

**State of Hawai'i
Office of Hawaiian Affairs
560 North Nimitz Hwy.
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Special Meeting of the Board of Trustees
Wednesday, January 4, 2017, 10:00 am**

I. CALL TO ORDER

Chair Rowena M. Akana called the Office of Hawaiian Affairs Board of Trustees Meeting to order at 10:10 am. Those present were as follows:

Attendance

Trustee Rowena M. Akana, Chair (left 11:05am; returned 12:27 pm)
Trustee Leina'ala Ahu Isa, Vice Chair
Trustee Dan Ahuna
Trustee Keli'i Akina (left at 10:29 pm; returned 11:05 am)
Trustee Peter Apo

Trustee Robert K. Lindsey, Jr.
Trustee Carmen Hulu Lindsey
Trustee Colette Machado
Trustee John Waihe'e IV

Excused

-None-

Staff Present

Dr. Kamana'opono Crabbe, CEO
Robert G. Klein, Board Counsel
Lora Lee Contreras, Chief of Staff
Nathan Takeuchi, Board Secretary
Kay Watanabe
Imiola Gora-Aina
Kama Hopkins
Kauikeaolani Wailehua
Claudine Calpito
Davis Price
U'ilani Tanigawa
Lehua Itokazu
Dayna Pa
Laurene Kaluau-Kealoha
Lady Elizabeth Garrett
Alvin Akee

Crayn Akina
Paul Harleman
Maria Calderon
Makana Chai
Albert Tiberi
Derek Kauano
Hawley Iona
Kawika Riley
Lisa Victor
Mehana Hind
Miles Nishijima
Momilani Lazo
Raina Gushiken
Shirley Okamoto
Sterling Wong

Others Present

Keali'i Makekau

Haunani Apoliona

Community Concerns/Beneficiary Comments

Chair Akana said okay, before we go into an executive session, we have one speaker that has signed-up to speak. Former Trustee Apoliona.

Haunani Apoliona distributed her written testimony and with a copy of her December 15, 2016 testimony to the Board attached. She stated that recent struggles that have plagued the Board of Trustees since its reorganization have not gone unnoticed by the OHA beneficiaries and that Trustees Ahu Isa, Akina, Hulu Lindsey and Waihee are derelict in their duty of care, loyalty, and obedience as fiduciaries by selecting Trustee Akana as Chair of the Board of Trustees. She prayed that they have the courage to act, “me ka pono.”

Trustee Machado said Madame Chair?

Chair Akana said Trustee Machado.

Trustee Machado said most of you received through the email some testimony from Trustee Stender so I'd just like to distribute it to everybody now. Thank you.

Chair Akana said Trustee Ahuna.

Trustee Ahuna said thank you Madame Chair. Okay this is a letter from former Trustee Oswald Stender. Office of Hawaiian Affairs Trustees: This letter is in reference to the Office of Hawaiian Affairs' (OHA) trustees' consideration of imposing sanctions on Trustee Rowena Akana as a result of the court's decision regarding the lawsuit filed by Trustee Akana against eight of her fellow Trustees in 2013/2014 (Haunani Apoliona and I are included in this lawsuit because we were sitting trustees at the time) and the outcome of a lawsuit finding Trustee Akana breached her fiduciary duty. In its decision, the court was very clear in its articulation of Trustee Akana's breach of the Trust and of her fiduciary duty and it is now imperative that the current Trustees take responsibility to sanction Trustee Akana. The most obvious sanction would be to remove her, immediately, as Chair of the Board, in order to correct the wrong and to regain the confidence of its beneficiaries. While certain Trustees have their personal reasons for selecting her as the current board chair, it would go against their fiduciary duties to allow her to continue this role. Because of Trustee Akana's lawsuit, OHA, I'm sure, has incurred tremendous cost in terms of time and money spent in order to respond to issues and allegation raised by Trustee Akana. In addition, having to provide requested documentation by her attorneys has taken OHA's employees away from their responsibilities of working for the mission of OHA and performing their daily responsibilities. Many of the questions raised by her lawsuit and her attorneys were already addressed by the Board in board meetings; and material was routinely provided each and every Trustee. Her actions have been detrimental to the financial health of the Trust and to OHA's beneficiaries as every dollar spent on her frivolous lawsuit was a dollar taken away from OHA's programs. Her actions have been detrimental to the wellness of the organization and created an environment that has been unhealthy to each employee as morale sunk to new lows. The cost of outside counsel, I'm sure, is close to \$1 million to date. At the very least, Trustee Akana should be required to reimburse the Office of Hawaiian Affairs for all costs associated with her lawsuit. Furthermore, each Trustee should be held to the highest standard – a standard Trustee Akana failed to uphold every time she leaked confidential information for personal gain. OHA's beneficiaries, as well as its employees, deserve a leader that is trustworthy, is sound in judgment, and who possesses the highest standard of integrity. For these reasons, I implore each and every Trustee to exercise your fiduciary duty and responsibility and to have the courage and will it takes to address and act on the issues of Trustee Akana's breach of trust in the most meaningful way for the betterment of OHA's beneficiaries and for the good health of a positive working environment for each of OHA's employees. Failing to address this issue and do nothing could expose each of you to your own sanctions

