

Appendix B – Meeting Minutes August 24, 2022

Commission to Improve Standards of Conduct

Members:

Judge Daniel R. Foley (Ret.), Chair;

Robert D. Harris, Executive Director and General Counsel of the State Ethics Commission, Vice Chair;

Kristin E. Izumi-Nitao, Executive Director of the Campaign Spending Commission;

Nikos Leverenz, Common Cause Hawaii Advisory Board Member;

Barbara C. Marumoto, Former State Representative;

Janet Mason, Legislative Committee Member, League of Women Voters of Hawaii; and

Florence T. Nakakuni, Former U.S. Attorney for the District of Hawaii.

Note: Ms. Sandy Ma, Executive Director of Common Cause Hawaii, resigned from the Commission effective June 17, 2022, and Mr. Nikos Leverenz was appointed by Speaker of the House of Representatives Scott Saiki to fill that vacancy via [memorandum](#) on the same day.

Resources:

The Commission's website, which includes related materials and information such as House Resolution No. 9 (Regular Session of 2022), the Commission's Interim Report, and meeting notices and minutes, can be found here: [Committees \(hawaii.gov\)](#)

Recordings of the Commission's public meetings may be viewed on the House of Representatives' YouTube channel found here: [Hawaii House of Representatives - YouTube](#)

The Commission may be contacted via email at standardsofconduct@capitol.hawaii.gov

Limited decision-making occurred at the meeting. Any proposals or final recommendations to be adopted by the Commission and subsequently submitted to the House of Representatives in its Final Report will be the subject of future public meetings and take into consideration input from the input.

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I. Call to order/Roll call

Chair Foley convened the meeting at 2:02 p.m. All Commissioners were present for the meeting except Commissioners Marumoto and Nakakuni, who were excused.

II. Approval of minutes

The adoption of the minutes from the August 17, 2022, meeting of the Commission was deferred to the next meeting.

III. Public testimony

The Commission received written public testimony from two individuals. In addition to any written public testimony by these individuals, oral testimony pertaining to:

- The establishment of significantly large fines against those who abuse public trust and require that the fines must be paid with their personal funds, rather than campaign funds or donations and also how corruption is created by the system that leaves corrupt individuals unchallenged; and
- The concept of creating a pono policy group, where certain members from the Executive Branch, Legislature, and Judiciary look at legislation being proposed in the Legislature, which could cut down the number of bills that get introduced.

IV. Discussion of Concepts to Improve Legislative Process

Vice Chair Harris continued the discussion on legislative process from the August 17, 2022, meeting, where he invited various legislators as guest speakers, including Representative Gene Ward who was unable to attend the August 17th meeting.

A. Representative Gene Ward, Minority Policy Leader

Representative Ward spoke of the difficulty of getting access to public testimony on legislation because it is usually not provided to the members until 10 minutes before the hearing, which does not give the members or the public enough time to read through all the testimony. Representative Ward further discussed his article on Civil Beat regarding the structure of the Legislature and how power is reserved to only a few key players. He then discussed getting rid of the practice of "voting with reservations". Representative Ward also mentioned that some testifiers are asked to limit their testimony to two minutes, which prevents the public from testifying completely in front of the committee. In general, Representative Ward opined that discussion regarding legislation is limited to certain select individuals, which leads to decisions being made behind closed doors and thus

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increases the temptation for corruption. He called for more transparency in terms of decision-making procedures and allowing the members and public more time to ask questions and testify in front of a committee.

Chair Foley asked Representative Ward for his position on term limits, which Representative Ward replied that even with his 12-term experience, he introduced legislation calling for term limits to prevent the status quo. Representative Ward also mentioned that bills introduced by request should note who is requesting the legislation. He further mentioned that a full-time legislature is not a good suggestion as the Legislature already introduces roughly 3,000, even as a part-time Legislature.

Vice Chair Harris asked Representative Ward about the suggestion of having a full-time Legislature to prevent legislators from having other jobs that may influence their official actions. Representative Ward responded that if the Legislature went to full-time, many may ask for a higher pay. Instead Representative Ward suggested doing a pilot project to extend the Regular Session a certain number of days.

