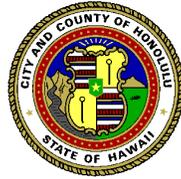


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: January 18, 2017  
Kapālama Hale  
1<sup>st</sup> Floor Conference Room

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Stephen Silva, Commissioner (holdover, term exp. 12-31-16)  
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Janice K. Yonamine, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I  
Joseph Pagkalinawan, Po‘okela Intern  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel (“COR”)  
Moana Yost, Deputy Corporation Counsel, COR

Richard F. Nakamura, Esq. (Chong, Nishimoto, Sia, Nakamoto & Goya)  
Eric Fleckles, Principal Advisor (Ridgeback Venture Group, LLC)  
Gordon Y. K. Pang, Reporter, Star Advertiser  
Dr. Kioni Dudley, Member of the Public  
Doris Dudley, Member of the Public  
Timothy J. Garry, Member of the Public

Absent: Stanford Yuen, P.E., Commissioner (holdover, term exp. 12-31-16)

## MINUTES OF THE JANUARY 18, 2017 OPEN SESSION MEETING

### I. CALL TO ORDER, PUBLIC NOTICE, QUORUM

Chair Marks called the meeting to order at 11:34 a.m. Chair Marks announced that there were members of the public present and asked if they had signed-in.

### II. NEW BUSINESS

#### A. Chair's Report

##### 1. Announcements, Introductions, and Correspondence

None.

##### 2. For Action: Approval of Open Session Minutes of December 21, 2016.

**Chair Marks requested a motion to approve the Open Session Minutes of the December 21, 2016 meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Silva, and unanimously carried to approve the Open Session Minutes of the December 21, 2016 meeting.**

##### 3. For Action: Approval of the Executive Session Minutes of December 21, 2016.

**Chair Marks requested a motion to approve the Executive Session Minutes of the December 21, 2016 meeting. It was moved by Commissioner Adler, seconded by Commissioner Suemori, and unanimously carried to approve the Executive Session Minutes of the December 21, 2016 meeting.**

#### B. Executive Director and Legal Counsel's Report

##### 1. Staff Work Reports Summary

The EDLC welcomed the Commission to its first meeting at Kapālama Hale. The EDLC cautioned the Commission about the uneven ground and ongoing construction when going to the restrooms.

The EDLC informed the Commission that Satellite City Hall and Driver Licensing were located on the parking lot side of the building and that HPD's Career Center and Psychologist office, Department of Community Services, Customer Services Department, Chinatown Gateway, and Emergency Services' Health Services in Iwilei, would eventually be moving to Kapālama Hale.

The EDLC introduced Po‘okela Fellow Joseph Pagkalinawan to the Commission and stated that he would be working with EC staff from January through July, on a part-time basis. Mr. Pagkalinawan is a political science major at the University of Hawai‘i at Mānoa. He previously interned for Sen. Keith-Agaran. The EDLC further stated that Joseph requested to work with the Ethics Commission and he plans on attending law school.

Chair Marks thanked Mr. Pagkalinawan for volunteering. The EDLC added that Mr. Pagkalinawan would be working on Wednesday afternoons and all day on Fridays.

Commissioner Amano arrived at 11:38 a.m.

The EDLC informed the Commission of upcoming deadlines for financial disclosures and lobbyists’ reports and registrations. She stated that staff has been very busy monitoring and answering questions about the filings.

The EDLC stated that the Commission’s new investigator, Ms. Yonamine, dramatically increased her time spent on complaints this month compared to last month. Ms. Yonamine had taken on a large case load. The EDLC, ALC, and Investigator Yonamine, have been able to triage incoming complaints. Also, they have closed many of the old cases.

The EDLC reported that 42 percent of the ALC’s time was spent on administration. Her time spent on legal research, drafting, and complaints, however, has increased dramatically from last month.

The EDLC referred the Commission to Open – 1 attachment to her EDLC memo, that showed staff’s program of work meeting agenda. She stated that she holds a weekly staff meeting and the program of work continues to grow. The staff meetings provide an opportunity for each staff to share their current workload and also to discuss any problems or issues.

