

Appendix B – Meeting Minutes July 27, 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

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 2:03 p.m. All members were present for the meeting except Commissioner Marumoto, who was excused.

II. Approval of minutes

The minutes from the July 13, 2022, meeting of the Commission were approved and adopted.

III. Public testimony

The Commission received written public testimony from three individuals.

The Commission heard oral public testimony from two individuals. In addition to any written public testimony by these individuals, oral testimony pertained to:

- The public's low rating of the Legislature's handling of internal corruption, which appeared in the July 27, 2022, issue of the *Honolulu Star-Advertiser*;
- Legislative members' negotiations over the fate of bills and the need for controls over members; and
- The massive data dump of information, without context or relevance, that is sometimes provided in response to a request for information under the Uniform Information Practices Act.

IV. Discussion of Hawaii's open meetings and open records laws and the importance of transparency and accountability in building the public's trust in government

Commissioners Mason and Leverenz facilitated presentations by the following individuals:

- a. Cheryl Kakazu Park, Director of the Office of Information Practices, who provided an overview of the Office of Information Practices (OIP), including that OIP:
 - Administers Hawaii's Open Meetings Law ("Sunshine Law"): Part I of Chapter 92, Hawaii Revised Statutes, (HRS); and Hawaii's Open Records Law: Uniform Information Practices Act (UIPA), Chapter 92F, HRS;
 - Is neutral: OIP does not represent anyone and provides advice to everyone;
 - Has no enforcement powers; and
 - Provides opinions, training and informational materials, reports, log summaries, and other resources, which can be found on its website at: oip.hawaii.gov.

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The presentation also included the following:

- An overview of the UIPA and the Sunshine Law;
- Per [S.C.R. No. 192, S.D. 1 \(2022\)](#), OIP is charged to convene a working group to develop recommendations for the treatment of deliberative and pre-decisional agency records;
- Other than its intended budget request to increase positions and funding to address workload and backlog issues, OIP does not have legislative proposals it is currently considering and has no proposals that would affect the Commission to Improve Standards of Conduct (Commission);
- OIP requested that the Commission obtain OIP input before recommending any legislative changes to the UIPA or Sunshine Law to avoid confusion, contradiction, or unintended consequences; and
- As of January 1, 2022, boards under the Sunshine Law became allowed to hold remote meetings, in addition to in-person meetings and multi-site meetings, which were already allowed.

Discussion focused on the following topics:

- Requests by county councils for exemption from the Sunshine Law.
Ms. Park stated that the county councils feel they are a legislative branch of government like the Legislature, which is exempt from the Sunshine Law. It was noted that the matters before the county councils and Legislature are different, and that the Legislature meets about four months a year, whereas county councils meet year-round and thus are better apt to meet the six-day notice requirement. OIP has consistently opposed proposals to exempt the county councils from the Sunshine Law;
- Recourse for requestors when materials provided by an agency to a requestor are not relevant to the inquiry and are not provided in a timely manner.
Ms. Park indicated that the UIPA requires agencies to provide records that the agency already has and maintains: The law does not require agencies to create a summary or report or answer questions. It was noted that sometimes requests for records are so broad that the information provided may be massive, and therefore it is prudent to narrow requests to what is being sought to get relevant and timely information and avoid unnecessary fees. OIP keeps a UIPA record request log of information that is submitted to OIP by state and county agencies annually. The record request log reports are on the OIP website;
- OIP guidance on subjecting the Legislature to the Sunshine Law.
Discussion centered on parameters and guidance from OIP on this matter and concerns related to the Sunshine Law and UIPA. Ms. Park indicated that OIP has never taken an official position on this matter, as the Legislature has its own set of rules, and it may be difficult for the Legislature to follow the requirements imposed on entities subject to the Sunshine Law. OIP looks at different,

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potentially competing interests to see what will work. Ms. Park reserved any comments until seeing specific proposals on this matter; and

- The costs to obtain information for UIPA requests and whether OIP has an appeals process for costs and other thoughts on resolving the cost issue. Ms. Park indicated that OIP has issued an opinion on this matter. OIP mediates complaints by asking agencies to justify the basis of the costs. It was noted that broad requests for records are subject to time and cost factors, so it may be prudent to narrow requests to the type of information that is being sought to eliminate or reduce costs and the receipt of unnecessary information. Ms. Park suggested that addressing some of these issues may be better achieved through administrative rule changes rather than statutory changes.

b. R. Brian Black, President and Executive Director of The Civil Beat Law Center for the Public Interest, who gave a presentation on government transparency from an advocate's perspective. The presentation and discussion centered on the following proposals:

- The status quo does not work: Restoring public trust in government requires real change, not just tinkering around the edges.

Mr. Black elaborated that when it comes to public records, open meetings, and concerns about corruption, there is much that can be done to help the public understand what government does and what is happening with government. Helping the public gain better confidence and understanding about what is happening in government and how things work in government will help address problems of trust.

- Corruption happens when it is easy: Lack of access to information and consolidated power.

Mr. Black remarked on the comment made by a former State Senator that it is easy to kill a bill. Mr. Black elaborated that when things are made easy, such as when there is lack of access to information, corruption can happen. This proposal focuses on better educating and informing the public about government and consolidated power.

- Change the corruption-friendly environment: [S.B. No. 3252, S.D. 2, H.D. 2, C.D. 1 \(2022\)](#), Relating to Public Records.

The presentation centered on the continuing need for what S.B. No. 3252 sought to accomplish. S.B. No. 3252 was passed by the Legislature during the Regular Session of 2022 but was subsequently vetoed. Mr. Black recommended that this measure be reintroduced in the upcoming session. He discussed how enactment of this measure can help ferret out corruption and expose incompetence and

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inefficiencies. He pointed to an example of a recent affordable housing conspiracy case on the Big Island. The case involved investigative reporting, the use of public records, and informing the public about what was happening, which turned into an investigation and indictments.

