

## Appendix B – Meeting Minutes July 13, 2022

### Commission to Improve Standards of Conduct

#### Members:

Judge Daniel R. Foley (Ret.), Chair;

Robert D. Harris, Executive Director and General Counsel of the State Ethics Commission, Vice Chair;

Kristin E. Izumi-Nitao, Executive Director of the Campaign Spending Commission;

Nikos Leverenz, Common Cause Hawaii Advisory Board Member;

Barbara C. Marumoto, Former State Representative;

Janet Mason, Legislative Committee Member, League of Women Voters of Hawaii; and

Florence T. Nakakuni, Former U.S. Attorney for the District of Hawaii.

Note: Ms. Sandy Ma, Executive Director of Common Cause Hawaii, resigned from the Commission effective June 17, 2022. To fill that vacancy the Speaker of the House of Representatives appointed Mr. Nikos Leverenz via [memorandum](#) to serve as a Commissioner beginning June 17, 2022.

#### Resources:

The Commission's website, which includes related materials and information such as House Resolution No. 9 (Regular Session of 2022), the Commission's Interim Report, and meeting notices and minutes, can be found here: [Committees \(hawaii.gov\)](#)

Recordings of the Commission's public meetings may be viewed on the House of Representatives' YouTube channel found here: [Hawaii House of Representatives - YouTube](#)

The Commission may be contacted via email at [standardsofconduct@capitol.hawaii.gov](mailto:standardsofconduct@capitol.hawaii.gov)

Limited decision-making occurred at the meeting. Any proposals or final recommendations to be adopted by the Commission and subsequently submitted to the House of Representatives in its Final Report will be the subject of future public meetings and take into consideration input from the public.

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### I. Call to order/Roll call

Chair Foley convened the meeting at 2:01 p.m. All members were present for the meeting except Commissioner Izumi-Nitao, who was excused. Tony Baldomero, Associate Director of the Campaign Spending Commission, attended on behalf of Commissioner Izumi-Nitao.

### II. Approval of minutes

The minutes of the June 29, 2022, meeting of the Commission were approved and adopted.

### III. Public testimony

The Commission heard oral public testimony from one individual pertaining to:

- Concerns about whether existing laws are strong enough to stop corruption;
- Inefficiencies of the legislative process from a public input standpoint;
- Concerns with legislative power being concentrated in just a few legislators; and
- The need for a systemic change that allows everyone to have a voice in the democratic process, including the need for discussion on legislation to occur in the public view.

### IV. Discussion of criminal prosecution and fraud reforms

Commissioners Nakakuni and Marumoto facilitated a panel discussion of representatives from various agencies relating to strengthening the investigation and prosecution of fraud and public corruption. Commissioner Nakakuni provided a historical overview of the events leading to the formation of the Commission, including:

- Most recently, two former state legislators who plead guilty to federal wire fraud charges in connection with taking bribes from a local businessman in exchange for influencing legislation;
- Honest services fraud charges against five employees of the City and County of Honolulu Planning and Permitting Department for accepting bribes;
- Wire fraud conspiracy charges against three former high-level City officials; and
- Former City Prosecuting Attorney and co-defendants charged with conspiracy to commit honest services fraud and other crimes.

Commissioner Nakakuni noted that these cases are evidence of serious public corruption in our State. The Commissioner said there are serious challenges with state law in handling such cases, while federal law is better tailored to charge corruption. Federal mail and wire fraud statutes allow for a charge of a scheme to defraud, which is important because none of these cases involve a one-time lapse of judgment.

The following individuals were invited to participate in the panel:

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- Jeff Felmann, Federal Bureau of Investigation (FBI) supervisory agent, accountant, and head of FBI's white collar squad in Hawaii;
- Matt McDonald, FBI supervisory special agent, assistant division counsel for FBI's Honolulu division, and former head of FBI's white collar squad in Honolulu;
- Steven S. Alm, former U.S. Attorney for the District of Hawaii (1994-2001) and current Prosecuting Attorney for the City and County of Honolulu;
- Holly Shikada, Attorney General of Hawaii;
- Cheuk Fu Lui, Deputy Attorney General, Criminal Justice Division;
- Gary Yamashiroya, Deputy Attorney General;
- Margery S. Bronster, former Attorney General of Hawaii (1995-1999);
- Doug Chin, former Lieutenant Governor of Hawaii (2018) and former Attorney General of Hawaii (2015-2018);
- Andrew H. Martin, Prosecuting Attorney of the County of Maui; and
- Rebecca V. Like, Prosecuting Attorney of the County of Kauai.

A. Jeff Felmann and Matt McDonald provided a presentation of the types of white-collar crime cases they address, including schemes to defraud and public corruption, and the primary statutes upon which they rely for charges, including:

1. 18 U.S.C. § 666, honest services fraud, where someone in a position of trust has taken money from someone else to do something they wouldn't normally do for others, taking advantage of the position they are in. The federal nexus for actions by state and county employees is typically the receipt of federal funds (including grant money) by the agency they work for. Minimum dollar thresholds apply. This is the statute the FBI uses in place of a state bribery statute; it doesn't necessarily require a wire or mailing. Obstacles include the time it takes to gather evidence and piece things together. Usually the federal statute of limitations is five years. Use of federal grand jury and subpoena power help in ways unavailable to the State.
2. 18 U.S.C. §§ 1341 and 1343, mail and wire fraud, are ways the federal government can tie in state criminal conduct by using interstate mechanisms.
3. 18 U.S.C. § 1001, false statements, is one of their most useful tools, along with witness tampering or obstruction of justice.
4. 18 U.S.C. §§ 1510 and 1512, obstruction of criminal investigations or witness tampering. For public corruption cases, someone may try to influence another's testimony. Sometimes the underlying criminal conduct isn't pursued, but obstruction or witness tampering is.
5. 18 U.S.C. § 371, conspiracy. If the FBI is running out of time on a five-year statute of limitations, evidence of a conspiracy might allow the FBI to capture historical events outside of that time frame.