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by the State Attorney General and/or the State's Ethics Commission. Oswald K. Stender, former Trustee-at-Large.

Chair Akana said thank you Trustee Ahuna. And since this has been brought up in open session, let me say to the viewers and to the people here, what was alleged as leaking confidential information was a letter from an attorney that reviewed the sale of this building and the letter had confidential on it, but nothing that was really confidential, just that the letter said that she had reviewed the sale of this building. It was part of an ethics complaint that I filed with the Ethics Commission against Trustee Apoliona for voting to buy this building when she was a board member of the Bank of Hawaii. This is the big deal of leaking confidential information. It was to protect the Trust, because as a Trustee, she violated not only the ethics law, but she violated our own policies. So they can make hay with this, but this is the crux of releasing confidential information. I want the world to know what that is. And so it wasn't I who raised this legal fees, it was this Board who tried to stop me from going to court on a Sunshine Law violation that the Board had committed. Not once, not twice, but this would be the third offense. And so, in trying to stop me from going to court on a Sunshine Law violation so that they would follow the law, they have expended this money, not me. The Board has. When they could have negotiated many, many times, they chose not to. Instead, they chose to counter-sue me and that is how this bill has run up to the fees that it has. Hiring a lawyer at \$700-plus an hour. And so this is what I have to say about this. Now I'd like to move into executive session. Trustee Akina.

Trustee Akina said thank you, Madame Chair. Thank you for giving me the floor. I would appreciate the opportunity to make a brief statement before fellow Trustees go into Executive Session. And first, I do want to say I consider it a high honor to sit here at this table to serve the Hawaiian people, to serve the public, and to serve with all of you. As the agenda states, the lawsuit in which I was involved along with a group of Native Hawaiian plaintiffs will be discussed by you. And I want to affirm that in the discussion of Akina versus the State of Hawaii, you do have every right to speak privately with attorney Klein in an attorney-client privileged conversation. So I support that and I will not be joining you during that executive session. I would like to share just some brief points with you that you may or may not be aware of. The first is in terms of the status of the case Akina versus the State of Hawaii. The plaintiffs and I, through our attorneys, voluntarily moved to have that dismissed from the court before I was sworn in. So it is a matter that has been dismissed. Now as to the question of whether the attorneys for either side are going to seek any kind of attorney fees, that would be a determination by the judge and I want you to know something that you may not know. I have taken the position with my attorneys that I am recusing myself from the plaintiffs with regards to any question of attorney fees. I am not privy to or privileged to know anything about any seeking of attorney fees by my attorneys and I just wanted you to be aware then that I have no further encumbrance with regards to this case and appreciate being able to share that with you. The other matter that I would like to do is just very briefly address some questions that have been raised by constituents of ours in community comments and by some of you Trustees. This morning I received in writing a document from Daniel Gluck, the Executive Director of the State Ethics Commission, for your consideration in executive session. I have given a copy to our Chair. I just want to read two sentences from it because they are in response to some questions that have been raised. Number one, Daniel Gluck, Executive Director of the State Ethics Commission says, "Whether Trustee Akina's status as President/CEO of Grassroot Institute, Grassroot Hawaii Action, creates a per se conflict of interest, there is no conflict of interest per se with Trustee Akina serving as President/CEO of a nonprofit organization while also serving as an elected Trustee of OHA." That's the first sentence. The second sentence that I would like to read is with regard to the lawsuit, "Again we believe that it is not necessarily a per se conflict of interest." And the full text of this has been given to the Chair should you wish to examine it during the session. With that said, again I want to repeat that I consider it such a wonderful privilege and opportunity to serve on this Board with you for the benefit of the Native Hawaiian people and I look forward to working with you and trust your judgment as you discuss my case in closed session and thank you, Madame Chair, for allowing me to say that.

