

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: December 20, 2023

Time: 9:00 a.m.

Location: Held via Zoom video and audio conference

Link: Recorded video available at  
[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_videos/](https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/)

Public Meeting Location

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

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)  
Harry J. McCarthy, Vice Chair (via video conference)  
Beverley Tobias, Commissioner (via video conference)  
Robert Hong, Commissioner (present in conference room)  
Cynthia Thielen, Commissioner (present in conference room)

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)  
Kee M. Campbell, Enforcement Director (excused)  
Bonita Y.M. Chang, Compliance Director (via video conference)  
Nancy C. Neuffer, Staff Attorney (excused)  
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)  
Myles A. Yamamoto, Administrative Assistant (present in conference room)

Members of the Public

Patricia Hunt (via video conference)  
Tom Kunz (via video conference)

Ashley Kim (via video conference)  
M. Sweeny (via video conference)  
Raceen Satele (via video conference)

**CALL TO ORDER (Part I 0:00)**

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

**Agenda Item No. I: Consideration and Approval of the Minutes of the November 15, 2023 Meeting (Part I 1:38)**

Commissioner Thielen made, and Commissioner Tobias seconded, a motion to approve the minutes of the November 15, 2023 meeting. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

**Agenda Item No. II: Directors' Report (Part I 2:38)**

Compliance Director Bonita Chang reported that approximately 78% of members of the targeted boards and agencies have completed the ethics training. 88 individuals registered for the final live ethics training session of the year. The overall completion rate is around 70% for all employees and board/commission members.

Director Chang stated that the priority for the remainder of the year is to complete the Lobbyist Training module. The goal is to have the module live by January.

Chair Fong asked what the current completion percentage is and how it compared to last year. Director Chang replied that the current percentage is around 70%. Executive Director Harris replied that historically the Commission has had around 2,000-3,000 completions per year. This year we are around 31,000 completions. He noted that we are significantly better than prior years.

Chair Fong expressed that he is pleased with the significant improvement. He noted that one of our goals is to be proactive in education.

Executive Director Robert Harris reported for the month of November that staff opened 37 new matters and closed 51. For the year, 660 assignments have come in and 710 assignments have been closed.

Director Harris reported that staff has completed the move back to the Commission's offices in suite 970. He noted that staff is still in the process of unpacking.

He noted that due to the length of the renovations period, the artwork that was in the Commission's offices was returned to circulation. He stated that once the office is unpacked, staff will select artwork from the public art collection to replace the old artwork.

Chair Fong thanked the staff for their hard work related to the move.

Chair Fong noted the presence of members of the public and asked if they wished to introduce themselves.

Member of the public Patricia Hunt introduced herself and began speaking about issues related to the Maui Wildfire and housing. Chair Fong cautioned Ms. Hunt that the Commission is only allowed to discuss matters that are on the agenda in accordance with the Sunshine Law. He suggested that if there is an issue that Ms. Hunt wished to raise, that she contact the Commission staff.

### **Agenda Item No. III: 2023 Council on Governmental Ethics Laws Conference (Part I 12:36)**

Executive Director Harris reported that the Council on Governmental Ethics Law ("COGEL") recently held their annual conference in Kansas City. In addition to Director Harris, Commissioner Hong, Enforcement Director Kee Campbell, and Staff Attorney Jennifer Yamanuha attended.

Commissioner Hong reported that he thought the conference was a great experience and encouraged staff and other commissioners to attend. He noted that the conference was a great opportunity to meet others from around the country and globe who are involved in ethics and to think about how ethics is fundamental to a functioning democratic government.

Director Harris noted that both he and Director Campbell spoke on COGEL session panels. Director Campbell's panel touched on resolving violations before going to enforcement. Director Harris' panel discussed gifts. Director Harris was hopeful that staff would continue to be invited to speak at future conferences.

Director Harris reported that he, Director Campbell, and Staff Attorney Yamanuha participated in a discussion on education and the use of Learning Management Systems ("LMS") to track ethics compliance and produce better statistics. He noted that the main issue with implementing such a system here is cost. He cited the example of an agency currently using an LMS system that spends approximately \$90,000 per year.

Staff Attorney Yamanuha commented that there were really good ideas shared about making training interesting, engaging, and interactive.

