidable. In addition to any other penalty provided by law, any contract or other action entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to void a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the contract is initiated within sixty days after the determination of a violation under this chapter. The

H.B. NO.

1 attorney general shall have the authority to enforce this
2 section."

3 SECTION 3. Section 97-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "lobbying" to read as
5 follows:

6 "\"Lobbying\" means communicating directly or through an
7 agent, or soliciting others to communicate, with any official in
8 the legislative or executive branch, for the purpose of
9 attempting to influence legislative or administrative action or
10 a ballot issue. Lobbying also includes communicating with any
11 person identified in section 84-17(d) concerning the
12 solicitation or award of a contract or proposal before an
13 administrative agency or a potential future vendor relationship
14 with an administrative agency if any of the communications are
15 not governed by section 103D or section 103F. Communications
16 about a request for proposals, contract, or vendor relationship
17 are not considered lobbying if they are initiated by a
18 legislator or state employee.

19 "\"Lobbying\" shall not include the preparation and submission
20 of a grant application pursuant to chapter 42F by a
21 representative of a nonprofit organization."

H.B. NO.

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 6. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on January 1, 2027.

12
13
INTRODUCED BY: _____

SUNSHINE LAW MEETING
AGENDA ITEM IX

MEETING CALENDAR

Attachment 1: Proposed Meeting Calendar, 2025

2025 Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	MTG FLDR	10	11
12	13	14	MTG	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	MTG FLDR	14	15
16	17	18	MTG	20	21	22
23	24	25	26	27	28	

March						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	MTG FLDR	14	15
16	17	18	MTG	20	21	22
23	24	25	26	27	28	29
30	31					

April						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	MTG FLDR	11	12
13	14	15	MTG	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	MTG FLDR	16	17
18	19	20	MTG	22	23	24
25	26	27	28	29	30	31

June						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	MTG FLDR	13	14
15	16	17	MTG	19	20	21
22	23	24	25	26	27	28
29	30					

July						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	MTG FLDR	11	12
13	14	15	MTG	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	MTG FLDR	15	16
17	18	19	MTG	21	22	23
24	25	26	27	28	29	30
31						

September						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	MTG FLDR	12	13
14	15	16	MTG	18	19	20
21	22	23	24	25	26	27
28	29	30				

October						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	MTG FLDR	10	11
12	13	14	MTG	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	MTG FLDR	14	15
16	17	18	MTG	20	21	22
23	24	25	26	27	28	29
30						

December						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	MTG FLDR	12	13
14	15	16	MTG	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

State Holidays 2025

Jan 1	New Year's Day	May 26	Memorial Day	Nov 11	Veterans Day
Jan 20	Martin Luther King Day	Jun 11	King Kamehameha Day	Nov 27	Thanksgiving Day
Feb 17	Presidents' Day	Jul 4	Independence Day	Dec 25	Christmas Day
Mar 26	Prince Kuhio Day	Aug 15	Statehood Day		
Apr 18	Good Friday	Sept 1	Labor Day		

SUNSHINE LAW MEETING
AGENDA ITEM X

AKANA v. HAWAII STATE ETHICS COMMISSION AND DANIEL GLUCK,
CIVIL NO. 18-1-1019-06 (JHA); AKANA v. HAWAII STATE ETHICS COMMISSION, CIVIL NO.
19-1-0379-03 (JHA); STATE OF HAWAII, ETHICS COMMISSION v. ROWENA AKANA, CIVIL
NO. 20-1-0453 (BIA)

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.

SUNSHINE LAW MEETING
AGENDA ITEM XI

UNIVERSITY OF HAWAI'I PROFESSIONAL ASSEMBLY V. BOARD OF REGENTS OF THE
UNIVERSITY OF HAWAI'I, S.P. NO.: 1CSP-23-0000959

Discussion of the case status and filing of an amicus brief by the Hawai'i State Ethics
Commission.

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.

No attachments.