The EDLC also referred the Commission to another handout in Open – 1, which was a monthly calendar showing staff deadlines to prepare for Commission meetings. The EDLC continued that she provided the handouts to the Commissioners so they could understand staff’s program and flow of work. Any last minute requests to add an item on the agenda would be deferred to the next month.

Vice Chair Lilly commended the EDLC on her program of work because it gives the Commission a good overall understanding of staff responsibilities in just a few pages. The EDLC responded that staff meetings last almost two hours but they keep staff organized.

## 2. Statistics – Complaints, Requests for Advice

The EDLC referenced Exhibit 4 in her EDLC memo that showed 1<sup>st</sup> quarter statistics. She stated that 2<sup>nd</sup> quarter statistics would be presented at the next meeting. The exhibit provides the Commission with a visual representation of statistics that will continue to be

updated until the end of the year. Then, staff will be able to compare and contrast FY 17 statistics with prior years.

### 3. Budget

#### a. FY2017 Operating Budget

No report.

#### b. FY2018 Operating Budget Request

The EDLC reported that there were no updates on the proposed budget from administration as they are still finalizing their budget submission to the City Council.

### 4. Ethics Training Program

The EDLC referenced her memo that showed the number of City Clerk staff who completed ethics training via the Mindflash software program (25 of 29). The EDLC stated that she received a message from Glen Takahashi, City Clerk, thanking the Commission for including them in the pilot program. Mr. Takahashi also stated that the online training was well done, and he appreciated the humorous videos illustrating serious topics. He also stated that he hopes that the Commission's intentions were to keep the desktop training since it was a time-flexible option for employees. Eventually, ethics staff will provide Mindflash training to the rest of the City's legislative branch.

The EDLC also informed the Commission that a survey was recently sent to the City Clerk's staff, which asked for their comments on the methodology and substance of the training.

Vice Chair Lilly asked the EDLC for clarification as to why four employees at the City Clerk's office did not complete the training. Legal Clerk Bigornia explained that one employee had difficulty receiving the emails from the Mindflash software, but eventually this issue was resolved and he completed his training. She also explained that two employees were on sick leave and the fourth employee retired.

The EDLC stated that the Department of Information Technology ("DIT") was still making progress on their version of Mindflash training software.

### 5. Charter Amendments

The EDLC informed the Commission that staff is drafting a bill to revise the relevant sections of the Revised Ordinances of Honolulu to conform with the Charter amendment. After the bill is drafted, COR will review prior to bill introduction at City Council.

Commissioner Adler asked when the charter amendment became effective. The EDLC requested confirmation from COR Deputy Kam that the amendment was effective on the date that the City Clerk certified the election. Deputy Kam concurred. Certification was received on November 29, 2016.

6. Audit

No report.

C. Rule-Making

No report.

D. For Discussion and Adoption: DRAFT Advisory Opinion 2017-01, Do “Independent Expenditures” Made by Super PACs for the Benefit of a City Officer Create a Conflict of Interest Under Revised Charter of Honolulu (RCH) Section 11-102.1(a)?

This matter was deferred.

E. For Discussion: Are the Conclusions in Advisory Opinion No. 76 (December 21, 1977) Still Correct Under Current Laws?

This matter was deferred.

F. For Discussion and Adoption: DRAFT Advisory Opinion 2017-02, Does the Honolulu Ethics Commission Have Jurisdiction to Decide:

1. Whether a Councilmember’s Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group Creates a Conflict of Interest When the Councilmember Has to Make Official Decisions Affecting the Special Interest Group; and
2. If Question 1 is Answered in the Positive, Were the City Council’s Five Votes Approving the Ho‘opili Project (Bill 3, 2015) Invalid?

This matter was deferred.

G. For Discussion and Action: Request for Reconsideration of Material Submitted in support of Agenda Items II.D, E, and F, at the December 21, 2016 Ethics Commission Meeting and for Further Analysis Under RCH Section 11-104.

Chair Marks asked Dr. Dudley for his testimony. She also stated that Dr. Dudley was asking for reconsideration of matters from last month’s agenda.