Mr. Felmann and Mr. McDonald noted the FBI is in the process of developing a white-collar crime task force here in Hawaii. In prosecuting public corruption or fraud cases, a decision needs to be made early on if a case will be pursued by the state or federal government. If federal techniques or subpoenas have been used,

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it may limit the State's ability to prosecute; this may present a vulnerability that should be addressed.

Commissioner Marumoto noted prosecuting these cases helps to restore public confidence and that the Commission may want to replicate some of the FBI's methods and perhaps certain federal laws.

- B. Steven Alm discussed how public confidence can be restored when people are held accountable. In the federal system, most people go to prison, which provides an incentive for people to cooperate. He suggested mandatory prison time may be needed and also that an investigative grand jury may be a good approach for the State. He also discussed sentencing issues and the power of the paroling authority. The Commission acknowledged that sentencing and parole authority issues may need to be reviewed but that they are not within the Commission's purview.
- C. Deputy Attorney General Cheuk Fu Lui advised the Commission that the Department of the Attorney General is actively drafting bills to combat public corruption and fraud for the next legislative session. The proposals are very preliminary so could not be commented on at this time. The Department is studying statutes from other state jurisdictions that might assist and considering how the statute of limitations can be expanded.
- D. Holly Shikada reiterated that the Department of the Attorney General is trying to determine what statutes might need to be revised. She discussed the new special investigations and prosecutions division that is being created that will incorporate work on corruption, fraud, and economic crimes and will work closely with the criminal justice division. The Department hopes to introduce a package to deal with corruption and fraud next legislative session. She also briefly discussed the new Department of Law Enforcement.
- E. Margery Bronster discussed her time spent on a law enforcement coalition while she was the Attorney General that included the four county prosecutors, chiefs of police, and U.S. Attorney to vet all criminal law proposals to see if there was agreement on what legislation was needed. She questioned whether that coalition still exists as an opportunity to say that these bills are supported by the State. Regarding promoting the issue of public corruption, she reflected on the tremendous effort that was brought to bear to try to stop a lot of cases from being pursued when she was the Attorney General. Ms. Bronster supported the State ensuring contracts and grants require an affirmation or oath that the signatories are complying with the terms of the grant and the law and that everything in the document is true and commitments are met. When looking at a section 666 case, it may be worth exploring what causes a case to fall through the cracks. She also agreed that the issue of conflicts of interest should be examined, noting she had indicted a sitting senator who was allowed to subsequently vote on her confirmation, with the ethics committee deciding the

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senator had no conflict. On the issue of honest services, the State has a part-time legislature and many legislators and spouses and families of legislators, so the question arises what other jobs they have, what they do for those jobs, and whether those jobs give rise to the potential for backroom dealings.

- F. Doug Chin found three main issues at stake: laws, bandwidth, and tools to battle fraud and public corruption.
  - 1. A lot of great efforts are being made to add to laws we have in the State.
  - 2. Promote bandwidth in the City prosecutor's office and through the dedicated division at the Department of the Attorney General.
  - 3. Regarding tools, sometimes the way the State Constitution is interpreted will result in greater limitations in effectively prosecuting these kinds of cases. Another limitation involves state sentencing guidelines and how prison vs. probation is viewed. These state limitations may present opportunities for the federal government to step in.
  
- G. Andrew Martin discussed the need for government to respond appropriately when public servants or public officials should be prosecuted. Acts of public corruption or other crimes erode public trust in government. Public servants take an oath to faithfully discharge their duties and need to be held to a higher standard. He recommended exploring the possibility of mandatory sentences for public servants, particularly those who defraud or steal from the government. The Commission may want to consider a special classification of offenders who commit acts of fraud, theft, or embezzlement against the government, including abuse of p-cards, overtime, conspiracies to commit these types of acts, perhaps by raising from class C to class B offenses by public servants.
  
- H. Rebecca Like found of particular interest the issue of increasing campaign spending regulations. She suggested some additional rules could be put into place regarding lobbying, acceptance of large donations, and an increased reliance on public funding. Federal government has additional tools that the State doesn't have at its disposal. She is open to exploring things Mr. Martin and Mr. Alm discussed.

Commissioner Nakakuni discussed that drafting proposed legislation is just a part of the solution. Because of the secretive nature of these crimes, they are hard to detect and prove. The only way we will be successful is if we collectively have the political will to say we won't tolerate corruption because it erodes public trust. The time is ripe to propose tougher laws to prevent, deter, and punish people who engage in corrupt activity and hold them accountable. Offenders should be subject to prison time and forced to disgorge ill-gotten gains.

Commissioner Marumoto noted that if Hawaii adopts the federal procedure of requiring some prison time upon conviction, that it would be adding to our prison population. Our

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correctional facilities are already over capacity and we are merely storing human beings. We should consider shortening the jail sentences of non-violent prisoners to make space for new felons.

The Commission discussed the idea of affirmation statements in contracts and that all state forms should contain an affirmation similar to many federal forms. State forms, other than tax forms, are lacking. The signer should certify that whatever is being submitted is true and correct, that they did not provide anyone with any money, and nothing fraudulent was done.

### V. Other matters

Chair Foley reminded the public that the Commission is open to public input at any time.

The Commission will meet on July 27, 2022, on the topic of Open Government Laws, as summarized in greater detail in the Commission's [April 14, 2022, Meeting Minutes](#).

The meeting adjourned at 4:00 p.m.