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# HAWAII STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

## **Resolution of Charge 2024-2**

**(COMPL-C-22-00382)**

**Allison Wong Daniel, Former Commissioner,  
State Foundation on Culture and the Arts,  
Department of Accounting and General Services,  
Alleged Violations of the Conflicts of Interests Law**

**May 15, 2024**

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The Hawai'i State Ethics Commission ("Ethics Commission") hereby resolves a Charge against Allison Wong Daniel ("Respondent"), a former commissioner of the State Foundation on Culture and the Arts ("SFCA"), for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

### I. Facts

Respondent admitted and declared, under penalty of perjury, that the following facts are true and correct:<sup>1</sup>

- a) The SFCA is a state agency that is part of the Department of Accounting and General Services for administrative purposes. The SFCA is governed by a nine-member policymaking and oversight commission known as the State Foundation on Culture and the Arts Commission ("SFCA Commission").
- b) The SFCA administers the Art in Public Places Program and maintains a state-owned collection of artworks. As part of its program functions, the SFCA also administers the Works of Art Special Fund, which is designated for the following purposes: (a) costs related to the acquisition of works of arts, including any consultant or staff services required to carry out the Art in Public Places Program; (b) site modifications, display, and interpretative work necessary for the exhibition of works of art; (c) upkeep services, including maintenance, repair, and restoration of works of art; and (d) costs associated with the storing and transporting of works of art.

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<sup>1</sup> This Resolution does not make formal findings but relies on the facts admitted by Respondent. In addition, this Resolution is limited to the Respondent's actions as a former SFCA commissioner as specifically described herein.

- c) Works of art that are being considered for acquisition go through a recommendation process before the Arts in Public Places Standing Committee. Following this, the committee votes to approve or reject the acquisition. If approved, the recommendation is then presented to the full SFCA Commission for consideration and final approval.
- d) Respondent was a member of the SFCA Commission from July 2018 to May 2022, and the chair of the SFCA's Art in Public Places Standing Committee from July 1, 2021 to May 2022.
- e) As a member of a state board or commission, Respondent was, at all times relevant herein, an "employee" as defined in HRS § 84-3 and was required to comply with the State Ethics Code.
- f) In her private capacity, Respondent was, at all times relevant herein, the president of the Jean Charlot Foundation, a domestic non-profit corporation whose mission is to "perpetuate the legacy of Jean Charlot by supporting the collection, preservation, documentation, and dissemination of resources related to his life, work, and interests". Its program activities include, among other things, helping to preserve murals, drawings, and other artwork created by Jean Charlot, and monitoring the state of public art works created by Charlot.
- g) As a SFCA Commissioner and Chair of the Art in Public Places Standing Committee, Respondent was responsible for reviewing and approving proposals to acquire works of art as part of the state's collection.
- h) Respondent attended a meeting of the Art in Public Places Standing Committee on November 17, 2021 at approximately 9:15 a.m. and presented a gift recommendation from the First Hawaiian Bank of a Jean Charlot mural, "Early Cultural Exchanges".
- i) The mural was presented as a gift recommendation for the Art in Public Places Collection for the purpose of preserving a significant work of art by Jean Charlot.
- j) Respondent and the Jean Charlot Foundation sought to preserve the Jean Charlot mural and prevent it from being destroyed or disposed of, and proposed having the SFCA acquire the Jean Charlot mural as part of the state's art collection and pay for the costs of removing and relocating the mural.
- k) After presenting the gift recommendation as Chair of the Art in Public Places Standing Committee, Respondent then voted to approve the gift recommendation, which passed unanimously.

- l) Thereafter, Respondent attended a meeting of the SFCA Commission on November 17, 2021 at approximately 10:15 a.m. and presented the gift recommendation regarding the Jean Charlot mural for final consideration and approval by the full board.
- m) As a member of the SFCA Commission, Respondent then voted to approve the gift recommendation, which passed unanimously.
- n) Following approval by the SFCA Commission, the SFCA proceeded with the contract and acquisition process, which involved contracting with vendors who specialize in the removal, transportation, and storage of oversized murals.

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 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 Ethics 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.<sup>4</sup> It is in this context that the Ethics Commission examines every state employee’s actions.

