



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

Resolution of Charge **2016-6**

(Charge No. 2015-Cg-8)

Paul Nash, Community College Professor
Misuse of Official Position; Conflict of Interest

November 21, 2016

On July 22, 2015, the Hawaii State Ethics Commission (“Commission”) issued a Charge against Respondent Paul Nash (“Respondent Nash”), a Professor of Art in Ceramics at Windward Community College (“WCC”), for alleged violations of the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”).

The Charge arose from Respondent Nash’s actions as the instructor of a WCC noncredit ceramics class and the faculty advisor for the WCC Student Ceramics Club. The Charge alleged that Respondent Nash collected student lab fees for his noncredit ceramics classes, which he used for his personal benefit and other unauthorized purposes; sold clay to his students at an inflated price; and diverted lab fees and other monies to the Student Ceramics Club for his own personal benefit and other unauthorized uses. The Charge covered the time period of 2010 up to and including 2015.¹ Respondent Nash filed an answer to the Charge, dated August 8, 2015, generally denying the allegations against him.

The Commission and Respondent Nash agreed to resolve the Charge with Respondent Nash’s payment of \$15,000 to the State of Hawaii and the publication of this Resolution of Charge. The Commission believes that the terms of the resolution are fair and in the public interest.

I. Alleged Facts

The Charge was based on the following facts obtained from the Commission’s investigation.

¹ The Commission has jurisdiction for investigating and taking appropriate action on alleged violations of the State Ethics Code in all proceedings commenced within six years of an alleged violation of the State Ethics Code by an employee. HRS section 84-31(a)(6).

Respondent Nash has been employed at WCC, a campus of the University of Hawaii System (“UH”), since the 1980s. Respondent Nash was hired by WCC as a lecturer and advanced to the position of Professor of Art in Ceramics and head of WCC’s Ceramics Program. Respondent Nash taught ceramics courses for credit in WCC’s academic program, for which he was paid a salary. He also taught a WCC noncredit ceramics class, “Play in Clay,” for which he was compensated.

In addition to teaching, Respondent Nash was responsible for maintaining the WCC Ceramics Studio, which was shared by students enrolled in ceramics credit courses and students enrolled in noncredit Play in Clay classes. WCC appropriated approximately \$3,500 annually for supplies and other necessary expenses for the WCC Ceramics Program.

During the time period relevant to the Charge, Respondent Nash had a private business through which he derived other income from art and music-related activities.

A. Play in Clay Noncredit Class

In the 1990s, Respondent Nash began teaching noncredit Play in Clay ceramics classes offered by WCC’s continuing education program.² Play in Clay was a six-week class that met twice a week in the evening. Respondent Nash taught up to eight Play in Clay classes per year. The enrollment for Play in Clay classes from 2010 through the first part of 2015 ranged from approximately 12 to 25 students per class.

From 2010 through 2014, the tuition for Play in Clay was \$140. In 2015, the tuition increased to \$160. Respondent Nash’s compensation for teaching this class was equal to fifty percent of the total tuition paid by students enrolled in Play in Clay. From 2010 through 2014, each student enrolled in Play in Clay was charged a Lab Fee of \$30. In 2015, the Lab Fee was increased to \$40. The Lab Fee and tuition amounts charged for Play in Clay were determined through discussions between the WCC administration³ and Respondent Nash. According to the WCC administration, the purpose of the Lab Fee was to purchase “consumable” materials, such as glazes for clay, to be used by the students in class.⁴

² WCC’s continuing education program is run by the WCC Office of Career and Community Education, previously known as the Office of Continuing and Career Education.

³ The Commission obtained information from the present and past directors of WCC’s continuing education program and others involved in administering and managing the program (collectively, the “WCC administration.”)

⁴ It is the Commission’s understanding that students enrolled in WCC’s credit ceramics classes were not assessed a lab fee.

B. Student Ceramics Club; Club Checking Account

In the 1980s, Respondent Nash began serving as the faculty advisor for the Student Ceramics Club. During the time period relevant to the Charge, the Student Ceramics Club was officially recognized by, and affiliated with, WCC as a student organization. The Club membership consisted of students enrolled in WCC credit ceramics courses and students enrolled in Play in Clay.