Chair Fong asked about any issues that were raised at the conference that the Commission could learn from. Director Harris replied that Artificial Intelligence was a hot topic, specifically how to address its uses.

Chair Fong noted that the commission is one of the oldest ethics commissions in the country.

#### **Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics Commission since the Last Meeting (Part I 20:21)**

Executive Director Harris reported that this is a standing item on the agenda. There were two articles to be discussed. Director Harris highlighted an editorial by Honolulu Civil Beat about the Office of The Public Advocate.

Commissioner Thielen reported about an article entitled “Corruption In the Land of Aloha” by Randall Roth. The article was published in the Hawai‘i Bar Journal in December. She noted that the article raised a number of issues. She asked if this article could be disseminated to members of the Legislature. Director Harris replied that he would first reach out to the Bar Association for permission and see if we can disseminate a copy of the article via email. Commissioner Thielen suggested that it would be better if a printed copy were sent accompanied by a letter. Director Harris replied that may be possible.

Chair Fong asked if, assuming we receive permission, could this article be posted on the Commission’s website?

Commissioner Thielen suggested that a section called “publications of interest” be added where articles of this nature could be housed.

Commissioner Tobias concurred with Commissioner Thielen’s idea.

Member of the public, Patricia Hunt, noted that in her opinion there is significant corruption on the island of Maui and thanked the Commission for doing its job. Chair Fong replied that the Commission has jurisdiction over state agencies and that each county has their own ethics board.

Vice Chair McCarthy asked about the article related to the Public Advocate and where this fits within the government hierarchy. Executive Director Harris replied that a bill was introduced last legislative session to address the interaction between the Legislature, the public, and state employees. The Office of the Public Advocate concept is loosely based on the Ombudsman’s Office. The bill was part of the legislative package submitted by the Foley Commission. Director Harris reported that the Department of the Attorney General objected to the legislation on the grounds that the bill would be unconstitutional by giving the Advocate enforcement powers over the Legislature. Director Harris believes that the Department of the Attorney General misread the proposed legislation. The Public Advocate’s Office would provide a neutral

party who could investigate interactions but not have direct enforcement power. He further noted that this position would promote transparency and accountability. Director Harris explained that he does not want the Commission to be the primary champion of this bill, but would continue to support it.

Chair Fong asked if the Commission could champion or somehow implement the public advocate idea. He also asked if these discussions should be a separate agenda item. Director Harris replied that if the discussion is about the article, then it is okay to talk about under this agenda item. If, however, the Commission wishes to draft legislation, then an agenda item would have to added in January.

Vice Chair McCarthy suggested adding the discussion of public advocate legislation to the agenda.

Chair Fong asked that a discussion of public advocate legislation be added to the January agenda.

#### **Agenda Item No. V: Proposed Legislation (Part I 34:26)**

Executive Director Harris reported that staff had amended previously approved legislation related to lobbying. The amendments would expand the definition of “lobbying” to include lobbying high-level officials such as the governor, lieutenant governor, directors, and board members. The proposed legislation also would add corporate relationships to the disclosure requirements. Additionally, the proposed legislation would require legislators to report potential violations to the Commission.

Commissioner Thielen asked how a legislator would reasonably know if an individual or group is an unregistered lobbyist. Director Harris replied that current lobbyist registrations are available to the public. Additionally, current law bars legislators from accepting any gifts and contributions from lobbyists during the session. Under the proposed new law, legislators would also be required to report the names of clients that are subject to the lobbying law.

Commissioner Tobias asked how the legislation affects non-profit groups and individual citizens. Director Harris replied that the legislation does not change the baseline definition of a lobbyist. Currently, lobbyists must meet certain requirements to be required to register. For example, the lobbyist must be paid and must meet certain hourly thresholds. Director Harris noted that the legislation will cover both legislative and executive actions.

Commissioner Thielen wondered if there is a way to ensure that legislators would be aware of who is a registered lobbyist. Director Harris agreed with Commissioner Thielen’s sentiments and said he would investigate ways to make lobbyist registration more visible.

Chair Fong asked if the Commission would be responsible for providing a list of registered lobbyists. Director Harris replied that the Commission would be the lead agency in providing information about registered lobbyists. He further noted that the obligation to register falls upon the lobbyist.

