

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

STATE OF HAWAI'I

Date: November 20, 2024

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at

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

Public Meeting Location

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

Present: State Ethics Commission Members

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

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)  
Kee M. Campbell, Enforcement Director (via video conference)  
Bonita Y.M. Chang, Compliance Director (via video conference)  
Nancy C. Neuffer, Staff Attorney (via video conference)  
Jennifer M. Yamanuha, Staff Attorney (via video conference)  
Jodi L. K. Yi, Staff Attorney (via video conference)  
Patrick W.C. Lui, Computer Specialist (via video conference)  
Jared Elster, Investigator (via video conference)  
Barbara A. Gash, Investigatory Analyst (via video conference)  
Myles A. Yamamoto, Administrative Assistant (present in the conference room)

Members of the Public

Candice Park, Deputy Attorney General  
Ashley Mizuo

**CALL TO ORDER (0:05)**

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

**Agenda Item No. I: Consideration and Approval of the Minutes of the October 16, 2024 Meeting (1:21)**

Executive Director Robert Harris corrected: Commissioner Hong was absent at the October 16, 2024 meeting.

Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to approve the October 16, 2024 meeting minutes as corrected. The motion carried (Commissioners Fong, Tobias, Thielen, and Becker voted in the affirmative, with Hong excused).

**Agenda Item No. II: Directors' Report (2:35)**

Compliance Director Bonita Chang reported staff is working on updating the lobbyist and live training curriculum to reflect changes in the laws. She reported that a live training was conducted for new legislators by Executive Director Robert Harris. She noted that there are upcoming continuing legal education trainings in December. Director Chang reported that live training for the lobbyist law will be held on December 5, with additional trainings scheduled for January. A separate training session for the lobbying e-filing system will be held on December 6. Staff is updating e-filing information in anticipation of the Legislature's filing deadlines in January, and new lobbying bill reporting requirements that will take effect on January 1st.

Director Chang reported that commendation emails with a message from Chair Fong were sent out to the boards and agencies. Staff also reached out to low-performing boards and agencies. Some of the issues faced by certain agencies and boards may be due to administrative challenges during the on-boarding process for new employees. In other cases, there may be discrepancies between the data shown due to lateral transfers between agencies.

Vice Chair Tobias thanked and commended Director Chang and the staff for their hard work.

Enforcement Director Kee Campbell reported that for October, 45 new matters were opened, and 42 matters were closed.

Chair Fong asked if the increase in training completions leads to a rise in enforcement cases. Director Campbell agreed that this was the case.

Executive Director Robert Harris reported that staff has launched a new case management system. He commended Computer Specialist Patrick Liu for all his hard work in moving files from the old system and managing the transition. Director Harris noted that the new system gives staff more capacity, especially in remote work. In addition, the public can receive greater transparency about the Commission's advice, training, and enforcement statistics.

**Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (9:40)**

Executive Director Robert Harris reported on items of note from recent media reports:

- An editorial suggests using surplus funds to pay for reforms, especially increasing the budgets for the Campaign Spending Commission.
- A report about issues with the water commissioner
- A report related to campaigning inside of state offices.
- A report pertaining to the passage of funding for staff at the Maui Board of Ethics.

Chair Fong noted that he and Director Harris provided testimony in support of funding staff for the Maui Board of Ethics. He was pleased that the measure passed.

**Agenda Item No. IV: Discussion of Ethics Oversight over the Judicial Branch (12:29)**

Staff Attorney Jennifer Yamanuha reported that the Judiciary has developed a set of proposed revisions to the Judicial Rules of Conduct. She noted that the proposed rules are available for public review and comment, and that staff is drafting preliminary comments to submit on behalf of the Commission. Attorney Yamanuha stated that staff will work with Chair Fong to finalize.

Chair Fong expressed his gratitude to the Judiciary for developing the rules. He noted that he was debating whether to hold a special commission meeting to discuss the rules. Executive Director Harris said that any special meeting would be subject to the Sunshine Law.

Chair Fong advised the commissioners to review the proposed rules and provide comments to Director Harris. The comments will be discussed with the judiciary's attorneys.

Director Harris said that the Judiciary was responsive to developing rules and making the process open to the public.

**Agenda Item No. V: Request for Information from the National Conference of State Legislatures Regarding State-Level Restrictions on High-Level Government Employees Participating in Political Fundraising (17:07)**

Executive Director Robert Harris said that at the request of Commissioner Thielen, staff reviewed Kentucky and Ohio Laws related to restrictions on high-level government employees participating in political fundraising. He reported that upon review, the laws targeted employees who did not hold positions of authority. Accordingly, these laws may not address the concerns raised by Commissioner Thielen.