The Student Ceramics Club held a pottery sale fundraising event ("Club Pottery Sale") twice a year, which was open to the public. Students sold ceramics pieces they created in class at the Club Pottery Sale. Each student who sold a ceramic piece kept seventy percent of the proceeds for himself or herself. The remaining thirty percent of the proceeds was donated to the Club.

Based on information obtained during the Commission's investigation, it appeared that the WCC administration, in the 1980s, instructed Respondent Nash that all money collected from Student Ceramics Club sales was to be deposited into a University of Hawaii Foundation ("UH Foundation")⁵ account; that a faculty or staff person designated as the principal investigator would be responsible for the account; and that the UH Foundation would make disbursements at the instruction of the principal investigator.

However, Respondent Nash apparently did not abide by those instructions, and instead opened a bank checking account for the Student Ceramics Club, for which he had signatory authority. Respondent Nash's home address served as the mailing address for the checking account.

Respondent Nash stated that proceeds from Club Pottery Sales were deposited into the Student Ceramics Club's checking account. He said that he deposited Lab Fees and other monies he collected from his students into the Club's checking account as well. It did not appear that WCC administration officials either authorized or were aware of Respondent Nash's use of the Club's checking account as a depository for Lab Fees and other monies collected from his students.

C. Student Lab Fee

According to the WCC administration, the purpose of the Lab Fee for Play in Clay was to purchase consumable materials that the students would use in class. Respondent Nash, however, contended that the WCC administration informed him that he could use the Lab Fee "any way he wanted." Respondent Nash said he understood

⁵ It is the Commission's understanding that the UH Foundation is a private, institutionally related corporation designated as a 501(c)(3) organization by the Internal Revenue Service. The UH Foundation works exclusively for the benefit of UH, as the central fundraising organization for UH and the manager of gift accounts for the benefit of UH and UH students.

this to mean that he could keep the Lab Fees for his personal use and indicated that he had, in fact, used Lab Fees to supplement his income. Respondent Nash also stated that he reported a portion of the Lab Fees as taxable income on his business tax returns.

Respondent Nash said that he eventually decided to “donate” fifty percent of the Lab Fees to the Student Ceramics Club. He said that the other fifty percent went “to the instructor.” Respondent Nash asserted that monies that went to the Student Ceramics Club were used to make large purchases of equipment and clay for the WCC Ceramics Program, and monies that went “to the instructor” were used as “cash on hand” to make smaller purchases, such as tools and supplies, for the program.

Bank statements for the Student Ceramics Club’s checking account and receipts produced by Respondent Nash appeared to confirm that Respondent Nash used some of the Lab Fee monies for purchases relating to the WCC Ceramics Program. However, Respondent Nash did not maintain any accounting records to verify his assertions that all Lab Fee monies that he collected were used to support the WCC Ceramics Program. Respondent Nash described his own recordkeeping practices as being “as loose as possible.” He revealed that he carried cash intended for the WCC Ceramics Program in his wallet, separated from his own personal money by a wallet divider.

D. Clay Sales to Students at Inflated Price

Students who enrolled in Play in Clay were required to purchase their own clay for class. Respondent Nash informed his students that they could buy this clay from the Student Ceramics Club for \$15. The same clay was sold at the WCC Bookstore for \$10. It appeared that many of Respondent Nash’s students bought their clay at the higher price. Respondent Nash said that the \$5 markup was considered a “donation” to the Club, which he deposited into the Club’s checking account.

It did not appear that Respondent Nash was authorized by WCC to sell clay to his students at an inflated price or to use the Student Ceramics Club for that purpose. In addition, there were no records to show how he actually used the monies obtained from the markup on the clay price.

E. Respondent Nash’s Response

During the Commission’s investigation and in his answer to the Charge, Respondent Nash generally denied any improper use of Lab Fees or monies obtained from the sale of clay to his students. Respondent Nash asserted that he applied all Lab Fees and other monies he collected from his students to the WCC Ceramics Program, and did not use any of it for himself notwithstanding his initial statements indicating that he used Lab Fee monies to supplement his income.

