

# 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: January 15, 2025

Time: 9:00 a.m.

Location: Zoom Videoconference or Phone:

Videoconference: [Join Zoom Meeting](https://us06web.zoom.us/j/88084886922?pwd=GUUxY55tEkyz2AFmik1XFqzZYpal2e.1)  
<https://us06web.zoom.us/j/88084886922?pwd=GUUxY55tEkyz2AFmik1XFqzZYpal2e.1>

Phone: +1 (408) 638-0968 or +1 (669) 444-9171

Phone passcode: 036678

Meeting ID: 880 8488 6922

Passcode: 6SCeH6

Public Meeting Location:

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

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

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

## AGENDA

### CALL TO ORDER

I. Consideration and Approval of the Minutes of the December 18, 2024 Meeting

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

II. Election of Officers

*Attachment 1: Election of Officers for 2025*

III. Directors' Report

1. Education / Training Report

*Attachment 1: 2024 Training Schedule*

*Attachment 2: 2025 Training Schedule*

2. Guidance and Assignment Statistics – December 2024

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

3. Miscellaneous Office Projects / Updates

*Attachment 4: Q2 Financial Report*

IV. Consideration of Draft 2024 Annual Report

*Attachment 1: 2024 Hawai'i State Ethics Commission Annual Report*

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

VI. Discussion of Ethics Oversight of the Judicial Branch

*Proposed rules are 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>*

VII. Proposed Administrative Rules

Review of proposed edits and new Chapter

*Attachment 1: Staff Overview*

*Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 8*

*Attachment 3: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 10*

*Attachment 4: Proposed new Chapter to Hawai'i Administrative Rules, Title 21, Chapter 11*

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

*Attachment 1: 25-01-06 [67] UHPA Response to HSEC Amicus Brief*

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.

IX. Evaluation of Executive Director Robert D. Harris

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee where consideration of matters affecting privacy will be involved, and/or under 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.

*Attachment 1: Staff Overview*

*Attachment 2: Proposed Poll Questions*

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. Adjournment

### Public Testimony

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

### Auxiliary Aid or Accommodation Due to a Disability

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

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

SUNSHINE LAW MEETING  
AGENDA ITEM I

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

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

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

STATE OF HAWAI'I

Date: December 18, 2024

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at

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

Public Meeting Location

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

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in the conference room)  
Beverley Tobias, Vice Chair (via video conference)  
Robert Hong, Commissioner (present in the conference room)  
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)  
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)  
Barbara A. Gash, Investigatory Analyst (via video conference)  
Myles A. Yamamoto, Administrative Assistant (present in the conference room)



1 Members of the Public

2  
3 Candace Park, Deputy Attorney General  
4 Dan Nakaso  
5 Patti Epler  
6  
7

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

9  
10 Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Tobias,  
11 Commissioner Thielen, Commissioner Becker, Commissioner Hong, and Commission  
12 staff were present. All Commissioners and staff participating via video or audio conference  
13 confirmed that no one was in the room with them at their respective remote locations.  
14

15  
16 **Agenda Item No. I: Consideration and Approval of the Minutes of the November 20,**  
17 **2024 Meeting (4:15)**

18  
19 Commissioner Hong made, and Commissioner Thielen seconded, a motion to  
20 approve the November 20, 2024 meeting minutes. The motion carried (Commissioners  
21 Fong, Tobias, Thielen, Hong, and Becker voted in the affirmative).  
22

23  
24 **Agenda Item No. II: Directors' Report (1:52)**

25  
26 Compliance Director Bonita Chang reported two lobbying law trainings were  
27 conducted in December. The first training covered the lobbyist law, and the second  
28 covered the lobbying e-filing system. Both were well attended. She also reported that  
29 several live training sessions have been scheduled for 2025. These include a mix of both  
30 general ethics trainings and lobbyist law trainings. She also noted that staff may see  
31 increased call volume related to lobbyists' registration for the 2025-2026 Legislative  
32 Biennium. She further stated that there are over 600 lobbyists who will need to re-register  
33 for the 2025-2026 biennium. Director Chang reported that the quick guides have been  
34 updated. She also noted that legislators' financial disclosures are due in January.  
35

36 Chair Fong noted that attendees at the recent COGEL conference were impressed  
37 with Hawai'i's 85% training compliance percentage.  
38

39 Enforcement Director Kee Campbell reported that 37 new matters were opened in  
40 November and 32 closed. To date in 2024, 395 matters have been opened and 391 closed.  
41

1 Chair Fong asked what the reasons were for closing most of the cases. Director  
2 Campbell replied that a large number of cases are closed for lack of jurisdiction or no clear  
3 evidence of a violation. Executive Director Robert Harris also noted that the commission  
4 has a much more open system to making complaints than other agencies. He further  
5 stated that other jurisdictions require statements and affidavits to file a complaint. He  
6 noted that staff does a good job of responding to and appropriately re-referring  
7 complainants as necessary. He reported that enhancements may be made to the  
8 complaints system to automate some of the referral process.

9  
10 Executive Director Robert Harris reported that in a prior meeting, the Commission  
11 had adopted staff goals for 2024. He further reported that he will have a draft report on the  
12 progress of meeting the goals and 2025 goals. Director Harris noted that the hope is that  
13 future reports will include more data regarding statistics for public view. Director Harris  
14 reported that staff had purchased new audio and visual equipment for future meetings and  
15 contested case hearings.

16  
17  
18 **Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics**  
19 **Commission Since the Last Meeting (10:52)**

20  
21 Executive Director Robert Harris reported on a couple of media reports of note. The  
22 first mentioned the commission's current litigation involving the Office of Hawaiian Affairs.  
23 The second was regarding a former DLNR Archeologist. Director Harris could not go into  
24 specifics regarding this case as it involves a possible investigation.

25  
26  
27 **Agenda Item No. IV: Summary and Discussion of the 2024 Council on Governmental**  
28 **Ethics Laws Conference (12:14)**

29  
30 Executive Director Robert Harris reported that commissioners and staff recently  
31 attended the 2024 Council on Government Ethics Law ("COGEL") Conference in Los  
32 Angeles. Chair Fong asked attendees to discuss their takeaways from the conference.

33  
34 Vice Chair Tobias noted that she learned a lot and enjoyed interacting with the other  
35 agencies and speakers. She was surprised that many of the agencies could point out  
36 ethical issues but lacked "real teeth." She noted that what is happening with the  
37 commission is great.

38  
39 Commissioner Hong noted that COGEL was formed in the wake of the Watergate  
40 Scandal. He highlighted a session with John Dean, who spoke on the importance of

1 vigilance in ethics. Additionally, he highlighted Los Angeles Mayor Karen Bass, who spoke  
2 on using the community to enforce ethics.

3  
4 Compliance Director Bonita Chang found the roundtable discussion interesting.  
5 She noted how smaller agencies leveraged their limited staff and resources. She wants to  
6 explore using public-facing dashboards and information sharing to better educate the  
7 public about the Commission’s activities. She also expressed her desire to do more with  
8 COGEL Connects Workshops.

9  
10 Staff Attorney Jodi Yi noted that this was her first COGEL Conference. She stated  
11 that she learned a lot about other agencies and operations. She expressed her surprise  
12 that many agencies have a staff of less than 10. She agreed with others that Hawai’i is  
13 better staffed and funded than many agencies. She also noted that some jurisdictions have  
14 penalties that are so low that entities consider the fine a “cost of doing business”.

15  
16 Executive Director Robert Harris brought back ideas about posting guidance  
17 anonymously and possible pre-employment restrictions, specifically restrictions on  
18 employees working on projects they were involved in before joining the state.

19  
20 Chair Fong expressed his thanks and appreciation for the quality of the commission  
21 staff, noting that the staff is “above the curve.” He also told COGEL attendees that staff  
22 took cases as far as litigation up to the Supreme Court. Chair Fong noted that the 2025  
23 COGEL Conference will be held in Atlanta.

24  
25 Vice Chair Tobias noted a discussion about ethics and artificial intelligence. She  
26 suggested that the commission consider this issue in the future. Director Harris noted that  
27 the legislature and Campaign Spending Commission were investigating the effect of  
28 artificial intelligence on voter misinformation.

29  
30 Chair Fong advised that commissioners inform Director Harris if they have a  
31 specific issue they would like staff to examine.

32  
33  
34 **Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (26:05)**

35  
36 Executive Director Harris reported that the Judiciary is proposing an independent  
37 administrator who would be attached to the Commission on Judicial Conduct. The position  
38 would serve as a counterpart to the Commission, and would investigate complaints. A  
39 second proposal is for rules related to the disclosure of gifts. He noted that the goal is to  
40 have final comments to forward to the Judiciary by January. He said that there may be a  
41 new Chief Justice appointed soon.

1  
2 Chair Fong thanked the commissioners for their feedback on the Judiciary's  
3 proposals.

4  
5  
6 **Agenda Item No. VI: Proposed Legislation (28:04)**

7  
8 Executive Director Robert Harris reported that staff proposes legislation to  
9 streamline the process for fines under \$1,000. The Commission would issue a notice of  
10 fine. The respondent would then have 20 days to request a hearing or pay the fine.

11  
12 Commissioner Hong asked how many violations result in fines under \$1,000.  
13 Director Harris replied that it was difficult to answer that question, as the fines were  
14 recently increased to \$5,000. He noted that creating a fine schedule for certain violations  
15 would be part of the administrative rules update.

16  
17 Commissioner Becker suggested that the word "ethics" be included in the bill's  
18 title.

19  
20 Vice Chair Tobias moved, and Commissioner Hong seconded, a motion to approve  
21 the proposed legislation. The motion carried (Commissioners Fong, Tobias, Thielen, Hong,  
22 and Becker voting in the affirmative.)

23  
24 Director Harris reported that staff has proposed legislation clarifying who has  
25 jurisdiction over lobbyists who give illegal contributions. Director Harris noted that  
26 previous legislation gave the Commission jurisdiction over lobbyists who make prohibited  
27 contributions. Further, the Campaign Spending Commission has jurisdiction over  
28 contributors who make prohibited donations. Director Harris reported that the proposal  
29 addresses potential issues related to double-fining a lobbyist for a violation. He noted that  
30 the proposal would clarify that the Campaign Spending Commission would have  
31 jurisdiction over candidates and that the Commission would have jurisdiction over  
32 lobbyists. He further stated that if a lobbyist was only a county lobbyist, only the county  
33 ethics board would have jurisdiction over the lobbyist.

34  
35 Commissioner Hong asked what the rationale was for having the Commission take  
36 on enforcement of lobbyist contributions rather than Campaign Spending. In other words,  
37 why is the commission responsible for lobbyists, and Campaign Spending is responsible  
38 for the candidates? Director Harris replied that constitutionally, the Commission has  
39 jurisdiction over lobbyists and their training. In addition, Director Harris noted that the  
40 Commission is better equipped to conduct more thorough investigations.

41

1 Vice Chair Tobias asked what would happen if a county lobbyist made an illegal  
2 contribution. Director Harris replied that most lobbyists lobby at both the state and county  
3 levels, so the Commission would likely have jurisdiction over the organization. However, if  
4 it is solely a county lobbying entity, the counties currently do not have any prohibitions on  
5 contributions. He further noted that this issue will have to be addressed in the future.  
6

7 Commissioner Hong moved, and Commissioner Becker seconded, a motion to  
8 approve the proposed legislation. The motion carried (Commissioners Fong, Tobias,  
9 Thielen, Hong, and Becker voting in the affirmative.)  
10

11  
12 **Agenda Item No. VII: Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil**  
13 **No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-**  
14 **0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-**  
15 **0453 (BIA) (41:03)**  
16

17 Executive Director Robert Harris reported that there is no update.  
18  
19

20 **Agenda Item No. VIII: University of Hawai'i Professional Assembly v. Board of Regents**  
21 **of the University of Hawai'i, S.P. No.: 1CSP-23-0000959 (41:26)**  
22

23 Executive Director Robert Harris summarized this case as arising from a matter that  
24 came before the Commission against a University of Hawai'i faculty member. A  
25 subsequent arbitration occurred, addressing whether the University should have provided  
26 her legal counsel and submitted any fine issued to the Legislature for payment. The  
27 arbitrator ruled that the Commission was a court under the collective bargaining  
28 agreement and that the University of Hawai'i should have provided counsel. The University  
29 of Hawai'i appealed the ruling to the Supreme Court. Director Harris noted that the  
30 Commissioners were provided the amicus brief filed by the Commission and other parties'  
31 filings. He further recommended that if the Commission wished to discuss the matter in  
32 further detail, the Commission go into executive session.  
33

34 Commissioner Hong asked if any action was required. Director Harris replied that  
35 no action was needed at this time.  
36

1 **Agenda Item No. IX: Adjournment of Sunshine Law Meeting (46:20)**

2

3 At approximately 9:45 a.m., Commissioner Hong moved to adjourn the meeting,  
4 and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias,  
5 Thielen, Hong, and Becker voted in the affirmative).

6

7 The meeting was adjourned at 9:47 a.m.

8

9 Minutes approved on \_\_\_\_\_.

10

DRAFT

SUNSHINE LAW MEETING  
AGENDA ITEM II

ELECTION OF OFFICERS FOR 2025

Attachment 1: Election of Officers for 2025

SUNSHINE LAW MEETING  
AGENDA ITEM II

ELECTION OF OFFICERS FOR 2025

The Commission's administrative rules provide for the annual election of a chair and vice chair whose terms will commence on January 1 of each year. Hawai'i Administrative Rules § 21-1-10 states as follows:

§ 21-1-10 Chairperson and vice-chairperson. (a) A chairperson shall be elected by a majority of all the members to which the commission is entitled, who shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year.

