



HAWAII STATE ETHICS COMMISSION

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

Resolution of Charge **2019-2**

(COMPL-C-17-00112)

Office of Hawaiian Affairs, Trustee's Alleged Violations of Confidential Information Law

April 25, 2019

The Hawaii State Ethics Commission (“Commission”) has resolved a Charge and Further Statement of Alleged Violation against Rowena Akana, Trustee, Office of Hawaiian Affairs (“OHA”), for alleged violations of the State Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

I. Facts

Respondent Akana admitted and declared, under penalty of perjury, that the following facts are true and correct:

- a) Paragraph 1.3.d of the Office of Hawaiian Affairs (“OHA”) Board of Trustees (“BOT”) Executive Policy Manual requires a trustee to obtain board approval before disclosing information from an Executive Session of the BOT.
- b) In January 2017, while an OHA Trustee, Respondent Akana disclosed confidential information from the January 3 and January 26, 2017 Executive Session meetings of the BOT regarding the BOT’s evaluation of Executive Director Kamana’opono Crabbe. Respondent Akana, in her Answer to the Further Statement of Alleged Violation, denied that, at the time of the disclosures, she believed or understood that some or all of this information was confidential or intended to be confidential.
- c) The BOT did not authorize Respondent Akana to disclose the confidential information in 2017, and Respondent Akana lacked the authority to disclose the information on her own.

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.”¹ To this end, the Hawaii 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.”² Additionally, the legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee’s actions.

B. Applicable Section of the State Ethics Code: the Confidential Information Law, HRS 84-12

The Confidential Information law, HRS § 84-12, prohibits a state employee from “disclos[ing] information which by law or practice is not available to the public and which the . . . employee acquires in the course of the . . . employee’s official duties, or use the information for the . . . employee’s personal gain or for the benefit of anyone[.]”

C. Application of the State Ethics Code to Respondent Akana

As a Trustee of OHA, Respondent Akana was a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Akana was required to comply with the State Ethics Code, including the Confidential Information law.

¹ Hawaii State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

³ HRS § 84-3.

III. Resolution of Charge

The Commission believes that, based on the facts admitted above,⁴ Respondent Akana likely violated the Confidential Information Law (HRS § 84-12).

Given the likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve this matter without further administrative action by (1) issuing this Resolution of Charge; and (2) requiring Respondent Akana to pay an administrative penalty of \$1,500.00 to the State of Hawaii. Charge number COMPL-C-17-00112 against Respondent Akana is hereby dismissed.

⁴ This Resolution of Charge does not make formal findings but relies on the facts admitted by Respondent Akana.



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RELATING TO CHARGE COMPL-C-17-00112 AGAINST ROWENA AKANA, TRUSTEE,
OFFICE OF HAWAIIAN AFFAIRS

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”), is entered into by and between Rowena Akana (“Respondent Akana” or “Respondent”) and the Hawaii State Ethics Commission (“Commission”). The Commission and Respondent Akana are referred to collectively as the “Parties.”

On June 22, 2017, the Commission issued Charge COMPL-C-17-00112 against Respondent Akana, alleging that her conduct violated the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”) – specifically, that Respondent Akana’s actions in 2012 and 2017 violated the Confidential Information Law (HRS § 84-12). Respondent Akana filed a written Answer to the Charge on August 11, 2017 and filed a First Amended Answer on December 11, 2017. On July 19, 2018, the Commission issued a Further Statement of Alleged Violation, setting forth six counts of alleged violations of the Confidential Information Law. Respondent Akana filed a written Answer to the Further Statement on August 1, 2018.

The purpose of this Agreement is to settle and resolve COMPL-C-17-00112 without further administrative proceedings. The Parties hereby agree as follows:

1. **Admitted Facts.** Respondent Akana admits and declares, under penalty of perjury, that the following facts are true and correct:
 - a) Paragraph 1.3.d of the Office of Hawaiian Affairs (“OHA”) Board of Trustees (“BOT”) Executive Policy Manual requires a trustee to obtain board approval before disclosing information from an Executive Session of the BOT.
 - b) In January 2017, while an OHA Trustee, Respondent Akana disclosed confidential information from the January 3 and January 26, 2017 Executive Session meetings of the BOT regarding the BOT’s evaluation of Executive Director Kamana’opono Crabbe. Respondent Akana, in her Answer to the Further Statement of Alleged Violation, denied that, at the time of the disclosures, she believed or understood that some or all of this information was confidential or intended to be confidential.
 - c) The BOT did not authorize Respondent Akana to disclose the confidential information in 2017, and Respondent Akana lacked the authority to disclose the information on her own.

2. **Agreement.** In light of the above admitted facts, the Parties hereby agree as follows:

