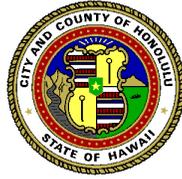


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: June 23, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Hon. Allene Suemori (ret.), Commissioner
Duane W. H. Pang, Deputy Corporation Counsel,
Department of the Corporation Counsel
Catherine Maki, Administrative Services Officer,
Department of the Corporation Counsel
Noel Ono, Assistant Director of Human Resources,
Department of Human Resources
Lila T. Tom, Human Resources Administrator,
Department of Human Resources-Classification and Pay Division
Jenny K. Tobin, Human Resources Manager III, Department of
Human Resources, Employment and Personnel Services, etc.
Gwynne W. Inamasu, Human Resources Manager II, Department
of Human Resources, Employment and Personnel Services
Gordon Y. K. Pang, Reporter, Star Advertiser
Timothy J. Garry, Member of the Public and Candidate for
Mayor, City and County of Honolulu

Absent: Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

MINUTES OF THE JUNE 23, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:05 a.m. and acknowledged all the Commissioners in attendance, as well as stated that Commissioners Riki Amano and Stanford Yuen were traveling, but that they still had quorum.

Chair Marks introduced Duane Pang of the Corporation Counsel, Lisa Parker and Krissy Bigornia of the Ethics Commission, Cathy Maki, Administrative Services Officer of Corporation Counsel, Noel Ono, Assistant Director of Human Resources, Lila Tom, Human Resources Administrator, Jenny Tobin, Human Resources Manager III, Gwynne Inamasu, Human Resources Manager II, and Gordon Pang of the Star Advertiser.

Chair Marks informed the Commission that all of the Human Resources personnel were in attendance to answer any questions.

Chair Marks also informed the Commission that written testimony from Ms. Lynne Matusow was submitted and accepted.

Chair Marks informed the Commission that Open Sessions A and B, pertaining to the hiring of full-time positions and the possibility of temporary hire positions, would be discussed in executive session.

II. OPEN SESSION

A. **Hiring for the Full Time Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to hiring for the full time positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

B. **Hiring for the Temporary Filling of the Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to temporarily filling the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the

positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks asked if there were any questions, and since there were none, asked the human resources personnel for position descriptions for the Executive Director, Associate Legal Counsel and the Investigator, as well as their SR levels, and that they were all exempt positions, and therefore not subject to civil service, and that the Commission could hire whoever they wanted.

Noel Ono informed the Chair that they had position descriptions for the Assistant Legal Counsel and Investigator, however they had none on file for the Executive Director, except for a draft. Ms. Lila Tom responded that there was a sample given at a meeting, and Deputy Duane Pang also mentioned that the Ethics Commission dictated his duties and responsibilities, and that it could change upon the new hiring, and Chair Marks acknowledged. Deputy Pang further explained that the other two (2) positions had position descriptions, since their positions required that they be in the classification system.

Vice Chair Lilly asked to see the draft, and the Chair agreed to his request. Chair Marks then stated that she needed information on the SR ratings and that she had information on current and projected salaries for the Executive Director and the Associate Legal Counsel, and also asked for those projections for the Investigator, as well as a list of benefits. Deputy Pang responded that the benefits were listed on their website, and Noel Ono informed the Commission that Jenny Tobin would provide such information to Cathy Maki. Chair Marks requested that the information be sent directly to her.

Commissioner Suemori commented that the new hires would need to know the current retirement benefits, as well, and also inquired about the parking availability. Chair Marks responded that as soon as the EC relocates, parking would be influx and that the Executive Director should get parking, but was not sure. Commissioner Suemori thought that the position would get parking and would also have to pay for the parking. Legal Clerk Parker informed the Commission that she received confirmation that she secured a parking stall and had also tried to secure parking for the three (3) positions at Kapalama Hale, but was informed that the new hires would need to apply for the parking. Commissioner Suemori assumed that parking spaces would be secured for those positions, and Legal Clerk Parker agreed and that there is usually blocked parking spaces, but that she needed to confirm with the Department of Facility Maintenance Division (DFM) Chief. Noel Ono also confirmed about the limited parking and that it should be deferred to DFM, the division that controls, sets the rules and also makes the determinations. Chair Marks asked for the name of the person at DFM and Legal Clerk Parker informed her that it was Clarice Kam. Mr. Ono also confirmed that Clarice Kam was the contact person. Commissioner Silva asked about parking for the Commissioners and the testifiers, and Noel Ono again stated that they would need to be discussed with Clarice Kam at DFM.

Chair Marks informed the Commission that it would be a good idea to form a PIG (Permitted Interaction Group), to hire for the full-time position, and if necessary, to hire on a temporary, so that the Commission, as a whole, would not need to be involved. Vice Chair Lilly responded that there was already a PIG for the Assistant Legal Counsel (ALC).

Commissioner Silva disagreed since his latest understanding was that the Executive Director (EDLC) would be hired first and that he would hire the ALC and Investigator. Vice Chair Lilly disagreed.