(b) A vice-chairperson, who shall call and chair meetings in the incapacity or absence of the chairperson, shall be elected by a majority of all the members to which the commission is entitled, and shall serve for a term of one year or until a successor is elected, with such term to commence on January 1 of each year.

The Commission has previously elected officers in January. However, in some years, it has deferred the election to July and kept the current officers in place until then.

At the Commission's meeting on January 17, 2024, Chair Fong announced that Vice Chair Harry McCarthy passed away. The Commission elected its current officers, Chair Fong, and Vice Tobias.

The following table is provided for your information.

<b>Commissioner</b>	<b>Date Appointed</b>	<b>Term End</b>	<b>Date of Reappointment</b>	<b>Term End</b>
Wesley Fong*	7/01/2018	6/30/2022	7/01/2022	6/30/2026
Beverley Tobias**	7/22/2021	6/30/2025		
Robert Hong	7/01/2022	6/30/2026		
Cynthia Thielen	7/28/2023	6/30/2027		
Roderick Becker	9/16/2024	6/30/2028		

\* Commissioner Fong served as Vice Chair from July 2021 to July 2022, and has served as Chair from July 2022 to present.

\*\*Commissioner Tobias served as Vice Chair from January 2024 to present.

(Note: Commissioners may be appointed to two consecutive four-year terms.)



SUNSHINE MEETING  
AGENDA ITEM III

DIRECTORS' REPORT  
January 15, 2025

**1. Education / Training Report**

*Attachment 1: 2024 Training Schedule*

*Attachment 2: 2025 Training Schedule*

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

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

**3. Miscellaneous Office Projects / Updates**

*Attachment 4: Q2 Financial Report*

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

<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
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	0	116
12/3/2024	WEBINAR: Ethics for State Government Attorneys	0	64
12/5/2024	WEBINAR: Lobbyists Law Training	0	38
12/6/2024	WEBINAR: Lobbying E-Filing	0	17
<b>TOTAL</b>	<b>24 Presentations</b>	<b>151 participants</b>	<b>540 participants</b>

## Ethics Training Dashboard: State Employees

Hawai'i State Ethics Commission: As of Dec. 31, 2024

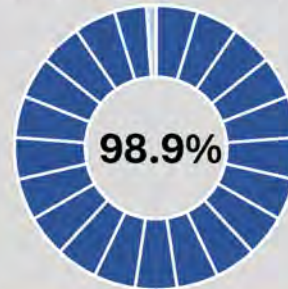
Employees

**57k+**

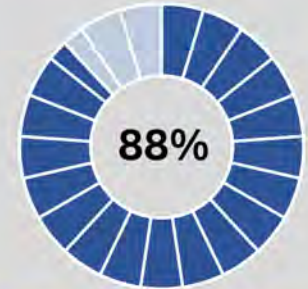
Dept Groups

**33**

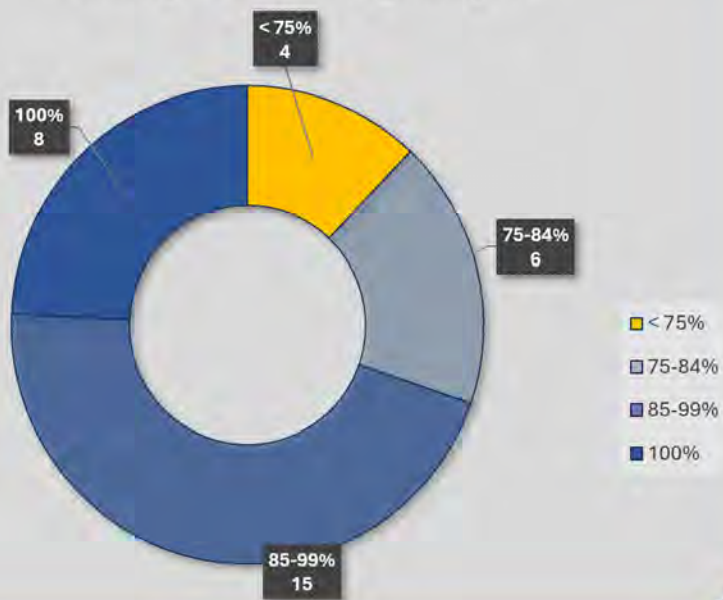
Tier 1 (High Level)



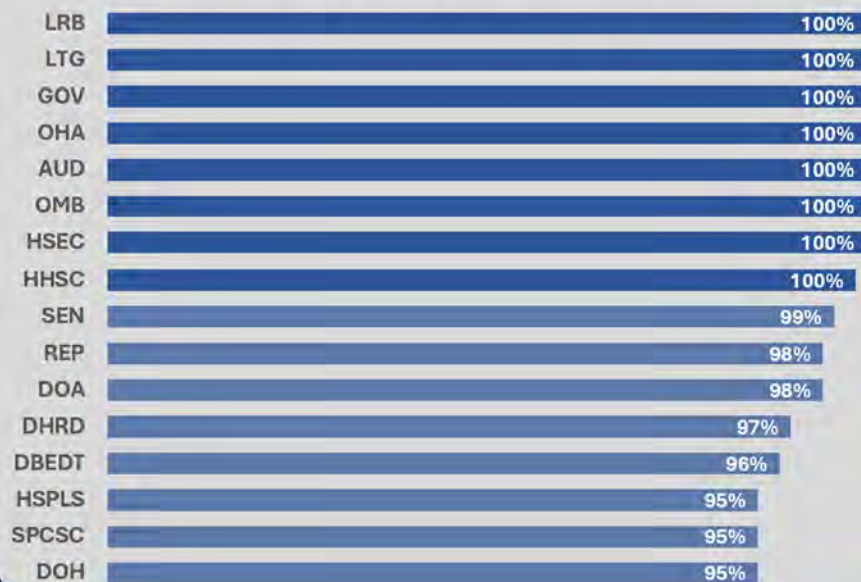
Total



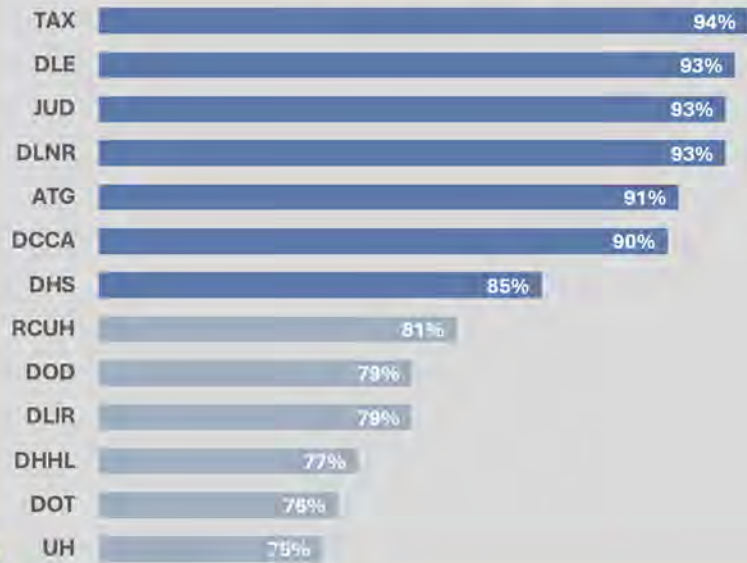
### Comparison: Agency %



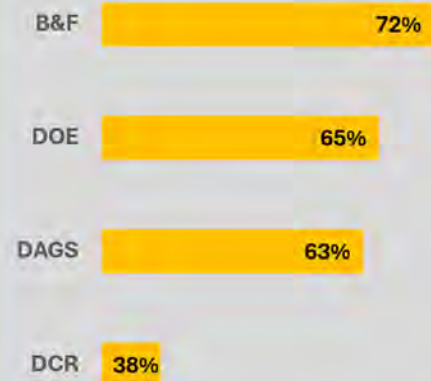
### Top Performers



### Mid-Range



### < 75%



## Ethics Training Dashboard: State Boards

Hawai'i State Ethics Commission: As of Dec. 31, 2024

Board Members

852

Public



Confidential



Total



### Public Boards

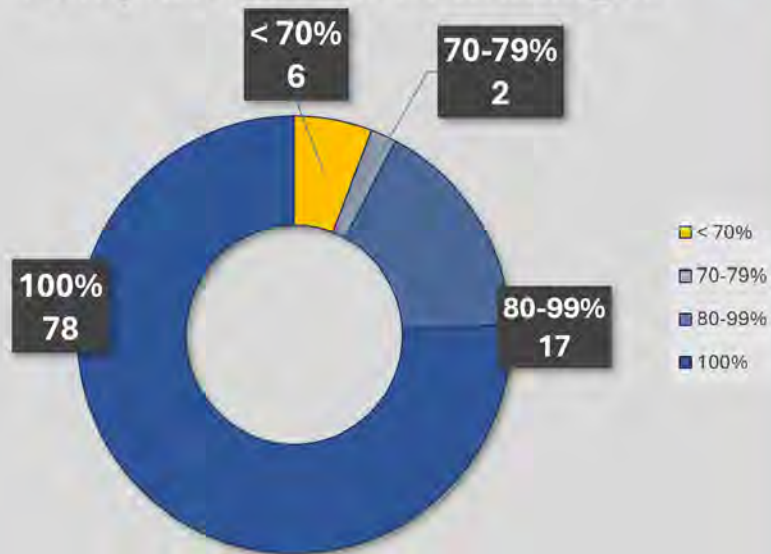
Board of Agriculture	100%
Board of Land and Natural Resources	100%
Commission on Water Resource...	100%
Hawai'i Housing Finance and...	100%
Hawai'i Public Housing Authority	100%
Hawai'i State Ethics Commission	100%
Land Use Commission	100%
Legacy Land Conservation Commission	100%
Natural Energy Laboratory of Hawai'i	100%
Public Utilities Commission	100%
Stadium Authority Commission	100%
University of Hawai'i Board of Regents	100%
Agribusiness Development Corporation	100%
Board of Education	100%
Natural Area Reserves System...	100%
Hawai'i Community Development...	100%
Hawaiian Homes Commission	82%

### Confidential Boards - 100%

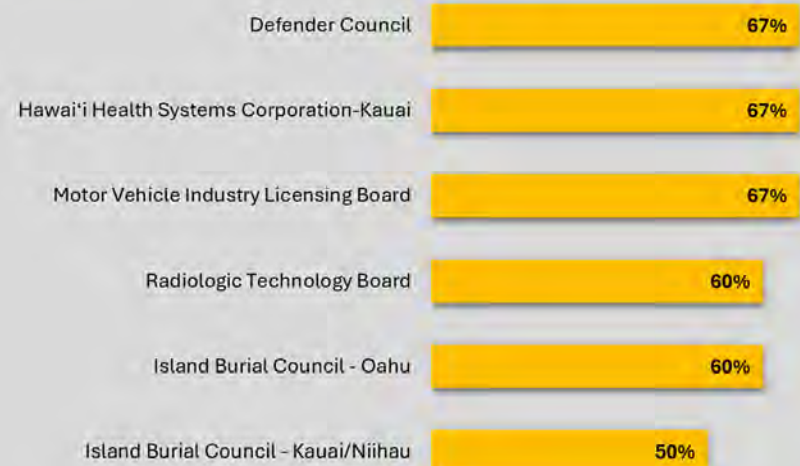
Acupuncture	Crime Victim Comp.	Retirement Savings
Barbering & Cosmetology	Deferred Comp. Plan	State Fire Council
Chiropractic Examiners	DCAB	<b>Teachers Standards</b>
Dentistry	<b>Early Learning</b>	HTDC
<b>Electricians &amp; Plumbers</b>	Elevator Mechanics	HTA
Massage Therapy	ERS	Island Burial - Hawai'i
Naturopathic Medicine	<b>Enhanced 911</b>	Island Burial - Molokai
Nursing	FestPAC	KIRC
Pharmacy	Optometry	<b>King Kamehameha Celebr.</b>
Physical Therapy	Veterinary Medicine	<b>LGBTQ Plus</b>
<b>Private Detectives &amp; Guards</b>	EUTF	Merit Appeals
<b>Professional Engineers</b>	Green Infrastr. Auth.	Motor Vehicle Repair
Psychology	<b>HHSC-Corp.</b>	PISCES
Public Accountancy	HHSC-East Hawai'i	Pest Control
Speech Pathology/Audiology	<b>HHSC-Maui</b>	<b>Public Water System Oper.</b>
Geographic Names	Historic Places Rev.	<b>RCUH</b>
Campaign Spending	Hurricane Relief Fund	Real Estate
Civil Rights Comm'n	<b>Law Enforcement Stds</b>	School Facilities Auth.
Status of Women	<b>Medical Board</b>	SFCA
Contractors License	Paroling Authority	State Public Charter Schools
Council on Revenues		



