

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: April 16, 2025

Time: 9:00 a.m.

Location: Zoom Videoconference or Phone:

Videoconference: [Join Zoom Meeting](https://us06web.zoom.us/j/82833314012?pwd=XSaNbkCaOdNb2TldWGW0hZhj47QqK.1)
<https://us06web.zoom.us/j/82833314012?pwd=XSaNbkCaOdNb2TldWGW0hZhj47QqK.1>

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

Phone passcode: 828464

Meeting ID: 828 3331 4012

Passcode: c01sit

Public Meeting Location:

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

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

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

AGENDA

CALL TO ORDER

I. Consideration and Approval of the Minutes of the March 19, 2025 Meeting

Attachment 1: Sunshine Law Meeting Minutes of the March 19, 2025, Hawai'i State Ethics Commission Meeting

II. Directors' Report

1. Education / Training Report

Attachment 1: 2025 Training Schedule

2. Guidance and Assignment Statistics – March 2025

Attachment 2: 2025 Guidance and Assignment Statistics / Website Traffic

Attachment 3: Q1 Complaints Report

3. Miscellaneous Office Projects / Updates

Attachment 4: Q3 Financial Report

III. Discussion of Commission Jurisdiction & Complaint Management

Attachment 1: Commissioners' Manual 2024

Attachment 2: Haw. Rev. Stat. § 84-31

Attachment 3: Haw. Rev. Stat. § 84-31.3

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

See <https://www.pbshawaii.org/hawai'is-government-reform-bills-insights-on-pbs-hawai'i/>

V. Discussion of Ethics Oversight over the Judicial Branch

Attachment 1: Staff Overview

Attachment 2: Order Amending Rules of the Supreme Court of the State of Hawai'i

Attachment 3: Order Amending Hawai'i Revised Code of Judicial Conduct

VI. 2025 Legislative Matters

The new bills of interest introduced in 2025 are described briefly below. The blue House or Senate bill number is a clickable hyperlink that goes directly to the bill language online. If the hyperlink does not work, bills can be looked up at “capitol.hawaii.gov” by typing the bill number in the box near the top of the window.

Budget

- [HB 1440 HD1](#). This bill proposes appropriations to cover the operational expenses of several key legislative bodies and offices, including the Legislature, the Auditor, the Legislative Reference Bureau, the Ombudsman, and the Ethics Commission. The proposed allocation to the Commission exceeds the requested amount by about 5%. This bill became Act 001 on March 12, 2025.
- [HB 1439](#). This bill proposes appropriations to cover public employment cost items and cost adjustments for employees of the Senate, House of Representatives, and various legislative service agencies. As of April 9, 2025, different versions of this measure passed both the House and Senate. The bill appears headed to a conference committee.

Commission Procedures

- [SB 289](#). This bill proposes establishing uniform provisions for assessing administrative penalties under the State Ethics Code and the Lobbyist Law. The bill aims to create a streamlined process for the Commission to impose administrative penalties for minor violations,

thereby enhancing the efficiency and consistency of enforcement actions. As of April 9, 2025, this measure has been enrolled to the governor.

Lobbyist Law

- [HB 412 HD1](#). This measure broadens the definition of "lobbying" in the state lobbying law to encompass specific communications with high-level government officials concerning procurement decisions. Additionally, it establishes certain presumptions regarding testimony provided by a lobbyist and potentially renders contracts voidable when entered into in violation of the state lobbying law. As of April 9, 2025, different versions of this measure passed the House and Senate. The House can either accept the Senate's amendments or the bill will be referred to a conference committee.
- [HB 413](#). This bill clarifies the administrative oversight of statutory restrictions concerning prohibited lobbyist contributions during the legislative session. It also specifies that the regular or special sessions in which lobbyist contributions are banned are periods when both houses of the legislature are in session. As of April 9, 2025, different versions of this measure passed the House and Senate. It is currently headed to a conference committee.

Nepotism

- [SB 1545](#). This bill repeals language in the code of ethics that exempts the Legislative Branch from prohibitions against nepotism in public employment. As of April 9, 2025, this measure failed to pass the House and is likely dead for this year.

- VII. *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.

VIII. Adjournment

Public Testimony

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

Auxiliary Aid or Accommodation Due to a Disability

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

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

SUNSHINE LAW MEETING
AGENDA ITEM I

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
MARCH 19, 2025 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the March 19, 2025
Hawai'i State Ethics Commission Meeting

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

STATE OF HAWAI'I

Date: March 19, 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

Beverley Tobias, Vice Chair (present in the conference room)
Robert Hong, Commissioner (present in the conference room)
Cynthia Thielen, Commissioner (present in the conference room)
Roderick Becker, Commissioner (present in the conference room)

Excused: Wesley F. Fong, Chair

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)

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

3
4 Members of the Public

5 Chad Blair

6 Gary Cordery

7 "People"

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

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

16
17
18 **Agenda Item No. I: Consideration and Approval of the Minutes of the February 19,**
19 **2025 Meeting (2:28)**

20
21 Commissioner Hong moved to approve the minutes from the February 19, 2025,
22 meeting, which Commissioner Thielen seconded. The motion passed with Commissioners
23 Tobias, Hong, Thielen, and Becker voting in favor, while Chair Fong was excused.

24
25
26 **Agenda Item No. II: Directors' Report (3:03)**

27
28 Compliance Director Bonita Chang reported that both DAGS and B&F are reporting
29 completion percentages of 95%. The aggregate training completion percentage is now over
30 90%. Staff will continue to collaborate with agency human resource contacts for employee
31 training requirements. The priority this year, however, will be on training curriculum
32 materials and content. She also reported that staff is working with the Office of the
33 Governor to establish a training session for new board and commission members.

34
35 Director Chang noted that Lobbying Organization reports for January-February 2025
36 are due on March 31, and that staff expects an increase in contacts to the office due to the
37 filing deadline. In addition, financial disclosure filing season is underway and staff has
38 requested annual updates from various agencies.

39
40 Enforcement Director Kee Campbell reported that 20 new matters were opened for
41 the month and 26 closed. He reported that staff is working on additional enhancements for

1 reporting enforcement data and that the new information should be ready by the April
2 Meeting.

3

4 On behalf of the Aloha Freedom Coalition, public member Gary Cordery asked
5 about the complaints he submitted about the Elections Commission and Office of
6 Elections. He noted that staff had already responded by stating the subject matter of the
7 complaints is not under the Commission's purview, but that he wanted staff to look into
8 them nonetheless. He further said that he requested that the commission undertake a
9 review per Haw. Rev. Stat. § 84-31 into his concerns. He further asked that the
10 Commission provide a written formal statement regarding his complaint.

