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## HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813  
50<sup>th</sup> ANNIVERSARY 1968-2018

### **Resolution of Charge** **2018-2**

(Charge No. 2015-Cg-5)

Adult Corrections Officer's Acceptance of \$7,000 from Inmate Under his Supervision

May 17, 2018

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Respondent Kumalani Borling ("Respondent Borling") was employed by the Department of Public Safety ("DPS") as an Adult Corrections Officer ("ACO") at the Hawaii Community Correctional Center ("HCCC") on the island of Hawaii, from approximately January 2007 through January 31, 2010. On April 15, 2015, the Hawaii State Ethics Commission ("Commission") issued a Charge against Respondent Borling for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84 ("Charge"). Respondent Borling filed a Response to the Charge on June 10, 2015, essentially admitting to the allegations in the Charge.

The Commission and Respondent Borling agreed to resolve the Charge with Respondent Borling's payment of an administrative penalty of \$2,500 to the State of Hawaii; restitution of \$7,000 to a former inmate of HCCC ("Inmate"); and the publication of this Resolution of Charge document. The Commission believed that, based on the allegations detailed below, the terms of the resolution were fair and in the public interest.

#### I. Alleged Facts

The Commission conducted an investigation of Respondent Borling and issued the Charge against him for allegedly soliciting and/or accepting \$7,000 from Inmate. Respondent Borling cooperated with the Commission's staff by voluntarily participating in an interview on August 24, 2015, and by providing additional information to the Commission. The Commission's investigation revealed the following alleged facts:

A. Respondent Borling's State Position and Authority Over Inmate

Respondent Borling was an ACO at HCCC. His official duties and responsibilities included performing security and custodial duties relating to the maintenance and custody of inmates in HCCC. Respondent Borling exercised supervisory and/or general authority and control over inmates at HCCC, including Inmate.

B. Misuse of Position to Obtain Power of Attorney from Inmate

In or around November 2009, Respondent Borling and two other ACOs, ACO Kimo Kanazawa-Yee and ACO Bernie Abella,<sup>1</sup> planned to obtain money from Inmate. Respondent Borling took part in a plan to cause Inmate to execute a Power of Attorney appointing Respondent Borling as Inmate's attorney-in-fact for the purpose of making a one-time withdrawal of \$10,000 from Inmate's bank account with the intent that the money be divided and distributed between the three ACOs.

C. Soliciting and/or Accepting and/or Receiving \$4,000 from Inmate

On November 18, 2009, Inmate executed a Power of Attorney, which (1) was made effective from November 20, 2009 to December 20, 2009, (2) was witnessed by ACO Kanazawa-Yee, and (3) gave Respondent Borling power of attorney for the purpose of making a \$10,000 withdrawal from Inmate's bank account. On December 14, 2009, Respondent Borling, ACO Kanazawa-Yee, and ACO Abella drove from Hilo to the bank branch in Kailua-Kona where, using the Power of Attorney, Respondent Borling withdrew \$10,000 from Inmate's account. Respondent Borling was issued a cashier's check in his name for this amount. On December 22, 2009, Respondent Borling deposited the \$10,000 in his own bank account. Subsequently, on or about January 7, 2010, Respondent Borling gave ACO Kanazawa-Yee and ACO Abella cashier's checks, drawn on Respondent Borling's bank account, in the amount of \$3,000 each.

D. Non-disclosure of \$4,000 Gift from Inmate

Respondent Borling did not file a gifts disclosure statement with the Commission disclosing the \$4,000 that he received.

E. Soliciting and/or Accepting, and/or Receiving \$3,000 from Inmate

In or around January 2010, Respondent Borling provided Inmate with his private address. On or about January 28, 2010, Inmate directed his bank to issue a check for \$3,000 to Respondent Borling and send the check to the private address. Respondent Borling was then part of a DPS reduction in force that took effect on January 31, 2010,

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<sup>1</sup> The Commission previously resolved Charges against ACO Kanazawa-Yee (Resolution of Charge 2017-7) and ACO Abella (Resolution of Charge 2016-8).

and ceased employment with DPS on this date. On or about February 4, 2010, Respondent Borling received a check for \$3,000, drawn from Inmate's funds, and later cashed his check or caused it to be cashed.

F. Non-disclosure of \$3,000 Gift from Inmate

Respondent Borling did not file a gifts disclosure statement with the Commission disclosing the \$3,000 that he received.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the 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."<sup>2</sup> To this end, the State Constitution further 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."<sup>3</sup> It is in this context that the Commission examines every employee's actions, including the actions of Respondent Borling.