Dr. Dudley took issue with the draft opinion regarding super PAC contributions. He disagreed with the Commission's opinion that candidates did not need to disclose contributions from noncandidate committees because the contributions were not made directly to candidates. Dr. Dudley stated that there is a real need for those contributions to be claimed, such as the \$105,000 contribution a super PAC made in support of Councilmember Brandon Elefante.

Chair Marks asked Dr. Dudley for clarification that his reference to "contributions or gifts" from super PACs were actually in reference to "independent expenditures." Dr. Dudley confirmed. Chair Marks responded that there are federal laws governing the existence of super PACs and that they are required by law to make the expenditures independent of coordination with the candidate. Dr. Dudley agreed but stated that the independent expenditures still obligated the Councilmember to vote for the super PAC's Ho'opili project.

Vice Chair Lilly asked Dr. Dudley if he agreed with the laws of the super PACs that prohibited coordination between candidates and the super PACs. Dr. Dudley confirmed. Vice Chair Lilly stated that the super PACs could be guilty of a criminal act if they conspired with a candidate to coordinate expenditures for the candidate's benefit. The super PAC's independent expenditures may incidentally provide a benefit to a particular candidate, but the super PACs and candidates are required to be separate. Dr. Dudley stated that he believed that the independent expenditure is a prohibited "financial interest" under Revised Charter of Honolulu Section 11-102(c).

Dr. Dudley quoted Revised Charter of Honolulu Section 11-102(c) and stated that city officers and employees shall not "...engage in any business or transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which shall tend to impair the independence of judgment in the performance of such person's official duties." Dr. Dudley continued that even though the candidates don't ask for the independent expenditure, it still benefits the candidate. If the candidate wants the super PAC support in the next campaign, the candidate is obligated to vote in alignment with the super PACs' interests. Dr. Dudley further stated that there is dependency corruption and obligation corruption that relates to the financial interest in Section 102(c). Dr. Dudley reiterated that Councilmember Elefante received 91 percent (91%) of his donations from people who would profit directly from rail and Ho'opili.

Chair Marks asked Dr. Dudley to clarify if he is advocating for a change in the campaign spending law. Dr. Dudley disagreed and responded that he had no problem with the law, but was concerned with the obligation tied to the financial interest under Section 11-102(c).

Commissioner Suemori asked Dr. Dudley if he was requesting that super PACs be prohibited from making any independent expenditures because any benefit to a candidate by the independent expenditure creates an obligation on the candidate to act in the best interest of the super PAC. Dr. Dudley disagreed. He stated that if the candidate has that obligation then it's a financial interest and that it would need to be disclosed. He further stated that in going back to his initial complaint about the rail vote, five councilmembers received huge amounts of super PAC money.

Commissioner Suemori asked for confirmation that Dr. Dudley wanted candidates to disclose the independent expenditure made by super PACs that inured to their benefit. Dr. Dudley confirmed.

Chair Marks stated that a candidate does not get super PAC campaign contribution money because of the way super PACs are set-up and regulated under the law. A super PAC advocates for whatever or whomever it wants.

Commissioner Adler asked Dr. Dudley what remedy he wanted from the Ethics Commission. Dr. Dudley responded that he was trying to comment on his testimony from the last EC meeting. Dr. Dudley further explained, as an example, that if he gave \$105,000 to someone, then the person has a known obligation to disclose the \$105,000 before voting. Dr. Dudley further stated that Councilmember Fukunaga received \$86,000, Kimberley Pine received \$90,000, and that Ron Menor and Joey Manahan also received huge amounts of money from people who wanted them to support the rail, but they still went ahead and voted. In spite of the super PAC law, the issue is about a financial interest they have under Section 102(c).

Vice Chair Lilly responded that the problem with Dr. Dudley's argument is that there is no direct evidence that there was some obligation. The obligation is only implied because candidates are indirectly benefitted by super PAC expenditures. Because there is a separation by law between candidates and super PACs, Dr. Dudley would need to prove that there was another piece of evidence to show quid pro quo. But absent that, by law, a candidate cannot receive any of those expenditures, so there was no gift to that candidate and therefore no implication of a violation of the conflict of interest rules.