11

12 Executive Director Robert Harris replied that the investigations of complaints are
13 confidential by statute. Director Harris explained other procedural options under the
14 Ethics Code and offered to provide instructions to Mr. Cordery following the meeting.

15

16 Mr. Cordery asked Director Harris to clarify his role with the Commission and what
17 the Commission's position is related to his concerns.

18

19 Director Harris explained that he is the Commission's Executive Director and
20 General Counsel. He further explained that he reports to the Commission and the
21 Commission Chair. He noted that the Commission does not represent any other agency.
22 Under the statute, ethics investigations are kept confidential to ensure due process and
23 the integrity of the investigation. As such, the Commission is precluded from discussing
24 such matters in a public meeting, except as part of a contested case hearing.

25

26 Director Harris also explained that the Commission only has jurisdiction over Ch.
27 84. He described scenarios involving conflicts of interest, abuse of a state position, and
28 failure to file financial disclosure requirements as examples of typical complaints. Director
29 Harris further explained that concerns regarding an agency not performing its tasks or
30 acting incompetently are typically matters for the courts and not necessarily under the
31 Commission's purview.

32

33 Mr. Cordery asked who had jurisdiction over his complaints, if the Commission did
34 not have jurisdiction over this matter. He argued that the matter should be under the
35 Commission's jurisdiction.

36

37 Vice Chair Tobias reiterated that the Commission may not have statutory
38 jurisdiction over this matter and advised Mr. Cordery to follow the procedural options that
39 Director Harris will provide to him.

40

41

1 **Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics**
2 **Commission Since the Last Meeting (23:04)**

3
4 Executive Director Robert Harris reported on the following media reports
5 concerning ethics:
6

- 7 • A Star-Advertiser report about the good government bills still pending before
8 the legislature.
- 9 • A Hawaii News Now report about the withdrawal of the nomination of a
10 member of the Water Resource Commission. The report noted ethics issues
11 related to the nominee.
- 12 • A Civil Beat article regarding the upcoming Commission Vacancy.
- 13 • A Civil Beat article contrasting the styles of the Elections and Ethics
14 Commissions.
- 15 • A Civil Beat article about good government bills.
16
17

18 **Agenda Item No. IV: 2025 Proposed Ethics Commission Logo Update and Brand**
19 **Guidelines (24:23)**

20
21 Executive Director Harris reported that the staff has undertaken redesigning the
22 Commission's logo and branding as part of enhanced outreach efforts. He noted that a
23 volunteer consultant was engaged to assist with the process. A draft of the new logo
24 design and guidelines was circulated. He also said that the Hawaiian name for the
25 Commission can be found on the website.
26
27

28 **Agenda Item No. V: 2025 Legislative Matters (25:58)**

29
30 Executive Director Harris reported that the governor has signed the Commission's
31 budget. He also reported that the Commission's bills are alive and moving in the
32 Legislature. Lastly, Director Harris noted that a proposal to extend nepotism restrictions to
33 the legislature is also still alive and pending before the House.
34
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36 **Agenda Item No. VI: Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil**
37 **No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-**
38 **0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-**
39 **0453 (BIA) (26:56)**

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41 Executive Director Robert Harris reported that there are no updates.

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Agenda Item No. VII: Adjournment of Sunshine Law Meeting (27:42)

Commissioner Thielen requested that staff look into the issues raised by Mr. Cordery.

Vice Chair Tobias agreed.

Executive Director Robert Harris explained procedural options available to Mr. Cordery. He also recommended re-circulating the Commissioner’s Manual at the next meeting and will provide a briefing and discussion about the roles and purview of the Commission.

Commissioner Hong agreed with the suggested course of action.

At approximately 9:32 a.m., Commissioner Hong moved to adjourn the meeting, and Commissioner Thielen seconded the motion. The motion passed, with Commissioners Tobias, Hong, Thielen, and Becker voting in favor. Chair Fong was excused.

The meeting was adjourned at 9:34 a.m.

Minutes approved on _____.

SUNSHINE MEETING
AGENDA ITEM II

DIRECTORS' REPORT
April 16, 2025

1. Education / Training Report

Attachment 1: 2025 Training Schedule

2. Guidance and Assignment Statistics – March 2024

Attachment 2: 2025 Guidance and Assignment Statistics / Website Traffic

Attachment 3: Q1 Complaints Report

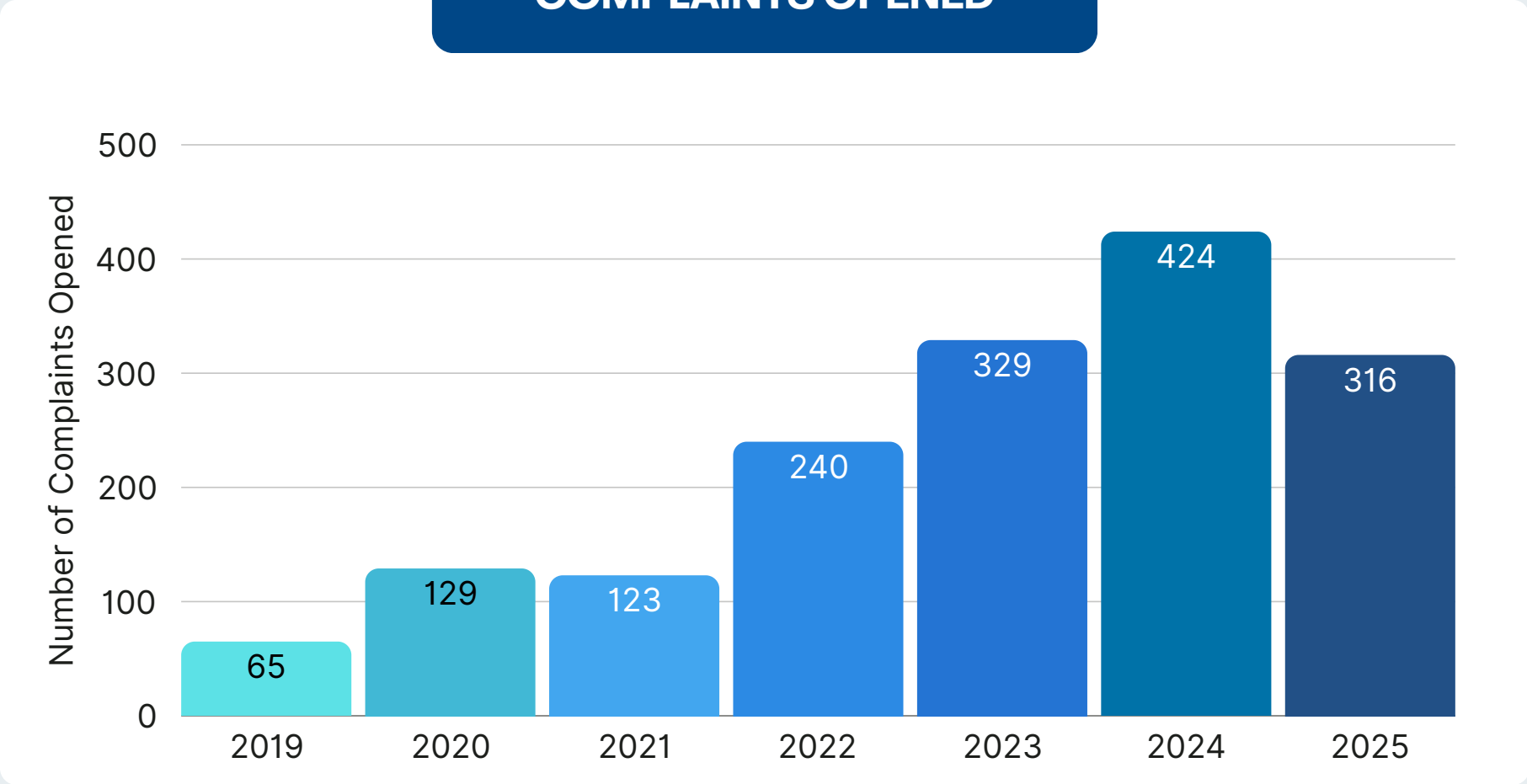
3. Miscellaneous Office Projects / Updates

