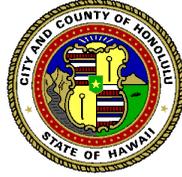


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



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EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: May 18, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Geoffrey Kam, Deputy Corporation Counsel,
Department of the Corporation Counsel
Nick Grube, Civil Beat
Timothy J. Garry, Member of the Public
Natalie Iwasa, Member of the Public

Absent: Hon. Victoria Marks (ret.), Chair
William Shanafelt, Investigator III
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

MINUTES OF THE MAY 18, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

The Ethics Commission members received a copy of the May 16, 2016 Memorandum regarding the Agenda items for the May 18, 2016 meeting. Vice Chair Lilly called the meeting to order at 11:37 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the April 20 and May 2, 2016 Meetings.

Vice Chair Lilly asked the Commission if there were any suggestions, amendments or discussion, and since there were none, asked for a motion to approve the minutes. Commissioner Yuen so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.

B. Executive Director and Legal Counsel's Administrative Report. (Written)

Vice Chair Lilly asked the EDLC if Investigator Shanafelt's last day of work was on Friday, May 20, 2016, and the EDLC confirmed.

1. Work Reports from Staff Members.

No Discussion.

2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).

No Discussion.

3. FY 2016 Budget Report.

No Discussion.

4. FY 2017 Budget Report.

No Discussion.

5. Move to Kapalama Hale.

Vice Chair Lilly asked the EDLC if there were any updates on the proposed move to Kapalama Hale. The EDLC informed the Commission that Chair Marks visited the site, but staff did not. The EDLC had inquired with the coordinator about a site visit for staff and the expected date for the move, but received no response. The EDLC informed the Commission about the lack of storage space for the filing cabinets, but after Chair Marks' informed the coordinator of the concern, her drawing of the most recent floor plan did include a separate storage room for the filing cabinets.

Before moving on to the next agenda item, Vice Chair Lilly asked that the guests present, introduce themselves and state their representation.

Mr. Timothy Garry and Ms. Natalie Iwasa introduced themselves and stated that they were representing themselves. Mr. Nick Grube introduced himself and stated that he was from Civil Beat.

Vice Chair Lilly asked if there were any testimonies that they wished to offer on any agenda items.

Timothy Garry testified that he was a member of the public and asked if any of the retired judges were allowed to hear cases for the Judiciary.

Mr. Garry clarified further and asked if the retired judges who are commissioners were able to handle matters outside of the Ethics Commission, and Vice Chair Lilly responded that his inquiry was not an issue before the Commission.

Mr. Garry further stated that the reason for his inquiry was because some of the commissioners had donated money to city politicians who they are charged with overseeing. Mr. Garry continued that he believed those commissioners who are retired judges are not allowed to make campaign donations to any politician.

Commissioner Silva responded that according to the rules members of the EC can make campaign donations, but they are not allowed to campaign

Mr. Garry then stated that according to his attorney, if a judge was on a list to be called to hear cases for the Judiciary, they would not be allowed to make campaign contributions. Vice Chair Lilly responded that he did not know if it was true or not. Mr. Garry asked Vice Chair Lilly if he could look into his inquiry, and Vice Chair Lilly responded that he would not be able to look into his hypothetical inquiry.

Mr. Garry continued further that if certain commissioners donated to city politicians, sitting on cases involving those same politicians would lead to undue influence.

Vice Chair Lilly responded that if a member of the public believed that any City employee, which includes members of the Ethics Commission, or the staff, may have committed an ethics violation, then the Ethics Commission staff, who is in charge of receiving those complaints and evaluating and investigating those complaints, and that it is the procedure for investigating cases. Mr. Garry confirmed that he did file a complaint with the Ethics Commission, and also asked the Commission to expedite his complaint with the EDLC. Mr. Garry also informed the Commission that he also filed another complaint against the current Mayor.