Chair Marks called for a motion for the creation of a PIG to investigate the hiring of full-time positions for an EDLC, ALC and an Investigator. Vice Chair Lilly so moved and Commissioner Suemori seconded, but also called for the question.

Chair Marks asked for any discussion and Commissioner Suemori explained that they had a discussion to hire on a temporary basis. Chair Marks responded that a PIG would need to be created, and Commissioner Suemori agreed.

Chair Marks asked if there were any other discussions and since they were none, reiterated that it already moved and seconded to create a PIG, all were in favor, and the motion passed unanimously.

Chair Marks asked for a motion to have Commissioners Steve Silva and Allene Suemori be the PIG for the full-time hiring. Vice Chair Lilly so moved, Commissioner Silva seconded. Commissioner Suemori asked for clarification that it would be for the full-time EDLC only, and Commissioner Silva confirmed.

Chair Marks stated that it wasn't her motion and Vice Chair Lilly understood. Chair Marks further stated that her thoughts were at some point to give the EDLC the opportunity to hire their own staff, but the Commission may want to be involved or do it on their own, so there's a need to be flexible and to not limit themselves.

Vice Chair Lilly explained that his motion was to appoint a PIG to do a search for just a full-time EDLC, and Chair Marks asked if he really wanted to limit the search, since she wanted to leave it open. Commissioner Suemori commented that it should not be for the ALC and the Investigator, and further stated that the PIG would be herself and Commissioner Silva, who would be doing the EDLC, ALC and the Investigator, but had questions on how it would relate to the temporary filling, which was the reason for her wanting to discuss the temporary filling first.

Chair Marks asked Commissioner Suemori what she wanted to say about the temporary hiring and that they all had different ideas on how the process should occur. Commissioner Suemori's understanding was that they would try and get someone who is retired, who could do the work fast and who knew what he was doing to respond to the questions or requests for advice. Vice Chair Lilly commented that they should be doing both in tandem and Commissioner Suemori wanted clarification.

Chair Marks informed the Commission that her thoughts were to get someone in as quickly as possible on a temporary basis and that they could hire on an 89-day contract or on an independent consultant basis, but asked for confirmation. Noel Ono responded that it depended on the situation and explained that they had been informed that the Commission was

looking to immediately hire someone on a temporary basis to help with the administrative matters of the Commission, until such time the Commission was ready to look for an EDLC, and thereafter the EDLC would then hire an assistant, as well as an Investigator. Mr. Ono further stated that in order to hire immediately, it would be on a personal services contract, since the process would be generated and expedited by Cathy Maki, to have someone start in a matter of days, and that the salary would be decided in further discussions.

Mr. Ono informed the Commission that an 89-day hire was more for a retiree from the City or State government, since it would not jeopardize their retirement benefits, and that hiring someone from the private sector would be done through the normal process.

Mr. Ono also explained to the Commission that since it's the end of the fiscal year, they could only hire the temporary hire until June 30 and thereafter a second contract would have to be processed in order to encumber the hire from July 1, or for the next 3 to 6 months. Mr. Ono also informed the Commission that DHR could assist them with the process and that the temporary hire from the City or State governments have a 6-month waiting period, to not jeopardize their retirement benefits, and also mentioned that the former Investigator was hired on an 89-day and independent services contracts. Mr. Ono emphasized that the hire would still need to meet with the criteria and standards by law, and that Deputy Pang could assist them.

Noel Ono informed the Commission that DHR could provide them with a list of investigators to review and also assist and advise the Commission on the recruitment process. Chair Marks responded that she needed position descriptions to create and advertise for the positions. Chair Marks also advised Commissioner Suemori that while reviewing the resumes, she could also choose someone who applied for the EDLC, which could also be a potential hire for the ALC position.

Chair Marks asked Noel Ono for the list of resumes for the Investigator, and Mr. Ono responded that they had a list that was given to the previous EDLC in 2015. Chair Marks also asked about advertising in the Bar Journal, and Cathy Maki responded that it depended on the size of the ad. Vice Chair Lilly also stated that an ad could be posted on Craigslist. Legal Clerk Parker commented that she did research on posting an ad in the Bar Journal and would provide copies of the Media Kit to the Commissioners.

Chair Marks acknowledged the presence of Mr. Garry and asked if he wanted to give testimony.

Mr. Garry testified that he wanted to express his concerns about his and another gentlemen's complaint against Mayor Caldwell and the lack of investigation and/or hearing in a timely manner, considering the upcoming election. Mr. Garry further stated and requested that the Board appoint a special investigator to look into the matters. Mr. Garry also stated his displeasure with the Board and an inept Commission with no investigator or EDLC, and if possible for the future to have a deputy executive commission to carry on if the EDLC should resign and/or for lack of staff. Mr. Garry commented on the Commission setting up a committee to hire, but didn't perceive that anyone could investigate and bring his matter to hearing before

the election and that he felt like his civil rights had been violated by the lack of an effective Commission.