Respondent Nash repeatedly maintained that the \$3,500 annual appropriation he received from WCC for the Ceramics Program was insufficient to run the program. He asserted that he used Lab Fee monies to purchase equipment, tools, and supplies for the WCC Ceramics Studio.⁶ Although Respondent Nash claimed that he applied all of the Lab Fees to support the WCC Ceramics Program and related art programs, he also indicated that he used some Lab Fees monies for personal use, such as buying food for himself and purchasing gas for his personal vehicle when it was used for work-related purposes.

F. Lack of WCC Administrative/Fiscal Oversight

WCC apparently did not control, supervise, or oversee Respondent Nash's collection and expenditure of Lab Fee monies. WCC advertisements for Play in Clay instructed students to pay the Lab Fee directly to the instructor, and Respondent Nash collected the Lab Fees directly from his students.⁷

Respondent Nash insisted that the WCC administration was aware of and did not question his actions with respect to the collection and use of student Lab Fees. He claimed that ever since he began teaching Play in Clay, the WCC administration gave him complete discretion to use the Lab Fees any way he wanted. However, based on the Commission's investigation, Respondent Nash's current and former WCC administrators did not seem to be aware of his practices in using the Lab Fees or selling clay to his students at a markup. Moreover, it did not appear that Respondent Nash sought or received authorization from the WCC administration to engage in those activities to help make up for any shortage in budgetary funding for the WCC Ceramics Program.

⁶ Respondent Nash explained that Lab Fee monies were used for expenses for items needing replacement on a regular basis during the semester, e.g., equipment and supplies, including sandpaper, brushes, tools, minerals to make glazes, decorating slips, lusters, china paints, underglaze colors, cone packs, kiln shelves, kiln posts, packing clay for stacking kilns, and controllers to electric kilns. He also stated that he used Lab Fee monies for running the WCC sculpture and glass studios.

⁷ Based on information obtained during the Commission's investigation, it appeared that, many years ago, perhaps in the late 1990s, the WCC administration may have issued a directive to instructors not to collect any fees, i.e., tuition or lab fees, directly from their students. Accordingly, the WCC administrative/business office reportedly sent office staff to the WCC Ceramics Studio at night to collect Lab Fees directly from Respondent Nash's Play in Clay students. However, WCC apparently did not consistently apply that policy because, later, WCC advertisements for Play in Clay instructed students to pay the Lab Fee directly to the instructor. As discussed more fully herein, however, WCC appears to have taken steps to improve its procedures regarding student lab fees.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from a declaration contained in the State Constitution, that “[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”⁸ To this end, the State Constitution directs that the legislature enact a code of ethics that applies to all appointed and elected state officers and employees. In accordance with this constitutional mandate, the legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law “so that public confidence in public servants will be preserved.”⁹ It is in this context that the Commission examines every employee’s actions.

Respondent Nash’s alleged conduct implicated three sections of the State Ethics Code: HRS section 84-13, the fair treatment law; HRS section 84-13(2), a subsection of the fair treatment law; and HRS section 84-14(a), part of the conflicts of interests law.

B. Fair Treatment Law, HRS section 84-13 (Misuse of Official Position)

The fair treatment law, HRS section 84-13, prohibits an employee from using or attempting to use his or her official position to secure unwarranted privileges, advantages, or benefits for the employee or anyone else.¹⁰

Based on the Commission’s investigation, it appeared that Respondent Nash misused his official position — as a professor, head of the WCC Ceramics Program, instructor of Play in Clay, and faculty advisor to the Student Ceramics Club — by assessing and retaining student Lab Fees for his own personal benefit and other unauthorized purposes, in violation of HRS section 84-13. It also appeared that he misused his official position by using the Club (including its checking account) as a vehicle to accept Lab Fees that he could access (through the Club’s checking account)

⁸ Hawaii State Constitution, Art. XIV.

⁹ HRS Chapter 84, Preamble.

¹⁰ HRS section 84-13 states in relevant part:

No legislator or employee shall use or attempt to use the legislator's or or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

...

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

without restriction, including for his own personal use and other unauthorized uses. Respondent Nash's sale of clay to his students at an inflated price and without authorization likewise appeared to constitute a misuse of his official position, in violation of HRS section 84-13.

