

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

STATE OF HAWAI'I

Date: January 15, 2025

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at

https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/

Public Meeting Location

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

Present: State Ethics Commission Members

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

State Ethics Commission Staff

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

Myles A. Yamamoto, Administrative Assistant (present in the conference room)

CALL TO ORDER (0:00)

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

Agenda Item No. I: Consideration and Approval of the Minutes of the December 18, 2024 Meeting (1:46)

Vice Chair Tobias made a motion to approve the minutes from the December 18, 2024 meeting, which Commissioner Thielen seconded. The motion carried with Commissioners Fong, Tobias, Thielen, and Hong voting in favor, while Commissioner Becker was excused.

Agenda Item No. II: Election of Officers (2:26)

Executive Director Harris noted that while the election of officers must be included in the January agenda, the Commission may defer this item until the July meeting.

Commissioner Hong made a motion, seconded by Vice Chair Tobias, to defer the election of officers until the July meeting. The motion carried with Commissioners Fong, Tobias, Thielen, and Hong voting in favor, while Commissioner Becker was excused.

Agenda Item No. III: Directors' Report (4:00)

Compliance Director Bonita Chang reported that two lobbyist training sessions were held on January 2 and 10. She noted that an ethics refresher training for the House of Representatives will be held on January 17. She reported that as of 12/31/2024, state agencies' overall compliance rate was approximately 88%, and boards and commissions have a 95% compliance rate. Director Chang stated that the primary focus for 2025 will be updating the training content to ensure that training information is timely and useful. She said that the Governor's Office is planning to conduct orientations for new board and commission members and provide information regarding the Sunshine law, state

procurement rules, ethics and general board governance and has asked staff to participate in the planning process. Director Chang indicated that the deadline for Legislators to file annual financial disclosures is January 31. She noted a new section of the disclosure where legislators must now disclose any lobbying affiliations. She further noted that lobbying expenditure reports for May to December are due January 31.

Chair Fong congratulated staff on achieving an 88% overall compliance rate. He asked if lobbyists are required to take ethics training. Director Chang replied that they are. She noted that failure to register and/or report lobbying activities is a violation subject to enforcement action.

Enforcement Director Kee Campbell reported that 424 matters were opened and 417 closed in 2024, compared to 329 new matters in 2023. Director Campbell also reported that staff is examining enhanced statistical reporting, utilizing the updated case management system's functions.

Chair Fong commended the staff for handling matters expeditiously.

Executive Director Robert Harris reported that, as of the second quarter, approximately 48.4 percent of the allocated budget has been spent. He noted that significant travel expenditures were related to commissioners and staff attending the annual COGEL Conference. There was a \$3,400 expense for the installation of a new server rack. He also mentioned that subscription expenses were due to payments for COGEL memberships and state Bar Association registrations. Director Harris indicated that the legislature's allocation for temporary hazard pay was for staff who worked during COVID. The first installment has been paid, and the second installment is forthcoming.

Chair Fong inquired about the return of unspent funds. Director Harris pointed out that the Commission has historically been financially prudent with its expenditures. For instance, last year, the Commission returned around \$70,000.

Agenda Item No. IV: Consideration of Draft 2024 Annual Report (14:50)

Executive Director Harris discussed the draft 2024 Annual Report. He noted the report is required by statute.

Chair Fong asked the commissioners to review the draft and provide any feedback to Director Harris by the end of January.

Vice Chair Tobias acknowledged the excellent work of the staff in preparing the draft report.

Agenda Item No. V: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (18:21)

Executive Director Robert Harris stated that there were no noteworthy reports.

Agenda Item No. VI: Discussion of Ethics Oversight over the Judicial Branch (19:35)

Executive Director Harris reported that the Judiciary is reviewing the Commission's comments on the proposed rules. He noted that the Judiciary is currently in its public comment period concerning those rules. He suggested removing this item from the agenda until the Judiciary responds to the comments, at which point the Commission can add it back to discuss.

Agenda Item No. VII: Proposed Administrative Rules (21:50)

Executive Director Robert Harris reported that these are the last of the proposed revisions to the administrative rules.

Revisions to Chapter 8, which covers conflicts of interest, are as follows:

- Consider parent companies and subsidiaries as part of the same organization.
- Clarification of the definition of an agency.
- Clarification of official duties.