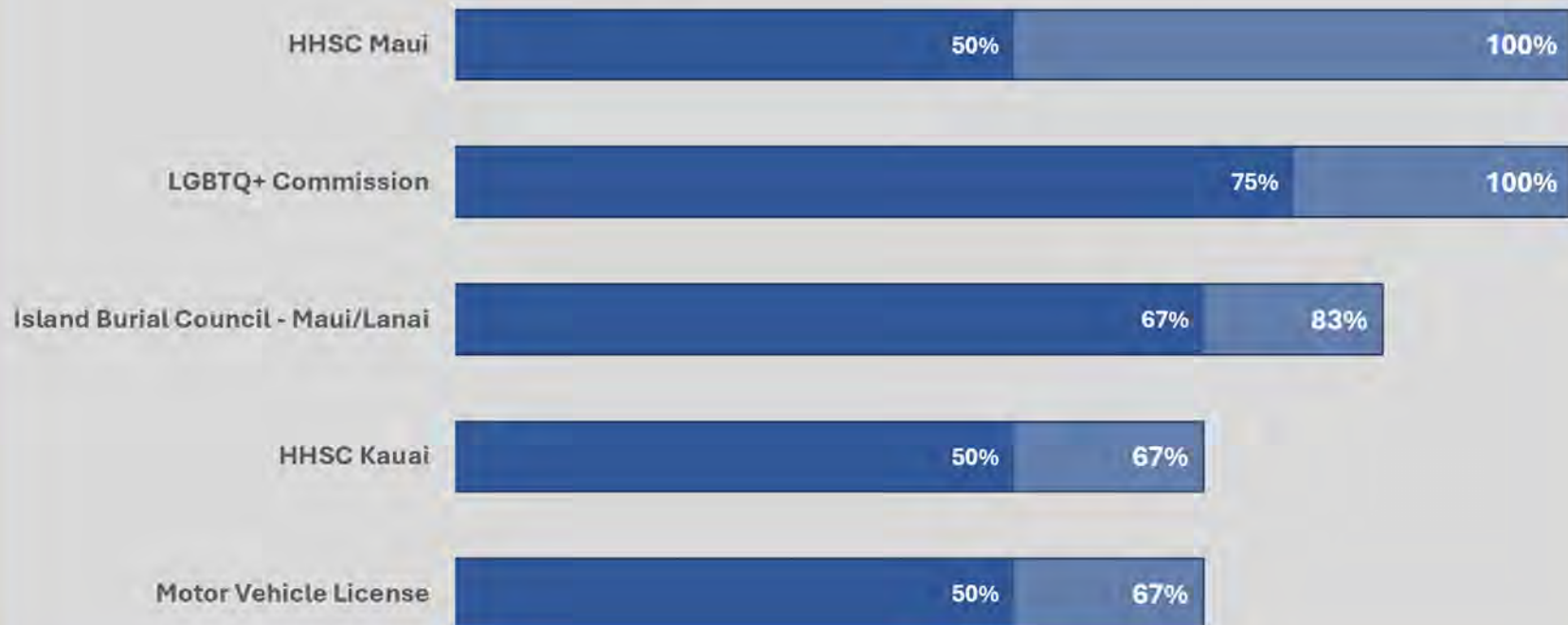
### Comparison: Board Training %



### Boards < 70%



## Board Highlights: Most Improved



<b>HAWAII STATE ETHICS COMMISSION</b>			
<b>2025 EDUCATION PROGRAM</b>			
<b>(Ethics Workshops and Presentations)</b>			
<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
1/2/2025	WEBINAR: Lobbyists Law Training	0	25
1/10/2025	WEBINAR: Lobbyists Law Training		
1/17/2025	IN PERSON: Ethics Refresher, Capitol House Members		
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		
<b>TOTAL</b>	<b>11 Presentations</b>	<b>0 participants</b>	<b>25 participants</b>

2024	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
<b>Training statistics</b>													
# of In-Person Trainings	1	0	0	0	0	1	1	1	0	0	1	0	5
# of People Trained In Person	51	0	0	0	0	80	10	16	0	0	10	0	167
# of On-Line Trainings (Self-Directed)	958	707	487	450	423	938	2,393	6,231	1,280	673	546	420	15,506
# of Lobbyists Law Trainings	186	52	29	17	17	5	7	8	11	12	57	184	585
# of Training Webinars	3	1	1	1	2	0	1	1	1	1	3	3	18
# of Participants in Training Webinars	106	13	7	64	20	0	15	15	19	8	154	119	540
<b>Attorney of the Day</b>	118	89	94	97	97	97	108	79	91	72	61	76	1079
<b>New assignments</b>													
Advisory Opinion	0	0	0	0	0	0	0	0	0	1	0	1	2
Complaint	67	25	39	25	26	27	34	27	43	45	37	29	424
Gifts/Invitations/Travel	21	24	30	24	27	39	33	28	33	19	10	22	310
Guidance	2	0	2	1	3	1	0	3	2	5	0	1	20
Judicial Selection Comm'n	6	0	5	4	1	2	3	4	1	3	1	2	32
Training Request	0	0	0	0	0	0	0	0	0	8	10	1	19
Record Request	1	1	0	0	1	0	0	1	0	1	0	2	7
Project/Other	6	1	1	4	1	2	3	1	4	7	1	0	31
<b>Total</b>	103	51	77	58	59	71	73	64	83	89	59	58	845
<b>Closed Assignments</b>													
Advisory Opinion	0	0	0	1	0	0	0	0	1	0	0	1	3
Complaint	67	26	26	33	22	38	41	17	46	43	32	26	417
Gifts/Invitations/Travel	21	22	35	24	25	37	35	23	40	19	11	21	313
Guidance	1	3	0	0	3	1	2	1	1	4	1	1	18
Judicial Selection Comm'n	7	0	4	5	1	2	2	3	2	3	1	2	32
Training Request	0	0	0	0	0	0	0	0	0	1	3	3	7
Record Request	1	1	0	0	1	0	0	1	0	1	0	2	7
Project/Other	2	2	2	2	4	2	1	2	3	8	0	0	28
<b>Total</b>	99	54	67	65	56	80	81	47	93	79	48	56	825
<b>Anti-Fraud</b>	2	5	5	3	4	4	6	6	4	7	6	5	57

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT  
 FY 2025 (MONTH ENDING: December 31, 2024)  
 Appropriation Symbol: G-25-393-Y6

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Expenditures Year-To-Date Expenditures Totals	% of Budget Expended
<b>A. PERSONNEL SERVICES</b>							
Staff Salaries	\$ 1,293,238.00	\$ 311,300.50	\$ 314,598.00	\$ 0.00	\$ 0.00	625,898.50	48.4%
Total Personnel Services	<b>\$ 1,293,238.00</b>	<b>\$ 311,300.50</b>	<b>\$ 314,598.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 625,898.50</b>	<b>48.4%</b>
<b>B. OTHER CURRENT EXPENSES</b>							
Office Expenses	16,640.00	2,940.10	2,003.05	0.00	0.00	4,943.15	29.7%
Intrastate Transportation and Travel	9,250.00	180.44	12.00	0.00	0.00	192.44	2.1%
Out-of-State Travel	12,660.00	1,243.23	7,933.60	0.00	0.00	9,176.83	72.5%
Equipment Rental and Maintenance	34,100.00	435.27	3,473.82	0.00	0.00	3,909.09	11.5%
Dues, Subscriptions, Training	20,910.00	2,317.48	4,636.69	0.00	0.00	6,954.17	33.3%
Newspaper Advertisements	1,100.00	0.00	0.00	0.00	0.00	0.00	0.0%
Comm'n Mtgs, Investigations, Hrgs	12,400.00	838.35	0.00	0.00	0.00	838.35	6.8%
Consulting Services	42,500.00	0.00	0.00	0.00	0.00	0.00	0.0%
Office Rent	131,880.00	16,849.10	31,530.81	0.00	0.00	48,379.91	36.7%
Total Other Current Expenses	<b>\$ 281,440.00</b>	<b>\$ 24,803.97</b>	<b>\$ 49,589.97</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 74,393.94</b>	<b>26.4%</b>
<b>C. CAPITAL OUTLAY</b>							
Office Furniture and Equipment	10,000.00	0.00	3,062.82	0.00	0.00	3,062.82	30.6%
Total Capital Outlay	<b>\$ 10,000.00</b>	<b>\$ 0.00</b>	<b>\$ 3,062.82</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 3,062.82</b>	<b>0.0%</b>
<b>GRAND TOTAL (A+B+C)</b>	<b>\$ 1,584,678.00</b> <sup>1</sup>	<b>\$ 336,104.47</b>	<b>\$ 367,250.79</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 703,355.26</b>	<b>44.4%</b>

General Fund Allocation .....	<b>\$ 1,584,678.00</b>
Total Expenditures as of December 31, 2024 .....	\$ 703,355.26
Balance as of December 31, 2024 .....	\$881,322.74

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

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT

Appropriation Symbol: G-24-395-Y6  
 FY 2025 (QUARTER ENDING: December 31, 2024)

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
A. ACCRUED VACATION/VACATION TRANSFERS							
	\$ 220,000.00 <sup>1</sup>	\$ 0.00	\$ 60,000.00	\$ 0.00	\$ 0.00	\$ 60,000.00	27.3%
<b>Total Payout</b>	<b>\$ 220,000.00</b>	<b>\$ 0.00</b>	<b>\$ 60,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 60,000.00</b>	<b>27.3%</b>
Temporary Hazard Pay							
<b>GRAND TOTAL</b>	<b>\$ 220,000.00</b>	<b>\$ 0.00</b>	<b>\$ 60,000.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 60,000.00</b>	<b>27.3%</b>

Appropriation for Accrued Vacation/Vacation Transfer Payments . . . . .	<b>\$ 220,000.00</b>
Total Expenditures as of December 31, 2024. . . . .	\$ 60,000.00
Balance as of December 31, 2024 . . . . .	\$ 160,000.00

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

SUNSHINE LAW MEETING  
AGENDA ITEM IV

CONSIDERATION OF DRAFT 2024 ANNUAL REPORT

Attachment 1: 2024 Hawai'i State Ethics Commission Annual Report



# 2024 ANNUAL REPORT

Hawai'i State Ethics Commission  
Komikina Ho'opono Kulekele o  
Hawai'i Moku'āina  
1001 Bishop St. #970  
Honolulu, HI 96813  
[ethics.hawaii.gov](http://ethics.hawaii.gov)  
[info.ethics@hawaii.gov](mailto:info.ethics@hawaii.gov)



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13	➔	Commissioners & Staff



**Hawai'i State Ethics Commission**

*Komikina Ho'opono Kulekele o Hawai'i Moku'āina*

# Executive Summary

The Hawai'i State Ethics Commission is steadfast in its commitment to promoting integrity, transparency, and accountability in government. Over the past year, the Commission achieved significant milestones in ensuring that state employees and officials adhere to the highest ethical standards. Our accomplishments include coordinating a record number of state employees in meeting a comprehensive ethics training requirement, imposing the highest administrative fines ever issued for ethics violations in the Commission's history, and implementing a modern approach to addressing conflicts of interest and financial disclosure compliance. These efforts are beginning steps toward fostering a culture of ethical responsibility within Hawaii's public institutions.



Robert D. Harris, Executive Director and General Counsel

The public's trust in government is increasingly fragile in an era marked by national and international uncertainties, ranging from economic instability to geopolitical tensions. This context amplifies the urgency of the Commission's work. Ethics are not simply a matter of compliance; they are the foundation of public confidence in governance. The Commission recognizes that its role is not merely to enforce rules but to serve as a beacon of integrity, reminding public servants and the community of the value of principled leadership and accountability.

This year, the Commission has expanded its outreach and engagement efforts, forging stronger connections with the public and other stakeholders. Initiatives such as enhanced accessibility to ethics resources, public forums, and collaborations with civic organizations have increased transparency and allowed citizens to understand better and participate in ethical governance. These efforts underscore our belief that ethical government is a collective responsibility that requires the active involvement of both officials and the public.

Looking ahead, the Commission recognizes it must continue to evolve, particularly in the face of rapid technological advancements and changing societal expectations. The Commission calls for a renewed focus on building public confidence through bold and decisive actions, including legislative reforms, expanded investigative capacities, and a robust commitment to education and prevention.

The Commission thanks all state employees, officials, and community members who have supported and participated in our efforts this year. While there is more work to be done, we are confident that together, we can establish ethical governmental practices worthy of the people of Hawai'i.

Warmly,  
*Robert D. Harris*  
 Executive Director & General Counsel

# Mission & Duties

## Constitutional Mandate

Established in 1968, the Hawai‘i State Ethics Commission—the first state ethics commission in the United States—represents Hawaii's commitment to the principles that “public officers and employees must exhibit the highest standards of ethical conduct, and that these standards arise from the personal integrity of each individual in government.” Hawai‘i Constitution, Article XIV. The constitution also mandates that the State and its subdivisions establish a code of ethics for public officers and employees.

## Ethics & Lobbying Oversight

Pursuant to its constitutional mandate, the Commission is responsible for administering and enforcing the State Ethics Code and the State Lobbyists Law, chapters 84 and 97, Hawai‘i Revised Statutes, respectively. The Ethics Code includes laws relating to the acceptance and reporting of gifts, confidential information, fair treatment (the prohibited misuse of official position), conflicts of interests, state contracts, post-employment restrictions, and nepotism. It also requires state legislators, candidates for state elective office, and certain state employees to file financial disclosure statements.

For purposes of the State Ethics Code, the Commission has jurisdiction over approximately 60,000 state officials and employees. This includes state legislators and other elected state officials, employees of the legislative, executive, and judicial branches of government (except for judges and justices), and members of all state boards and commissions. The State Ethics Code’s financial disclosure law also applies to all candidates for state elective office.

The Commission also administers the State Lobbyists Law, which applies to lobbying activities at the state level. The Lobbyists Law requires lobbyists to register with the Commission and requires lobbyists and organizations that lobby to report lobbying expenditures and contributions on forms filed with the Commission. The Commission has jurisdiction over 500 lobbyists representing nearly 500 organizations that lobby the state legislature or executive branch.

# 2024 Goal Attainment

On March 20, 2024, the Commission adopted five staff goals for the year. These goals served as the Commission's roadmap for the year. Each goal was designed to align with our overarching mission of fostering public trust through transparency and ethical integrity. This year's annual report includes the following column reflecting on our progress in tackling these priorities, celebrating our successes, acknowledging areas for improvement, and setting the stage for the year ahead.