Due to virtually nonexistent recordkeeping, it was impossible to account for the collection and use of all of the money Respondent Nash collected from his students in the way of Lab Fees and clay sales during the time period relevant to the Charge. This was particularly troubling given Respondent Nash's apparent belief that he had complete discretion to use the money as he saw fit. In light of Respondent Nash's own statements, it is believed that he diverted some of the money he collected from his students to himself, for personal use, in violation of HRS section 84-13.

Finally, it appeared that Respondent Nash, as the Student Ceramics Club's faculty advisor, was responsible for ensuring that the Club did not engage in unauthorized activities. Yet, his use of the Club with respect to the Lab Fees and clay sales likely violated HRS section 84-13.

C. Prohibited Compensation, HRS section 84-13(2)

HRS section 84-13(2), part of the fair treatment law, prohibits an employee from soliciting or receiving additional compensation for performing his or her official duties except as provided by law.¹¹ The information obtained during the investigation indicated that Respondent Nash assessed a Lab Fee and likely retained some of the Lab Fee monies for his own personal use. In light of this, it appeared that he violated HRS section 84-13(2) by securing an unwarranted benefit in the form of compensation that was above and beyond the compensation WCC paid him to teach Play in Clay.

D. Conflict of Interest, HRS section 84-14(a)

Respondent Nash's alleged activities also implicated the conflicts of interests law. HRS section 84-14(a) prohibits an employee from taking any official action directly affecting an undertaking in which the employee has a substantial financial interest.¹² Under the State Ethics Code, a "financial interest" includes an employment.¹³ As discussed, the Lab Fee may be viewed as additional compensation Respondent Nash

¹¹ See footnote 10.

¹² HRS section 84-14(a) states in relevant part:

No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which the employee has a substantial financial interest

¹³ HRS section 84-3.

received for teaching Play in Clay. By assessing and retaining the Lab Fee, it appeared that Respondent Nash took official action directly affecting the terms of his employment. This likely constituted a conflict of interest, in violation of HRS section 84-14(a).

E. Summary

The Commission acknowledges Respondent Nash's assertions that he has exerted significant efforts to create and sustain a well-received and popular ceramics program at WCC. Notwithstanding the success and popularity of the WCC Ceramics Program, however, his activities in that regard over the course of many years appeared to constitute a misuse of his official position and a conflict of interest under the State Ethics Code. Assuming the alleged facts in this case to be true, the Commission believed that the conduct at issue would constitute a violation of the State Ethics Code.

III. WCC Improvements to Fiscal Oversight, Management, Practices

During the Commission's investigation, it appeared that several changes occurred at WCC with respect to Play in Clay and the WCC noncredit program. The Commission was informed that WCC discontinued offering Play in Clay classes after 2015 and that the Student Ceramics Club's checking account was closed. In addition, it is the Commission's understanding that WCC ceased to recognize the Student Ceramics Club as an official WCC student organization, and that the Club was to be dissolved. The Commission also learned that a UH Foundation account was recently created to collect proceeds from pottery sales and other donations to support ceramics-related activities.

The Commission further understands that WCC has now improved its fiscal oversight, management, and practices pertaining to the WCC noncredit program, where the instructors do not collect or accept any lab fee payments directly from their students, and any lab fees are deposited directly into WCC accounts and monitored through the UH fiscal management system. The Commission also learned that instructors of noncredit classes must obtain prior approval from WCC to purchase class-related supplies. It appears that all approved purchases are made through purchase orders issued by the WCC Business Office or via a state "pCard" issued to approved pCard holders, and expenditures and other transactions are processed through the UH fiscal management system.

IV. Resolution of the Charge

This Resolution of Charge is being issued pursuant to the Commission's agreement with Respondent Nash to resolve the Charge without any further administrative proceedings. It does not constitute an admission by Respondent Nash, or a determination by the Commission, of any wrongdoing; however, if the allegations in

the Charge were found to be true, the Commission could conclude that Respondent Nash's actions violated the State Ethics Code.

The Commission believes it is reasonable, fair, and in the public interest to resolve the Charge with Respondent Nash's payment of an administrative penalty of \$15,000 to the State of Hawaii, and the Commission's publication of this Resolution of Charge. Also, pursuant to the agreement to resolve the Charge, Respondent Nash must not collect any money from his students and must comply with all UH and WCC policies and procedures pertaining to the expenditure of monies to benefit the WCC Ceramics Program and related WCC art programs.