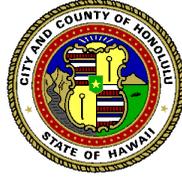


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



VICTORIA S. MARKS
CHAIR

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: July 20, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Geoffrey Kam, Deputy Corporation Counsel,
Department of the Corporation Counsel
Donna Y. L. Leong, Corporation Counsel,
Department of the Corporation Counsel
Paul S. Aoki, First Deputy, Department of the
Corporation Counsel
Robert H. Kohn, Deputy Corporation Counsel,
Department of the Corporation Counsel
Corey Lum, Civil Beat Cameraman
Natalie Iwasa, Member of the Public
Timothy J. Garry, Member of the Public and Candidate for
Mayor, City and County of Honolulu

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

MINUTES OF THE JULY 20, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:30 a.m. and asked that the record reflect that all Commissioners were present and that there was one Commissioner vacancy. Commissioner Yuen informed the Commission that there was a City Council committee hearing

the day before to approve the new Commissioner, but he still needs to be approved by the full Council.

Chair Marks asked that guests in attendance introduce themselves. Donna Leong, Corporation Counsel; Robert Kohn, Deputy Corporation Counsel; Paul Aoki, Deputy Corporation Counsel; Natalie Iwasa, Member of the Public; and Tim Garry, Member of the Public and Candidate for Mayor, introduced themselves.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the June 15, 2016 and June 23, 2016 Meetings.

Chair Marks asked for a motion to approve the open session minutes for both June 15 and June 23, 2016. Commissioner Suemori so moved and Vice-Chair Lilly seconded. Chair Marks then asked if there was any discussion, and Ms. Natalie Iwasa asked to testify.

Ms. Iwasa asked if copies of the draft minutes could be made available for the public, and that pursuant to the Sunshine Boards and Commissions, at least a draft could be made available to the public in order for them to provide any corrections that may be applicable. She hoped that in the future it would become an opportunity for the public.

Chair Marks asked if there were any questions for Ms. Iwasa or any other discussion, and since there were none, all were in favor in approving the Minutes and the motion carried unanimously.

- B. Staff's Administrative Report.

1. Work Reports from Staff Members.

There was no discussion of this agenda item.

2. Report on the Status of Move to Kapalama Hale.

Chair Marks asked Legal Clerk Lisa Parker if there was any updated status about the move. Ms. Parker responded that there was an upcoming site visit on Thursday, July 21, 2016, at 3:30 p.m. Also, there was no specific date for the move.

Commissioner Silva asked to attend the site visit and about parking at Kapalama Hale for the Commissioners. Ms. Parker stated that she was still trying to secure courtesy parking for the Commissioners. Commissioner Silva also asked about public parking.

Corporation Counsel Donna Leong informed the Commission that the Managing Director had adopted a policy about Kapalama Hale parking and also asked if the

Commission wanted her to find out if it had been memorialized, since it did contemplate free parking for the volunteer Boards and Commissioners members, and the Commission agreed and confirmed.

3. Report on Charter Amendments: Affecting Ethics Laws

Chair Marks informed the Commission that Proposal 39 was regarding the Ethics Commission staff salaries, and that the EDLC's salary would be comparable to or would not exceed the salary of the First Deputy. The salary of all other attorneys would not exceed that of the EDLC. Chair Marks stated that the amendments would likely be on the ballot.

Chair Marks continued that the EC's proposal to amend the conflicts of interest and gift laws, Proposal 153, did not pass.

Corporation Counsel Donna Leong stated that the Charter Commission passed 27 out of 41 proposals through to the Committee on Submissions. Therefore, 27 proposals are still alive, but she was not sure if the proposals would come out of the Committee for the final ballot. Ms. Leong confirmed that Proposal 39 about the Ethics Commission attorneys' salaries did pass into Committee. Also, Charter Commissioner Paul Oshiro amended the Proposal based upon a recommendation from the Department of Human Resources that the EC attorney salaries not exceed the First Deputy Corporation Counsel's salary.

Ms. Natalie Iwasa testified that her understanding was that the proposals that were passed into the Submission Committee would be on the ballot. She also stated that she was disappointed with the Chair's testimony supporting the Administration's amendment to that Proposal, which limited the salary of the EDLC. She stated that the salary should be more comparable to the salary of the State Ethics Commission Director, which is about \$138,000, whereas limiting the EDLC's salary to the level of a Deputy Director in COR was much lower.