Commissioner Silva responded that it wasn't easy finding replacements for the EDLC and other staff positions, and informed Mr. Garry that he should discuss his issues with Deputy Duane Pang. Mr. Garry responded that he did bring his concerns to the Attorney General's (AG's) office and received a response letter informing him that it was the responsibility of the Board to fulfill their responsibilities. Chair Marks informed Mr. Garry that the AG was a State agency and unrelated to the City. Mr. Garry responded that he thought that the State could intercede, since the City was in violation of the Charter, because they weren't doing their job, and that the Corporation Counsel would be in conflict since they represented the Mayor. Chair Marks responded that Corporation Counsel does not oversee the Commission, since they are administratively attached and that they only provide legal advice.

Vice Chair Lilly informed Mr. Garry that the Commission only meets on a duly noticed date and time, with efficient advance notice and that they convened the meeting early because of what happened at the meeting one week ago. Vice Chair Lilly assured Mr. Garry that the Commission was moving expeditiously as possible, under the circumstances, and that they were establishing a committee to look at hiring on a temporary basis, which would thereafter enable them to re-staff the EC as quickly as possible. Vice Chair Lilly continued further that they wanted to also be sure that whoever they chose would be qualified and competent, as well as someone that the Commission would feel confident to work with.

Mr. Garry asked if there was a timetable, and Chair Marks responded that it would be as soon as possible. Commissioner Suemori also informed Mr. Garry if he realized that the meeting had to be scheduled for June 23 because of the Sunshine Law and that the Commission was working expeditiously, and Mr. Garry understood.

Mr. Garry then restated his concerns by informing the Commission that the issues of the EC should not have gone as far as it did and that if the EDLC resigned for whatever reason, someone should have already been there to take over, like the managing director for the Mayor. Commissioner Suemori informed Mr. Garry that the ALC had been sitting-in for the EDLC, but she left before he did and that the EDLC did not fill the ALC position, and Mr. Garry seemed to understand. Vice Chair Lilly informed Mr. Garry that the ALC and Investigator positions would also be the back-up positions for the EDLC, and Mr. Garry was satisfied and thanked the Commission for their time.

Chair Marks directed the Commission back to the hiring process, and Noel Ono reiterated again the criteria and standards of the different hiring contracts. Mr. Ono also informed the Commission that Cathy Maki would need to research the adequate and available funding for the positions. Commissioner Silva asked if an 89-day contract could be extended, and Mr. Ono responded that it would be an 89-day work schedule with a 1-day break.

Chair Marks asked that Vice Chair Lilly restate his motion. Vice Chair Lilly stated that his motion was to create a PIG to search for an interim and a permanent, and Chair

Marks stated that the PIG would be Commissioners Suemori and Silva for the permanent fill, but that their responsibilities need to be defined.

Chair Marks moved for a motion to have the PIG, consisting of Commissioners Silva and Suemori, to have the authority to look at all vacant positions. Vice Chair Lilly seconded, and since there was no discussion, all were in favor and the motion passed unanimously.

Chair Marks moved for a motion to have her and Commissioner Amano be the PIG to look at filling any vacant positions on a temporary basis. Commissioner Suemori seconded, and since there was no discussion, all were in favor and the motion passed unanimously.

Chair Marks asked if there were any other questions, and Deputy Duane Pang asked to suggest to the Commission, with respect to time, if they would consider giving the last PIG the authority to make an offer to that person, in order to get that person on board as soon as possible, rather than requiring the PIG to come back to full commission for approval.

Commissioner Suemori moved that the temporary PIG be given the authority to extend an offer to a perspective candidate to fill that position, without coming back to the full commission for approval. Commissioner Silva seconded, and since there was no discussion, all were in favor and the motion passed unanimously.

Commissioner Marks asked for a motion to end the open session and to go into executive session. Vice Chair Lilly so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.

At 12:00 p.m., Commissioner Marks informed everyone that Vice Chair Lilly made a motion to end the executive session and to move into open session. Commissioner Suemori seconded the motion, and it was passed unanimously.

Chair Marks informed everyone that during the executive session the board unanimously gave her, the Chair, authority to extend an offer to an individual who would not be named, and that she would be making the offer very soon. She also stated that she would not say for what position.

Chair Marks asked if there was any other business before the Commission.

Noel Ono asked that for processing the position, if the person would be hired temporarily, and if they would also be starting in the month of June, or July 1, since Cathy Maki would be drawing up the contract. Chair Marks responded that they did not know when the person would be starting and that she would be in touch with Mr. Ono. Mr. Ono understood and also suggested that they could also inform Ms. Maki.

Vice Chair Lilly asked if he could be provided with a list of investigators.

III. ADJOURNMENT

Chair Marks asked for a motion to adjourn. Commissioner Suemori so moved, Vice Chair Lilly seconded, all were in favor and the motion passed unanimously.

The meeting adjourned at approximately 12:02 p.m.