Noting the concerns raised by Commissioner Thielen, staff recommends continuing to support the efforts of the Campaign Spending Commission to ban contributions by contractors. Additionally, staff recommends the following changes to the fair treatment rules:

- Prohibiting Legislative Employees from using their positions to solicit contributions from contractors or vendors.
- Prohibiting Legislative Employees from discriminating against individuals for their political beliefs.

Commissioner Thielen asked if these rule changes would have barred previously discussed political fundraising events attended by contractors and staff. Director Harris replied that such an event would have been barred under the proposed rule changes.

Commissioner Thielen asked what the timeline would be for the implementation of new rule changes. Director Harris replied that the process for implementing new rules is as follows:

- Review of proposed rules by the attorney general.

- Public hearing on proposed rules.
- Vote on rules by the Commission.
- Approval by the Governor.

Director Harris noted that staff has already initiated the process of updating the Commission's rules and is halfway through making draft revisions. He estimated that it may take six months to one year for the rulemaking process.

### **Agenda Item No. VI: Administrative Rules (25:29)**

Executive Director Robert Harris outlines the proposed changes to Chapter 7 related to gifts and fair treatment. He noted that the guiding principle of the gift rules is whether or not a reasonable person would construe the gift as an attempt to reward or influence a government official. He noted that in 2020, the commission adopted a three-part test to determine whether a gift is acceptable. The three parts are 1) who is giving the gift, 2) the relative value of the gift, and 3) what, if any, benefit is there to the state. He noted that there has been criticism that the lines between acceptable and unacceptable gifts are blurry. Director Harris stated that the revisions intend to create brighter lines of what is permissible and what is not.

The first revision expands the definition of a prohibited source to include individuals regulated by an agency or employee and government contractors.

The next revision defines protocol gifts. The revision is part of an exception that is being made. It defines a protocol gift as something given to the state that may be historically or culturally significant. The intent of the gift is to be a part of the state's history.

Chair Fong asked about the use of \$5 as a nominal amount. Director Harris replied that \$5 was used as an example of something considered nominal in value.

The next revision lays out the parameters under which an employee or official may accept an invitation to a "widely attended event". The revision defines a "widely attended event" as open to the public or an organization's general membership. The complimentary tickets would have to be provided by the event sponsor. The revision also defines an event cost of \$100 or less as acceptable. Invitations to events that cost more than \$100 would not be acceptable.

Vice Chair Tobias asked if the prohibition would extend to invitations where an official is requested to be a guest speaker. Director Harris replied that in all cases, the three-part test still applies. He noted that this revision sets clearer bright lines as to what is an acceptable event for an official to attend. He said that if there are questions, officials can always consult with the Commission for guidance.

Commissioner Hong asked how this would be implemented. Director Harris replied that the hope would be that organizers would proactively work with the Commission to ensure that inviting officials would be acceptable.

Commissioner Hong asked what the consequences would be for violating this protocol. Director Harris replied that the easiest way to resolve this would be for the official to pay for the value. He also noted that the Commission could bring an enforcement action.

Commissioner Becker asked how the three-part test applies to fundraisers. Director Harris replied that there have been occasions when legislators have been allowed to attend such events. He noted that the revision is an attempt to create a line so legislators and organizations can determine whether an invitation is appropriate.

The next revision addresses protocol gifts. The rule would require that the recipient contact the state archives and maintain the protocol gift as directed by the Archivist.

Chair Fong asked what would happen if an official received a high-priced bottle of liquor as a gift. Director Harris replied with the example of the Mayor of Chicago, who had to pay the city for the item's value. He noted that there may be outliers, but the intent is to force a conversation and provide a mechanism for the archivist to address protocol gifts.

A new section was drafted to allow fellow employees to give their coworkers gifts of a modest value for special occasions.

A new section was drafted regarding attendance at an organization's general meeting and the acceptance of refreshments. The new section allows the acceptance of refreshments of a nominal value.

Commissioner Becker asked if the new section defines a "General Meeting". Director Harris replied that the current draft does not define a "General Meeting", but that is something staff should consider.

A new section would require employees to provide documentation that they paid for their meal portion or gift if participating in a broader group.

