

Resolution of Investigation
2019-5

(COMPL-I-19-00153)

**Department of Land and Natural Resources, Division of Boating
and Ocean Recreation, Harbor Agent's Alleged Violations of
Fair Treatment Law and Conflicts of Interests Law**

November 21, 2019

The Hawai'i State Ethics Commission ("Commission") has resolved an investigation of Scott W. Pruitt, Harbor Agent, Division of Boating and Ocean Recreation ("DOBOR"), Department of Land and Natural Resources ("DLNR"), for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

I. Facts

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

- a) Respondent Pruitt, at all times relevant herein, was employed as a Harbor Agent by the Department of Land and Natural Resources ("DLNR"), a state agency, with the Division of Boating and Ocean Recreation ("DOBOR") in Hilo ("DOBOR-Hilo"). He has worked for DLNR since 2012.
- b) Respondent Pruitt, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Pruitt was required to comply with the State Ethics Code.
- c) As a Harbor Agent, Respondent Pruitt is responsible for overseeing the operations in recreational small boat harbors, ramps, and ocean waters. Among other things, he issues permits to boaters; collects revenues for registrations and permits; conducts safety inspections of boats; and works with law enforcement entities, including the DLNR Division of Conservation and Resources Enforcement, to enforce statutes, administrative rules, and other regulations governing boating and recreational water activities.

- d) Respondent Pruitt is the only Harbor Agent for three locations on the island of Hawai'i: the Wailoa Small Boat Harbor, Reed's Bay, and the ramp at Pohoiki. His supervisor, the DOBOR District Manager for the Hawai'i District, works from the District office in Kona – more than 70 miles from Respondent Pruitt's worksites around Hilo.
- e) Respondent Pruitt is also a recreational boater. He has owned multiple boats over time and has had a permanent mooring for his personal boat since 2003 – that is, since before he began work for DLNR.
- f) In early 2018, Respondent Pruitt owned one boat, moored at Reed's Bay (an off-shore mooring area). Around July 2018, Respondent Pruitt acquired a second boat ("second personal boat"), which he also moored at Reed's Bay.
- g) As a Harbor Agent, Respondent Pruitt uses DOBOR-Hilo's boat to travel to and inspect the roughly two dozen boats that are moored at Reed's Bay. At times, another DOBOR employee will accompany Respondent Pruitt on these inspections.
- h) On at least two occasions in 2018, while using DOBOR-Hilo's boat to inspect Reed's Bay and while accompanied by another DOBOR employee, Respondent Pruitt noticed that one of his personal boats appeared to be taking on water below deck. Rather than attending to this boat on his own personal time, Respondent Pruitt removed the water from his personal boat during state work time while the other DOBOR employee waited for him on the DOBOR-Hilo boat.
- i) In August 2018, Respondent Pruitt obtained a Recreational Permit for his personal boat from DOBOR, allowing him to moor his boat at the Reed's Bay Offshore Mooring Area. Although Respondent Pruitt ordinarily would be the DOBOR employee to issue such a permit to a boater, he (correctly) did not issue this permit to himself; instead, a DOBOR employee from the Kona District Office issued the permit to Respondent Pruitt.
- j) However, in January 2019, Respondent Pruitt's second personal boat – which was on a temporary mooring permit in Reed's Bay – required an inspection. In his capacity as a Harbor Agent, Respondent Pruitt inspected his own boat on or around January 11, 2019. Also in his capacity as a Harbor Agent, Respondent Pruitt completed an inspection form and reported to DOBOR that his second personal boat passed inspection.
- k) Respondent Pruitt contends that he inspected his own boat because he had short notice that an inspection was required; this short notice resulted from his second personal boat being on a temporary, rather than a

permanent, mooring, and because a new rule requiring safety checks for vessels on temporary moorings went into effect on January 1, 2019. Prior to this time, only permanently moored vessels required safety checks. Respondent Pruitt also contends that when he has advanced notice of required state action – such as an upcoming permit renewal for his permanent mooring – he arranges for another DOBOR employee from the Kona office to take the required action with respect to Respondent Pruitt’s personal boat.

- l) In his capacity as a Harbor Agent, Respondent Pruitt took other actions affecting his own personal boat. DOBOR personnel e-mailed Respondent Pruitt on multiple occasions in 2018 and 2019, asking Respondent Pruitt to verify and download information about various permittees (e.g., vessel name, permit number, permittee) – including Respondent Pruitt’s personal boat – for DOBOR’s records. Respondent Pruitt responded from his state e-mail address. Then on August 28, 2018, Respondent Pruitt – again acting in his capacity as a Harbor Agent and using his state e-mail address – e-mailed another DOBOR employee to coordinate and schedule inspections of three boats, one of which was Respondent Pruitt’s own personal boat.

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 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.”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.

¹ Hawai‘i State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Pruitt

As a DLNR employee, Respondent Pruitt is a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Pruitt is required to comply with the State Ethics Code.

HRS § 84-13(a) (the Fair Treatment Law) prohibits a state employee from using her or his state position to obtain unwarranted privileges, advantages, or benefits for the employee or others. HRS § 84-14 (the Conflicts of Interests Law) provides in relevant part that employees “shall not take any official action directly affecting . . . [a] business or other undertaking in which the employee has a substantial financial interest[.]”

The Commission investigated Respondent Pruitt’s actions and believes that Respondent Pruitt likely violated the Fair Treatment Law and/or Conflicts of Interests Law by taking official action affecting his personal boat and by using state resources, including state time, to attend to his personal boat. He should not have taken any action as a Harbor Agent affecting his personal boat; instead, he should have recused himself from the matter entirely. Similarly, he should not have used state resources to attend to his personal boat; absent an immediate threat to public health or safety (such as an imminent risk that the boat may break loose from its mooring and/or sink, thus threatening other users of Reed’s Bay, other boats, nearby reefs, etc.), he should have performed this work on his personal time and without using state resources.

III. Resolution of Investigation

The Commission believes that, based on the facts admitted above,⁴ Respondent Pruitt likely violated the Fair Treatment Law (HRS § 84-13(a)) and/or the Conflicts of Interests law (HRS § 84-14(a)).

Respondent Pruitt has not previously been the subject of a Commission charge or investigation. Respondent Pruitt cooperated fully with the Commission in its investigation, and was forthright and candid in speaking with the Commission and its staff.

Given the likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the investigation by (1) issuing this Resolution of Investigation, and (2) requiring Respondent Pruitt to pay an administrative penalty of \$2,000 to the State of Hawai‘i.

³ HRS § 84-3.

⁴ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Pruitt.