With regard to Proposal 153, Ms. Iwasa testified that she was glad that it didn't pass because there was a phrase that mentioned that gifts would apply to only "registered" lobbyists and therefore if a lobbyist was not registered, it would be a loophole for unregistered lobbyists to not have to worry about that particular law.

Chair Marks asked if there were any questions for Ms. Iwasa and whether there were any questions regarding the Charter Amendments. Since there were none, she moved on to the next item on the Agenda.

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

Vice Chair Lilly informed the Commission that his Personnel Evaluation Form was the final draft. Commissioner Suemori requested additional revisions: (1) add "the Ethics Commission's responsibilities, training of employees, complaints and workflow" to the Vision and Mission section; (2) add everything that the Commission had been working on since she was appointed, i.e., Charter Commission, training, complaints and workflow, in the Working

with EC Members section; (3) Memos and Reports must be in writing; (4) workload reports must contain how many cases were opened, closed, and the total amount of cases; (5) include major duties and having a training plan for City employees, as well as clarification for presentation and meetings in the Work Quality and Work Quantity section.

Commissioner Silva stated that he understood that the training would be done with a video. Chair Marks stated that they may not be present if there's a video training.

Commissioner Suemori asked for clarification on the meaning of "presentations and meetings." Vice Chair Lilly responded that it meant "how it's conducted" or "how it's done." Commissioner Suemori further stated that she liked the video training and asked how it would be presented. Chair Marks responded that it was an in-person presentation or a presentation via the internet. Commissioner Suemori added that staff responsibilities, team-based cooperative work environment, organization and cases-flow must be included in the Supervising Subordinates section.

Vice Chair Lilly asked that Commissioner Suemori give her edits and additions to Legal Clerk Bigornia to be red-lined.

- D. For Discussion and Action: Report from Commission Chair Regarding the Hiring of the Acting Executive Director/Associate Legal Counsel.

Chair Marks entertained a motion to ratify and approve the hiring of Laurie Wong-Nowinski as Associate Legal Counsel, and that until a full-time Executive Director and Legal Counsel is hired, she would be the Acting Executive Director. Commissioner Amano so moved, Commissioner Silva seconded.

Vice Chair Lilly asked for clarification of Ms. Wong-Nowinski's start date, and Commissioner Silva confirmed that it was August 1, 2016. Chair Marks asked if there was any other discussion and Mr. Timothy Garry asked to testify.

Mr. Garry asked if the Commission could direct her to expedite complaint investigations involving Mayor Caldwell and the City Council since the primary election would be held on August 14 (sic) and the outcome of the investigations might have a material effect on the election. He stated that he filed his complaint on May 4, and because his complaint was not being timely investigated, he felt that his rights were being violated for lack of due process, since his complaint was against one of his opponents in the mayoral race. Mr. Garry further stated that the public should know if there's any validity to his complaints.

Commissioner Silva asked Mr. Garry if he had taken his complaints to the media, and Mr. Garry responded that he was on KGMB in the morning for an interview. Commissioner Silva explained that the Commission would not meet again until after the election and that they did not have an investigator. Mr. Garry responded that the Commission could call a special hearing before the primary election, and Commissioner Silva reiterated again that they had no investigator. Mr. Garry asked if Ms. Wong-Nowinski would be able to conduct the investigation, and Commissioner Silva disagreed. Chair Marks interjected that investigating was

part of her duties as an Associate Legal Counsel before an investigator was ever hired for the Ethics Commission.

Mr. Garry informed the Commission that he was very disappointed with them regarding the position they're in at the present, and asked for the status of the new Board Member approval. Chair Marks responded that no-one had consulted the Commission regarding the status, but she heard that the Committee approved the Resolution confirming the new Board Member and that the Resolution would be going to the full Council in their next meeting in two (2) weeks.

Vice Chair Lilly informed Mr. Garry that the staff had many other complaints in addition to his that are under investigation. The Commissioners are decision-makers and are not involved in the facts of the investigation, since they need to be impartial. Vice Chair Lilly continued that even in the best of circumstances, the possibility of having a resolution of a complaint, even assuming a charge had been brought, would take many months. It would be physically impossible for Mr. Garry's complaint, which was filed in May, to be concluded before August. In regard to Mr. Garry's disappointment of the Commission in handling his complaint, Vice Chair Lilly also explained that the person who is the subject of the complaint also has due process rights, and a trial or hearing cannot happen in three (3) months.