Attachment 4: Q3 Financial Report

HAWAII STATE ETHICS COMMISSION			
2025 EDUCATION PROGRAM			
(Ethics Workshops and Presentations)			
DATE	PRESENTATIONS	IN PERSON PARTICIPANTS	WEBINAR PARTICIPANTS
1/2/2025	WEBINAR: Lobbyists Law Training	0	25
1/10/2025	WEBINAR: Lobbyists Law Training	0	22
1/17/2025	IN PERSON: Ethics Refresher, Capitol House Members	46	0
1/23/2025	WEBINAR: General Ethics Training	0	18
2/10/2025	WEBINAR: Universal Access Advisory Council, Custom Advisory	0	24
3/5/2025	WEBINAR: General Ethics Training	0	3
4/17/2025	WEBINAR: General Ethics Training, Charter Schools		
5/8/2025	WEBINAR: General Ethics Training		
7/18/2025	WEBINAR: Ethics for State Board & Commission members		
8/6/2025	WEBINAR: General Ethics Training		
9/25/2025	WEBINAR: Ethics for State Board & Commission members		
10/22/2025	WEBINAR: General Ethics Training		
11/7/2025	WEBINAR: Ethics for State Board & Commission members		
TOTAL	13 Presentations	46 participants	92 participants

2025	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of In-Person Trainings	1	0	0										1
# of People Trained In Person	46	0	0										46
# of On-Line Trainings (Self-Directed)	698	511	411										1,620
# of Lobbyists Law Trainings	180	62	117										359
# of Training Webinars	3	1	1										5
# of Participants in Training Webinars	65	24	3										92
Attorney of the Day	97	89	87										273
New assignments													
Advisory Opinion	0	0	0										0
Anti-Fraud	6	2	3										11
Complaint	22	20	37										79
Gifts/Invitations/Travel	46	33	31										110
Guidance	2	5	0										7
Judicial Selection Comm'n	2	4	4										10
Nepotism	0	0	0										0
Training Request	1	0	2										3
Record Request	0	0	1										1
Project/Other	9	3	2										14
Total	88	67	80	0	0	0	0	0	0	0	0	0	235
Closed Assignments													
Advisory Opinion	0	0	0										0
Anti-Fraud	2	5	13										20
Complaint	25	26	29										80
Gifts/Invitations/Travel	46	35	26										107
Guidance	1	5	0										6
Judicial Selection Comm'n	2	4	4										10
Nepotism	0	0	1										1
Training Request	4	1	1										6
Record Request	0	0	1										1
Project/Other	5	3	1										9
Total	85	79	76	0	0	0	0	0	0	0	0	0	240

COMPLAINTS OPENED



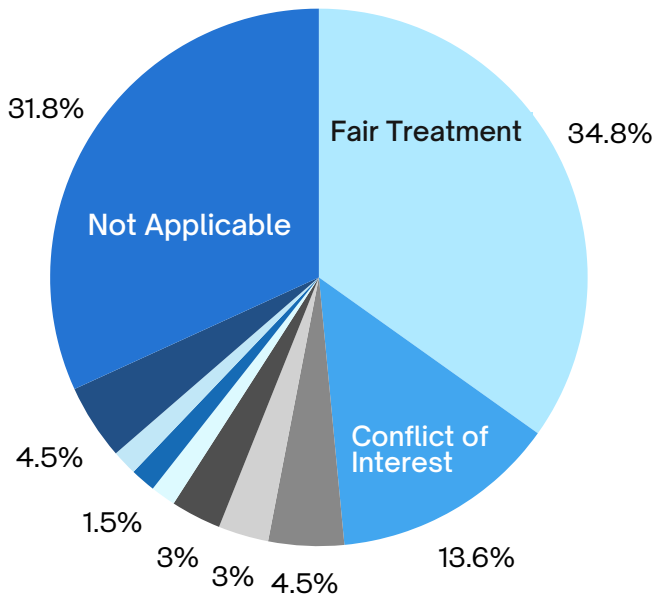
*79 Complaints opened in first quarter of 2025, projected to open 316 complaints over four quarters.

Complaints

Calendar Year 2025
Quarter 1

What Were the Alleged Violations?

