

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: April 20, 2022

Time: 9:00 a.m.

Location: Held via Zoom video and audio conference

Present: State Ethics Commission Members

Melinda S. Wood, Chair (via video conference)
Wesley F. Fong, Vice Chair (in person)
Reynard D. Graulty, Commissioner (via video conference)
Harry J. McCarthy, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)
Susan D. Yoza, Associate Director (via video conference)
Nancy C. Neuffer, Staff Attorney (via video conference)
Bonita Y.M. Chang, Staff Attorney (via video conference)
Kee M. Campbell, Staff Attorney (via video conference)
Jennifer M. Yamanuha, Staff Attorney (via video conference)
Patrick W.C. Lui, Computer Specialist (via audio conference)
William Aana, Intern (via video conference)

Excused: Beverley Tobias, Commissioner

CALL TO ORDER

Chair Wood called the meeting to order at 9:01 a.m. Chair Wood asked each Commissioner, if they were not in a public meeting location, to state whom, if anyone, was present at their location with them. Vice Chair Fong was present at the public meeting location (Hawaii State Ethics Commission's conference room). Chair Wood and Commissioner McCarthy attended via videoconference and were alone.

Chair Wood announced that if the Commission's video conference connection was lost during the meeting, the meeting would be recessed and reconvened after the connection was restored; members of the public were asked to check the Commission's website (www.ethics.hawaii.gov) for information about reconnecting to the meeting. Chair Wood also announced that if the meeting was continued to a later date or terminated, information about this would be posted on the Commission's website.

Sandy Ma of Common Cause Hawai'i introduced herself via videoconference. She confirmed she was alone at her location.

Agenda Item No. I: Consideration and Approval of the Minutes of the March 16, 2022 Meeting:

Commissioner McCarthy made a motion to approve the minutes of the March 16, 2022 meeting. Vice Chair Fong noted he was not present at the past meeting and recused himself from the matter. Without another Commissioner to second the motion, the matter was deferred until later in the agenda.

Agenda Item No. II: Consideration and Approval of the Minutes of the March 16, 2022 Executive Meeting:

Deferred until later in the meeting.

Agenda Item No. III: Executive Director's Report:

Executive Director Harris, as an administrative note, suggested considering holding an in-person meeting in July or shortly thereafter as 1 or 2 new Commissioners will be joining the Commission and it would provide a good opportunity to train those members and allow the full Commission to meet each other.

At 9:08 a.m., Commissioner Gaulty joined the meeting.

Executive Director Harris referred to the materials for the Education and Training Report; Guidance and Assignment Statistics for March 2022. He noted live trainings had been held for the Department of Commerce and Consumer Affairs Professional Licensing Board and the University of Hawai'i Law School, and both of these trainings had a number of specific questions. The specificity of those questions highlighted the importance of live trainings versus pre-recorded or self-directed training sessions. In that vein, Executive Director Harris noted that the staff was looking to schedule and advertise trainings throughout the year to consolidate the number of trainings into larger training groups.

Vice Chair Fong asked about the general types of questions that were asked at the training sessions for DCCA and UH Law School, and whether the Commission needs to consider providing more guidance. Executive Director Harris gave an example that University professors were required under their contract to engage in outside activities, and there were several questions about the use of state property and resources for outside employment or support of nonprofits. All participant questions were answered. However, Executive Director Harris observed there may be an opportunity to provide more clarity if the administrative rules are updated.

Executive Director Harris also referenced the Financial Report for the Third Quarter of FY 2021-2022 and expected that normal expenditures into the fourth quarter should keep the Commission within budget.

Sandy Ma of Common Cause Hawai'i noted the published statistics around department trainings, and asked whether all the required participants had undergone training. Executive Director Harris noted most state employees were not required to undergo ethics training, which was the rationale for the Commission's mandatory ethics training bill. Most required training participants were meeting their obligation.

Agenda Item No. IV: 2022 Legislative Session:

Executive Director Harris noted the Commission's budget (HB 2500) was passed and signed into law in Act 1. Also budget related, HB 2355, which made payments into employee health benefit funds, was deferred. But Executive Director Harris anticipated that the proposed funding would be placed in the general budget.