- a) This agreement is solely for purposes of settling and resolving COMPL-C-17-00112 and may not be used for any other purposes, including as an admission or concession in any other proceedings or actions.
- b) Respondent Akana, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Akana was required to comply with the State Ethics Code.
- c) Respondent Akana understands and admits that her disclosure of confidential information as alleged in COMPL-C-17-00112 could constitute violations of the Confidential Information Law (HRS § 84-12). Respondent Akana understands and acknowledges that if the Charge proceeded to a contested case hearing, her actions could be punishable by an administrative penalty of up to \$1,000 for each violation of the State Ethics Code that occurred after June 22, 2017, and up to \$500.00 for each violation of the State Ethics Code that occurred prior to that date. Respondent Akana further understands and acknowledges that if the Charge proceeded to a contested case hearing, and if the Admitted Facts were proven to be true at the hearing, the Commission could render a decision, accompanied by findings of fact and conclusions of law, that Respondent Akana violated the State Ethics Code.
- d) To avoid further proceedings and resolve this matter, Respondent Akana agrees: (1) to the Commission's publication of a "Resolution of Charge" document describing the resolution of COMPL-C-17-00112; and (2) to pay an administrative penalty of \$1,500.00 to the State of Hawaii. Payment of the \$1,500.00 administrative penalty to the State of Hawaii shall be made in monthly installments of \$100.00; the first payment shall be made no later than May 1, 2019, and subsequent payments shall be due on or before the first of each month thereafter. Payments shall be made by check payable to the "State of Hawaii" and submitted to the Hawaii State Ethics Commission, 1001 Bishop St., Suite 970, Honolulu, Hawaii, 96813.
- e) The draft Resolution of Charge is attached hereto as Exhibit A and will be published – along with this Agreement – after the Parties execute this Agreement. Respondent Akana has had an opportunity to review and comment on the Resolution of Charge and: (1) approves the content of the Resolution of Charge; (2) acknowledges that the Resolution of Charge is potentially subject to further revision or action by the Commission; and (3) agrees that she has no editorial control over the contents or time of publication of that document now or anytime in the future.
- f) In consideration of Respondent Akana's agreement hereto, the Commission will terminate the proceedings against Respondent Akana regarding COMPL-C-17-

00112, with each party to bear its own attorneys' fees and costs for these proceedings.

- g) Should Respondent Akana fail to comply with the terms of this Agreement, the Commission reserves the right, at its discretion, to re-open COMPL-C-17-00112 and/or refer this matter to the Department of the Attorney General for collection proceedings for the unpaid amounts due and owing to the State of Hawaii under this Agreement. Prior to any referral for failure to make a payment, however, the Commission shall notify Respondent, via her counsel, and provide Respondent five days to cure the deficiency by paying any amounts due and owing. Failure to make timely payment in two consecutive months terminates the requirement that the Commission provide notice, and an opportunity to cure, for late payments.
- h) Given the foregoing resolution of COMPL-C-17-00112, Respondent Akana agrees to dismiss with prejudice any and all claims asserted against the Commission and Executive Director Daniel M. Gluck, in his official capacity, in Rowena Akana v. Hawaii State Ethics Commission et al., Civil No. 18-1-1019-06 JHA (hereinafter, "Akana v. HSEC"), with each party to bear its own fees and costs except as otherwise set forth herein, to the extent that those claims arise from or relate to the Commission's investigation of and action on COMPL-C-17-00112. This Agreement does not resolve those claims in Akana v. HSEC that arise from the Ethics Commission's investigation of and action on COMPL-C-15-00236, and Respondent Akana retains the right to appeal the Commission's Decision and Order in COMPL-C-15-00236 and to litigate Akana v. HSEC with respect to claims other than those arising from or relating to COMPL-C-17-00112.

3. Bar of Claims. Acceptance of the consideration stated above and execution of this Agreement is a complete and final bar to any appeal, claims, or further proceedings by Respondent Akana against the Commission or its staff regarding COMPL-17-C-00112. Respondent Akana waives her right to a contested case hearing or any further proceedings regarding COMPL-C-17-00112 and/or the Commission's actions in investigating or enforcing the Ethics Code as to Respondent in connection with COMPL-C-17-00112. Respondent Akana acknowledges that only COMPL-C-17-00112, actionable by the Commission pursuant to the State Ethics Code, HRS chapter 84, is resolved by way of this Agreement. A separate Commission proceeding, COMPL-C-15-00236, is not resolved by way of this Agreement. Respondent Akana represents that she is not aware of any conduct, other than that alleged in COMPL-C-17-00112, that could form the basis for a Charge against her under HRS § 84-12. As such, the Commission further agrees that it will not commence any additional proceedings against Respondent Akana regarding alleged wrongful disclosures of Executive Session or other confidential information that occurred during her term as an OHA Trustee ending in November 2018.

4. Representation of Comprehension of Document. The Parties represent that they have entered into this Agreement with full knowledge of the facts. The Parties execute and

deliver this Agreement having completely read its provisions, terms and agreements, and being fully informed as to its contents and effect. Each Party fully understands and voluntarily accepts this Agreement without any coercion or duress. The Parties declare, covenant and warrant that they are over the age of eighteen (18) years, that they are not suffering from any legal, mental or physical disability which would impair or disable them from executing this Agreement, and that they have the authority to enter into this Agreement. This Agreement shall be construed as if it was drafted by the Parties jointly and shall not be construed against any party regardless of which party drafted any provision hereof.

5. Execution in Counterparts. The Parties may sign this Agreement using one or more counterparts. The several executed copies together will be considered an original and will be binding on the Parties. One or more of the counterparts may be a faxed or digital copy, which shall constitute an original of this Agreement. This Agreement is effective upon approval by the Respondent and three or more Commissioners.

6. Entire Agreement. This Agreement, including exhibits, constitutes the entire agreement between the Parties concerning the resolution of COMPL-C-17-00112; supersedes all prior oral or written agreements or understandings between the Parties regarding that subject matter; and may not be modified except by written agreement of the Parties.

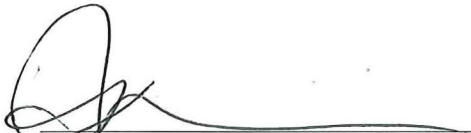
I HAVE READ THE FOREGOING AGREEMENT, I FULLY UNDERSTAND IT, AND I AGREE TO ALL ITS TERMS.

Dated April 25, 2019



Reynard D. Gaulty, Chair
On behalf of
Hawaii State Ethics Commission

Dated 4/24/19



Rowana Akana
Respondent



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