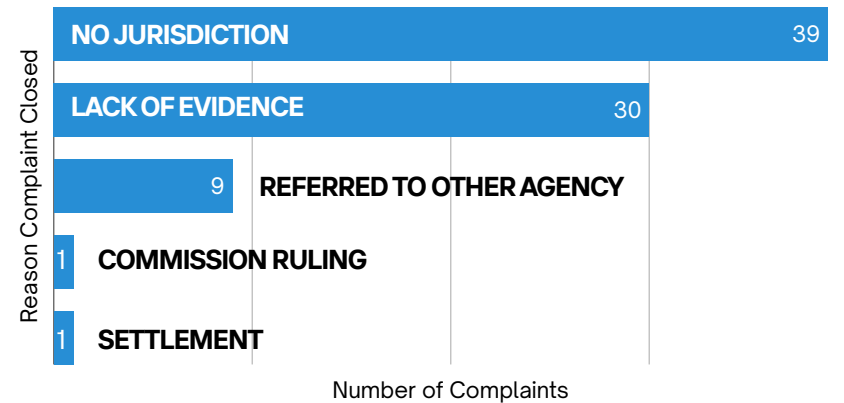
Fair Treatment	23	Gifts	1
Conflict of Interest	9	Gifts Reporting	1
Nepotism	3	Financial Disclosures	1
Lobbying	2	Other	3
Post-employment	2	Not Applicable	21



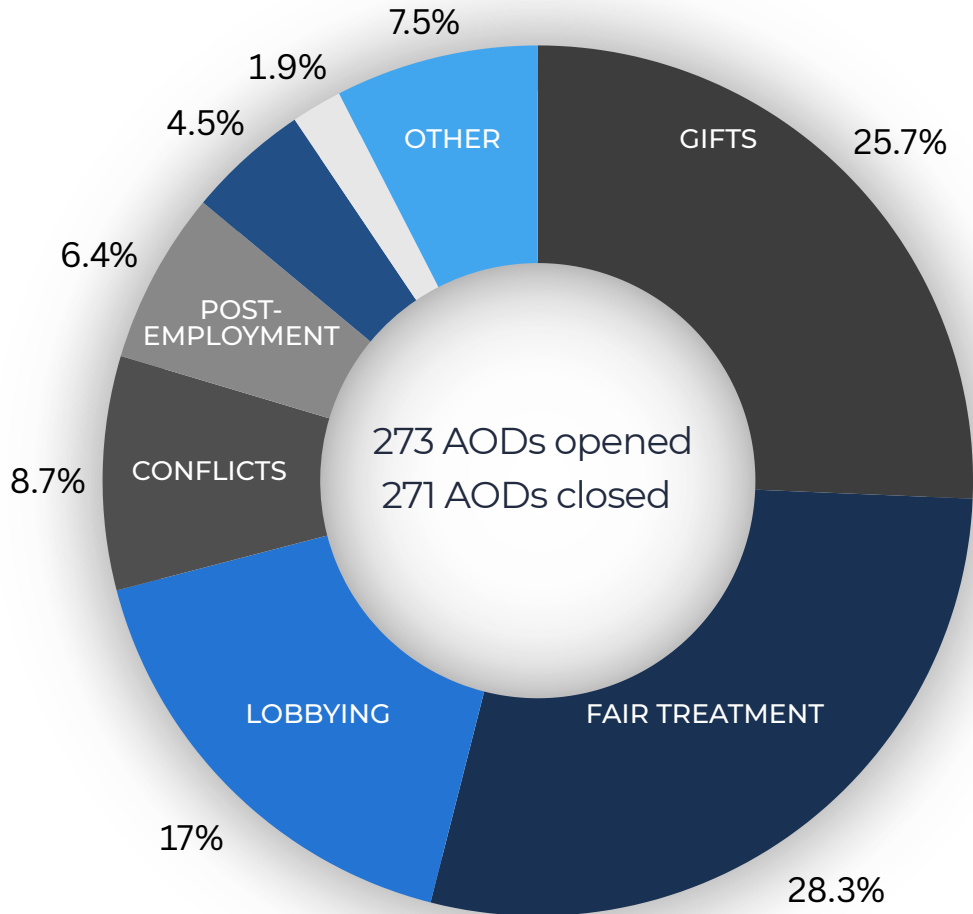
Complaints Opened 79

Complaints Closed 80

How Were the Complaints Resolved?



ATTORNEY OF THE DAY TRENDS



70 Written Summaries issued
7 Guidances Issued



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

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
A. PERSONNEL SERVICES							
Staff Salaries	\$ 1,293,238.00	\$ 311,300.50	\$ 314,598.00	\$ 314,598.00	\$ 0.00	940,496.50	72.7%
Total Personnel Services	\$ 1,293,238.00	\$ 311,300.50	\$ 314,598.00	\$ 314,598.00	\$ 0.00	\$ 940,496.50	72.7%
B. OTHER CURRENT EXPENSES							
Office Expenses	16,640.00	2,940.10	2,003.05	1,229.85	0.00	6,173.00	37.1%
Intrastate Transportation and Travel	9,250.00	180.44	12.00	181.34	0.00	373.78	4.0%
Out-of-State Travel	12,660.00	1,243.23	7,933.60	1,093.41		10,270.24	81.1%
Equipment Rental and Maintenance	34,100.00	435.27	3,473.82	1,252.59	0.00	5,161.68	15.1%
Dues, Subscriptions, Training	20,910.00	2,317.48	4,636.69	4,225.81	0.00	11,179.98	53.5%
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	18.89	0.00	857.24	6.9%
Consulting Services	42,500.00	0.00	0.00	1,102.48	0.00	1,102.48	2.6%
Office Rent	131,880.00	16,849.10	31,530.81	31,776.25	0.00	80,156.16	60.8%
Total Other Current Expenses	\$ 281,440.00	\$ 24,803.97	\$ 49,589.97	\$ 40,880.62	\$ 0.00	\$ 115,274.56	41.0%
C. CAPITAL OUTLAY							
Office Furniture and Equipment	10,000.00	0.00	3,062.82	5,966.63	0.00	9,029.45	90.3%
Total Capital Outlay	\$ 10,000.00	\$ 0.00	\$ 3,062.82	\$ 5,966.63	\$ 0.00	\$ 9,029.45	0.0%
GRAND TOTAL (A+B+C)	\$ 1,584,678.00 ¹	\$ 336,104.47	\$ 367,250.79	\$ 361,445.25	\$ 0.00	\$ 1,064,800.51	67.2%

General Fund Allocation	\$ 1,584,678.00
Total Expenditures as of March 31, 2025	\$ 1,064,800.51
Balance as of March 31, 2025	\$519,877.49

¹ \$1,584,678 awarded by Act 1, SLH 2024 - Appropriation 393.