There was discussion from presenters on S.B. No. 3252 and on the interpretation of UIPA Record Request Log data, the way the form request to access a government record is filled out, and information that is not being captured by the log data.

Commissioner Harris inquired about a working definition of what is in the public interest and whether this needs to be incorporated into legislation, and about narrowing the scope of requests for massive information. Mr. Black responded that S.B. No. 3252 is modeled after the Freedom of Information Act standard. With regard to requests for larger information requests, the Commission heard that agencies are permitted greater time in responding to larger requests. If requestors are told a response to a request will take a long time, they can begin a dialogue to narrow their requests, whereas money is an outright stopping point and can bar these requestors from pursuing those records further.

- Public deliberations at legislative committees: Let the public see what is happening.

Mr. Black stated he has never argued that the Sunshine Law should apply to the Legislature; however, there are things that can be done to make things the Legislature does more public. The Commission noted the issue of legislative hearings taking place in public but committees recessing to discuss decisions on measures prior to decision making in public. He stated that more discussions should take place in public.

- More egalitarian distribution of power among legislators: Empower committee members with respect to agendas and votes.

The Commission noted that members often are unable to bring things to the agenda or bring measures to a vote because committee chairs hold those powers. Addressing this issue would better enable the public to know where individual legislators stand on issues and how measures are progressing through the legislative process.

- Constitutional amendments: Right of access.

Mr. Black commented that no matter what is in the public records law, the Legislature will claim that it has constitutional privilege to withhold, and unless there is a constitutional right of access, the Legislature will have carte blanche to withhold information.

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- c. Randall Roth, Professor Emeritus of the University of Hawaii William S. Richardson School of Law, spoke on transparency and accountability in helping build and maintain public trust in government.

Mr. Roth's presentation focused on the end goal of public trust in government and the role and absence of watchdogs in the system. He referred to the poll results in today's *Honolulu Star-Advertiser* that public trust in government in Hawaii is abysmally low. The presentation included the following points:

- Existing laws in theory can always be improved;
- In public corruption scandals, generally—Mr. Roth highlighted two scandals and the watchdogs in these scandals that are detailed in "Broken Trust" and "The Mailbox Conspiracy"—there has been an absence of accountability and transparency and a tremendous amount of public corruption. Mr. Roth stated that the watchdogs, in theory, were there with responsibility and power to do something but were asleep;
- People in positions of power may have gotten along to get along. Mr. Roth commented on having higher expectations of people who are part of the political elite that have some degree of power;
- If the end goal is about public trust, how about establishing a commission comprised of a group that the public perceives as not part of the "in crowd", but part of the "out crowd". Mr. Roth stated it helps to have people who, relatively speaking, can't be hurt and are not as susceptible to favor or punishment;
- The cost of not thriving in Hawaii is huge. In Hawaii, if you want to thrive, it's tough to go out there and say what you really want to say without ticking off the wrong people;
- The phrase "go along to get along" seems to permeate in Hawaii. Discussion included how to go about change so that people are more forthright in calling out wrongdoing;
- Taking action to begin the process to regain the public trust in a meaningful way will change the culture of people who serve on watchdog organizations and who become part of the code of silence;
- If we regain trust, there will be some who will speak up and be encouraged, empowered, and reinforced to do the right thing; and
- The community needs to recognize the courage and work of those watchdogs in the community and say, "That was magnificent!"

The presentation detailed aspects of the following scandals and the watchdogs in the scandals:

- The Broken Trust scandal about the Bishop Estate controversy of the 1980s and 1990s.

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Mr. Roth indicated that the scandal involved years of obvious trust abuse and a strong appearance of corruption in terms of using the power obtained by virtue of a government position and using that power for selfish or special interests. The presentation emphasized the absence of accountability and lack of watchdogs. Years after the scandal, the American Judicature Society formed the Committee on Judicial Independence and Accountability.

- The Mailbox Conspiracy case regarding the corruption of power and abuse of public office by the former Honolulu Police Chief and former Honolulu Deputy Prosecutor.

The presentation included the work of the Federal Public Defender and the absence of watchdogs.

In response to whether a legislative package of recommendations by the Commission would be a step in restoring public trust, Mr. Roth responded that he would assume that the package would include really good recommendations and that he would probably support most of the package. However, the problem is that if there's too much in the package, it becomes easy to say that everything can't be done at once and that the political in-crowd will do everything they can to prevent what Mr. Roth described. Mr. Roth emphasized the need for a "truth commission" to find out why the rules of accountability and transparency did not work in the past and why did the watchdogs did not do their jobs.

- d. Nikos Leverenz, Advisory Board Member of Common Cause Hawaii and Grants and Advancement Manager of the Hawaii Health & Harm Reduction Center, prepared a [summary](#) of reported problems of public departments in complying with the Sunshine Law and the Open Records Law but did not present it at the meeting. The summary is posted on the Commission's webpage.

V. Other matters

Commissioner Harris announced upcoming meetings of the Commission and the topics to for discussion at those meetings. Commission meetings are scheduled for:

- Wednesday, August 17, 2022, at 2:00 p.m., which will focus on the legislative process to include addressing issues with conference committees and the power of committee chairs. The intent may be to invite a small but diverse group of legislators to speak on the legislative process; and
- Wednesday, August 24, 2022, at 2:00 p.m. to catch up on proposals on different topics and discuss upcoming meetings, legislation, and next steps.

The meeting adjourned at 4:08 p.m.