Revisions to Chapter 10, which covers lobbying, are as follows:

- Definition of Administrative Action.
- Definition of a Trade Association.
- Addition of provisions related to reasonable presumption of lobbying.
- Clarification of registration requirements.
- Creates the presumption of potentially lobbying on behalf of a private client.
- Details regarding reporting and filing requirements.

Chair Fong asked if the Commission or the lobbyist has the burden of proof regarding the reasonable presumption. Director Harris replied that the lobbyist has the burden of proof to prove that they are not lobbyists when there is a presumption of lobbying.

A new chapter of the Administrative Rules was proposed. This chapter covers the recently passed Nepotism Law. Enforcement Director Kee Campbell reviewed each of the proposed sections:

- Section 1 is a preamble that explains the purpose of the law.
- Section 2 defines supervision and a mechanism for guidance related to supervision. Commission decisions would be made public.
- Section 3 covers disqualifications, with special attention given to smaller agencies and issues with disqualification for those agencies.
- Section 4 covers good cause exceptions and sets a list of factors the Commission considers when looking at good cause exceptions.
- Section 5 covers good cause exception applications
- Section 6 covers decisions and appeals. It sets a process for staff to make an initial determination, with appeals and novel issues being brought before the Commission for consideration.
- Section 7 addresses emergencies and natural disasters.
- Section 8 covers “hanai” relationships.

Chair Fong asked about the enforcement of the nepotism law. Director Campbell replied that violations would be considered enforcement matters like any other violations. Chair Fong asked whether the law applies to the legislature. Executive Director Harris replied that the law does not apply to the legislature.

Director Harris thanked staff for their work in updating the rules.

Chair Fong also thanked the staff.

Agenda Item No. VIII: University of Hawai‘i Professional Assembly v. Board of Regents of the University of Hawai‘i, S.P. No.: 1CSP-23-0000959 (36:45)

Executive Director Robert Harris noted that the Commission’s Amicus Brief was filed. The court gave the parties a chance to respond, and the briefs were provided as part of the public materials.

Chair Fong asked if the decision ultimately impacts the Commission, as it seems to be a dispute between the University of Hawai'i and UHPA. Director Harris responded that the two main issues concerning the Commission are whether the ethics code is an individual responsibility, and whether the state is obligated to provide counsel. He indicated that if counsel is deemed necessary, it could potentially delay Commission proceedings.

Agenda Item No. IX: Evaluation of Executive Director Robert Harris (40:20)

Executive Director Robert Harris noted that one of the Commission's most important responsibilities is evaluating the Executive Director. He outlined a proposed process similar to last year's. The goals for 2024 will serve as an evaluative tool, and a self-evaluation will be conducted alongside a streamlined Commissioner poll. Director Harris mentioned that staff input will not be part of the evaluation due to concerns regarding the confidentiality of comments made during the process.

Commissioner Thielen proposed a motion to go into executive session to discuss the evaluation of Executive Director Robert Harris, which Commissioner Hong seconded. The motion passed with Commissioners Fong, Tobias, Thielen, and Hong voting in favor, while Commissioner Becker was excused.

At approximately 9:45 a.m., the Commission recessed the Sunshine meeting and held an executive session in accordance with Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters regarding the evaluation of an employee, and/or under section 92-5(a)(4) to consult with the Commission's attorney on questions and issues related to the Commission's powers, duties, privileges, immunities, and liabilities.

All staff and members of the public were directed to the waiting room. The Commission met with Compliance Director Bonita Chang to discuss matters related to the evaluation.

At around 10:20 a.m., the Commission adjourned its executive session and reconvened the Sunshine Meeting.

Compliance Director Bonita Chang summarized the discussion held during executive session in which commissioners had discussed legal issues relating to the evaluation process. It was noted that the Commission values staff input as part of the evaluation, but agreed to streamline the evaluation process this year.

Commissioner Hong made a motion to approve the evaluation process for the Executive Director, which was seconded by Vice Chair Tobias. The motion passed with Commissioners Fong, Tobias, Thielen, and Hong voting in favor, while Commissioner Becker was excused.

Agenda Item No. X: Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA) (47:12)

Executive Director Robert Harris reported that there are no updates.

Agenda Item No. XI: Adjournment of Sunshine Law Meeting (48:42)

At around 10:24 a.m., Commissioner Hong moved to adjourn the meeting, and Vice Chair Tobias seconded the motion. The motion passed, with Commissioners Fong, Tobias, Thielen, and Hong voting in favor, while Commissioner Becker was excused.

The meeting was adjourned at 10:27 a.m.

Minutes approved on February 19, 2025.