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT
 FY 2025 (QUARTER ENDING: March 31, 2025)
 Appropriation Symbol: G-25-395-Y6

	Amount Appropriated FY 2024-2025	Expenditures for Qtr. End 9/30/2024	Expenditures for Qtr. End 12/31/2024	Expenditures for Qtr. End 3/31/2025	Expenditures for Qtr. End 6/30/2025	Year-To-Date Expenditures Totals	% of Budget Expended
A. TEMPORARY HAZARD PAY							
Temporary Hazard Pay	\$ 220,000.00 ¹	\$ 0.00	\$ 60,000.00	\$ 60,000.00	\$ 0.00	\$ 120,000.00	54.5%
Total Payout	\$ 220,000.00	\$ 0.00	\$ 60,000.00	\$ 60,000.00	\$ 0.00	\$ 120,000.00	54.5%
GRAND TOTAL	\$ 220,000.00	\$ 0.00	\$ 60,000.00	\$ 60,000.00	\$ 0.00	\$ 120,000.00	54.5%

Appropriation for Temporary Hazard Pay	\$ 220,000.00
Total Expenditures as of March 31, 2025	\$ 120,000.00
Balance as of March 31, 2025	\$ 100,000.00

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

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT
 FY 2025 (QUARTER ENDING: March 31, 2025)
 Appropriation Symbol: G-24-396-Y6

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

Appropriation for Accrued Vacation/Vacation Transfer Payments	\$ 16,553.00
Total Expenditures as of March 31, 2025	\$ 0.00
Balance as of March 31, 2025	\$ 16,553.00

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

SUNSHINE LAW MEETING
AGENDA ITEM III

DISCUSSION OF COMMISSION JURISDICTION & COMPLAINT MANAGEMENT

Attachment 1: Commissioners' Manual 2024

Attachment 2: Haw. Rev. Stat. § 84-31

Attachment 3: Haw. Rev. Stat. § 84-31.3



Hawai'i State
Ethics Commission

COMMISSIONERS' MANUAL

2024

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

OPERATION OF THE COMMISSION **01**

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

GENERAL DUTIES OF THE COMMISSION **03**

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

THE ETHICS CODE **10**

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

THE LOBBYISTS LAW **21**

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

<https://ethics.hawaii.gov>



Operation of the Commission

General Operation of the Commission

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

Administration of the Law

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

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

Meetings

A. Scheduling and Conduct of Commission Meetings

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

B. Format

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

1. Public Meeting

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

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

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

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

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

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

2. Adjudicatory Meeting

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

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

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

3. Quorum

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

Political Activity by Commissioners

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



General Duties of the Commission

Guidance and Advisory Opinions

A. Guidance

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

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

B. Advisory Opinions

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

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

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

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

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

Education

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

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

Administration of Financial, Gifts, and Lobbying Disclosures

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

Enforcement

A. Commission's Role in Enforcement Proceedings

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

B. Investigations

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

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

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

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

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

C. Complaints and Charges

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

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

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

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

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

D. Settlement Agreements

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

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

HAR § 21-5-12

E. Charges

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

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

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

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

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

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

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

Contested Case Hearings

A. General Process

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

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

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

HRS § 91-9 to -12, -14, and -15

B. Motions

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

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

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

HAR § 21-5-6.5

C. Pre-Hearing Matters

1. Status Conferences

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

HAR § 21-5-3.5

2. Pre-Hearing Conference

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

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

HAR § 21-5-8



D. Contested Case Hearings

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

1. Opening Statements

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

2. Examination of Witnesses

Witnesses are examined in the following order:

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

3. Closing Arguments

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

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

4. Evidentiary Standard

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

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

E. Post Hearing

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

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

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

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

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

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

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





The Ethics Code

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

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

Application

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

HRS § 84-2

The Gifts Law

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

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

1. The relationship between the donor and the recipient.

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

2. The value of the gift.

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

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

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

HAR § 21-7-2(b)



Types of Permissible Gifts:

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

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



HAR § 21-7-3

Common Types of Gifts:

Tangible Items

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

Invitations to Events

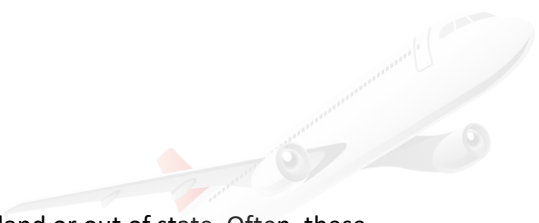
These may include invitations to conferences, grand openings, sporting events, cultural celebrations, community celebrations, and entertainment events. Again, these types of gifts are analyzed using the three factors test:

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

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

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

HAR § 21-7-4, -6



Gifts of Travel

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

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

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

HAR § 21-7-5

Gifts Disclosures

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

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

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

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

HRS § 84-11.5; HAR §§ 21-7-8 and -9

Fair Treatment

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

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

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

1. *Using Position to Gain Employment.*

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



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

2. "Double" Compensation for Official Work.

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

3. Misappropriating State Resources.

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

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

4. Financial Transactions with Subordinates.

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

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

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

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

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

HRS § 84-13; HAR § 21-7-10

Nepotism

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

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

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

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

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

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

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

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

In evaluating these requests, staff look at:

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

HRS § 84-13.2

Conflicts of Interests

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

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

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

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

Financial interest also has a specific definition. It includes:

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

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

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

Examples of conflicts requiring recusal:

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

HRS §§ 84-3 and -14(a)

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

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

Examples of prohibited actions under this provision include:

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

HRS § 84-14(b); HAR § 21-8-2

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

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

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

HRS § 84-14(c)

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

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

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

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

Examples of prohibited actions under this section include:

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

HRS § 84-14(d); HAR § 21-8-3



Contracts

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

A. Public Notice of Certain Contracts.

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

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

HRS § 84-15(a)

B. Prohibition on Agencies Entering into Certain Contracts.

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

HRS § 84-15(b)

Financial Disclosures Law

A. Financial Disclosure Law

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

B. Who Must File?

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

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

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

HRS §§ 84-17(b) and (c)

C. Filing Deadlines

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

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

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

HRS § 84-17(b); HAR § 21-3-8

D. Public Availability of Financial Disclosures

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

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

HRS § 84-17(d)

E. What Financial Interests Must Be Reported?

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

The types of financial interests that must be reported include:

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

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

HRS § 84-17; HAR § 21-3-3

Post-Employment

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

A. Confidential Information

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

B. Representation by a Former Legislator

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

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

HRS §§ 84-18 (b) and (g)

C. Representation by a Former Employee

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

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

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

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

HRS § 84-18(c) HAR § 21-9-1

D. Ban on Lobbying for Certain High Ranking Former Employees

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

HRS § 84-18(e)

E. Post-Employment Exceptions

There are two exceptions to the Post Employment Law:

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

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

HRS § 84-18(d) and (f)

Miscellaneous Provisions

A. Use of Washington Place

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

HRS § 84-13.5

B. Prohibition on Governor Holding Outside Employment

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

HRS § 84-14.5





The Lobbyists Law

What is Lobbying?