B. Application of the State Ethics Code to Respondent Borling

i. Fair Treatment Law

The State Ethics Code prohibits an employee from misusing his official position. Specifically, the "fair treatment" law, HRS section 84-13, states:

**§84-13 Fair treatment.** No . . . employee shall use or attempt to use the . . . employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others . . . .

As a state employee, Respondent Borling was required to comply with all provisions of the State Ethics Code, including the fair treatment law. Respondent

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<sup>2</sup> Hawaii State Constitution, Art. XIV.

<sup>3</sup> HRS Chapter 84, Preamble.

Borling appeared to have violated HRS section 84-13 by using his official position to obtain unwarranted personal privileges and advantages for himself by:

- (1) Planning, discussing, and/or arranging with ACO Kanazawa-Yee and ACO Abella to obtain the Power of Attorney from Inmate for Respondent Borling's personal benefit;
- (2) Soliciting, accepting, and/or receiving a monetary gift of \$4,000 from Inmate for Respondent Borling's personal benefit; and
- (3) Further soliciting, accepting, and/or receiving a monetary gift of \$3,000 from Inmate for Respondent Borling's personal benefit.

ii. Gifts Law

The State Ethics Code prohibits an employee from soliciting, accepting, or receiving a gift if it is reasonable to infer the gift is given to influence or reward the employee in the performance of his or her state duties. HRS section 84-11, the gifts law, states:

**§84-11 Gifts.** No . . . employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the . . . employee in the performance of the . . . employee's official duties or is intended as a reward for any official action on the . . . employee's part.

Respondent Borling appeared to have violated HRS section 84-11 by:

- (1) Soliciting, accepting, and/or receiving a monetary gift of \$4,000 from Inmate; and
- (2) Further soliciting, accepting, and/or receiving a monetary gift of \$3,000 from Inmate.

iii. Gifts Disclosure Law

The State Ethics Code also requires all employees who, during a one year period, receive a gift or gifts valued singularly or in the aggregate in excess of \$200 to file a gifts disclosure report with the Commission disclosing the gift or gifts. Gifts disclosure reports are due by June 30 of each year. In relevant part, HRS section 84-11.5, the gifts disclosure law, states:

**§84-11.5 Reporting of gifts.** (a) Every . . . employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

- (1) The . . . employee, or spouse or dependent child of a[n] . . . employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the . . . employee; and
- (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

Respondent Borling's employment with DPS ended on January 31, 2010, as part of a DPS reduction in force, prior to the June 30, 2010, gifts disclosure report deadline. In the Commission's view, the fact that Respondent Borling did not file a gifts disclosure statement to report the two gifts he received from Inmate was contrary to the gifts disclosure law, the purpose of which is to provide transparency regarding gifts accepted by individuals while they are employed with the State.

The State Constitution mandates the highest standards of ethical conduct by all state employees. These standards of conduct do not allow state employees to use their official positions to obtain unwarranted personal privileges or advantages, nor may they accept improper gifts. While the Commission acknowledges Respondent Borling's cooperation with its investigation, the Commission also notes that his alleged conduct is particularly disturbing given the power and authority Respondent Borling had over Inmate in this situation: ACOs maintain control over virtually every aspect of a prisoner's life, and prisoners depend upon ACOs for the basic necessities of life. The idea that an ACO would abuse this authority to take a prisoner's personal funds is incomprehensible and indefensible.

ACOs have particularly difficult (and at times dangerous) jobs that can cause both physical and emotional stress and harm, but are nevertheless expected to demonstrate the highest ethical standards in their work. Most do. The overwhelming majority of state employees, including ACOs, perform their duties with the utmost integrity. In this case, Respondent Borling's alleged conduct not only harmed Inmate, but damaged the public's trust in the many other ACOs who work hard every day to earn and keep that trust. When a state employee – particularly one entrusted with the

care and custody of another – abuses his position, and jeopardizes the public's faith in government, he will be held accountable for his actions.

III. Resolution of Charge

This Resolution of Charge document is being issued pursuant to the Commission's agreement with Respondent Borling to resolve the Charge without any further administrative proceedings.

The Commission believes it was reasonable, fair and in the public interest to resolve the Charge by issuing this Resolution of Charge, by Respondent Borling's payment of an administrative penalty of \$2,500 to the State of Hawaii, and by restitution of \$7,000 to Inmate.