

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

STATE OF HAWAI'I

Date: September 18, 2024

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at

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

Public Meeting Location

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

Present: State Ethics Commission Members

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

State Ethics Commission Staff

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

Members of the Public

Candace Park, Deputy Attorney General (via video conference)

CALL TO ORDER (0:00)

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

Agenda Item No. I: Status of New Commissioner Appointment (3:32)

Executive Director Robert Harris reported Mr. Roderick Becker has been appointed to fill the Commission's vacancy due to the passing of Commissioner Harry McCarthy. His appointment was effective as of September 16, 2024. Due to scheduling conflicts, Commissioner Becker was not available. Director Harris stated that Commissioner Becker should be present at the October meeting.

Chair Fong stated that he was pleased that the Commission now had a full complement of Commissioners.

Agenda Item No. II: Consideration and Approval of the Minutes of the August 21, 2024 Meeting (4:48)

Commissioner Thielen made, and Vice Chair Tobias seconded, a motion to approve the minutes of the August 21, 2024 meeting. The motion carried (Commissioners Fong, Tobias, Hong, and Thielen voted in the affirmative).

Agenda Item No. III: Directors' Report (5:37)

Compliance Director Bonita Chang reported that staff is in the process of compiling data related to state agency training compliance and expects to have that data available at the October meeting. With regards to board and commission training compliance, Director Chang reported that 95% of public filing board members and 87% of confidential filing board members have completed training, with an overall training completion rate of 88%. Director Chang noted that the missing public filing board members may be due to new members coming on board. A few confidential filing boards have lower rates due to turnover in board staffing and other factors. Staff will conduct further outreach to these boards. The vast majority of boards are at 100% including the Commission. Based on

Commissioner Hong's suggestion, staff will be sending letters to board with 100% compliance to congratulate them on their hard work.

With regards to state agencies, Director Chang will continue working with human resource officers, most of whom have access to their own departmental Learning Management Systems.

Chair Fong stated he is pleased that the boards and commissions have hit the 85% training goal set earlier.

Commissioner Hong commended Director Chang regarding the updated dashboard. He noted that the information is easier to follow.

Director Chang noted between now and the end of the year, staff will focus its attention on updating the content and curriculum of the training materials to reflect new statutory changes.

Enforcement Director Kee Campbell reported that for the month of August, 27 new complaints were opened and 17 matters were closed. He noted that a number of cases are due to be closed soon and expects an uptick in closures next month.

Executive Director Robert Harris recognized Computer Specialist Patrick Liu for his efforts to support updating the Commission's internal case management system. Director Harris noted that testing is ongoing, and expects the new system to go live in October.

Director Harris noted that he will not be present at the October Commission meeting.

Agenda Item No. IV: Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting (13:50)

Executive Director Harris reported on recent articles that covered the enforcement settlements by the Commission. He also noted reports regarding the Maui Board of Ethics investigations into Conflicts of Interest regarding grant awards. There were also a number of candidate questionnaires where candidates addressed question about a commitment to ethics.

Commissioner Thielen reported her recent participation in a panel forum on Pay to Play politics hosted by Civil Beat at the University of Hawai'i.

Agenda Item No. V: Discussion of Ethics Oversight over the Judicial Branch (16:26)

Executive Director Robert Harris reported that the Judiciary is proposing to amend its rules. The drafts will be available for public input and comment on the Judiciary's website.

Chair Fong noted that Judges and Justices are not subject to the ethics code and are under the jurisdiction of the Commission of Judicial Conduct. He further noted that judges in other jurisdictions are subject to both a judicial and ethics code.

Director Harris clarified that Judicial Employees are subject to the state ethics code but not judges and justices.

Agenda Item No. VI: Request for Information from the National Conference of State Legislatures Regarding State-Level Restrictions on High-Level Government Employees Participating in Political Fundraising (20:18)

Executive Director Harris reported that a request for information regarding state level restrictions on High-Level Government Employees participating in political fundraising was sent to the National Conference of State Legislatures ("NCSL"). He reported that NCSL's information did not contain anything specific to restrictions of high-level employees. He noted that most regulations concerned contributions by contractors.

Commissioner Thielen asked if staff could take a closer look at the Ohio and Kentucky Laws. She noted that both states have specific laws that deal with the executive branch. Commissioner Thielen requested a review to see if those laws could be incorporated into proposed legislation to enact similar restrictions here.

Vice Chair Tobias asked how candidates would be able to raise funds for elected office with a restriction in place. Commissioner Thielen replied that the restriction would be on employees and not elected officials.

Chair Fong asked if there were any state provisions similar to the Hatch Act. Executive Director Harris explained that the Hatch Act is a federal law that limits the political activities of federal employees. He further explained that the state has adopted similar statutory provisions that apply to the Elections and Ethics Commissions.

Director Harris expressed constitutional concerns with Commissioner Thielen's proposal. He also noted that the proposal may encounter heavy resistance at the legislature. He further noted that the fair treatment laws were purposely written broadly to provide the Commission flexibility in dealing with enforcement.

Commissioner Thielen suggested reaching back out NCSL to see what, if any, kinds of challenges were made to the Ohio and Kentucky Laws.

Director Harris re-emphasized the recommendation to focus on enforcing prohibitions against contractor contributions. He noted that prohibitions on employees may prove to be a more difficult task to pass and enforce.

Chair Fong asked where the line on prohibited activities would be drawn. Director Harris replied that the prohibition would be on fundraising activities by employees involved in procurement. He further noted that he estimates that 10,000 employees may be affected by a proposed prohibition.

Chair Fong requested that this matter remain on the agenda for further discussion.

Commissioner Thielen requested that in the request to NCSL to ask how broad the law in Ohio and Kentucky are. She noted that the law must be constitutional since they are still in force.

Director Harris noted that the Ohio & Kentucky Statutes are very elaborate and specific. He further noted that Hawaii Statutes are broad with specifics embedded in the Administrative Rules. He stated that inserting a new provision may require alteration of the entire ethics statutes.

Agenda Item No. VII: Administrative Rules (39:30)

Executive Director Harris reported that staff has been working on updates to the administrative rules. He recommended a review of the general concepts of the updates at this time. He noted that the rules still need to be approved by the attorney general. Public hearings are also required before approval.

- Chapter 1: Updates to strike language that relates to the associate director.
- Chapter 2: Adding language related to subpoenas and enforcement.
- Chapter 3: Adding definitions of blind trusts and mutual funds. Updating filing procedures.

Director Harris noted that the discussion is for information only and no action is required by the Commission at this time.

Agenda Item No. VIII: 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) (46:13)

Executive Director Harris reported that there is no update.

Chair Fong asked what the anticipated timeline is. Director Harris replied that the Supreme Court is usually faster at rendering a decision. He anticipates a decision early next year.

Agenda Item No. IX: Adjournment of Sunshine Law Meeting (47:40)

At approximately 9:49 a.m., Commissioner Hong motioned to adjourn the meeting, and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias, Hong, and Thielen voted in the affirmative).

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

Minutes approved on October 16, 2024.