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

Direct Lobbying

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

Examples of direct lobbying include:

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

Indirect or Grassroots Lobbying

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

Examples of indirect or grassroots lobbying include:

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

HRS § 97-1

Requirements and Prohibitions Under the Lobbyists Law

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

There are also a number of restrictions and mandates:

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

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

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

HRS §§ 97-2, -2.2, -3, -5, and -5.5

Lobbyists Registration

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

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

OR

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

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

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

HRS §§ 97-1, -2, -2.5

Lobbying Expenditures and Contributions Reports

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

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

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

These reports are due three times per year:

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

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

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

HRS § 97-3

Types of Reportable Expenditures

Types of expenses that are reportable include:

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

HAR § 21-10-8

Types of Reportable Contributions

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

Reportable contributions include:

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

HAR § 21-10-6



PART IV. ADMINISTRATION AND ENFORCEMENT

§84-31 Duties of commission; complaint, hearing, determination. (a) The ethics commission shall have the following powers and duties:

- (1) It shall prescribe forms for the disclosures required by article XIV of the Hawaii constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;
- (2) It shall provide advice upon the request of any person as to whether the facts and circumstances of a particular situation constitute or will constitute a violation of the code of ethics or other laws or rules administered and enforced by the commission, and discuss ways to avoid an appearance of impropriety. A person receiving advice from the commission may request a written summary of that advice. The commission shall treat all advice requests, responses, and related materials as confidential. Written summaries shall be confidential unless the recipient waives confidentiality;
- (3) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within ninety days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion. The commission shall also render public general advisory opinions concerning proper interpretation of the code of ethics and other laws or rules

- administered and enforced by the commission, if it deems the opinion of sufficient general interest and importance;
- (4) It may initiate an investigation into alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, on a confidential basis, having available all of the powers herein provided, whether the investigation is made based on a charge allegation, other information or indications, or as the commission determines is in the public interest;
 - (5) It shall initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, initiate or make investigation, and hold hearings;
 - (6) Upon adoption of a resolution defining the scope and nature of the inquiry, supported by a vote of three or more members of the commission, it may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission;
 - (7) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;
 - (8) It shall have jurisdiction for purposes of investigation and taking appropriate action on possible violations of this chapter in all proceedings commenced within six years of a possible violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;
 - (9) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of

educating the citizenry and all legislators, employees, and delegates to the constitutional convention on matters of ethics in government employment; and

- (10) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath; provided that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall issue written notice to every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, the charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with the informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with a request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter or of the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded.

(d) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision. The commission's decision shall be

binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under this chapter. [L 1972, c 163, pt of §1; am L 1979, c 91, §8; am L 1980, c 87, §§3, 4; am L 1981, c 82, §12; gen ch 1985; am L 1989, c 291, §2; am L 1990, c 220, §1; am L 1992, c 322, §2; am L 1995, c 220, §§2, 3 and c 221, §1; am L 1997, c 51, §1; am L 2019, c 120, §4; am L 2024, c 188, §2]

Law Journals and Reviews

Confidentiality Breeds Contempt: A First Amendment Challenge to Confidential Ethics Commission Proceedings of the City & County of Honolulu. 18 UH L. Rev. 797.

Case Notes

Jurisdiction of commission, under former law, over an employee after the employee's resignation. 53 H. 373, 494 P.2d 559.

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[§84-31.3] Filing of false charges. (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused. [L 1992, c 322, pt of §1]

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SUNSHINE LAW MEETING
AGENDA ITEM IV

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

See <https://www.pbshawaii.org/hawaiʻis-government-reform-bills-insights-on-pbs-hawaiʻi/>

SUNSHINE LAW MEETING
AGENDA ITEM V

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

- Attachment 1: Staff Overview
- Attachment 2: Order Amending Rules of the Supreme Court of the State of Hawai'i
- Attachment 3: Order Amending Hawai'i Revised Code of Judicial Conduct

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

STAFF OVERVIEW

Supreme Court Rule Amendments – March 12, 2025

On March 12, 2025, the Hawai'i Supreme Court issued two final orders amending the *Rules of the Supreme Court of Hawai'i* and the *Hawai'i Revised Code of Judicial Conduct*. These amendments update how judicial conduct is reviewed and how judges disclose financial interests and reflect reforms supported by the State Ethics Commission.

I. Summary of the Orders**a. *Order Amending the Rules of the Supreme Court:***

This order enhances the authority and capacity of the Commission on Judicial Conduct (CJC). Most notably, it authorizes the appointment of an Administrator—a first for the CJC—who will serve as legal counsel and help manage the Commission's work. The rules also clarify the CJC's jurisdiction and streamline procedures for reviewing complaints and recommending discipline. Separately, the order strengthens judicial financial disclosure requirements, updating the annual disclosure forms and requiring that key information—such as real property interests, gifts, and educational activities—be made publicly accessible.

b. *Order Amending the Hawai'i Revised Code of Judicial Conduct:*

This order updates judicial ethics rules related to gifts, reimbursements, and waivers. Judges must now disclose more types of financial benefits received by themselves, their spouses, or guests—particularly when the source has appeared, or is likely to appear, before the judge. The amendments promote transparency and align judicial disclosure rules with those already in place for other state officials and employees.

II. Role of the State Ethics Commission

The Commission initiated a conversation with the State of Hawai'i Judiciary based on concerns about ethics lapses at a national level, which resulted in numerous meetings and a robust and collegial discourse. The Commission submitted formal comments in support of the proposed amendments:

- a. On gift disclosure, the Commission expressed strong support and offered no suggested changes, citing consistency with ethics principles applied to state employees and board members.

- b. On the creation of the Administrator position, the Commission recommended that the CJC, rather than the Court, appoint the Administrator, and proposed a 12-month “cooling off” period for former judges seeking the role. These recommendations were not adopted.

III. Effective Date

All rule changes will take effect on January 1, 2026.