Commissioner Hong made, and Commissioner Thielen seconded, a motion to approve the amended lobbying legislation proposal. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

#### **Agenda Item No. VI: Proposed Budget (Part I 46:31)**

Executive Director Harris reported that the proposed 2024 budget includes a request for one additional staff attorney and a small increase in office equipment expenses. Otherwise, the budget is flat when compared to 2023.

Commissioner Tobias made, and Commissioner Hong seconded, a motion to approve the proposed budget. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

#### **Agenda Item No. VII: Discussion of Ethics Oversight of the Judicial Branch (Part I 49:28)**

Executive Director Harris provided an update on a meeting with the Judiciary administrators to discuss ethics oversight. The Commission was represented by Chair Fong, Vice Chair McCarthy, and Executive Director Harris. Director Harris noted that the discussions were initiated because of Chair Fong's concerns in light of ethics issues with the U.S. Supreme Court. Director Harris reported that an initial meeting was held, and that the Judiciary committed to meet again in January to respond to, and discuss questions raised at the initial meeting.

Vice Chair McCarthy added that the Judiciary was open to a review of its ethics practices.

Chair Fong stated that he was pleased that the Judiciary was receptive to action. He noted that at a recent Rotary Club presentation given by Director Harris, the first question asked was, "what about the judiciary?"

#### **Agenda Item No. VIII: Discussion of Nepotism Good Cause Exception Procedures (Part I 53:24)**

Executive Director Harris said the recently passed Nepotism Law provided for good cause exceptions. As part of the implementation of the law, the Commission passed an Order establishing procedures for application for a good cause exception. The procedures have the staff conduct the initial review. The Commission would review

any novel issues or any appeals by an individual involved. The Order did not provide for members of the public to appeal good cause exception decisions. After review, staff concluded that the public should not be allowed to appeal decisions. The reason is the potential to slow down the process. The recommendation would be to not alter the Order. He noted that the Commission has the ability to review all decisions made by staff and offer corrections and guidance.

Vice Chair McCarthy suggested that guidelines be developed for good cause exceptions after a review of the cases before the Commission. He recommended that the current order regarding good cause exception procedures remain as is.

Commissioner Tobias asked what would constitute a valid exception. Director Harris replied that an example would be if there was only a single person with the specialized knowledge for a position. Another example would be if there was only one qualified applicant after an agency widely advertising for a position.

Chair Fong felt confident that the Commissioners and staff have the expertise to evaluate and review the decisions made regarding good cause exceptions.

Commissioner Hong made, and Vice Chair McCarthy seconded, a motion to take no further action on the Nepotism Good Cause Exception Procedures. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

**Agenda Item No. IX: 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) (Part I 1:06:37)**

No update.

**Agenda Item No. X: Evaluation of Executive Director Robert Harris (Part I 1:07:27)**

Commissioner Thielen made, and Commissioner Hong seconded, a motion to go into executive session to discuss the evaluation of Executive Director Robert Harris. The motion carried (Fong, McCarthy, Hong, Thielen and Tobias voting in the affirmative).

At approximately 10:03 a.m., the Commission recessed the Sunshine meeting and convened an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee, and/or pursuant to section 92-5(a)(4) to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

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

At approximately 10:45 a.m. the Commission adjourned its executive session and reconvened the Sunshine Meeting.

Chair Fong summarized the executive session where Commissioners discussed the procedure of the evaluation of the Executive Director. The Commission is ready to move to phase 2 whereby the Commissioners will complete their survey and submit to staff for compilation. The Commission will review the compiled results in executive session in January.

Commissioner Hong made, and Commissioner Thielen seconded, a motion to proceed with phase 2 of the evaluation of the Executive Director. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

#### **ADJOURNMENT OF SUNSHINE LAW MEETING (Part II 2:25)**

Chair Fong wished everyone happy holidays.

At approximately 10:51 a.m., Commissioner Thielen made, and Commissioner Tobias seconded, a motion to adjourn the meeting. The motion carried (Fong, McCarthy, Tobias, Hong, and Thielen voting in the affirmative).

The meeting was adjourned at 10:52 a.m.

Minutes approved on January 17, 2024.