## 85% Training Target for all State Employees

Staff estimates that approximately 88% of all state employees and 95% of state board members have successfully completed ethics training. This achievement sets a new benchmark for the State of Hawai'i system and marks a significant milestone in the Commission's 57-year history.

## Update Electronic Filing System to Comply with Statutory Changes

The Commission's electronic filing system has been successfully updated to allow legislators to disclose any financial connections to lobbyists and to allow lobbyists to record the specific bill or item they lobbied on. Quick guides and training sessions have been offered to end users.

## Enforcement/ Compliance Modernization

Commission staff successfully reviewed lobbyist testimony in 2023 and 2024 and identified potential situations where unregistered lobbying may have occurred. Advice and enforcement efforts are still underway, as are efforts to develop a proactive method for identifying conflicts of interest using existing financial disclosure data.

## Office Modernization

The Commission successfully launched a new case and document management system, allowing for greater remote accessibility, statistic tracking, and modern security protocols. Phone and internet services were overhauled, resulting in significant annual savings. In addition, 225,000 pages (95 banker boxes) of materials were scanned and then securely shredded to allow greater digital access.

## Enhancing Public Trust and Awareness

The Commission took significant steps to enhance public trust and awareness. It issued a series of public opinion editorials praising current legislative reform efforts while advocating for further necessary changes. Additionally, the Commission strengthened collaborations with good governance organizations and actively engaged in several public civic education programs to foster transparency and accountability.

# Advice



The Commission recognizes that providing timely and meaningful ethical guidance is one of its most essential functions. Through its “attorney of the day” service, the Commission ensures that requests for guidance are addressed promptly and efficiently. In 2024, the Commission’s attorneys responded to an impressive 1,079 requests for advice from state legislators, employees, lobbyists, candidates for state elective office, and members of the public. Many of these requests involved detailed written guidance and follow-up support.

A significant legislative development in 2024 reinforced the confidentiality of the Commission’s advisory process, encouraging state employees to seek ethical advice without hesitation. Requestors may obtain a written summary of the guidance provided and share it as needed.

The Commission also issues binding advisory opinions on the application of the State Ethics Code and the State Lobbyists Law. In 2024, three advisory opinions were published and are accessible on the Commission’s public website:

- **Advisory Opinion No. 2024-1:** Addressed whether former state employees could be rehired through staffing agencies during their one-year post-employment restriction. The Commission determined that such arrangements are permissible if the staffing agency’s sole purpose is to facilitate the employees’ work on behalf of the State, as this does not constitute representing a “business” before a former agency.
- **Advisory Opinion No. 2024-2:** Examined whether state-employed physical education teachers or coaches may offer private sports clinics for compensation. The Commission concluded this is allowable under the State Ethics Code if the clinics are openly advertised, exclude one-on-one lessons with current students, and avoid the use of state resources or coercion of students.
- **Advisory Opinion No. 2024-3:** Considered whether specific University of Hawai’i (UH) employees could negotiate contracts with UH on behalf of their private businesses under the tech transfer law (Hawai’i Revised Statutes §§ 84-10, 304A-1961, et seq.). The Commission confirmed such agreements comply with the law and are exempt from certain ethics code provisions.

These statistics and advisory opinions demonstrate the Commission’s ongoing commitment to fostering ethical practices across Hawai’i’s government.

**Average of 4.12  
Requests for  
Advice Per Day**

# Education

The Commission is statutorily charged with educating state officials and employees about government ethics, as outlined in Haw. Rev. Stat. § 84-31(a)(7). A recent legislative mandate, championed by the Commission and warmly received by the state legislature, now requires all state employees to complete ethics training—either live or online—within 90 days of employment and at least once every four years thereafter.

## Commitment to Ethics Education

The Commission places a high priority on ethics education, offering both in-person and videoconference training. In addition to general ethics training, specialized sessions are conducted for lobbyists, teachers, board and commission members, and legislators. The Commission also provides ethics sessions for Continuing Legal Education (CLE) credits, tailored to the needs of government attorneys. A full calendar of videoconference training sessions is available on the Commission's website: <https://ethics.hawaii.gov/training/#signup>.

## Self-Directed Online Training Modules

The Commission developed self-directed online training modules to efficiently meet the mandatory training requirements. These modules allow state employees to access ethics education anytime, anywhere, using a computer and internet connection. In 2024, four tailored modules were offered, focusing on:

- State employees
- Board and commission members
- Charter schools
- Lobbying

Each module, designed for convenience and accessibility, takes approximately 35 minutes to complete. The online format offers a flexible, user-friendly approach for state employees to fulfill their training requirements. Direct access to these modules is available at the Commission's website: <https://ethics.hawaii.gov/training/>.

## Record-Breaking Participation

The self-directed training initiative achieved extraordinary success. In 2023, 35,977 participants completed the training modules—a staggering 500% increase compared to 2022 and an astonishing 7,724% increase relative to 2021. In 2024, this success continued, with an additional 15,506 participants throughout the year (and 707 participants taking a live in-person or webinar class). Staff estimates that approximately 88% of all state employees and 95% of state board members have successfully completed ethics training.

Remarkably, these achievements were accomplished without any increase in the Commission's budget or staffing. The results highlight the effectiveness of the Commission's innovative approach to ethics education and the collective commitment of government agencies across the state.

# Legislation

In 2022, Hawai'i faced a wave of corruption allegations involving state and county employees, prompting widespread public concern and a renewed focus on ethical conduct in government. This heightened awareness catalyzed significant legislative reforms in 2022, 2023, and continuing into 2024.

The Commission, in collaboration with the leadership of the Hawai'i Legislature, played a critical role in advancing key reforms that strengthened accountability and transparency across state government. These efforts reflect a shared commitment to restoring public trust and ensuring that ethical standards are upheld at all levels of government.

## Maximum Administrative Fines

Act 15 (House Bill 1881 HD1 SD1) increases the maximum administrative fines for violations of Hawaii's ethics and lobbying laws. Specifically, it raises the cap on fines from \$1,000 to \$5,000 for each violation under chapters 84 and 97 of the Hawai'i Revised Statutes, which pertain to standards of conduct and lobbyist regulations, respectively. This adjustment strengthens enforcement and promotes compliance with the state's ethical standards. It also aligns Hawai'i closer to the potential national average for ethics administrative fines.

## Disclosure Deadline

Act 189 (Senate Bill 2217 HD1 CD1) aims to enhance the administration and enforcement of the state's ethics code and lobbyist laws. The bill introduces a phased approach to adjust the reporting periods for gift disclosures filed with the Commission, transitioning from a calendar year to a fiscal year reporting system. This change is intended to improve the uniformity, efficiency, and effectiveness of reporting and oversight. Additionally, the legislation mandates electronic filing for certain disclosures, streamlining the submission process and promoting transparency.

## Advice Modernization

Act 188 (Senate Bill 2216 SD1 HD1 CD1) aims to enhance the operations of the Commission by updating procedures for providing advice and conducting investigations under sections 84-31 and 97-6 of the Hawai'i Revised Statutes. The act clarifies the Commission's authority to conduct investigations confidentially, while still ensuring that individuals subject to investigation are given an opportunity to respond if the Commission proceeds further with the Charge process. The act also clarifies the confidentiality of the Commission's advice and guidance process while establishing a process where the Commission can publicly issue an Advisory Opinion on matters of general and public importance. It also improves the Commission's processes to improve efficiency and transparency in enforcing ethics laws. The legislation received support from various stakeholders, including the League of Women Voters of Hawai'i, who emphasized the importance of enforcing ethical actions by public officials.

# Enforcement

The Commission is responsible for enforcing the State Ethics Code (Haw. Rev. Stat. Chapter 84) and the State Lobbyists Law (Haw. Rev. Stat. Chapter 97). Complaints alleging violations are received and reviewed on a confidential basis, and the Commission conducts investigations as necessary. When warranted, the Commission initiates formal charges against individuals who appear to have violated the law. If probable cause is found, the Commission may hold a contested case hearing under Hawai'i's Administrative Procedure Act (Haw. Rev. Stat. Chapter 91).

## 2024 Enforcement Matters

**Department of Education, Fair Treatment and Conflicts of Interest:** Resolution of Charge 2024-1.

On March 20, 2024, the Commission resolved a case involving Glenn S. Nitta, former Athletic Director of Mililani High School, for egregious violations of the State Ethics Code. Over two decades, Nitta misappropriated funds from the school's Athletic Booster Club for personal expenses, including travel, credit card payments, and unauthorized business ventures involving family members. He pleaded "no contest" to related criminal charges and made restitution totaling \$406,000. The Commission imposed a

### ETHICS COMPLAINTS RECEIVED

**424**

Total number of complaints received from sourced or anonymous sources

### TOTAL CASES CLOSED

**417**

Matters resolved due to lack of jurisdiction, guidance or advice given, or settlements/enforcement successfully pursued

### INVESTIGATIONS LAUNCHED:

**9**

Where the Commission found that allegations of an ethical violation had merit and initiated a formal investigation.

### CHARGES ISSUED:

**5**

Times when the Ethics Commission initiated a formal charge into an alleged ethics code violation



### FRAUD, WASTE, AND ABUSE COMPLAINTS RECEIVED:

**57**

Complaints received in conjunction with the Office of the Attorney General

### PENALTIES ASSESSED:

**\$293,100**

Fines assessed and directed to the general fund.

### RESTITUTION REQUIRED:

**\$48,000**

Illegal gifts returned.



**HAWAI'I STATE ETHICS COMMISSION**



## 2024 Enforcement Matters (continued)

\$274,500 administrative penalty, emphasizing the severe breach of trust and the need to uphold ethical standards in public service.

### **State Foundation on Culture and the Arts, Conflict of Interest:** Resolution of Charge 2024-2.

On May 15, 2024, the Commission resolved a case involving Allison Wong Daniel, a former commissioner of the State Foundation on Culture and the Arts, for violating the State Ethics Code's conflict of interest provisions. As president of the Jean Charlot Foundation, a nonprofit organization, she used her position as a state commissioner to advocate for and approve the acquisition of a mural by Jean Charlot, benefiting her foundation. Despite disclosing her role, her actions violated the prohibition on taking official actions that directly affect a private organization in which she held a substantial financial interest. The Commission's resolution underscored the importance of maintaining impartiality and ethical conduct in public service.

### **House of Representatives, Fair Treatment:** Resolution of Investigation 2024-1.

On June 26, 2024, the Commission resolved an investigation into Kris Coffield, an Office Manager for Representative Jeanne Kapela, for violating the State Ethics Code's Fair Treatment law. Coffield admitted to using state work hours to send emails on behalf of the Democratic Party of Hawai'i, a private nonprofit organization, which constitutes misuse of state time and resources under HRS § 84-13(a). Coffield fully cooperated with the investigation, resigned from his position with the Democratic Party, and agreed to pay a \$100 administrative penalty. The Commission also referred the matter to the House of Representatives for further action.

### **Department of Education, Fair Treatment and Gifts Law:** Resolution of Charge 2024-3.

In 2024, the Commission resolved a case involving Vera Alvarez, a teacher at Moanalua Elementary School, for violating the State Ethics Code's Fair Treatment and Gifts laws. Alvarez accepted \$48,000 in cashier's checks from a school volunteer, depositing \$34,000 for personal use and retaining \$14,000 in undeposited checks. These funds were provided under the guise of aiding teachers but violated state ethics laws as unwarranted benefits derived from her employment. Alvarez agreed to pay \$34,000 in restitution, return the remaining \$14,000, and pay a \$5,000 administrative penalty. The matter was referred to the Department of Education for disciplinary action.

### **House of Representatives, Financial Disclosure:** Resolution of Charge 2024-4.

On September 19, 2024, the Commission resolved a case against State Representative David Alcos III for failing to disclose substantial financial information on required financial disclosure forms, as mandated by the State Ethics Code. Alcos admitted to omitting numerous creditors, including significant tax liens, legal debts, and judgments related to his construction business, D.A. Builders, LLC. He also failed to disclose his state salary and ownership interests in two businesses. Alcos cooperated with the investigation, voluntarily disclosed additional information, and acknowledged the importance of adhering to financial disclosure requirements for transparency and public trust.

# Nepotism

The Commission enforces a nepotism law that generally prohibits state employees from taking employment actions regarding their relatives or household members. However, exceptions can be granted for “good cause.” To obtain such an exception, the employee or agency must show that complying with the nepotism law is impractical. For example, in hiring situations, this could involve demonstrating that a position was widely advertised, yet no qualified applicants came forward, necessitating the hiring of a relative. Similarly, for supervisory roles, if delegating duties to another employee is not feasible, an exception may be considered. The Commission stresses that any granted exceptions will be managed transparently to maintain public trust.



In 2024, the Commission considered eight nepotism exception applications. These include cases where specialized positions had a limited pool of qualified candidates, making hiring a relative necessary, and situations in rural areas where staffing shortages required supervisory roles to be filled by family members. Each exception was evaluated individually, ensuring that the decisions upheld the integrity of the state’s employment practices. Each decision can be found at [https://hawaiiethics.my.site.com/public/s/ethics-advice/Ethics\\_Advice\\_c/00B6R00000AwpdxUAB](https://hawaiiethics.my.site.com/public/s/ethics-advice/Ethics_Advice_c/00B6R00000AwpdxUAB).

For more detailed information on the nepotism law and the process for applying for a good cause exception, the Commission issued a Quick Guide on Nepotism available at [https://ethics.hawaii.gov/wp-content/uploads/quickguide\\_nepotism.pdf](https://ethics.hawaii.gov/wp-content/uploads/quickguide_nepotism.pdf).