B. Application of the State Ethics Code to Respondent

The State Ethics Code applies to all state elected officials, state employees, and members of state boards and commissions. For purposes of HRS Chapter 84, the term “employee” includes members of state boards and commissions.<sup>5</sup> As a member of the SFCA Commission, Respondent was subject to the requirements of the State Ethics Code, including the Conflicts of Interests law, HRS § 84-14.

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<sup>2</sup> Hawai‘i State Constitution, Art. XIV.

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

<sup>4</sup> HRS § 84-1.

<sup>5</sup> HRS § 84-3.

The Conflicts of Interests law prohibits employees from taking “any official action directly affecting . . . [a] business or other undertaking in which the employee has a substantial financial interest[.]”<sup>6</sup> The State Ethics Code defines “financial interest” as including a directorship or officership in a business.<sup>7</sup> HRS § 84-3 further defines “business” as including non-profit organizations.<sup>8</sup>

An officership or directorship interest in a private organization constitutes a substantial financial interest because of the significant fiduciary responsibility that is owed by an officer or director to that business entity.<sup>9</sup> As such, a state official who serves, with or without pay, on the Board of Directors of a private non-profit organization has a substantial financial interest in the organization for purposes of the State Ethics Code and is prohibited by the Conflicts of Interests law from taking any official action affecting that organization.

In this case, Respondent took official action that directly affected the interests of the Jean Charlot Foundation, a private nonprofit organization in which Respondent served as board president. Respondent’s official actions included presenting the gift acquisition proposal and then voting to approve the proposed acquisition – first before the Art in Public Places Standing Committee, and later again before the full SFCA Commission.

Respondent maintains that she had previously disclosed her role as President of the Jean Charlot Foundation, and that she did not personally receive any monetary compensation as a result of the transaction. Respondent further maintains that some of the costs related to the removal of the mural were paid for by her non-profit organization.

Even if these facts were true, it does not negate Respondent’s obligations under the State Ethics Code. By virtue of her position as the President of the Jean Charlot Foundation, Respondent held a financial interest as an officer and director of a private business entity and was prohibited by the Conflicts of Interests law from taking any official action that directly affected her non-profit organization. HRS § 84-14(a). In other words, Respondent’s financial interest in this case is based on her officership position and fiduciary duties to the Jean Charlot Foundation, and not on whether she received direct payment or compensation as a result of the underlying transaction.

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<sup>6</sup> HRS § 84-14(a)(1). Further, “official action” is defined as “a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” HRS § 84-3, ¶ 7.

<sup>7</sup> HRS § 84-3, ¶ 6.

<sup>8</sup> HRS § 84-3, ¶ 1.

<sup>9</sup> See, e.g., Advisory Opinion No. 300 (1977); Advisory Opinion No. 347 (1978); and Advisory Opinion No. 392 (1979).

Furthermore, mere disclosure of a conflict of interest is not sufficient for compliance with the Conflicts of Interests law. Under HRS § 84-14(a), Respondent should have disqualified or recused herself from any official involvement in the gift acquisition proposal.<sup>10</sup>

The Ethics Commission has consistently held that the purpose of the Conflicts of Interests law, HRS § 84-14(a), is to ensure that state officials perform their duties and functions in accordance with the interests of the State and the general public, and not for the benefit of their private business interests. Decisions by state boards and commissions must be done on an independent and objective basis, and free of external conflicts -- particularly where the underlying action involves the acquisition of property and the expenditure of State funds.

### III. Resolution of Charge

Respondent admits that she violated the Conflicts of Interests law, HRS § 84-14(a). The Ethics Commission notes that Respondent has not been the subject of a previous ethics charge or ethics investigation.

Given the violations of the State Ethics Code, the Ethics Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by (1) issuing this Resolution of Charge, and (2) requiring Respondent to pay an administrative penalty of \$1,000.00 to the State of Hawai'i.

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<sup>10</sup> SFCA's administrative rules similarly provide that all SFCA "Commissioners, staff, and panelists selected by the SFCA shall disqualify themselves and shall not take any official action directly affecting any personal business, project, or undertaking as specified in section 84-14, HRS." Hawai'i Administrative Rules § 3-90-3.