Vice Chair Lilly explained to Mr. Garry that the staff and the Commission take complaints very seriously and that since the Commission is the decision-making body, it does not get involved with the investigation until presented by staff. Vice Chair Lilly added that the Commission relies on the staff to conduct the investigation and make recommendations to them on any ethics complaint, which is done on a regular basis, and Mr. Garry indicated he understood.

Mr. Garry further stated that pursuant to his research, the Ethics Commission is severely under-funded, and Vice Chair Lilly agreed. Mr. Garry continued that he filed a complaint a few weeks ago and had called the office several times and received no response, so he went to the office in person to file a complaint, and that he tried calling the office to follow-up several more times with no success. Therefore, he believes that because of under-funding and lack of staff, his complaint wouldn't be handled in a timely and just manner. Mr. Garry was concerned that there

would not be enough time to have the complaint investigation completed before the upcoming election.

Mr. Garry informed the Commission that he inquired at the Attorney General's ("AG") office, about overseeing the Ethics Commission, and the AG's informed him that the City Ethics Commission was not in their jurisdiction, and that it might be Corporation Counsel (COR). Mr. Garry believes that it would be an inherent conflict of interest, since the COR represented the Mayor and therefore unable to oversee the Ethics Commission and at same time be the counsel for the Mayor in a legal dispute.

Vice Chair Lilly responded that the EC is an independent Commission with no need for supervision and that they make their independent decisions and rely upon staff to vet the voluminous amount of complaints, and that the staff is overworked and that the Commission also agrees with his concerns. Mr. Garry informed the Commission that he had spoken with many City Council people, and they conveyed that they were experiencing the same difficulties.

Mr. Garry informed the Commission that he had communicated his concerns to the Hawaii congressional delegation and that someone from the outside on the Federal level should investigate the entire situation, since there is a potential conflict with the Mayor appointing the members of a Commission, and there being no transparency in light of Commissioners making donations to the Mayor, who appointed them.

Vice Chair Lilly asked if anyone had any questions or comments, and since there were none, asked if there were more testimony.

Natalie Iwasa, another member of the public, expressed her concerns about the recent events and believes that the Commission is one of the most important agencies within the City, but currently it was not functioning well.

Ms. Iwasa stated that the people in charge are not the ones to blame, but that a good portion of such blame is because of the lack of resources and funding. Ms. Iwasa continued that it was unbelievable when she learned that the City Council still did not include the \$6,000 in the budget for training City employees for next year, which is less than a dollar per employee. Ms. Iwasa continued further that if she understood Corporation Counsel, Donna Leong, properly, she said that she spoke to Chair Marks and that it would be pushed-off another year. Ms. Iwasa asked that the Commission be aggressive in asking for the \$6K for training.

With regard to the move to Kapalama Hale, which she assumed was a "done deal," Ms. Iwasa's concern was for the public not having easy access to the EC's office and meetings.

Ms. Iwasa was also concerned about the hiring of staff, because of the manner in which things were stated in the last EC meeting. She further stated that she did a search for "help wanted" for the EC and nothing had come up. She encouraged the Commission to expedite the hiring of the vacant positions, since the hiring process takes some time.

Ms. Iwasa further stated that in her opinion the EDLC is the one who has to work with the staff on a daily basis and so the EDLC needs to make sure that the staff person is a good fit. Vice Chair Lilly stated that the EDLC will be involved in the hiring process.

Ms. Iwasa also mentioned that she saw the March Minutes and commented that it was very important that the minutes be a little more detailed for the public's benefit.

Ms. Iwasa also expressed her concern that the Commission was micro-managing staff duties and that she understands there is a lot of political pressure. She further stated that it was very important for the Commission to operate as independently as possible from political pressures. She understands this is difficult to do because of the City Council and Administration funding and oversight, which is the reason for her proposal of the Charter amendment for an Inspector General.

Ms. Iwasa concluded her testimony with regard to an executive session matter, and stated that it was in her opinion unethical for the Police Chief to sue the Ethics Commission for doing its job, pursuant to the reports she had seen, and that the Police Chief and his wife are "grasping at straws" in their EEOC complaints. In her opinion, the EDLC has done a great job, considering the resources available, and asked that the Commission consider her testimony, and thanked the Commission.

