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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- 3**

(Charge No. COMPL-C-16-00197)

Department of Public Safety Deputy Sheriff -  
Alleged Violations of Fair Treatment Law

July 19, 2018

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The Hawaii State Ethics Commission (“Commission”) has resolved a Charge against Lieutenant Patrick Kawai (“Respondent Kawai”), an employee of the Department of Public Safety (“DPS”), for alleged violations of the State Ethics Code, Hawaii Revised Statutes (“HRS”) Chapter 84.

The Charge<sup>1</sup> alleged that Respondent Kawai violated the State Ethics Code by approving and/or securing compensation for himself and his subordinate employees for more hours than they actually worked in: (1) assisting a private party in carrying out an eviction on March 15, 2014; and (2) assisting DPS in conducting a test for deputy sheriff applicants on March 22, 2014.

The Commission and Respondent Kawai agreed to settle the Charge with Respondent Kawai’s payment of an administrative penalty of \$6,000.00 to the State of Hawaii, and the Commission’s publication of this “Resolution of Charge” document, in lieu of further administrative proceedings. The Commission believed that the terms of the settlement were fair and in the public interest.

### I. Facts

Respondent Kawai admitted the following facts:

- a. Respondent Kawai, at all times relevant herein, was employed as a deputy sheriff by DPS, a state agency, in the Sheriff Division, Hawaii Section, which included units in Hilo and Kona. At all times relevant herein, Respondent

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<sup>1</sup> The “Charge” refers collectively to: (1) Charge No. COMP-C-16-00197, issued by the Commission against Respondent Kawai on April 20, 2017 (to which he filed a written answer on May 12, 2017); and (2) a Further Statement of Alleged Violation, issued by the Commission against Respondent Kawai on February 22, 2018 (to which he filed a written answer on April 2, 2018).

- Kawai held the rank of lieutenant and was the commander and the highest ranked officer of all Sheriff Division employees on the Island of Hawaii.
- b. Respondent Kawai, at all times relevant herein, was a state employee as defined in the HRS § 84-3. As a state employee, Respondent Kawai was required to comply with the State Ethics Code.
  - c. Respondent Kawai, at all times relevant herein, resided in Hilo and worked out of the Sheriff Division's office located in Hilo.
  - d. On Saturday, March 15, 2014, Respondent Kawai and nine subordinate deputy sheriffs assisted a private process server ("Process Server") in carrying out an eviction order pertaining to a tenant in Keaau, Hawaii ("Eviction").
  - e. The Process Server, who worked for a private party ("Private Party"), had contacted the Sheriff Division, Hawaii Section for assistance with the Eviction. DPS permitted Sheriff Division personnel to be paid directly by private parties for performing such work.
  - f. DPS had a Special Off-Duty Employment Policy ("Special Duty Policy"), applicable to Sheriff Division personnel, which included an hourly compensation schedule. Respondent Kawai used the Special Duty Policy's hourly compensation schedule to determine the amount to bill the Private Party for the Eviction services.
  - g. Prior to March 15, 2014, Respondent Kawai estimated that the Eviction would require a team of ten DPS Sheriff Division personnel to perform ten hours of work.
  - h. Respondent Kawai organized and led a team of Sheriff Division personnel consisting of himself and nine subordinate deputy sheriffs (collectively, the "Eviction Team") to assist with the Eviction. The nine subordinate deputy sheriffs included a sergeant and eight lower level deputy sheriffs.
  - i. Based on the compensation schedule set forth in the Special Duty Policy, Respondent Kawai determined and arranged with the Process Server that the Private Party would be charged for the Eviction Team's services on an hourly basis, at the following rates: \$40 per hour for a lieutenant, \$35 per hour for a sergeant, and \$30 per hour for a lower level deputy sheriff.
  - j. The number of hours each member of the Eviction Team actually worked on March 15, 2014 did not exceed 3.5 hours.