Commissioner Mason asked Representative Ward how compliance would work in terms of changes in legislative rules since legislative rules do not have the force of law. Representative Ward responded if the Commission recommended changes to be made to legislative rules and there was no compliance, the backlash from the public could act as a means of enforcement.

Commissioner Leverenz asked Representative Ward three questions pertaining to:

- Having a checklist or specifying why a piece of legislation is deferred;
- Requiring at least one hearing in the opposite chamber of any legislation that passes out of one chamber; and
- Identifying who the sponsor of a bill that is introduced by request.

Representative Ward responded that having a check list may not be transparent enough and instead members of a committee should be allowed to vote to defer the measure or not. He then answered that the bicameral system works as a checks and balance for each chamber and most times, companion legislation is introduced in both chambers. Finally, Representative Ward thinks outside sponsors of a bill that is being introduced by request should be noted.

Commissioner Mason asked Representative Ward for clarification regarding a suggestion that a committee would first vote on a piece of legislation and then the chair would make a recommendation. Representative Ward clarified that the chair would make a recommendation and then the committee would vote, whether it is to defer or pass out a piece of legislation, as the current practice is to only vote on a piece of legislation to pass it out but the authority to defer legislation is reserved entirely to the chair. Representative Ward further clarified that he does not believe that all bills should be heard as there should be a way to sort through the number of bills that get introduced to be more efficient.

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B. PowerPoint Presentation by Vice Chair Harris

In continuation of items that were deferred from the August 17 meeting, Vice Chair Harris facilitated a PowerPoint presentation to discuss concepts that the Commission received from public input that the Commission can use to make its recommendations on the following topics:

- Fair Consideration of Bills:
 - Death by Referral: Referral process of bills may be more subjective than fair. One proposal is to look at the legislative rules and lay out the referral process and create some level of objectivity. Establishing a group, rather than an individual, who makes the referrals may address this subjectivity. Vice Chair Harris noted that the referral process is very fast and there exists an active process for re-referrals so it would be prudent for the Commission to learn more about the re-referral process. To this, Chair Foley mentioned the difficulty of triple referrals due to the time constraints of the Legislature. Commissioner Mason discussed how non-fiscal measures are often referred to the Finance Committee, even though there is no fiscal implications and views this as more of a gatekeeping method.
 - Power of the Chair: Options to ensure fair consideration:
 - Hearings for all bills introduced.
 - Pros: Reduce authority of chairs, greater transparency, and allowing all bill ideas to be heard;
 - Cons: Time consuming, provides more power to lobbyists, and sloppy decision-making.
 - Eliminating the chair's authority to defer bills.
 - Pros: Reduce potential of corruption and greater transparency;
 - Cons: Politically challenging, may reduce the number of bills heard, and greater number of potentially "bad" bills passing.
 - Term limits for chair positions
 - Pros: Prevent one single person from dominating that subject matter and more ideas may be heard;
 - Cons: Lose of subject matter expertise and potential of increasing power of lobbyists.

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- Rule Proposals:
 - Lower the voting threshold to recall a bill that has been deferred by a chair; or
 - Reduce the number of committee members necessary to require hearing a bill.
- Discussion:
 - Chair Foley: Internal deadlines of the Legislature proves difficult to hear all bills introduced. Chair should have the power to schedule hearings on bills, but members of the committee should be able to overrule the chair to either hear a bill or vote on a bill. That number will need to be determined.
 - Vice Chair Harris: The intent is to make it easier for the members to overrule a chair and make it easier for a recall for the members and to create a more transparent process, such as chairs specifying the reasons for deferral.
- Transparency and Public Access:
 - Remote Video/Access:
 - Support continuing remote/video access to public hearing. Vice Chair Harris recognized the significant improvements made to public access to offer public testimony and watching hearing remotely;
 - Loosen strict written testimony requirements for remote participation: Vice Chair Harris noted that sometimes if people did not submit written testimony, they would not be allowed to testify orally, and this rule should be changed to allow anyone to testify orally.
 - Access to Bill Drafts:
 - Require public access to all bill drafts submitted to the Legislature.
 - Main concern is conference committee when a stakeholder submits a draft to the chairs and the public has no way of seeing the draft, even though this is what the chairs may agree upon, and no one will have time to point out potentially errors or faults of the draft.
 - Note author of any bill draft.
 - Require all by request bills to note who is requesting the bill.