Vice Chair Lilly asked if there were any more testimonies, and the EDLC informed him that there was a written testimony that was sent to the Commission by staff, filed by Ms. Lynne Matusow, a member of the public, and Vice Chair Lilly confirmed that the Commission received her written testimony.

Vice Chair Lilly informed the Commission about his philosophy of the Commission's job, which is not to micro-manage the office, but rather they are policy-makers at a higher level. The EC should not micro-manage its staff. Commissioner Suemori commented that she thinks that the Commissioners agree with him. Vice Chair Lilly responded that the goal is not to have to be involved in the day to day duties of staff, but on the other hand there have been a lot of issues regarding budget and the Charter Commission so they need to be involved in the different layers of the organization. Vice Chair Lilly asked if the EDLC needed to add anything more to his comments, and the EDLC had none.

6. Charter Amendments Report re Ethics Laws.

Vice Chair Lilly asked the EDLC if he had any supplements, and the EDLC responded that he had some additions to the Charter Commission and the change to the gift law, which had been passed, and that out of the general commission it will go to the style committee, and would probably be one that would go on the ballot. The EDLC also reported that he testified before the Style Committee and that it will move Proposition 39 regarding the attorneys' salaries.

7. Considerations Regarding Hiring to Replace the Associate Legal Counsel and the Investigator.

No Discussion

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly informed the Commission that he handed-out a copy of a different evaluation form, rather than the one they had been using in the past. Vice Chair Lilly also offered copies to the guests in attendance.

Vice Chair Lilly explained that he took the evaluation forms from the Fire Chief, the Police Chief and one or two (2) other organizations, which were provided by staff. He further explained that after reviewing them, he tried to integrate things from those evaluation forms to fit with his prior form. The new form would be to annotate since it was in Excel and also asked that Legal Clerk Bigornia add those annotations to the draft Excel form from the EDLC. Vice Chair Lilly explained in detail about the form he was presenting, and also mentioned that the form was designed to tally the numbers provided and then the scores would be averaged.

Vice Chair Lilly further stated that at the June or July meetings if anyone had any comments on whether it should be changed or adopted, then it would be discussed or action could be taken, and asked that the staff circulate an Excel draft.

Commissioner Yuen asked how long it took to staff to prepare timesheets each day. The EDLC responded that he could only speak for his timesheet and that it wasn't a lot of time.

Commissioner Suemori commented that it was good time management. .

The EDLC stated his original concern that timesheets will not be helpful in increasing the EC's budget. The staff at Budget and Fiscal has always focused on the workload, not on whether staff is working efficiently.

The EDLC further stated that Budget and Fiscal has always been straight-forward in its agreement that the Ethics Commission needed more staff, but it would not be provided because the ethics program is not a high enough priority for the Administration. The EDLC also noted that Investigator Shanafelt received a response from his union representative explaining that the only time the city would implement timesheets is when it was "hanging someone out to dry," and that the unions do not allow it for their members.

The EDLC informed the Commission that he lists 6-10 items per day and explained in more detail. He further explained that staff was using their time as efficiently as possible before the advent of timesheets.

Commissioner Yuen asked about the staff, and the EDLC clarified that only the attorneys and investigator are required to do timesheets.

Commissioner Suemori commented that it wasn't a bad thing and that the Commission

was only trying to think about how they were going to justify having more investigators or more attorneys. The EDLC stated that staff has provided case statistics comparing other city and state agencies, and Budget and Fiscal will review the all the data. But the ethics program is not a high priority for additional funds. Timesheets will not affect the priority.