Mr. Garry responded that it was his understanding that there were older complaints that were stagnant. Vice Chair Lilly responded that the Commission was unaware of those complaints since they were not brought before the Commission. Mr. Garry complained about the Commission's lack of resources, and Vice Chair Lilly stated that even under the best circumstances the complaint could not be resolved within three (3) months. Mr. Garry responded that the process needed to be expedited and he could not understand why the process would take so long. Mr. Garry was disappointed that his complaint was not being worked on, and that the Commission did not have a backup plan given the circumstances leading up to the resignation of Chuck Totto.

Commissioner Suemori asked Mr. Garry if the Mayor responded to his allegations and he confirmed. Commissioner Suemori informed Mr. Garry that the Commission did not receive a copy of the response. Mr. Garry responded that the Mayor's PIO, Andrew Perreira, responded in public. Mr. Garry reiterated his frustration and also mentioned that the Commission should be more fluid.

Mr. Garry also stated that there was a public perception that there was no oversight over the largest public works project in its history to prevent waste fraud and abuse, because of a lag in state and city government ethics.

Chair Marks reiterated the motion on the floor on whether to approve and ratify the hiring of Laurie Wong-Nowinski as the Associate Legal Counsel and Acting Executive Director and asked if there was any further discussion. Hearing none, all were in favor and the motion carried unanimously.

- E. For Discussion and Action: Status Reports from PIG Regarding the Hiring for Full-Time Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks informed the Commission that Legal Clerk Parker recently received an application for the Investigator III position and would forward copies to the PIG. Vice Chair Lilly asked for an update of the applications from the Department of Human Resources, and Commissioner Suemori responded that she split the applications with Commissioner Silva and that they were screening them.

- F. For Discussion and Action: Status Reports from PIG Regarding the Filling of Temporary Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks asked if there was any further discussion regarding filling on a temporary basis for the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator. Chair Marks acknowledged Ms. Natalie Iwasa to testify.

Ms. Iwasa requested that the Commission publicize the employment information on the website and Facebook page, so people can apply. Otherwise the Commission would be missing opportunities for other qualified people to apply.

Ms. Iwasa also commented on the hiring of Laurie Wong-Nowinski as Acting Executive Director. She was concerned about Ms. Wong-Nowinski's effectiveness given the public perceptions about Ms. Wong-Nowinski that lead up to the resignation of the former EDLC since she would now be acting as the EDLC. She asked the Commission to be aware of the public perception and to monitor the public's comments. She stated that if there were no effective staff people, the ethics program would suffer.

Ms. Iwasa further stated that with regard to the Kealoha v. Totto case, what was reported on Civil Beat was only a small sliver of the entire case. She stated that the questions asked were reasonable and she didn't think anything was out of the ordinary. She requested that her comments be included on the record because of her enormous concern with what's been happening with the Commission. She thanked the Commission for allowing her to testify. Chair Marks informed Ms. Iwasa that she could read the entire Complaint at the Circuit Court, and Commissioner Suemori also stated that it would provide her with some information.

Chair Marks asked if there were any questions for Ms. Iwasa, and since there were none, she entertained a motion to go into executive session. Commissioner Yuen so moved, Commissioner Silva seconded and since there was no discussion, all were in favor and the motion carried unanimously.

III. EXECUTIVE SESSION (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; 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; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

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 June 15, 2016 and June 23, 2016 Meetings.**

The approval of the Executive Session Minutes for June 15, 2016 and June 23, 2016 was deferred to the next meeting.

B. **For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorneys Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with respect to Kealoha v. Totto, Civil No. 16-1-1166-6 GWBC, in the Circuit Court of the First Circuit, State of Hawaii.**

The Commission met with Corporation Counsel Donna Leong, First Deputy Paul Aoki and Deputy Robert Kohn, in order to discuss the Kealoha v. Totto civil action. Chair stated that the Commission also discussed the status of hiring for vacant positions, and that the Commission would hold a special executive session meeting on August 1, 2016 at 11:00 a.m., to interview potential applicants.

Commissioner Yuen moved and Commissioner Amano seconded that the Commission exit Executive Session to go into Open Session at 1:30 p.m.

IV. ADJOURNMENT

Chair Marks asked if there was anything else to discuss, and since there was no further discussion, Commissioner Amano moved to adjourn, Commissioner Silva seconded, all were in favor and the motion passed unanimously.

The meeting adjourned at approximately 1:32 p.m.