# Financial & Gifts Disclosures

The Commission oversees the filing requirements of the financial disclosure law and the gifts disclosure law, which contribute to accountability and transparency in government. In 2024, the Commission received 1,882 financial disclosure statements. Public disclosure statements (for elected officials, department directors, and other designated state officials) can be found in the Commission’s “public data” section of its website. The Commission also received and published 253 gifts disclosure statements, all accessible in the “public data” section of the Commission’s website.



# Lobbyists

The Commission administers Haw. Rev. Stat. Chapter 97, the Lobbyists Law, which requires lobbyists to register with the Commission and file periodic expenditure reports. Lobbyists are required to register and file their periodic expenditure reports electronically. These reports are available on the “public data” tab of the Commission’s website.

The Commission continually upgrades and enhances its e-filing system for lobbying, financial disclosures, and gift disclosures. In 2024, the Commission introduced a series of improvements to simplify the process for filers and comply with recent statutory changes. Recent updates include allowing legislators to report financial ties to lobbyists and enabling lobbyists to specify the particular bill number or issue they lobbied on.

As of April 19, 2023, Act 20 requires all lobbyists to complete mandatory training before registering and to renew it at least every two years. This legislation emphasizes the importance of equipping lobbyists with a clear understanding of ethical standards and compliance requirements.

In 2024, the Commission’s lobbyist training program saw an impressive turnout, with 584 participants successfully completing the training. This record number underscores the growing commitment to ethical practices and transparency within the lobbying community. The Commission continues to prioritize high-quality, accessible training programs to meet the demands of this new regulatory framework.

## 2024 LOBBYING REPORT

586

Lobbyist Registration  
Statements Filed

1,408

Lobbying Expenditure  
Reports Filed

581

Total Number of  
Registered Lobbyists

498

Lobbying Organizations

# Commissioners & Staff

The Commission comprises five members nominated by the State Judicial Council and appointed by the Governor for four-year terms. Following the passing of former Vice Chair Harry McCarthy on January 8, 2024, Governor Josh Green appointed Roderick Becker on September 16, 2024, to fill the vacancy. The Commission's current members are Wesley Fong (Chair), Beverley Tobias (Vice Chair), Robert Hong, Cynthia Thielen, and Roderick Becker.

As of December 2024, the Commission employs twelve staff members: Executive Director Robert D. Harris, Compliance Director Bonita Chang, Enforcement Director Kee Campbell, three staff attorneys (Nancy Neuffer, Jennifer Yamanuha, and Jodi Yi), Investigator Jared Elster, Investigatory Analyst Barbara Gash, Computer Specialist Patrick Lui, Office Manager Caroline Choi, Secretary Lynnette O'Ravitz, and Administrative Assistant Myles Yamamoto.

The Commission prioritizes fiscal prudence and efficiency. In 2024, it returned \$72,229.54 of its allocated budget to the General Fund. Several key efforts guided the reduced expenses, including successfully renegotiating the Commission's office lease and changing phone and internet systems to provide greater accessibility and reduced cost.



Wesley F. Fong, Chair



Beverley Tobias, Vice  
Chair



Robert Hong



Cynthia Thielen



Roderick Becker

SUNSHINE LAW MEETING  
AGENDA ITEM V

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

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM VI

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

Attachment 1: Proposed rules are 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 VII

PROPOSED ADMINISTRATIVE RULES

Review of proposed edits and new Chapter

- Attachment 1: Staff Overview*
- Attachment 2: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 8*
- Attachment 3: Proposed edits to Hawai'i Administrative Rules, Title 21, Chapter 10*
- Attachment 4: Proposed new Chapter to Hawai'i Administrative Rules, Title 21, Chapter 11*

## PROPOSED ADMINISTRATIVE RULES

Review of proposed edits and new Chapter

**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 Chapters 8 and 10, as well as a new Chapter 11 (addressing nepotism), are submitted to obtain 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.

**Proposed Revisions (Chapter 8):**

1. **Corporate Structures (§ 21-8-XX):** Parent companies, subsidiaries, and companies with a "brother-sister" relationship are considered single entities when analyzing financial interests under Chapter 84, HRS.
2. **Agency Definitions (§ 21-8-XX):**
  - An employee's "agency" is defined at the department level for executive branch employees or as equivalent for other branches. Agencies administratively attached are considered separate.
  - For employees of the legislature, "agency" includes both houses.
  - In specific situations (e.g., large departments like the University of Hawaii or those with geographical divisions), "agency" can be defined at the division or branch level if:
    - The department is extensive.
    - There is no reasonable likelihood of unfair advantage or influence peddling.
3. **Conflicts of Interests (§ 21-8-1):**
  - Employees serving as directors or officers of private organizations in their **official state capacity** are permitted to take official actions directly affecting those organizations if the action does not impact their personal financial interests or those of their immediate family.
  - Any discretionary actions taken in this capacity are classified as official actions for the purposes of Chapter 84, HRS.



## **Proposed Revisions (Chapter 10):**

The proposed revisions to Chapter 10 of the State Ethics Commission's rules, focusing on lobbying, include updates to definitions, registration, reporting requirements, and procedural clarifications.

### **1. Definitions (§ 21-10-1)**

- Revises definitions for terms such as “direct lobbying” and “grassroots lobbying” to include “administrative action” instead of “rulemaking.”
- Adds a detailed description for “trade association.”

### **2. Registration and Termination (§ 21-10-2)**

- Updates and uses the term “administrative action” throughout instead of rulemaking;
- Authorizes the Commission to make reasonable presumptions regarding the time spent lobbying with respect to activities like drafting testimony, discussing legislation or administrative action, and preparing while waiting to testify.

### **3. Exclusions from Registration Requirements (§ 21-10-3)**

- It clarifies that sole proprietors are exempt from registering as lobbyists.
- Refines the conditions under which individuals with special skills may appear without registering, emphasizing the limits on frequency and the need for documentation.

### **4. Presumption of Lobbying on Behalf of Private Clients (§ 21-10-5)**

- It introduces a presumption that individuals actively lobbying for an organization are compensated unless specific criteria rebut this presumption, such as personal time usage or prior individual involvement.

### **5. Reporting Requirements (§ 21-10-5, § 21-10-6)**

- Enhances the statement of contributions and expenditures to require detailed reporting of the specific legislative or administrative action lobbied on.
- Clarifies the obligation of trade associations to report contributions to lobbying efforts and provides several examples.

### **6. Filing Procedures (§ 21-10-10)**

- Mandates electronically submitting registration forms and statements using the commission's system or other prescribed methods.

## **Proposed New Chapter 11**

These new rules establish guidelines to address nepotism in state employment and uphold public trust in government. With limited exceptions, state employees are prohibited from engaging in hiring or supervision that impacts their relatives or household members.

1. **Preamble (§ 21-11-1):**
  - Emphasizes ethical behavior and the presumption against nepotism unless justified by good cause.
  - Aims to ensure fair governance under Chapter 84, HRS.
2. **Supervision (§ 21-11-2):**
  - Defines “supervise” and clarifies when a supervisory relationship exists.
  - Allows supervision of relatives in cases of physical impairment if properly disclosed.
  - Provides an advisory mechanism for assessing supervisory relationships.
3. **Disqualification (§ 21-11-3):**
  - Allows supervisors to disqualify themselves from actions affecting relatives.
  - Prohibits disqualification in small agencies or those with limited geographic or employee separation to avoid appearances of impropriety.
4. **Good Cause Exception (§ 21-11-4, § 21-11-5):**
  - Establishes a process for seeking exceptions to nepotism rules, requiring proof of diligence and necessity.
  - Lists factors for determining good cause, such as recruitment efforts and agency needs.
  - Applications must be submitted via the ethics commission’s online system.
5. **Decisions and Appeals (§ 21-11-6):**
  - Grants the executive director authority to decide good cause applications, with public disclosure of decisions.
  - Allows appeals to the commission for applicants disagreeing with the executive director’s decision.
6. **Emergencies (§ 21-11-7):**
  - Provides a limited exemption during bona fide emergencies, such as natural disasters, requiring urgent action.
7. **Hanai Relationships (§ 21-11-8):**
  - Extends nepotism rules to hanai relationships, defining such individuals as family members through traditional Hawaiian customs.

This framework aims to balance ethical standards with practical needs, ensuring transparency and fairness in state employment while addressing unique circumstances like emergencies or cultural practices.

## HAWAII ADMINISTRATIVE RULES

## TITLE 21

## LEGISLATIVE AGENCIES

## CHAPTER 8

## STATE ETHICS COMMISSION

## CONFLICTS OF INTERESTS

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

§ 21-8-XX. Corporate structures. (a) A parent company and its subsidiaries, as well as companies with a "brother-sister" relationship, are considered single entities for the purposes of analyzing financial interests in Chapter 84, HRS.

[Eff \_\_\_\_\_] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-3, 84-14, 84-31)

§21-8-XX. Agency. (a) For purposes of section 84-14, HRS, the employee's "agency" is defined at the department level if referring to the executive branch or similar equivalent. Any agency attached for administrative purposes only is considered separate. For employees of the legislature, the employee's "agency" includes both houses.

(b) Instead of the department level, the division or branch level will define the employee's "agency" if:

(1) The department is expansive and has numerous employees, such as the University of Hawaii, Department of Education, Department of Land and Natural Resources, and Public Charter Schools, or there are geographical divisions (such as different districts or different islands);

(2) No reasonable likelihood that the employee would have an unfair advantage; and

(3) No reasonable likelihood of influence peddling.

[Eff \_\_\_\_\_] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-14, 84-31)

**§ 21-8-1. Conflicts of interests, director or officer of private organization in employee's state capacity.** (a) An employee who serves as a director or officer of a private organization in the employee's official capacity may take~~[is not prohibited from taking]~~ official action directly affecting that organization, provided that action does not affect the personal financial interest of the employee, the employee's spouse or civil union partner, or the employee's dependent children.

(b) Any discretionary action taken by the employee as a director or officer as set forth in subsection (a) shall be considered official action for purposes of chapter 84, HRS.

[Eff ] (Auth: HRS §§84-31(a)(5)) (Imp: HRS §§84-3, 84-14, 84-31)

## HAWAII ADMINISTRATIVE RULES

## TITLE 21

## LEGISLATIVE AGENCIES

## CHAPTER 10

## STATE ETHICS COMMISSION

## LOBBYING

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

**§ 21-10-1. Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Administrative action" means the same as in section 97-1.

"Client" means the individual or entity that employs, contracts with, or retains another person for pay or other consideration to lobby on behalf of that individual or entity.

"Direct lobbying" means any oral or written communication with a legislator, or an employee, intern, or volunteer of the legislature or an agency[~~7~~] that would appear to a reasonable person to be an attempt to influence legislation or ~~[rulemaking]~~administrative action.

"Employing organization" means an entity that employs or contracts with a lobbyist to act on behalf of a client.

"For pay or other consideration" includes a wage, salary, fee, or other compensation provided to an owner, director, employee, or contractor of an organization who lobbies on behalf of the organization.

"Grassroots lobbying" means any oral or written communication directed at any member of the public that both expresses an opinion about existing or potential legislation, administrative [~~rule,~~]action, or ballot issue and includes an explicit or implied call to action.

"Lobbying" has the same meaning as in section 21-1-2.

"Lobbyist" has the same meaning as in section 21-1-2.

"Person" has the same meaning as in section 97-1, HRS.

"Trade association" is an organization comprised of members within an industry who work together to promote or improve common interests.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-2.5, 97-3, 97-6)

**§ 21-10-2. Registration and termination.** (a) Every individual who meets the threshold requirements to be deemed a lobbyist, as described in section 97-1, HRS, shall register as a lobbyist with the commission within five days of meeting those requirements.

(b) For purposes of determining whether an individual has met the threshold requirements to register as a lobbyist, all time spent lobbying shall be included. Time spent lobbying includes, but is not limited to:

(1) Drafting and providing testimony;

(2) Discussing actual or potential legislation or ~~rules~~ administrative action with any official in the legislative or executive branch who is or may be involved in legislation or ~~rulemaking~~ administrative action;

(3) Waiting to testify at a hearing, when the individual who is waiting:

(A) Is being compensated to lobby during that waiting time and is not performing other work unrelated to the lobbying;

(B) Spends that time preparing, reviewing, or strategizing on the testimony; or

(C) Spends that time otherwise lobbying.

(c) The commission may make reasonable presumptions about the time spent lobbying. In doing so, the commission may consider the amount of written testimony submitted, the number of hearings attended, and the complexity and frequency of the testimony or lobbying communications (including meetings, phone calls, and email).

~~(d)~~ (d) Time spent on the following activities need not be counted for purposes of registration:

(1) Performing work relating to service on a task force created by the legislature or an agency; and

(2) Research on and discussions regarding policy matters where the research or discussions are not reasonably likely to lead to lobbying activities within a twelve-month period.

~~(d)~~ (e) Every lobbyist shall renew the lobbyist's registration biennially by filing a registration and authorization form with the commission within ten days of the opening of every odd-numbered legislative session.

~~(e)~~ (f) If a lobbyist does not renew the lobbyist's registration as required by subsection (d), the lobbyist's registration is deemed to have expired on December 31 of the preceding even-numbered year, provided that the lobbyist shall

remain subject to the requirements of chapter 97, HRS, and these rules for the period during which the registration was effective.