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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI‘I

ORDER AMENDING RULES OF THE SUPREME COURT OF THE STATE OF HAWAI‘I
(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

It is hereby ordered that Rules 8.2, 8.3, 8.6, and 8.7 of the Rules of the Supreme Court of the State of Hawai‘i are amended effective upon entry of this order as follows (deleted language is bracketed and stricken; amendments are underscored):

Rule 8. JUDICIAL DISCIPLINE.

8.2. Jurisdiction and Powers of Commission.

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

- (1) receive information, allegations, and complaints;
- (2) make preliminary evaluations;
- (3) screen complaints;
- (4) conduct investigations;
- (5) conduct hearings;
- (6) recommend dispositions to the supreme court concerning allegations

of judicial misconduct or physical or mental disability of judges; ~~and~~]

- (7) issue advisory opinions[-]; and
- (8) utilize an administrator.

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

(c) **Jurisdiction of Commission.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3. Immunity.

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

8.6. Complaint Procedure.

(a) Initiation of Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

(h) **Insufficient Cause to Proceed.**

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

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

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

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

(1) Issue a private reprimand; or

(2) Inform or admonish the judge that [~~his or her~~]their conduct is or may be cause for discipline; or

(3) Direct professional counseling or assistance for the judge; or

(4) Impose conditions on the judge's conduct.

8.7. Appointment of Special Counsel.

Upon determining that further proceedings should be had, the Commission shall request the supreme court to appoint special counsel to further investigate the matter. The supreme court, however, may also, upon receipt of the report from the Commission pursuant to Rule 8.6 of these Rules, review the record *de novo* and, in its discretion, appoint special counsel *sua sponte*. In either case,

Counsel, upon further investigation, shall either report to the Commission that a formal hearing is not necessary or shall initiate formal disciplinary proceedings as provided in Rule 8.9 of these Rules. The administrator may be appointed as special counsel. The Office of Disciplinary Counsel may be appointed as special counsel, subject to the approval of the chairperson of the Disciplinary Board.

It is hereby further ordered that Rule 15 of the Rules of the Supreme Court of the State of Hawai'i is amended effective as of January 1, 2026 as follows (deleted language is bracketed and stricken; amendments are underscored):

Rule 15. Judicial Financial Disclosure.

(a) Filing of annual financial disclosure statement. Every judge shall file in the supreme court clerk's office an annual financial disclosure statement on a form [~~approved by the supreme court~~] that substantially complies with Form 1 in the Appendix of Forms. The form may be completed and submitted electronically. This requirement applies to all full time and per diem judges, including justices of the supreme court, but does not apply to retired judges or justices called back for temporary service pursuant to Article VI, Section 2 of the State Constitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares.

(f) Short form statement. In odd-numbered years where there are no more than 10 amendments or changes in the information reported for the preceding disclosure period, a judge may comply with the requirements of subsection (a) of this rule by filing in the supreme court clerk's office an annual financial disclosure statement on a form that substantially complies with Form 2 in the Appendix of Forms. [~~A short form financial disclosure statement approved by the supreme court may be used in odd-numbered years where there are no more than 10 amendments or changes in the information reported for the preceding disclosure period.~~]

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

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

It is hereby further ordered that the following forms attached hereto are adopted effective January 1, 2026 and shall be appended to the Rules of the Supreme Court of the State of Hawai'i as Forms 1-2: Financial Disclosure Statement (Form 1); and, Financial Disclosure Statement (Short Form) (Form 2).

A copy of this order shall be filed in SCMF-11-0000111, In the Matter of the Financial Disclosure Statement Form (JUD 101), and after the filing of said order, the clerk of the supreme court shall mark SCMF-11-0000111 as closed. On a going-forward basis, any future amendments to Form 1 or Form 2 should be filed

in SCR-11-0000068, Rules of the Supreme Court of the State of
Hawaii.

DATED: Honolulu, Hawaii, March 12, 2025.

/s/ Mark E. Recktenwald

/s/ Sabrian S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens



ITEM 4 RSCH 15(d)(1)	ANY OTHER INCOME, FOR SERVICES RENDERED, IN EXCESS OF \$1,000 - INCOME DISCLOSED IN ITEMS 1 - 3 NEED NOT BE REPEATED HERE
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SOURCE	NATURE OF SERVICES RENDERED	AMOUNT

Check here if entry is None
 Check here if you have attached additional sheets

ITEM 5 RSCH 15(d)(2)	EACH OWNERSHIP OR BENEFICIAL INTEREST, HELD IN ANY BUSINESS CARRYING ON BUSINESS IN THE STATE, HAVING A VALUE OF \$5,000 OR MORE OR EQUAL TO 10% OF THE OWNERSHIP OF THE BUSINESS.
-------------------------	--

NAME OF BUSINESS	NATURE OF BUSINESS	NATURE OF INTEREST	ENTER AMOUNT OR NO. OF SHARES

Check here if entry is None
 Check here if you have attached additional sheets

ITEM 6 RSCH 15(d)(2)	OWNERSHIP OR BENEFICIAL INTEREST UNDER ITEM 5 TRANSFERRED DURING THIS DISCLOSURE PERIOD.
-------------------------	--

NAME OF BUSINESS	DATE OF TRANSFER	VALUE OF TRANSFER

Check here if entry is None
 Check here if you have attached additional sheets

ITEM 7 RSCH 15(d)(3)	LIST EACH OFFICERSHIP, DIRECTORSHIP, TRUSTEESHIP OR OTHER FIDUCIARY RELATIONSHIP HELD IN ANY BUSINESS, INCLUDING A NON-PROFIT ENTITY.
-------------------------	---

NAME OF BUSINESS	TITLE AND TERM OF OFFICE	COMPENSATION (enter amount or NONE)

Check here if entry is None
 Check here if you have attached additional sheets

ITEM 8
RSCH 15(d)(4)

LIST CREDITORS, OTHER THAN CREDIT CARD ACCOUNTS, TO WHOM MORE THAN \$3,000 WAS OWED DURING THE DISCLOSURE PERIOD. LIST CREDIT CARD DEBT THAT EXCEEDED \$10,000 FOR SIX MONTHS OR MORE.

NAME AND ADDRESS OF CREDITOR

ORIGINAL AMOUNT OWED

AMOUNT OWED AT END OF YEAR

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 9
RSCH 15(d)(5)

REAL PROPERTY IN THE STATE IN WHICH IS HELD AN INTEREST WITH A FAIR MARKET VALUE OF \$10,000 OR MORE.

