

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF
HAWAII,

Complainant,

vs.

UNITED STATES DEPARTMENT OF
THE NAVY,

Respondent.

Docket No. 21-UST-EA-02

ENTRY ORDER CONCERNING THE
RESTATED AND SUPPLEMENTAL
DISCLOSURE OF HEARINGS
OFFICER, FILED DECEMBER 16, 2021

ENTRY ORDER CONCERNING THE RESTATED AND SUPPLEMENTAL
DISCLOSURE OF HEARINGS OFFICER, FILED DECEMBER 16, 2021

The Restated and Supplemental Disclosure of Hearings Officer, filed December 16, 2021, at 9:56 a.m. ("Written Disclosure") set forth certain factual disclosures regarding the Hearings Officer and contained the following instruction:

DOH, the Navy, Sierra Club, or BWS may file a motion to disqualify or recuse the Hearings Officer no later than by today, Thursday, December 16, 2021, at 4:00 p.m., with a statement of the legal and factual bases for disqualification or recusal of the Hearings Officer, with citation to authority. If any party or proposed intervenor has no objection to my participation as hearings officer in this proceeding, said party or proposed intervenor shall promptly file a statement to that effect.

Written Disclosure at 2.

The Written Disclosure was served on the parties and the proposed intervenors at 10:06 a.m. Complainant Department of Health ("DOH") confirmed receipt in an email time-stamped December 16, 2021, at 10:21 a.m. Proposed Intervenor Sierra Club confirmed receipt via an email time-stamped December 16, 2021, 11:41 a.m.

Respondent United States Department of the Navy (“Navy”) confirmed receipt via an email time-stamped December 16, 2021, at 11:52 a.m. Proposed Intervenor Honolulu Board of Water Supply (“BWS”) did not confirm receipt. All relevant emails are attached to this order.

Sierra Club filed its Statement in Response to Restated and Supplemental Disclosure of Hearings Officer on December 16, 2021, at 12:46 p.m., stating that it had no objection to Mr. Day’s participation as the hearings officer. DOH, the Navy, and BWS did not file any response. No request for an extension of time was made.

The Hearing Officer finds that no timely motion to disqualify or recuse was filed pursuant to the Written Disclosure.

DATED: Honolulu, Hawai‘i, December 16, 2021.

/s/ David D. Day
David D. Day
Hearings Officer

From: [Hargrove, Wade H](#)
To: [Kam, Stella M](#); [Jensen, Craig D SES USN OGC WASH DC \(USA\)](#); dhenkin@earthjustice.org; [Kylie Wager Cruz](#); [Isaac Moriwake](#); [Ella Gannon](#); [Brown, David K](#); ["jlau3@honolulu.gov"](mailto:'jlau3@honolulu.gov')
Cc: [Day, David D](#)
Subject: RE: Hearings Officer David Day's Disclosure
Date: Thursday, December 16, 2021 10:21:05 AM

Confirming receipt.

From: Kam, Stella M <Stella.M.Kam@hawaii.gov>
Sent: Thursday, December 16, 2021 10:06 AM
To: Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>; dhenkin@earthjustice.org; Kylie Wager Cruz <kwager@earthjustice.org>; Isaac Moriwake <imoriwake@earthjustice.org>; Ella Gannon <ella.gannon@morganlewis.com>; Brown, David K. <david.brown@morganlewis.com>; 'jlau3@honolulu.gov' <jlau3@honolulu.gov>
Cc: Day, David D <david.d.day@hawaii.gov>
Subject: Hearings Officer David Day's Disclosure

Please confirm receipt. Thank you!

Stella M.L. Kam

Deputy Attorney General

Administration Division

(808) 586-0618

From: [Jensen, Craig D SES USN OGC WASH DC \(USA\)](#)
To: [Kam, Stella M](#); [Hargrove, Wade H](#); dhenkin@earthjustice.org; [Kylie Wager Cruz](#); [Isaac Moriwake](#); [Ella Gannon](#); [Brown, David K](#); ["jlau3@honolulu.gov"](mailto:'jlau3@honolulu.gov')
Cc: [Day, David D](#)
Subject: [EXTERNAL] RE: Hearings Officer David Day's Disclosure
Date: Thursday, December 16, 2021 11:52:27 AM

Navy confirms

From: Kam, Stella M <Stella.M.Kam@hawaii.gov>
Sent: Thursday, December 16, 2021 3:06 PM
To: Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>; dhenkin@earthjustice.org; Kylie Wager Cruz <kwager@earthjustice.org>; Isaac Moriwake <imoriwake@earthjustice.org>; Ella Gannon <ella.gannon@morganlewis.com>; Brown, David K. <david.brown@morganlewis.com>; 'jlau3@honolulu.gov' <jlau3@honolulu.gov>
Cc: Day, David D <david.d.day@hawaii.gov>
Subject: [Non-DoD Source] Hearings Officer David Day's Disclosure

Please confirm receipt. Thank you!

Stella M.L. Kam
Deputy Attorney General
Administration Division
(808) 586-0618

From: [David Henkin](#)
To: [Kam, Stella M](#); [Hargrove, Wade H](#); craig.d.jensen.civ@us.navy.mil; [Kylie Wager Cruz](#); [Isaac Moriwake](#); [Ella Gannon](#); david.brown@morganlewis.com; jlau3@honolulu.gov
Cc: [Day, David D](#)
Subject: [EXTERNAL] RE: Hearings Officer David Day's Disclosure
Date: Thursday, December 16, 2021 11:41:20 AM

Sierra Club confirms receipt.

David Henkin
Senior Attorney
Earthjustice
850 Richards St., Suite 400
Honolulu, HI 96813
T: 808-599-2436
www.earthjustice.org

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From: Kam, Stella M <stella.m.kam@hawaii.gov>
Sent: Thursday, December 16, 2021 10:06 AM
To: wade.h.hargrove@hawaii.gov; craig.d.jensen.civ@us.navy.mil; David Henkin <dhenkin@earthjustice.org>; Kylie Wager Cruz <kwager@earthjustice.org>; Isaac Moriwake <imoriwake@earthjustice.org>; ella.gannon@morganlewis.com; david.brown@morganlewis.com; jlau3@honolulu.gov
Cc: david.d.day@hawaii.gov
Subject: Hearings Officer David Day's Disclosure

Please confirm receipt. Thank you!

Stella M.L. Kam

Deputy Attorney General

Administration Division

(808) 586-0618