



HAWAII STATE ETHICS COMMISSION

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

Resolution of Investigation **2023-1**

(COMPL-I-21-00231)

Former Legal Clerk's Use and Disclosure of Confidential Information

February 15, 2023

The Hawai'i State Ethics Commission ("Commission") has resolved an investigation of Brandon D. Zakahi ("Respondent Zakahi"), a former legal clerk with the Department of the Attorney General, for alleged violations of the State Ethics Code, Hawai'i Revised Statutes ("HRS") chapter 84.

I. Facts

Respondent Zakahi admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) From 2012 to 2019, Respondent Zakahi was employed by the Department of the Attorney General ("ATG") as a Legal Clerk and was assigned to the Tort Litigation Division until May 2019. Respondent Zakahi transferred to a different division for several months and left the ATG in the summer of 2019.
- b) Respondent Zakahi, at all times relevant herein, was a state employee as defined in HRS § 84-3, and was required to comply with the State Ethics Code, HRS chapter 84.
- c) Between 2017 and May 2019, Respondent Zakahi provided clerical support for the deputy attorney generals representing the State of Hawai'i in *Mueller v. State of Hawai'i, et al*, Civil No. 17-00571 HG-WRP, United States District Court for the District of Hawai'i ("*Mueller*"). As part of his

¹ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Zakahi.

duties and responsibilities, Respondent Zakahi reviewed and handled confidential information related to the case.

- d) On October 28, 2021, Respondent Zakahi sent an electronic message to Plaintiff's counsel in the *Mueller* case and referenced certain confidential information that Respondent Zakahi had previously reviewed as a Legal Clerk. The information was potentially adverse to the State's defense.

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.”² 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.”³ 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. Application of the State Ethics Code to Respondent Zakahi

Respondent Zakahi is a state employee for the purposes of the State Ethics Code and is bound by the provisions of the State Ethics Code.⁴

The Confidential Information law, HRS § 84-12, prohibits a state employee from disclosing any information that is acquired in the course of the employee's official duties and which by law or practice is not available to the public. This section also prohibits a state employee from using any confidential information to benefit the employee or others.⁵

² Hawai‘i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

⁴ HRS § 84-3.

⁵ HRS § 84-12 reads in relevant part:

The Commission has previously addressed the use and disclosure of confidential state information. See, e.g., Advisory Op. No. 2013-1 at 6 (concerning investigations and regulatory information);⁶ Opinion No. 480 (1982) at 1 (involving financial information of program participants).⁷ State employees who are privy to confidential information have a duty to ensure that such information remains protected from use or disclosure. This obligation continues to exist even after the employee is no longer with the agency.

In this case, the Commission investigated Respondent Zakahi's actions, and Respondent admits that he violated the Confidentiality law for the reasons stated above.

III. Resolution of Investigation

Respondent Zakahi admits that he violated the Confidentiality law, HRS § 84-12. The Commission notes that Respondent Zakahi has fully cooperated in this investigation, and has not previously been the subject of a Commission Charge or investigation.

Given the 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 Zakahi to pay an administrative penalty of \$1,000 to the State of Hawai'i.

§84-12 Confidential Information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone; . . .

⁶ Available at <https://files.hawaii.gov/ethics/advice/AO2013-1.pdf>.

⁷ Available at <https://files.hawaii.gov/ethics/advice/AO480.pdf>.