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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 Investigation** **2018-3**

(COMPL-I-17-00156)

Conflicts of Interests and Misuse of State Resources for Outside Employment Activities

August 22, 2018

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The Hawai'i State Ethics Commission ("Commission") has resolved its investigation against two state employees ("State Employees") for alleged ethics violations stemming from certain outside employment activities.<sup>1</sup>

#### I. Admitted Facts

State Employees admitted to the following facts:

In January 2017, State Employees were hired as consultants by a defendant in a private legal dispute. At the time, the defendant was being investigated by the State Employees' state agency based on allegations raised by the plaintiff in the underlying case. Because the investigation was assigned to another state employee, the State Employees were initially unaware of the pending investigation affecting their client.

After the initial contact, Employees were informed by their client about the pending investigation. To avoid a direct conflict with the pending agency matter, the State Employees postponed their outside employment until the state agency had closed its investigation.<sup>2</sup>

Between January and March 2017, Employee A participated in several client meetings during non-state hours, and later testified on behalf of the client at a court hearing, which included certain recommendations. Employee A's recommendations were directly contrary to those given by Employee A's state agency.

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<sup>1</sup> For convenience, the two State Employees shall be referred to individually as "Employee A" and "Employee B."

<sup>2</sup> There is no evidence that the State Employees took any official action directly affecting the state agency's investigation or their client.

Employee B assisted Employee A by attending several client meetings in February and March 2017. Three of these meetings occurred while Employee B was on-call for the state agency and involved use of a state vehicle.

I. 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 Hawai‘i 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>3</sup> To this end, the Hawai‘i 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>4</sup> 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. Conflict of Interests, HRS § 84-14(b)

HRS § 84-14(b) prohibits a state employee from accepting outside employment if the employee has reason to believe that he or she may be called upon to take official action affecting their prospective employer. This provision of the conflicts of interests law essentially prohibits state employees from acquiring or accepting new outside employment that would “create” a conflict of interest with their state duties.

In this case, Employee A’s actions likely violated HRS § 84-14(b). Employee A was informed about the pending investigation being conducted by the state agency and was alerted about the conflict issue. Even though the investigation was subsequently resolved, there was still a potential conflict based on the nature of Employee A’s state duties and the fact that the underlying legal dispute was still on-going.

Because there was the risk of additional complaints being reported to the state agency, there was a reasonable likelihood that Employee A would be directly involved in

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<sup>3</sup> Hawai‘i State Constitution, Art. XIV.

<sup>4</sup> HRS Chapter 84, Preamble.

taking official action affecting Employee A's own client.<sup>5</sup> As such, Employee A should not have accepted the outside consulting work.

C. Misuse of State Position to Benefit Others, HRS § 84-13

HRS § 84-13, the general fair treatment law, prohibits state employees from using their official position to grant unwarranted treatment for themselves or others. Employee A likely violated the fair treatment law by submitting a written report and testifying as a witness on behalf of the client in the underlying court proceeding.

Employee A's testimony was based on Employee A's years of experience with the state agency. Employee A also admitted that the testimony given was not based on a fair and thorough examination of the facts. Employee A's testimony was offered to counter the recommendations given by Employee A's own agency and bolster the client's arguments in the underlying court proceeding. As such, Employee A's actions did not appear to comport with the requirements of the general fair treatment law.

D. Misuse of State Resources for Private Business Purposes, HRS § 84-13(3)

HRS § 84-13(3) specifically prohibits state employees from using state time and resources for private business purposes. Employee B appears to have violated HRS § 84-13(3) by engaging in outside employment activities while Employee B was on-call for the state, and by using a state vehicle to attend client meetings.

II. Resolution of Investigation

The Commission believes that, based on the facts admitted above, Employee A likely violated HRS § 84-14(b) and HRS § 84-13, and Employee B likely violated HRS § 84-13(3).<sup>6</sup>

Based on the circumstances in this case, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by: (1) issuing this Resolution of Investigation, and (2) providing separate guidance to the state agency regarding the foregoing ethics issues.

The Commission believes that further administrative action and penalties are not warranted based on the following: State Employees fully cooperated with the Commission in its investigation, and accepted responsibility for their actions. State Employees did not actively solicit the outside work and are no longer providing such

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<sup>5</sup> Due to the specialized nature of Employee B's state duties, it was unlikely that Employee B would be required to take official action affecting the client. As such, Employee B does not appear to have a similar conflict under HRS § 84-14(b).

<sup>6</sup> This Resolution of Investigation does not make formal findings, but instead relies on the facts admitted to by the Employees.

consulting services to private individuals. The Commission also recognizes that the current shortage of third-party providers and professionals who are qualified to assist members of the public, along with the lack of clear agency guidelines governing outside employment activities for agency employees, were mitigating factors.

Accordingly, the Commission believes that it is reasonable, fair, and in the public interest to resolve this matter without further administrative action.