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- Discussion:
 - Chair Foley: Current process of showing the changes made to a measure, which is shown in the committee reports, is sufficient as it explains the decision of the committees and still has to go through the legislative process. Chair Foley is for either eliminating the option to introduce a measure by request or requiring the name of the requestor.
 - Commissioner Mason: Attention needs to be paid to drafts of the conference committee because it is under a tight time schedule and public does not always see all the drafts. Conference process is very different from the normal lead up to conference where the public has at least 48 hours to review the draft.
 - Vice Chair Harris: Intent of these proposals is to target any draft that is submitted to the Legislature for consideration. For example, if a lobbyist hands a draft to a legislator, that should be submitted for public review.
 - Chair Foley: Questioned how this proposal would work with the State budget because it has many drafts submitted to the legislature.
 - Commissioner Mason: Potential carveout for appropriation bills. If members of the public and lobbyists are submitting proposals, it should be made available to the public.
 - Chair Foley: Requested that Vice Chair Harris come up with language regarding this proposal.
 - Commissioner Leverenz: It may be prudent to have advocates submit their budget line items to the Ethics Commission as a disclosure requirement.
- Access to Public Testimony:
 - Make public testimony available 24 hours before the hearing. Some challenges are the 48 hours' notice, which may require all the testimony to be submitted within 24 hours. Legislative staff also have to process all the testimony and maintain their other duties at the same time. Extension of session may partly address this problem. Or automatic posting of testimony as soon as it is submitted.
- Discussion:
 - Commissioner Leverenz: Late testimony should be made available online. Institutions owe it to the public to ensure that their testimony appears online. Personal experience shows that sometimes late testimony is not always posted online.

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- Chair Foley: Personal experience shows that late testimony is posted before the hearing, although it may not be uniform for all the committees, but there is testimony online that have the late stamp.
- Commissioner Mason: Public testimony is very valuable as it often includes data and the public rely on external testifiers to provide the data.
- Session Timing:
 - Legislative Calendar: Propose longer breaks between key decision making moments, such as requiring conference committee drafts to be posted and require a 2-day period before voting on the proposed changes. Increase the amount of recesses to keep with the 60-day constitutional requirement. Limited flexibility to change the legislative calendar aside from passing a constitutional amendment to change the start date of session, but more time during session would improve transparency and participation.
 - Discussion:
 - Chair Foley: With the newly passed law that prohibits fundraising during a legislative session, extending session is essentially barring candidates from fundraising. A longer session could potentially mean higher number of bills introduced and then more hearings.
 - Vice Chair Harris: Each subject committee has about two weeks to go through bills, but if we make it a three week period instead there would be more time to notice bills. Intent is to give the public more time to look at potential changes before it gets voted on.

V. Draft Nepotism Bill

Vice Chair Harris discussed that the intent of the draft nepotism bill is to create a bright line about the hiring and supervising of family members. There exists some restriction under Fair Treatment laws, but the draft nepotism bill gives clear direction and reduces ambiguity of hiring and supervising a family member. The intent is to not stop existing relationships that may be in place. Vice Chair Harris looked at two different states as models for this draft.

Commissioner Mason suggested to add a definition of "member of the household". She further suggested to add a restriction on performance appraisals or performance evaluation to the list of restricted actions.

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VI. Discussion of Future Meetings and Next Steps

Chair Foley mentioned that the Commission met its goals and covered all the areas that were set out in the Interim Report. The next step is for each of those areas to come up with bill drafts for consideration. The Commission will need to work together to provide either those bill drafts for recommendation or make recommendations on legislative rule changes. Commissioner Nakakuni was excused from the meeting because she was working on the bill package for the Commission's recommendations.

Vice Chair Harris asked if more discussions were necessary regarding any of the areas that were discussed in the Interim Report, for example campaign finance.