~~[(f)]~~(g) Lobbyists' registrations shall be terminated as set forth in section 97-2, HRS.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

**§ 21-10-3. Exclusions from registration requirements.** (a) The following individuals need not register as lobbyists:

(1) Any individual who represents oneself, the individual's sole proprietorship, or other business solely owned and operated by the individual and does not represent any other person before the legislature or administrative agency, provided that these individuals may be required to submit statements of contributions and expenditures as provided in section 97-3, HRS, and these rules ~~[. For purposes of this subsection, "any other person" includes a sole proprietorship or other business owned or operated by the individual];~~

(2) Any federal, state, or county official or employee acting in the official's or employee's official capacity, provided that if the federal, state, or county official or employee contracts for the services of a lobbyist, either directly or through an employing organization, then the lobbyist is subject to the registration and reporting requirements of chapter 97, HRS, and these rules, and the director of the agency employing the lobbyist shall be responsible for submitting statements of contributions and expenditures as required by section 97-3, HRS, and these rules;

(3) Any person engaged in the business of publishing or broadcasting news or commenting on the news ~~[,]~~ while engaged in the gathering or dissemination of news and comment on the news and in the ordinary course of business;

(4) An attorney advising a client on the construction or effect of proposed legislative or administrative action; and

(5) Any person who possesses special skills and knowledge relevant to certain areas of legislation or rulemaking, whose skills and knowledge may be helpful to the legislative and executive branches of state government, and who makes an occasional appearance as described in section 97-2, HRS. ~~[at the written request of the legislature, an administrative agency, or the lobbyist, even though the person receives reimbursement or other payment from the legislature, administrative agency, or the lobbyist for the appearance.]~~ For purposes of this section,



"occasional appearance" means no more than three appearances before a single agency or before the legislature within six months, absent good cause. A copy of the written request for an appearance made by the legislature, administrative agency, or lobbyist shall be provided to the commission within five business days of the commission's request.

(b) Lobbying activities that exceed the scope of subsection (a) shall be reported as provided by chapter 97, HRS, and these rules.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

**§21-10-5 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. In determining whether the presumption is rebutted, the Commission shall consider the following factors:

(a) Whether the individual engages in the lobbying during personal time or during the time typically devoted to work on behalf of the organization.

(b) Whether the individual has a history of a personal interest in the issue or a history of previously personally testifying on the issue.

(c) Whether the individual used the organization's resources for lobbying.

(d) Whether the individual's duties on behalf of the organization include lobbying or advocacy.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

### **Reporting of Lobbying Contributions and Expenditures**

#### **§ 21-10-5. Statement of contributions and expenditures.**

(a) Each client, its lobbyists, and the lobbyists' employing organization, if any, shall file a joint statement of

contributions and expenditures that includes all expenditures [~~for the purpose of lobbying~~] to lobby on behalf of that client.

(b) A joint statement of contributions and expenditures shall include:

(1) The names of all registered lobbyists engaged in lobbying on behalf of the client;

(2) All contributions for the purpose of lobbying received by the lobbyists, the employing organization, and the client, as set forth in section 97-3, HRS, and these rules; and

(3) All expenditures made by or in support of the lobbying interests or activities of the client, including out-of-pocket expenditures made by individual lobbyists, as set forth in section 97-3, HRS, and these rules.

(4) All legislative or administrative actions commented on, supported by, opposed by, or otherwise lobbied on during the reporting period. Such items shall be identified by bill number, resolution number, rule number, budget cost or program identification number, or other similar and appropriate identifier.

(c) If a lobbyist expends funds or receives contributions for the purpose of lobbying that are not reported on any client's statement of contributions and expenditures, or if any person expends more than \$1,000 of the person's or any other person's money during a reporting period and those expenditures are not reported on any client's statement of contributions and expenditures, the lobbyist or person expending such funds shall submit a separate statement reporting these contributions and expenditures.

(d) Each client, each of its lobbyists, and each lobbyists' employing organization, if any, shall be responsible for filing [~~of~~] timely, accurate, and complete statements of contributions and expenditures to the commission.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

**§ 21-10-6. Contributions for the purpose of lobbying.** (a) Contributions for the purpose of lobbying shall be reported as set forth in section 97-3, HRS, except where a contributor's identity may be withheld pursuant to law.

(b) Contributions shall be reported where the contributor knows or reasonably should know that the primary purpose of the contribution is to support lobbying.

(c) Where a contribution is used in part for lobbying and in part for other expenses, the reporting entity need report only the amount used for lobbying.

(d) A trade association that lobbies on behalf of its members shall report as contributions anything of value given to the trade association for the purpose of lobbying, including but not limited to membership dues

Example 1: A company pays annual membership dues to a trade association. Membership dues fund the trade association. Lobbying accounts for 30% of the trade association's activities. The trade association must report 30% of the company's membership dues as a lobbying contribution.

Example 2: A trade association is interested in lobbying on a bill and asks its members to fund the lobbying effort. The trade association must report any contributions received by its members for the lobbying effort.

Example 3: A company that is a member of a trade association lends an employee to assist in the association's lobbying efforts. The trade association must report the in-kind value of the employee's services as a contribution.

[Eff ] (Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2, 97-3, 97-6)

**§ 21-10-10. Submission of registration forms and statements of contributions and expenditures.** (a) Registration forms and statements of contributions and expenditures shall be filed using the commission's electronic filing system or any other forms and methods prescribed by the commission. [~~The commission may require that forms and statements be filed using an electronic filing system.~~]

(b) Every registration, statement, or form submitted pursuant to this chapter shall include a certification by an authorized representative or agent of the registered lobbyist, employing organization, or client that the information contained in the document is complete, true, and accurate.

[Eff ]  
(Auth: HRS §§84-31(a)(5), 97-6(a)(5)) (Imp: HRS §§97-1, 97-2,  
97-2.5, 97-3, 97-6)

11. Chapter 21-11, Hawaii Administrative Rules, entitled “Nepotism”, is adopted to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 21

LEGISLATIVE AGENCIES

CHAPTER 11

STATE ETHICS COMMISSION

NEPOTISM

21-10-1	Preamble
21-10-2	Supervision
21-10-3	Disqualification
21-10-4	Good Cause
21-10-5	Good Cause Exception Application
21-10-6	Decisions and Appeals
21-10-7	Emergencies
21-10-8	Hanai Relationships

**§21-11-1. Preamble.** The strength and stability of our democratic government rely upon the public's trust in government institutions, including the expectation that employees act ethically with prudence, integrity, and sound judgment. Accordingly, this chapter aims to implement the nepotism law, chapter 84, HRS, and promote good government by prospectively prohibiting state employees from hiring, contracting with, or taking official action affecting their relatives or household members. There is a presumption that nepotism is prohibited unless an applicant establishes good cause under sections 21-11-4 and 21-11-5.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-2. Supervision.** (a) For the purposes of chapter 84, HRS, "supervise" means an employment relationship in which a superior directly and specifically affects, or has the authority to directly and specifically affect, the terms and conditions of a subordinate's employment. Factors to consider whether or not someone is a supervisor are the amount of direct interaction between the employees and whether an employee makes recommendations or controls decisions about a subordinate employee's work assignments, compensation, grievances, advancements, or performance evaluations. An employee may have more than one supervisor.

(b) An action affecting an entire class of or large number of employees is not supervision for purposes of this section.

(c) An agency or employee, or prospective agency or employee, may seek advice regarding whether a supervisory relationship exists or would exist between themselves and a relative or household member or whether disqualification is sufficient to avoid a supervisory relationship. Any request under this provision shall utilize the same procedures as good cause exception applications under Section 21-11-5. Any decision by the Commission stating that a supervisory relationship does not exist between relatives who work together or will work together shall be public in the same manner as a good cause exception application.

(d) An employee may supervise a relative or household member if they have a physical impairment requiring the employment of a particular household member, provided that the employee discloses the prospective employment to the state ethics commission before the appointment or hire is made. The notification must be made in writing, and the prospective employment must be described.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-3. Disqualification.** Supervisors who disqualify themselves from taking any official action affecting a relative or household member do not violate Section 84-13.2, HRS. For purposes of this chapter, disqualification is not appropriate where:

- (1) the agency or relevant subdivision has less than twenty employees;
  - (2) the agency or relevant subdivision's employees are in a single geographic location;
- and

(3) there is little separation in direct interactions between the agency or relevant subdivision's employees, such that the employee's disqualification would still result in the appearance of impropriety.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-4. Good cause.** (a) To obtain an exception to the nepotism law for good cause, the agency or employee must demonstrate that, despite exercising diligence in attempting to comply with the nepotism law, good cause exists to exempt the agency or employee from the nepotism law.

(b) In determining whether good cause exists under chapter 84, HRS, the executive director or the commission may consider:

- (1) the nature of the relationship between the employee and their relative;
- (2) the particular need for the position;
- (3) any potential alternatives in meeting the need for the position;
- (4) the type of position and difficulty of finding an employee with unique skills or training;
- (5) the state purpose served in filling the position;
- (6) whether the agency or employee has exhausted all reasonable options before seeking an exception to the law;
- (7) the adequacy of the recruitment effort, including the length of time and manner in which the state position was advertised;
- (8) whether there is a demonstrated lack of qualified personnel or applicants; and
- (9) any other relevant factors.

(c) An agency's inability to hire the best applicant or employee is insufficient to establish good cause if other qualified applicants or employees exist.

*Example 1:* An agency seeks a good cause exception to hire an employee related to its supervisor after advertising the position for one week on its internal system and receiving only one application. Good cause likely does not exist because the agency has failed to exercise appropriate diligence in attempting to comply with the nepotism law.

*Example 2:* An agency in a remote location seeks a good cause exception to hire an employee related to their supervisor after advertising a position for two months on its internal system and several external job application websites. The agency also has evidence that it has historically had difficulty hiring individuals due to its remote location. The agency has searched for alternative supervisors for the prospective employee. Still, due to the agency's size and location, a relative will need to take some action to supervise the prospective employee. Depending on the need for the position, good cause potentially exists, and the agency has exercised appropriate diligence in attempting to comply with the nepotism law.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-5. Good Cause Exception Application.** (a) An employee, prospective employee, or agency may apply for a good cause exception to the nepotism law under Chapter 84, HRS. Applications for good cause exceptions shall be filed using the commission's online filing system, and the information requested by the commission will be provided. The applicant shall notify the commission if an expedited decision is requested.

(b) During the pendency of a good cause exception application, the agency and employee or prospective employee shall maintain the status quo regarding the employee's or prospective employee's employment responsibilities or hiring status. At their discretion, the executive director or commission may deny a good cause exception application if an agency or employee fails to maintain the status quo during the pendency of a good cause exception application.

(c) The submission of a good cause exception request does not prohibit or alter the commission's ability to take any action to enforce the State Ethics Code, chapter 84, HRS.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-6. Decisions and Appeals.** (a) Upon receipt of a good cause exception application, the executive director shall determine whether to grant or deny the application unless the matter presents a novel question of law or public policy; in this case, the executive director may refer the matter to the commission.

(b) Decisions on good cause exception applications shall be public documents, and commission meetings regarding good cause exception applications or appeals shall occur in a public meeting unless the executive director determines extenuating circumstances exist and publication of the application is not in the public interest.

(c) If an applicant disagrees with the executive director's decision, the applicant or anyone with due process rights impacted by the decision may appeal the decision within ten business days to the commission. The applicant's appeal shall be in writing to the commission, and the basis for the applicant's disagreement with the executive director's decision shall be described. The commission may conduct additional investigation or take relevant testimony before deciding on the appeal.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

**§21-11-7. Emergencies.** During a bona fide emergency due to a natural disaster or other similar event that requires the agency to act under exigent circumstances without time to apply for a good cause exception, the agency may, during that limited period, respond to the emergency without violating the nepotism law.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)



**§21-11-8. Hanai Relationships.** For purposes of this chapter, a person who has become a member of an employee's immediate family through the hanai custom is a person for whom the employee or their family has provided food, nourishment, and support and who is known among friends, relatives and the community as the employee's immediate family member.

[Eff ] (Auth: HRS §§84-31(a)(5), 84-13.2)

SUNSHINE LAW MEETING  
AGENDA ITEM VIII

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.

Attachment 1: 25-01-06 [67] UHPA Response to HSEC Amicus Brief

Electronically Filed  
Intermediate Court of Appeals  
CAAP-24-0000278  
06-JAN-2025  
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NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO. 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAII	)	BOARD OF REGENTS OF THE
PROFESSIONAL ASSEMBLY,	)	UNIVERSITY OF HAWAII'S APPEAL
	)	FROM:
Petitioner-Appellee,	)	
	)	1) FINDINGS OF FACT, CONCLUSIONS
and	)	OF LAW, AND ORDER GRANTING
	)	PETITIONER UNIVERSITY OF HAWAII
BOARD OF REGENTS OF THE	)	PROFESSIONAL ASSEMBLY'S
UNIVERSITY OF HAWAII,	)	MOTION TO CONFIRM ARBITRATION
	)	AWARD FILED OCTOBER 16, 2023,
Respondent-Appellant.	)	FILED JANUARY 16, 2024;
	)	
	)	2) FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND ORDER DENYING
	)	RESPONDENT BOARD OF REGENTS
	)	OF THE UNIVERSITY OF HAWAII'S
	)	COUNTER MOTION TO VACATE
	)	ARBITRATION AWARD FILED ON
	)	NOVEMBER 7, 2023, FILED JANUARY
	)	16, 2024; and
	)	
	)	3) JUDGMENT, FILED MARCH 11, 2024.
	)	
	)	FIRST CIRCUIT COURT
	)	HONORABLE DEAN E. OCHIAI

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**PETITIONER-APPELLEE  
UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY'S  
RESPONSE TO AMICUS CURIAE BRIEF OF  
THE HAWAII STATE ETHICS COMMISSION**

AND

**CERTIFICATE OF SERVICE**

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NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO. 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAII	)	
PROFESSIONAL ASSEMBLY,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAII,	)	
	)	
Respondent-Appellant.	)	
	)	
_____	)	

**PETITIONER-APPELLEE  
UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY'S  
RESPONSE TO AMICUS CURIAE BRIEF OF  
THE HAWAII STATE ETHICS COMMISSION**

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**PETITIONER-APPELLEE  
UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY’S  
RESPONSE TO AMICUS BRIEF OF THE  
HAWAII STATE ETHICS COMMISSION**

Petitioner-Appellee UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (“UHPA”), by and through its undersigned counsel, respectfully submits its Response to the HAWAII STATE ETHICS COMMISSION’s (“Commission”) Amicus Curiae Brief filed on December 6, 2024.