- k. When the Eviction work was completed, the Process Server gave Respondent Kawai money orders to pay each member of the Eviction Team for ten hours of work; that is, \$400 for Respondent Kawai, \$350 for the sergeant, and \$300 for each lower level deputy sheriff.
- l. Respondent Kawai discussed with the Process Server whether the payments should be adjusted to lower amounts, but nevertheless accepted the money orders as issued, for himself and for each member of the Eviction Team.
- m. On Saturday, March 22, 2014, Respondent Kawai led a team of Sheriff Division employees to assist DPS in conducting a "Physical Agility Test" ("PAT") for deputy sheriff applicants, in Kailua-Kona, Hawaii. The team, which was organized by Respondent Kawai, included himself, fourteen deputy sheriffs from the Hilo unit ("Hilo Unit deputies"), and other DPS employees.
- n. DPS employees who assisted with the PAT were eligible to receive overtime compensation -- that is, compensation at a rate of one and one-half times their DPS hourly rate of pay, or compensatory time off in lieu of overtime compensation (collectively, "overtime compensation") -- based on the number of hours that they worked on March 22, 2014.
- o. Prior to the PAT, Respondent Kawai estimated that he and each of the Hilo Unit deputies would have to perform 12.0 hours of work (including travel time) to assist with the PAT.
- p. Respondent Kawai and each of the Hilo Unit deputies actually worked less than 12.0 hours on March 22, 2014.
- q. After the PAT, Respondent Kawai submitted a claim to his supervisor for approval to be paid overtime compensation for March 22, 2014, based on 12.0 hours of work. Respondent Kawai was paid for the 12.0 hours of overtime compensation that he claimed.
- r. Based on information provided by Respondent Kawai, the personnel forms submitted for the Hilo Unit deputies to claim overtime compensation reflected that each of the Hilo Unit deputies worked 12.0 hours on March 22, 2014.
- s. Respondent Kawai, as the Hilo Unit deputies' supervisor, authorized and approved overtime compensation for each of the Hilo Unit deputies for March 22, 2014, based on 12.0 hours of work. Each of the Hilo Unit deputies was paid for the 12.0 hours of overtime compensation that Respondent Kawai authorized and approved.

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 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.”<sup>3</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. The State Ethics Code

As a state employee, Respondent Kawai was (and is) required to comply with the State Ethics Code. Moreover, as the commander of all DPS Sheriff Division employees on the Island of Hawaii, it was incumbent upon him to set -- and exhibit -- high standards of ethical conduct.

HRS § 84-13, the Fair Treatment law, provides in relevant part:

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 . . . .

In other words, an employee may not use his state position to obtain unwarranted benefits for himself, nor may he use his state position to obtain unwarranted benefits for others.

With respect to the Eviction on March 15, 2014, Respondent Kawai accepted payments from the Process Server for ten hours of work by each member of the Eviction Team (comprised of himself, as the lieutenant; the sergeant; and the eight

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

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

lower-level deputy sheriffs). However, no one worked more than 3.5 hours. Respondent Kawai's actions in this situation likely violated HRS § 84-13.

With respect to the PAT on March 22, 2014, Respondent Kawai's claim for overtime compensation for himself was based on 12.0 hours of work when, in fact, he worked fewer than 12.0 hours. As a result, Respondent received overtime compensation for more time than he actually worked. Respondent's actions with respect to his claim for, and acceptance of, overtime compensation likely violated HRS § 84-13.

Respondent Kawai also authorized and approved 12.0 hours of overtime compensation for each of the fourteen subordinate Hilo Unit deputy sheriffs who participated in the PAT when, in fact, each deputy sheriff worked fewer than 12.0 hours. As a result, each deputy sheriff received overtime compensation for more time than was actually worked. Respondent's actions with respect to the authorization and approval of overtime compensation for the Hilo Unit deputy sheriffs likely violated HRS § 84-13.

Respondent Kawai was the senior ranking deputy sheriff on the island of Hawaii, and, as such, was entrusted with the responsibility of overseeing all DPS Sheriff Division employees on the island. On each of the work occasions in question, Respondent Kawai led a team of subordinate deputy sheriffs in performing the work, and knew or had reason to know that they all worked fewer hours than what was originally estimated or later claimed. Respondent Kawai's actions in accepting the overpayments for himself, and approving, authorizing, and/or accepting the overpayments for his subordinates appeared to fall short of the high ethical standards to which he was held. The State Ethics Code does not allow state employees to use their official positions to obtain unwarranted benefits for themselves or others.

### III. Conclusion

This Resolution of Charge is being published pursuant to the Commission's agreement with Respondent Kawai to resolve the Charge without any further administrative proceedings. The settlement of the Charge is neither an admission by Respondent Kawai, nor a determination by the Commission, that Respondent Kawai violated the State Ethics Code.

The Commission believed it was reasonable, fair, and in the public interest to settle the Charge by issuing this Resolution of Charge and by Respondent Kawai's payment of an administrative penalty of \$6,000.00 to the State of Hawaii.