Commissioner Becker asked if the ideal resolution for situations where a lobbyist takes a group of legislators to lunch would be for each legislator to retain a record showing they paid or reimbursed the cost for their portion of the lunch, such that it can be shown the lunch was not a gift. Director Harris agreed and noted the example of an electronic receipt or check return in the proposed rule.

The next revision would require notification to the commission of the type and duration of fundraising administratively authorized on state time and/or using state resources.

A new section outlining social media rules related to fair treatment provisions was drafted. Chair Fong asked for examples of issues. Director Harris replied that an example would be if a legislator sought to use his/her official Facebook account to endorse a political candidate or business. Staff Attorney Nancy Neuffer added that officials have made personal social media posts standing in front of or otherwise using the state seal or in official areas such as offices, etc.

Chair Fong asked about using the state capitol for campaign purposes. Director Harris replied that as long as the areas are publicly accessible, such activity is allowed. It would be a violation to use non-public areas.

Commissioner Hong asked how the rule would be enforced. Director Harris replied that some enforcement actions have already been brought under similar interpretations of the fair treatment section of the code. Additionally, staff provided guidance regarding social media use where the situation may have been questionable. He noted that additional enforcement actions may be taken in the future.

The next revision clarifies that if an individual speaks or performs other services off state time and not using state resources, they are allowed to accept an honorarium. Director Harris noted that this revision comes from a situation connected to the University of Hawai'i. Commissioner Becker asked if an individual traveling for the state could accept an honorarium. Director Harris replied that the individual would not be allowed to receive the honorarium. He noted that public filers generally may not accept honoraria related to their state positions under the proposed rule. Additionally, Enforcement Director Kee Campbell pointed out that the honorarium could be given to the state as a whole.

Chair Fong asked if this rule would apply to the Judiciary. Director Harris replied that it would apply to judicial employees but not judges and justices.

#### **Agenda Item No. VII: Proposed Fiscal Year 2025-26 Budget (1:05:21)**

Executive Director Robert Harris summarized the proposed Fiscal Year 2025-26 budget. He reported that the overall budget would be decreased by 2.1%. The significant decreases are in telephone and internet service and consulting expenses. Director Harris also noted that copier costs have been eliminated. Director Harris explained that there are proposed increases in travel and the modernization of the training curriculum. The increased travel would provide opportunities to attend more conferences and training events. Chair Fong commended the staff for cutting costs. He asked Director Harris if he

was comfortable with the budget decrease. Director Harris replied that he is comfortable with the proposed budget amounts.

Commissioner Becker concurred with Chair Fong that the staff did a good job cutting costs. He asked if the budget could be submitted directly to the legislature. Director Harris replied that the Commission's budget is part of the legislative budget.

Commissioner Becker asked about staff salaries. Director Harris replied that the legislature sets salary increases based on what is negotiated by the executive branch.

**Agenda Item No. VIII: Proposed Legislation (1:10:53)**

Executive Director Robert Harris summarized proposed legislation the Commission would like to introduce in the 2025 legislative session. The proposed bill is a reintroduction of legislation that failed to pass in the previous session. The proposal would expand the definition of lobbyists to include high-level officers and directors, officers and directors of organizations who lobby, as well as contractors.

Commissioner Thielen made, and Vice Chair Tobias seconded, a motion to approve the proposed legislation. The motion carried (Commissioners Fong, Tobias, Thielen, Hong, and Becker voted in the affirmative).

**Agenda Item No. IX: Meeting Calendar (1:13:28)**

Executive Director Robert Harris summarized the proposed 2025 Commission Meeting Calendar. He noted that the schedule would remain the same, with the Commission meeting on the third Wednesday of the month at 9:00 AM. There were no objections to keeping the meeting schedule.

**Agenda Item No. 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) (1:14:33)**

Executive Director Robert Harris reported that there is no update.



**Agenda Item No. XI: University of Hawai'i Professional Assembly v. Board of Regents of the University of Hawai'i, S.P. No.: 1CSP-23-0000959 (1:15:11)**

Executive Director Robert Harris reported that staff are proceeding with the submission of an amicus brief. There were no questions.

**Agenda Item No. XII: Adjournment of Sunshine Law Meeting (1:15:50)**

At approximately 10:16 a.m., Commissioner Hong motioned to adjourn the meeting, and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias, Thielen, Hong, and Becker voted in the affirmative).

The meeting was adjourned at 10:17 a.m.

Minutes approved on December 18, 2024.