Executive Director Harris noted that the Commission's proposed mandatory training bill (HB 1475) was referred to conference committee to resolve differences between the House and Senate. Vice Chair Fong asked if there was any pushback to this bill. Executive Director Harris replied that there hadn't been any obstacles to date, but noted that Common Cause Hawai'i had asked for more aggressive language. Sandy Ma noted that Common Cause supported the bill, but they wanted the training to occur every year with greater consequences for failure to participate.

Executive Director Harris noted that the protocol gifts reporting bill (HB 2069 HD1 SD1) had been recommitted and would not pass this year. Similarly, the bill (SB2138 SD1) defining interns as state employees had not been scheduled for hearing and was deferred for the year.

Executive Director Harris said the Commission on Improving Standards of Conduct was about to release an interim report focused on bills improving good governance standards. This interim report was limited to looking at bills that had already been introduced before the Legislature. Another report will be filed in December 2022, which would likely have a broader scope and the ability to suggest a greater swath of ideas to consider. Executive Director Harris noted he and the other staff would likely bring ethics bill proposals at the next Commission meeting (May 18, 2022) for the Commission's input. The Standards Commission was meeting next on June 1, 2022, and input from the Ethics Commission was necessary.

Commissioner McCarthy asked whether the individual members of the Standards Commission would help pass any recommended ideas proposed in December. Executive Director Harris noted there were some great members on the Standards Commission, and he was confident the final report would be valuable, and the additional attention and focus might help push ideas along.

Vice Chair Fong asked why SB2138 SD1, defining interns as state employees, was deferred. Executive Director Harris was unable to address why the bill had not been scheduled for hearing, but indicated that the Ethics Commission had already determined interns were state employees under the state ethics code. Statutorily enshrining this interpretation would have been helpful, but this was not a critical bill.

Agenda Item No. I: Consideration and Approval of the Minutes of the March 16, 2022 Meeting:

The Commission returned to this agenda item. Commissioner Gaulty confirmed he was alone and participating remotely.

Commissioner Gaulty made and Commissioner McCarthy seconded a motion to approve the minutes of the March 16, 2022 meeting. The motion carried (Commissioners Wood, Gaulty, and McCarthy voting, Commissioner Fong recused).

Agenda Item No. II: Consideration and Approval of the Minutes of the March 16, 2022 Executive Session Meeting

The Commission returned to this agenda item. Commissioner McCarthy made and Commissioner Gaulty seconded a motion to approve the minutes of the March 16, 2022 executive session meeting. Executive Director Harris observed that Chair Wood had observed on paragraph 7 that the word “beyond” should be “behind.” Commissioner McCarthy made a friendly amendment to amend the minutes accordingly. Commissioner Gaulty seconded. The amended motion carried (Commissioners Wood, Gaulty, and McCarthy voting, with Commissioner Fong recused).

Agenda Item No. V: *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)*:

RECESS OF SUNSHINE LAW MEETING AND CONVENING OF EXECUTIVE SESSION

At approximately 9:34 a.m., Commissioner Gaulty made and Commissioner Fong seconded a motion to recess the public meeting and 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. The motion carried unanimously (Wood, Fong, Gaulty, and McCarthy voting).

All members of the public were excused to the Zoom waiting room. The Commission and staff met in executive session.

ADJOURNMENT OF EXECUTIVE SESSION AND RETURN TO SUNSHINE LAW MEETING

At approximately 9:43 a.m., Commissioner Gaulty made and Commissioner Fong seconded a motion to adjourn the Executive Session and return to the Sunshine Law meeting. The motion carried unanimously (Wood, Fong, Gaulty, and McCarthy voting).

The Commission adjourned the Executive Session and returned to the Sunshine Law meeting at approximately 9:43 a.m. There were no members of the public in the Zoom waiting room.

Commissioner Gaulty asked about the status of the artwork at the Hawai'i State Ethics Commission office. A group of two staff members and Commissioner Fong were meeting with the State Foundation on Culture and the Arts to select new artwork. Commissioner Gaulty suggested trying to select artwork from local artists.

Agenda Item 6: Adjournment of Sunshine Law Meeting:

At approximately 9:49 a.m., Commissioner McCarthy made and Commissioner Fong seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Wood, Fong, and McCarthy voting). Commissioner Gaulty was not present for the vote.

The meeting was adjourned at 9:50 a.m.

Minutes approved on May 18, 2022.