POSTAL ZIP CODE OR LOCATION

VALUE

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 10
RSCH 15(d)(5)

REAL PROPERTY, THE FAIR MARKET VALUE OF WHICH EXCEEDS \$10,000, ACQUIRED DURING THE DISCLOSURE PERIOD.

POSTAL ZIP CODE OF LOCATION

NATURE OF INTEREST

NAME AND ADDRESS OF PERSON RECEIVING
CONSIDERATION

CONSIDERATION GIVEN

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 11
RSCH 15(d)(5)

REAL PROPERTY, THE FAIR MARKET VALUE OF WHICH EXCEEDS \$10,000, TRANSFERRED DURING THE DISCLOSURE PERIOD.

POSTAL ZIP CODE OF LOCATION

NAME AND ADDRESS OF PERSON FURNISHING CONSIDERATION

CONSIDERATION RECEIVED

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 12
RSCH 15(d)(6)

CREDITOR INTEREST IN INSOLVENT BUSINESS HAVING A VALUE OF \$5,000 OR MORE.

NAME OF BUSINESS	NATURE OF BUSINESS	NATURE OF INTEREST	VALUE

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 13
RSCH 15(d)(7);
Rules 3.13,
3.14 & 3.15
Revised Code
of Judicial
Conduct

GIFT(S) AND REIMBURSEMENTS THAT MUST BE REPORTED UNDER RULE 3.15(a)(2) and (3) OF THE HAWAII REVISED CODE OF JUDICIAL CONDUCT

DATE	SOURCE	DESCRIPTION	ESTIMATED VALUE

___ Check here if entry is None

___ Check here if you have attached additional sheets

ITEM 14
RSCH 15(d)(8)
& 22(h)

FULL-TIME JUDGES' APPROVED JUDICIAL EDUCATION

I attended _____ hours of Approved Judicial Education during the reporting period.

REMARKS:

___ See attached sheets.

CERTIFICATION: I hereby certify that the above is a true, correct, and complete statement.

SIGNATURE:

DATE:



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

**FINANCIAL DISCLOSURE STATEMENT
 (SHORT FORM)**

THIS SPACE FOR OFFICE USE ONLY

Instructions: Rule 15(a) of the Rules of the Supreme Court of the State of Hawaii (RSCH) requires every justice or judge and per diem judge to file an annual financial disclosure statement covering the calendar year. This disclosure is due by April 30th of the year-after the reported calendar year. Under RSCH 15(e), where an amount is required to be disclosed, the following financial range codes may be used:

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

This short form may be used in odd-numbered years where there are not more than 10 amendments or changes in the information reported for the preceding disclosure period. See RSCH 15(f).

(Type or Print Clearly)

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

OFFICE ADDRESS: _____
 NUMBER, STREET

CITY OR TOWN: _____ ZIP CODE: _____

NAME OF SPOUSE OR DOMESTIC PARTNER:

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

JUDICIAL POSITION:	TERM OF OFFICE BEGAN: _____ ENDS: _____	OFFICE PHONE:
--------------------	--	---------------

CALENDAR YEAR COVERED BY THIS DISCLOSURE: 20__

Check either number 1 or 2. If you check number 2, provide the relevant information.

- I have no changes to report since my last filing.
- I have the following changes to report since my last filing.

ITEM# [] Add [] Delete [] Change [] As follows:

ITEM# [] Add [] Delete [] Change [] As follows:

ITEM# [] Add [] Delete [] Change [] As follows:

ITEM# [] Add [] Delete [] Change [] As follows:

[] Check here if you have attached additional sheet(s).

I attended _____ hours of Approved Judicial Education during the reporting period

REMARKS:

____ See attached sheets.

CERTIFICATION: I hereby certify that the above is a true, correct, and complete statement.

SIGNATURE:

DATE:

Electronically Filed
Supreme Court
SCRU-14-0000891
12-MAR-2025
11:15 AM
Dkt. 5 ORD

SCRU-14-0000891

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the

HAWAI‘I REVISED CODE OF JUDICIAL CONDUCT

ORDER AMENDING HAWAI‘I REVISED CODE OF JUDICIAL CONDUCT

(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

It is hereby ordered that Rules 3.13, 3.14 and 3.15 of the Hawai‘i Revised Code of Judicial Conduct attached as Exhibit B to the Rules of the Supreme Court of the State of Hawai‘i are amended effective January 1, 2026 as follows (deleted language is bracketed and stricken; amendments are underscored):

**Rule 3.13. ACCEPTANCE AND REPORTING OF GIFTS,
LOANS, BEQUESTS, BENEFITS, OR OTHER
THINGS OF VALUE**

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

Code Comparison

*The Hawai‘i Revised Code of Judicial Conduct
modifies ABA Model Code Rule 3.13 by (1)
substituting “materially impair” for “undermine”*

and (2) adding “temperament, or fitness to fulfill the duties of judicial office.”

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

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification or recusal of the judge under Rule 2.11;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge’s household,* but that incidentally benefit the judge;
- (9) gifts incident to a public testimonial; or
- (10) invitations to the judge and the judge’s spouse, domestic partner,* or guest to attend without charge:
 - (A) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
 - (B) an event associated with any of the judge’s educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

Code Comparison

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

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

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

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

Code Comparison

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

COMMENT:

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

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

[3] *Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are*

available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

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

[5] RESERVED.

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

(a) Unless otherwise prohibited by Rules 3.1 and 3.13(a) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

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

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

COMMENT:

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines in furtherance of their duty to remain

competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

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

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

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

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

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

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

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

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

*(g) whether differing viewpoints are presented;
and*

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

Rule 3.15. REPORTING REQUIREMENTS

- (a) A judge shall publicly report the amount or value of:
 - (1) compensation of \$1000 or more received for extrajudicial activities as permitted by Rule 3.12; and
 - (2) gifts and other things of value as permitted by Rule 3.13(c).
 - (3) ~~[RESERVED.]~~ reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(a), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$200.00.
- (b) When public reporting is required by Rule 3.15(a), a judge shall report the date, place, and nature of the activity for which the judge received any compensation and the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.
- (c) The public report required by Rule 3.15(a) shall be made annually.
- (d) Reports made in compliance with this Rule shall be filed as public documents in the supreme court clerk's office.

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

A copy of this order shall be filed in SCRU-11-0000068, In the Matter of the Rules of the Supreme Court of the State of Hawai'i.

DATED: Honolulu, Hawai'i, March 12, 2025.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens



SUNSHINE LAW MEETING
AGENDA ITEM VI

2025 LEGISLATIVE MATTERS

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM VII

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.