**I. INTRODUCTION**

The Commission emphasizes two points of agreement with Appellant BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII (“BOR”). Commission’s Amicus Brief, *DKT 61 at 7*.<sup>1</sup> First, the Commission asserts that the State of Hawaii has an explicit, well-defined, and dominant public policy that government employees must act with personal integrity and conduct themselves in accordance with the highest ethical standards. *Id.* Second, the Commission asserts that it is a State “agency” and not a “court” as the Arbitrator interpreted the word to encompass in the collective bargaining agreement. *Id.* The Commission also makes a third undeveloped argument that Hawaii law disfavors contracts that waive liability for willful misconduct. *Id. at 12*.

UHPA first submits that the Commission fails to understand the limits of judicial review, and thus, the Commission improperly urges this Court to exceed the limited scope of judicial review of arbitration awards. UHPA next submits that the Commission’s brief misconstrues the meaning of an “explicit, well-defined, and dominant public policy” as used in the public policy exception to the general deference to arbitration awards. Here, the Commission’s argument misunderstands how precise a public policy must be to overcome the general deference to arbitration awards. Last, UHPA submits that there is nothing in the record to demonstrate that the contract

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<sup>1</sup> Pursuant to HRAP 28(b)(3) the record references refer to the JEFS docket number and the pdf electronic page citations, and not to the pagination that may appear at the bottom of the page.

condones willful misconduct. As such, the Commission does not provide this Court with a compelling basis to reject the Circuit Court's decision that:

1. The Circuit Court denied the BOR's Counter Motion to Vacate Arbitration Award [RA DKT 15] as the BOR failed to show that the "Decision and Award" violates an explicit, well defined, and dominant public policy. RA DKT 46 at 14-22.
2. The Circuit Court denied the BOR's Counter Motion [RA DKT 15] as the BOR failed to show that Arbitrator Marr exceeded his powers in by defining the issues and interpreting and applying Article III.D., Legal Representation to the facts of this case. RA DKT 46 at 7-14.

The UHPA respectfully requests that this Court affirm the Circuit Court's orders.

## II. **ARGUMENT**

### A. **THE ARBITRATOR ACTED WITHIN HIS AUTHORITY TO INTERPRET THE AGREEMENT.**

The UHPA initially addresses the Commission's point that the Ethics Commission is not a "court" and its assertion that the Arbitrator's conclusion to the contrary is a product of deeply misguided reasoning. *Commission's Amicus Brief, DKT 61 at 12.*

The Arbitrator's Decision and Award is a product of the UHPA and BOR's collective bargaining agreement to "final and binding" arbitration for the settlement of grievances. RA DKT 5 at 56-59. It is well settled that the legislature overwhelmingly favors arbitration as a means of dispute resolution. *State of Hawaii Org. of Police Officers (SHOPO) v. County of Kauai, 135 Hawaii 456, 462-63, 353 P.3d 998, 1004-05 (2015), citing Tatibouet v. Ellsworth, 99 Hawaii 226, 234, 54 P.3d 397, 405 (2002) (citations omitted).* Accordingly, the legislature narrowly constrained judicial review of arbitration awards in HRS Chapter 658A-23. *Id.* The circumstances under which a circuit court may vacate an arbitration award includes vacation if an "arbitrator exceeded the arbitrator's powers." *Id.* In determining whether an arbitrator has exceeded his or her authority under the agreement, "there should be no 'second guessing' by the court" of the arbitrator's interpretation of his or her authority so long as the arbitrator's

interpretation “could have rested on an interpretation and application of the agreement.”  
*Id.*

In this case, the UHPA and BOR stipulated that the Arbitrator decide the question: “Did the University violate the collective bargaining agreement by failing to provide the grievant with legal representation. If so, what is the appropriate remedy.”  
*RA DKT 29 at 4-5; RA DKT 3 at 3; RA DKT 4 at 3.* The collective bargaining agreement provides for legal representation at Article III, Section D.

#### D. LEGAL REPRESENTATION

1. The Employer shall provide legal counsel for a Faculty Member upon request to the Office of the Vice President for Legal Affairs and University General Counsel when:
  - a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty Member’s employment and within the scope of the Faculty Member’s duties and responsibilities;
  - b. The Faculty Member must appear as a defendant or is subpoenaed to appear in **court** when sued for actions taken in the course of employment and within the scope of the Faculty Member’s duties and responsibilities;
  - c. The Faculty Member must appear as a witness or is subpoenaed to appear in **court** on a matter arising in the course of employment and within the scope of the Faculty Member’s duties and responsibilities; and
  - d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member’s duties and responsibilities.
2. If a judgment or court approved settlement is made against a Faculty Member in a civil suit for actions taken by the Faculty Member in the course of the Faculty Member’s employment and within the scope of the Faculty Member’s duties and responsibilities, the Employer agrees to no more than submit to the legislature any judgment (or court approved settlement) against the Faculty Member, with the Employer retaining the discretion of recommending or not recommending legislative approval.

*RA DKT 5 at 8 (bold emphasis added).*

The arbitrator's authority to interpret the Legal Representation Clause cannot be disputed. It was the BOR's position that the Legal Representation Clause only applies to "court" proceedings and other litigation matters and did not apply to administrative agency matters. *RA DKT 3 at 17.* After carefully evaluating the language in the Clause, the Arbitrator found that the administrative agencies, such as the Commission, were included within the reference to "court" in the parties' collective bargaining agreement.<sup>2</sup> *RA DKT 3 at 29.* In this case, the Arbitrator's interpretation clearly could have "rested on an interpretation or application of the agreement" and under the standard of review there should be no "second guessing" by the Court.

The Commission's argument that the Arbitrator's Decision is flawed for whatever reason cannot be "second guessed" by the Court. In Hawaii the following principles limit judicial review of an arbitration award:

First, because of the legislative policy to encourage arbitration and thereby discourage litigation, arbitrators have broad discretion in resolving the dispute. **Upon submission of an issue, the arbitrator has authority to determine the entire question, including the legal construction of terms of a contract or lease, as well as the disputed facts.** In fact, where the parties agree to arbitrate, they thereby assume all the hazards of the arbitration process, including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.

Second, correlatively, judicial review of an arbitration award is confined to the strictest possible limits. An arbitration award may be vacated only on the four grounds specified in HRS § 658-9 and modified and corrected only on the three grounds specified in HRS § 658-10. **Moreover, the courts have no business weighing the merits of the award.**

*Matter of Hawaii State Teachers Ass'n, 140 Hawaii 381, 391, 400 P.3d 582, 592 (2017) citing Schmidt v. Pac. Benefit Servs., Inc., 113 Hawaii 161, 165-66, 150 P.3d 810, 814-15 (2006) (other citations omitted) (bold emphasis added).*

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<sup>2</sup> The Arbitrator's conclusion is correct because an employee who is acting within the course and scope of her employment cannot control where a charge may be brought against her. Any other reading of the Clause would lead to an absurd result that coverage only applies in court proceedings but not administrative proceedings.

Once it is established that the Arbitrator's award draws its essence from the contract, judicial review ends. The Ninth Circuit Court of Appeals described the relevant inquiry is simply whether "the arbitrator's decision *concerns* construction of the contract," not an evaluation of the merits of the construction. *Hawaii Teamsters & Allied Workers Union, Local 996 v. United Parcel Serv.*, 241 F.3d 1177, 1183 (9<sup>th</sup> Cir. 2001). The Ninth Circuit has also described the appropriate question for a court to ask when determining whether to enforce a labor arbitration award interpreting a collective bargaining agreement is a simple binary one: Did the arbitrator look at and construe the contract, or did he not?<sup>3</sup> *Southwest Regional Council of Carpenters v. Drywall Dynamics, Inc.*, 823 F.3d 524, 532 (9<sup>th</sup> Cir. 2016). The U.S. Supreme Court stated, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the fact that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987) ("*Misco*"). Thus, the Commission's argument that it is not a "court" is an improper intrusion into the merits of the Arbitrator's Decision and Award.

For these reasons, the Commission's assertion that the Ethics Commission is not a "court" is of no relevance to this Court's review of the Circuit Court's decision to confirm the Arbitration Award because it improperly intrudes on the Arbitrator's authority to interpret the collective bargaining agreement.

## **B. THE ARBITRATOR'S DECISION AND AWARD DOES NOT VIOLATE A PUBLIC POLICY.**

The UHPA next addresses the Commission's point that the BOR correctly states an explicit, well-defined, and dominant public policy that government employees must act with personal integrity and conduct themselves in accordance with the highest ethical standards. *Commission's Amicus Brief, DKT 61 at 9*. The Commission next asserts that UHPA's position that "there is no 'explicit law or legal precedent prohibiting

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<sup>3</sup> The Court also stated that, "The question is not, therefore, whether the arbitrator's interpretation and application of the agreement was "plausible", in the sense of one a court might render, but instead whether he made any interpretation or application at all. If so, the court's inquiry ends." 823 F.3d at 531-32.

the use of public funds to defend a public employee accused of violating the ethics code' considers public policy at too high a level or specificity." *DKT 61 at 12, footnote 1*. The Commission's argument misunderstands the application of the public policy exception to the general deference given arbitration awards.

The UHPA does not dispute the Commission's claim that there is an interest in public employees acting with personal integrity and conducting themselves in accordance with the highest ethical standards. However, under the framework for reviewing public policy claims, the Commission's claimed policy is simply in the category of "general considerations of supposed public interests." The interest in personal integrity does not rise to the appropriate level of specificity needed to overturn an arbitration award. That is because Hawaii law establishes dual policies to encourage arbitration and limit judicial review of labor arbitration awards would not be honored if the general public policy encouraging personal integrity and high ethical standards could overturn this Arbitrator's Decision and Award.

Hawaii courts adopted the United States Supreme Court's public policy exception established in *Misco*, and directed that the exception be applied under those guidelines. *Inlandboatman's Union of the Pac., v. Sause Bros., Inc., 77 Hawaii 187, 194, 881 P.2d 1255, 1262 (App. 1994)*. Since *Misco*, the Supreme Court refined the analysis of the public policy exception. In a case where an arbitration decision reinstating a truck driver that had twice failed a marijuana drug test, the employer argued that the public policy against drug use by workers who perform safety-sensitive functions prevented the enforcement of the arbitrator's award. The Court described the appropriate analysis succinctly: "the question to be answered is not whether [Grievant's] drug use violates public policy, but whether the agreement to reinstate him does so. To put the question more specifically, does a contractual agreement to reinstate [Grievant] with specified conditions ... run contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests?" *Eastern Associated Coal Corp., v. United Mine Workers of America, Dist. 17, 531 U.S. 57, 62-63, 121 S.Ct. 462, 467, 148 L.Ed.2d 354 (2000)*. The Court stated:

Regarding drug use by persons in safety-sensitive positions, then, Congress has enacted a detailed statute. And Congress had delegated to the Secretary of Transportation authority to issue further regulations on that subject.... Neither Congress nor the Secretary has seen fit to mandate the discharge of a worker who twice tests positive for drugs. We hesitate to infer a public policy in this area that goes beyond the careful and detailed scheme Congress and the Secretary have created.

We recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here. But both employer and union have agreed to entrust this remedial decision to an arbitrator. We cannot find in the Act, the regulations, or any other law or legal precedent an “explicit,” “well-defined,” “dominant” public policy to which the arbitrator’s decision “runs contrary.”

*Id.*, 531 U.S. at 67, 121 S.Ct. at 469. Lower courts have faithfully applied the *Eastern Associated Coal* analysis.