Commissioner Izumi-Nitao noted that the Campaign Spending Commission has potentially 15 bills to provide as recommendations, of which drafting has begun already.

Commissioner Izumi-Nitao mentioned that she would like to share those bills with the Campaign Spending Commission. She deferred to the Commission if they would like to come back and discuss campaign spending a bit more.

Commissioner Mason mentioned that she had not seen a list of campaign finance bills throughout the nation that Senator Rhoads mentioned at the August 17 meeting, which Commissioner Izumi-Nitao also did not see the list, either.

Commissioner Leverenz suggested to hold a public forum on super PACs and discuss how they can be regulated more or increase disclosure requirements.

Chair Foley stated that time is limited as the Commission has to submit the Final Report in three months. Considering specific bills or rule changes will not prohibit further discussion on the matter or changes, but recommendations need to start moving forward. Chair Foley asked about potential timelines for when the Commission can see and discuss draft legislation or rule changes.

Commissioner Mason noted that aside from term limits, she does not expect a lot of bills to be drafted for voting and elections area. As such, she suggested September as a potential timeline.

Commissioner Izumi-Nitao asked whether the objective is to try and consolidate the bill reviews similar to how the presentations by specialty, which Chair Foley said yes, that would be the easiest way to approach it.

Chair Foley asked the members for a timeline of when bills would be potentially available for the Commission to look at. Vice Chair Harris mentioned a four to six week timeline and Commissioner Izumi-Nitao stated October as a potential date because they are currently working on some large bills, such as a partial public funding bill. She is expecting to present bills to the Campaign Spending Commission in September, which would make her available to discuss the potential bills with this Commission in October.

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Vice Chair Harris suggested to meet once a week in October to discuss the proposals. Chair Foley then laid out that the discussions will take place from September to October, leaving the Commission with November to put the Final Report together. Chair Foley noted that he would like to draft the Final Report as the Commission is going along, similar to how the Interim Report was drafted.

Commissioner Mason suggested that the members reach a consensus on the priority of the bills as it will help convey the Commission's ideas to the public if they express what bills they view as a priority. Chair Foley mentioned that Commissioner Mason did a good job of doing that in the Interim Report and they will need to do that again. Chair Foley mentioned housekeeping bills as also being important as any bill to help an agency complete its missions is important.

In discussing scheduling, Chair Foley mentioned that he will not be available for four to six weeks, which Vice Chair Harris will then lead the meetings during that time. Chair Foley noted that Commissioner Marumoto will not be available the fourth Wednesday of each month. Vice Chair Harris suggested that the Commission take a break in September if they do not have anything they want to bring up to the Commission and instead use that time drafting the proposals and then meet every week in October. Chair Foley then suggested to meet every Wednesday, at 2:00 p.m., in October. Vice Chair Harris stated he will not be available on the second week of October, but Chair Foley will be present at that hearing. Chair Foley mentioned that if Commissioner Nakakuni is done with her draft proposals, the Commission could meet in September, which would be scheduled via e-mail and schedule it on a Wednesday at 2:00 p.m.

Commissioner Mason asked if the Commission will need to take a vote on the proposed measures as it is possible the members may not agree. Chair Foley stated that is what happened in the Interim Report and if any member disagrees, that can be noted in the Final Report. Chair Foley then discussed the importance of having differing opinions, but the Commission still needs to put forth a recommendation to the Legislature.

Commissioner Mason mentioned mandatory minimums, upon which Chair Foley discussed that as it is a controversial topic, the Commission will have to wait and see what proposals get recommended to them.

Chair Foley encouraged the members to discuss amongst themselves and everything they discuss will eventually become public information.

Vice Chair Harris suggested recognizing a theme of the Final Report to highlight various objectives of the Final Report. Chair Foley requested Vice Chair Harris and Commissioner Mason to work on the highlights and theme of the Final Report.

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VII. Other matters

The Commission's next meeting will be scheduled for October 5, 2022, at 2:00 p.m. to discuss the proposals worked on by the members. A meeting prior to October 5 may happen, and in that case the members will be notified via e-mail and a hearing notice will be posted accordingly.

The meeting adjourned at 3:45 p.m.