Chair Akana said I want to call attention to the Board that we are moving from “A.” to “B.” with the consultation with Counsel Klein on the Akina case. So that’s what we’ll be taking out of order, okay? So we will now move into Executive Session. Trustee Ahuna.

Trustee Ahuna said I just was asking a question. Madame Chair, with all due respect, I appreciate your comments and, but right now I’m just trying to understand and find answers. I have concerns and I’ve seen things that happened to other boards, large trusts, you know, in the past, like with Kamehameha Schools and I don’t have a great understanding of it all, but what I do have is, I have a feeling that there’s things that are not aligning and with that I want to ask the question. So, what was the answer, what was the findings, the rulings? Was there any violations? Was she found in violation or was there a breach, what is the actual? What happened?

Board Counsel Klein said Trustee, you’re getting a full briefing in Executive Session and legal advice from your counsel on that case who is not me. It’s Paul Alston. I’ve been recused from that case mainly because some of the Sunshine Law violations were attributable to agendas that I wrote. So that’s why Mr. Alston is your lawyer in that case. He’s here today. You have a full and free opportunity to discuss all of those questions because they involve legal advice. We shouldn’t be discussing them here at the table.

Trustee Ahuna said thank you. I appreciate that recommendation and I would like to move to Executive Session.

Chair Akana said is there a second?

Trustee Apo said I second the motion.

Recess

Chair Akana called a one minute recess at 10:27 am and reconvened the meeting at 10:28 am.

II. EXECUTIVE SESSION

Chair Akana asked for a roll call vote:

Motion

At 10:29 am, Trustee Ahuna moved, and Trustee Apo seconded, to go into Executive Session to consider the following:

II. Executive Session

- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities regarding *Akina et al. v. State of Hawaii et al. Pursuant to HRS 92-5(a)(4).*
- A. Consultation with Paul Alston, Esq. re: questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities regarding *Akana v. Machado et al. Civil No. ICC13-1-002485. Pursuant to HRS 92-5(a)(4).*

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	1		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE PETER APO		2	X			
TRUSTEE HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE COLETTE MACHADO			X			
TRUSTEE JOHN WAIHE'E			X			
CHAIR ROWENA AKANA			X			
TOTAL VOTE COUNT			9	0	0	0
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passed with nine (9) YES votes, no (0) NO votes, no (0) abstentions, and no (0) excused.						

Trustee Akina left the meeting at 10:29pm

The Board went into Executive Session at 10:29 am.

Chair Akana left the meeting at 11:05 am during Executive Session and handed the meeting over to Vice Chair Ahu Isa before the discussion of agenda item II. A.

Board Counsel Klein also left the meeting at 11:05 am.

The Board exited Executive Session at 12:24 pm.

Chair Akana returned to the meeting in Open Session at 12:27 pm and resumed being Chair of the meeting.

Trustee Apo announced the Board took action in Executive Session to pursue mediation for agenda item II. A.

C. ANNOUNCEMENTS

There were no announcements.

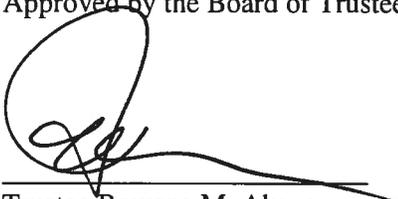
D. ADJOURNMENT

Having no further business, Chair Akana adjourned the meeting at 12:29 pm.

Respectfully Submitted,


Nathan H. Takeuchi
Board Secretary

Approved by the Board of Trustees on February 9, 2017:



Trustee Rowena M. Akana
Chair, Board of Trustees