Commissioner Yuen asked that the Commission consider eliminating timesheets completely, and that in his opinion there is no value. Commissioner Silva commented that it is common knowledge that the EC is overloaded and short-staffed and that it would be difficult when hiring qualified people considering all of the extra work required and frankly would not be beneficial and therefore it should be eliminated. Vice Chair Lilly responded that the EDLC stated it didn't take too much time, and Commissioner Silva replied that it didn't matter how much time it took, it was all about trust, and the EDLC agreed. The EDLC stated that the public view is that the timesheets are inefficient and ineffective ways to deal with serious funding and resource problems at the Commission.

The EDLC also stated that he was directed to and did prepare workflow charts. He also provided information about how the attorneys and investigators determine proof of the elements of complaint cases. More recently, the Chair told him he that the EC wanted him to draft a procedural manual so that each staff member will know each step of their work duties.

The EDLC further stated that when the Commission sets priorities such as writing a procedural manual it should be done with the primary goal in mind: to keep up with the demand of requests for advice and complaints. He also expressed that the stress in the office comes from the excess workload, not the lack of a procedural manual. The EDLC asked that the Commission ask staff about the most stressful aspects of the work in the office. The EDLC understood the good intentions of the Commission, but felt that it had been misguided.

Commissioner Yuen commented that the Commission needed to be mindful that the office is a professional office, and not an assembly line, and that there were a lot of variables and uncertainties in conducting the work. The Commission would need to trust the staff and the director of the office.

Commissioner Silva stated that he also had a business and that his staff were cross-trained from one job to another. The EDLC agreed and responded that he had to make a decision on whether to hire an attorney or investigator, and decided that it would be beneficial to hire an attorney since an attorney could practice law as well as investigate. The EDLC further stated that in a small office, staff should have the right attitude, flexibility and the knowledge to be able to perform from one job to another. Commissioner Silva agreed and mentioned that since Legal Clerk Parker was on vacation, Legal Clerk Bigornia needed to fill-in and perform some of her duties, and the EDLC agreed and further stated that she was doing a good job.

Vice Chair Lilly commented about timekeeping -- since he's been in private practice for 35 years, and gets paid by the minute, and that more importantly it's about management and it being a management tool. Vice Chair Lilly further stated that he could see whether he was spending too much time on something, and receiving little in return. Commissioner Silva responded that the Ethics Commission is experiencing the same problem by spending too much

time on a few cases, while being backlogged on the many other cases.

Vice Chair Lilly asked the Commission and the EDLC if they had further discussion or comments for the open session, and since there were none, asked for a motion to enter executive session. Commissioner Silva so moved, Commissioner Yuen seconded, all were in favor and the motion passed unanimously.

[Attorney Peter B. Carlisle entered at 1:30 p.m., the end of Open Session.]

IV. EXECUTIVE SESSION SUMMARY

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the April 20 and May 2, 2016 Meetings.

Vice Chair Lilly reported that the executive session minutes of the April 20 and May 2, 2016 meetings were approved unanimously.

- B. For Discussion and Action (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a) (2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved and/or; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.):

1. Pursuant to HRS Sec. 92-5(a)(2) and HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Regarding the Procurement of an Independent Ethics Investigator to Conduct Investigations Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee Due to a Conflict of Interest; and

Vice Chair Lilly reported that the Commission had hired Barbara Petrus to conduct the investigation, and would be meeting with COR.

2. Pursuant to HRS Secs. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Related to Charges Received by the Equal Employment Opportunity Commission on April 12, 2016 against the Ethics Commission; and

Vice Chair Lilly reported that counsel reported on the status of the EEOC complaint status, and that the Commission established a PIG with Commissioner Amano and Vice Chair Lilly to review and approve, as appropriate, any draft response by COR to the EEOC.

3. Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to the Ethics Commission's position regarding a possible civil claim against the Ethics Commission.

The Commission would be sending out a public notice meeting, to be held on Friday, May 27, 2016 at 11:30 a.m.

The EDLC asked why the item could not be heard as scheduled, and Vice Chair Lilly responded that it would be heard on Friday, May 27. Commissioner Suemori responded that they needed to vacate the conference room and that there was no quorum.

V. ADJOURNMENT

The meeting adjourned at approximately 1:35 p.m.