The Court of Appeals for the First Circuit was presented with a claim that public policy required the vacation of an arbitrator’s award reinstating a nurse who had been discharged for substandard practices that led to the death of a patient. *Boston Medical Center v. Service Employees Intern. Union, Local 285*, 260 F3d 16 (1<sup>st</sup> Cir. 2001). The Hospital argued that even if the arbitrator had the authority to decide that progressive discipline was appropriate, the decision to reinstate the nurse violates an established public policy providing for safe and competent nursing care. *Id.*, 260 F.3d at 23. The Court noted that Massachusetts law reflects a concern for nursing competence and patient safety, however, the question is not whether the nurse’s conduct violated a public policy in favor of competent nursing care, but whether *the order to reinstate her* violated that policy. *Id.* The Court concluded, that while the laws, regulations, and cases reflect a concern about the quality of nursing care, they do not establish a public policy prohibiting the nurse’s reinstatement with the clarity demanded by *Eastern Associated Coal*. *Id.*

The First Circuit Court then went on to note that even in the absence of a specific law barring reinstatement, that there may be conduct so egregious that reinstatement may threaten general public policy promoting competence of nurses and public safety. *Id.*, 260 F3d at 25. But the Court noted that this is not such a case. The Court cited the arbitrator’s findings that there was no evidence that the grievant willfully or callously

provided substandard care, but the deficiencies in the grievant's care appear to be due to clinical misjudgments, not malice, amenable to correction through supplemental education and training. *Id.* The precedent on the public policy exception supports this fact-specific approach to consequences of reinstating an employee found to have engaged in misconduct. *Id.*

The Court of Appeals for the Fifth Circuit addressed the claim that an arbitration decision reinstating an airline pilot that tested positive on an alcohol test. *Continental Airlines, Inc. v. Air Line Pilots Ass'n Intern.*, 555 F.3d 399 (5<sup>th</sup> Cir. 2009). The Employer claimed that public policy concerns about alcohol abuse by pilots and air-traffic safety compelled reversal of the reinstatement order. *Id.*, 555 F.3d at 418-420. The Court found that Continental identified no positive law that expressly precludes the grievant's reinstatement. *Id.* As the Court stated, *Misco* requires that the arbitration award, not the underlying conduct of the grievant or actions of third parties violate public policy. *Id.*

The Washington Supreme Court reversed a lower court's vacation of an arbitration award reinstating a sheriff's deputy that was terminated for 29 documented incidents of misconduct, including untruthfulness. *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wash.2d 428, 219 P.3d 675 (2009). The County pointed to statutes that prohibit public officers from making false statements in an official report or statement or committing misconduct. 167 Wash.2d at 436-37, 219 P.3d at 679. The Court stated that these statutes do not provide an explicit, well defined, and dominant public policy prohibiting the reinstatement of any officer found to violate these statutes. *Id.* Examples of well-defined, and dominant public policy in comparable cases in other states include a statute prohibiting individuals who have committed felonies from serving as police officers. *Id.* Washington has no similar statute prohibiting persons found to be untruthful from serving as officers. *Id.*

Indeed, the Hawaii Supreme Court's application of a public policy exception focuses on whether the arbitrator's award of remedial promotions for police officers violated the public policy of the merit principle as provided in Hawaii statute. *State of Hawaii Org. of Police Officers (SHOPO)*, 135 Hawaii at 465, 353 P.3d at 1007. The Court found there was nothing in the record to suggest that the arbitrator's authority to grant promotions and back pay in this case violates the merit principle. The arbitrator



heard testimony with regard to the grievants' professional background and work performance, and the arbitrator found that the grievants were well qualified based on merit and ability for promotion based on the evidence presented during the arbitration hearings. *Id.*, 135 *Hawaii* at 466-67, 353 *P.3d* 1008-09. These findings showed that the arbitrator's award of promotions were consistent with the merit principle. The Court determined that the arbitrator's decision and award did not infringe on the employer's authority to make promotions in accordance with the bargained for criteria and procedures and found no violation of public policy based on the merit principle. *Id.*

Based on these cases, the Commission's point that public policy requires government employees to act with personal integrity and conduct themselves in accordance with the highest ethical standards, is not the proper focus for an application of the public policy exception to the general deference to arbitration awards. This is simply a statement of general policy considerations under the public policy exception.

The proper focus is whether the Arbitrator's Decision and Award granting attorney's fees for the representation of a public employee before the Ethics Commission violates an explicit, well-defined, and dominant public policy. It is not the public's interest in ethical rules that is the core of the analysis. Thus, the UHPA's focus, and the BOR's statement that this case concerns "whether an arbitration award, requiring a state agency to fund a state employee's legal representation in a charge before the Hawaii State Ethics Commission is unenforceable by the circuit court under the public policy exception" is at the heart of the case. *Opening Brief at 8*. The Arbitrator's findings that the Grievant acted in the course and scope of her employment, that she did not have any wrongful, fraudulent, or deceitful intent to harm the University or violate University policy, and that her expenditures were for the benefit of the BOR cannot be challenged on appeal. *RA DKT 3 at 30-31*. These findings do not abridge the State's expectation of high ethical conduct of public employees, as the Grievant did not engage in misconduct. She was trying to do her job. Therefore, the BOR breached the collective bargaining agreement when it failed to provide Grievant with legal representation, and the grant of attorney's fees to UHPA is a proper remedy for the BOR's breach.

Thus, UHPA contends that the BOR does not identify an explicit, well-defined, and dominant public policy that prohibits the Arbitrator's Decision and Award granting attorney's fees in a matter before the Commission. In other words, it is not too high a level of specificity to require the BOR to identify a public policy prohibiting the use of public funds to defend a public employee accused of violating the ethics code. This is the level of policy that must be demonstrated under the exception to the general deference to arbitration decisions and awards. The BOR has not met the standard.

**C. THE COLLECTIVE BARGAINING AGREEMENT DOES NOT WAIVE LIABILITY FOR WILLFUL MISCONDUCT.**

Finally, UHPA addresses the Commission's argument that, "as a matter of public policy, Hawaii law disfavors contracts that waive liability for willful misconduct or allow conduct below the acceptable standard of care." *Commission's Amicus Brief, DKT 61 at 12*. The Legal Representation Clause requires the BOR to provide representation to faculty members acting in the course and scope of their employment does not lower the expectation that public employees exhibit the "highest standards of ethical conduct." This is not a case where the Grievant engaged in willful misconduct.

The Arbitrator's Award granted to UHPA the attorney's fees expended for representation of the Grievant before the Commission because she was acting in the course and scope of her employment.<sup>4</sup> *RA DKT 4 at 11*. The Grievant is a person of high personal integrity as the Arbitrator determined that the expenditures (that violated the ethics rules) made for the benefit of the BOR were not a result of misconduct or deceitful intent to harm the BOR (as also determined by Provost Michael Bruno.) *RA DKT 3 at 31*. Again, this finding is not reviewable on appeal.

It is the Commission's enforcement of its ethics rules that do not account for the simple negligent actions of an honest employee. That is the conclusion that Grievant

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<sup>4</sup> The Grievant paid a fine in the amount of \$5,500 to the State General fund to settle the case. *RA DKT 33 at 2*. The Arbitrator's Award does not involve the payment of the fine. *RA DKT 4 at 14-16*. Further, any reimbursement of the \$5,500 fine is subject to the Legal Representation Clause at Article III.D.2., that leaves reimbursement to the determination of the legislative funding process. *RA DKT 5 at 8*. But the reimbursement of the fine is not a part of this appeal. *RA DKT 5 at 8*.

drew from the Commission's result in the *Mark Patterson*<sup>5</sup> case (see, *Appendix 1*) and is among her reasons for settling the Commission's charge<sup>6</sup> against her. *RA DKT 33 at 2-4*. These reasons were presented to the Arbitrator during the remedy portion of arbitration hearing in response to the BOR's argument that Grievant's settlement of the Commission's charge was an admission of misconduct. *RA DKT 4 at 5; 11*. The Arbitrator ultimately determined that the resolution of the Commission's charge against Grievant was not relevant to the matters before him. *RA DKT 4 at 14-16*. At the end of the case, it is clear that the Arbitrator's Decision and Award remained within the parameters of the Grievant's rights to legal representation in the collective bargaining agreement. There is nothing in the record to show that the collective bargaining agreement waives liability for willful misconduct or condones conduct below the acceptable standard of care.<sup>7</sup> The Commission's argument is misplaced under the facts of this case.

### III. **CONCLUSION**

For the foregoing reasons, Petitioner-Appellee UHPA respectfully requests that Circuit Court's orders be affirmed on appeal.

Dated: Honolulu, Hawaii: January 6, 2025.

/s/ Wade C. Zukeran  
WADE C. ZUKERAN  
Attorney for Petitioner-Appellee  
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<sup>5</sup> *Resolution of Investigation 2021-01 (COMPL-I-17-00164) (Mark Patterson)* (<http://files.hawaii.gov/ethics/advice/ROI2021-1.pdf>).

<sup>6</sup> The BOR's Exhibit "A" submitted to the Arbitrator. *RA DKT 15 at 22; 24-30*.

<sup>7</sup> The Commission's reference to *State of Hawaii Org. of Police Officers (SHOPO) v. Society of Professional Journalists – University of Hawaii Chapter*, 83 Hawaii 378 (1996) for the point that statutes cannot be avoided by private agreement reached by collective bargaining is misplaced. The confidentiality clause could not prevent the statutory requirement to release information upon certain conditions. There is no language in the Legal Representation Clause that contradicts the public's interest in ethical behavior.

NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO. 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAII	)	
PROFESSIONAL ASSEMBLY,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAII,	)	
	)	
Respondent-Appellant.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was duly served on January 6, 2025, upon the following via electronic filing through [efiling@courts.hawaii.gov](mailto:efiling@courts.hawaii.gov) at the Judiciary Electronic Filing and Service:

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SUNSHINE LAW MEETING  
AGENDA ITEM IX

EVALUATION OF EXECUTIVE DIRECTOR ROBERT D. HARRIS

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee where consideration of matters affecting privacy will be involved, and/or under 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.

Attachment 1: Staff Overview

Attachment 2: Proposed Poll Questions

EVALUATION OF EXECUTIVE DIRECTOR ROBERT D. HARRIS

**STAFF OVERVIEW**

**Introduction**

This overview outlines a comprehensive process for evaluating Executive Director Robert D. Harris’s performance over the past year. The review incorporates an assessment of the 2024 goals, a self-evaluation, and feedback gathered from a Commissioner Survey (see attachment 2). By combining these elements, the Commission can conduct a balanced and thorough evaluation that highlights Mr. Harris’s contributions and identifies opportunities for growth.

Staff members have been encouraged to provide input directly to the Executive Director through direct or anonymous submissions. Additionally, they have been informed that they may approach Commissioners directly to share concerns or substantive feedback warranting Commission attention.

Please note that all materials included in this review will be publicly discussed during the Sunshine agenda.

**1. Evaluation Criteria**

**a. 2024 Annual Goal Accomplishments**

Commissioners will consider the key objectives set at the start of the year and the progress made toward achieving them. This will include a review of the measurable outcomes and qualitative achievements, demonstrating the alignment of the Executive Director’s work with the Commission’s strategic priorities.

**b. Self-Evaluation**

The Executive Director will provide a reflective assessment of his performance, emphasizing the following areas:

- Leadership and team management
- Effective execution of core responsibilities
- Collaboration with internal and external stakeholders
- Areas for improvement and future objectives

**c. Commissioner Poll**

A targeted poll will be distributed to gather feedback from the commissioners (see proposed [Attachment 2](#)). The poll is modeled on the Executive Director’s job description to ensure alignment with key responsibilities and expectations. All responses will be collected anonymously and averaged to provide a comprehensive overview of the feedback. This approach attempts to ensure confidentiality while allowing for constructive insights.

**2. Proposed Next Steps**

The following timeline is proposed to facilitate a timely and efficient review process.

- **January 22, 2025:** Submission of 2024 Annual Goal Accomplishment Report and Self-Evaluation to Commissioners.
- **January 22, 2025:** Distribution of Commissioner Poll via email (responses due on **February 4, 2025**).
- **February 19, 2025:** Presentation of compiled feedback and discussion during the Commission meeting.

The proposed structure is intended to provide transparency, encourage meaningful dialogue, and support alignment with the Commission’s expectations and goals.



**Proposed Commissioner's Survey**  
**2024 Evaluation of Executive Director Robert Harris**

A. **Legal Counsel to the Commission.** Advises Commissioners on legal issues; ensures Commissioners are aware of both sides of the issue; and applies ethics and lobbying laws in a fair and consistent manner.

1    2    3    4    5    6    7    8    9    10

Specific Feedback (if any):

B. **Meetings and training.** Develops positive, cooperative, and collaborative relationships; assists in conducting meetings in a timely manner; and receives input.

1    2    3    4    5    6    7    8    9    10

Specific Feedback (if any):

C. **Administration and Enforcement of Ethics and Lobbying Laws.** Oversees, plans, and implements effective complaint investigations; oversees the timely administration and compliance with disclosure requirements; and oversees enforcement proceedings.

1    2    3    4    5    6    7    8    9    10

Specific Feedback (if any):

D. **Education Program.** Develops, conducts, and manages an educational program for state employees and government officials; develops educational materials to help ensure compliance; and helps with the development, design, and maintenance of the Commission's website.

1    2    3    4    5    6    7    8    9    10

Specific Feedback (if any):

E. **Media.** Responds to the media in a clear, concise, and professional manner; and issues appropriate news releases, commentaries, and letters to the editor as necessary.

1    2    3    4    5    6    7    8    9    10

Specific Feedback (if any):

F. **Relationships.** Maintains professional relations with other state, local, and federal agencies; maintains relations with local and national organizations, such as Common Cause Hawaii, the League of Women Voters, and the Council on Governmental Ethics Laws; and promotes ethics and "good government" initiatives.

1 2 3 4 5 6 7 8 9 10

Specific Feedback (if any):

G. **Legislation.** Drafts, edits, and/or reviews legislative testimony; understands and actively engages in the legislative process; participates in legislative hearings in a professional manner; engages with key government decision-makers; and works collaboratively with community groups and members of the public on matters of common interest.

1 2 3 4 5 6 7 8 9 10

Specific Feedback (if any):

H. **Budget and Fiscal Operations.** Plans, prepares, and manages the Commission's budget; ensures fiscal operations of the office are in accordance with applicable laws; and negotiates and executes office lease agreements and other agreements and contracts on behalf of the Commission.

1 2 3 4 5 6 7 8 9 10

Specific Feedback (if any):

I. **Administration and Management.** Handles conflicts and disagreements with sensitivity and tact; communication is clear, effective, and respectful, demonstrates high standards of integrity and fairness; treats everyone with dignity and respect; works to develop and foster high morale and positive relationships with staff; and fosters effective teamwork.

1 2 3 4 5 6 7 8 9 10

Specific Feedback (if any):

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.