Dr. Dudley responded that if the average thoughtful person saw that a candidate was only able to raise \$13,000 on his own and \$24,000 from the unions and that the extra money came to his support, the average citizen would be able to see the connection and that it would need to be reported.

Dr. Dudley further stated that the public would have questioned the City councilmembers when they voted, had they known about the thousands of dollars that they received. Chair Marks responded that they didn't get those contributions because it came from a super PAC.

Commissioner Silva then stated that even if the contribution came from a lobbyist and it was declared, the councilmember would still be able to vote and it would be "okay," and that there would be no violation.

Commissioner Silva asked for confirmation that the councilmembers who received contributions voted for the project, and Dr. Dudley confirmed. Chair Marks and Commissioner Suemori responded that it was unknown. **Commissioner Silva then requested that it be researched.**

Commissioner Suemori stated that if a contribution was given to a T.V. station to run a candidate's ad for their campaign, the candidate should declare it as a gift and provide disclosure, regardless of whether the ad was approved or not by a candidate.

Vice Chair Lilly commented that the candidate needs someone to monitor the campaign spending reports because the candidate would not be getting the money. Chair Marks responded that independent expenditures were completely separate and not on the campaign spending report.

Vice Chair Lilly asked Dr. Dudley where he obtained the report; Dr. Dudley responded that he got it from the Campaign Spending Commission. Vice Chair Lilly then stated that before a councilmember could vote they would need a staff person to go through every campaign spending report to ensure disclosure of all super PAC expenditures. How would a councilmember know if that expenditure was for the councilmember's benefit?

Dr. Dudley responded that independent expenditures are found on non-candidate committee reports. These reports identify the candidate who received the contribution and how the super PAC spent the money.

Commissioner Adler informed the Commission that the larger question for him is what can the EC do to increase public confidence and trust in government that is within their jurisdiction and mandate. Chair Marks responded that it would have to be within the law to allow the Commission to operate.

Commissioner Suemori asked for clarification, that if the contribution was a candidate expenditure that didn't benefit anyone, would it still need to be reported. For example, if \$100,000 in independent expenditures were used to support or oppose the Super Ferry or even rail, it would not need to be reported to the Campaign Spending Commission because it didn't benefit anybody. How would the expenditure be categorized?

Commissioner Adler asked if the independent expenditure was tied to a person, and Commissioner Suemori responded that it didn't need to be reported. Dr. Dudley disagreed.

Vice Chair Lilly stated that Dr. Dudley mentioned there was a column with the expenditure stating who it benefited. Commissioner Suemori continued that if it didn't benefit anyone and it was not stated who it benefited, then it wouldn't need to be reported.

Chair Marks asked what the super PAC needed to report. Dr. Dudley responded that the super PAC needs to report every cent it spends. Chair Marks then asked Dr. Dudley whether they were required to report if it benefited a particular candidate. Dr. Dudley responded that if they do something for the benefit of the candidate then they have to name the candidate. Commissioner Silva commented that \$100,000 is a big benefit; Chair Marks agreed.

Chair Marks asked if there were any other matters to discuss. Dr. Dudley responded that he spent a year researching corruption in the City Council and that he brought all of his

material before the Commission. But, he is now focusing his issues on Sections 102(c) and especially 104. He showed that the councilmembers did receive campaign money through direct contributions. Dr. Dudley stated that the councilmembers received huge amounts of money, they knew what they were doing. It had been a planned giving and receiving.

Dr. Dudley stated that the City Council refused to listen to any kind of problems about the Ho`opili development, including falsification of the Traffic Incident Area Report. Dr. Dudley continued further stating that it was an understood quid pro quo between the contributor and the councilmember so therefore it falls under 102(c) and also 104. Dr. Dudley concluded that the best agricultural land in the State and the world will be lost, climate change was drying up entire areas, and that according to the United Nations the world is heading toward mass starvation.

Dr. Dudley informed the Commission that they needed to stand up and take up the matter again and reconsider all of his testimony and documents which he submitted since it was powerful enough to use and to finally say that there had been a grave wrong committed against Sections 102(c) and 104.

Dr. Dudley also stated that the people depend on the Commission to stand up for them. He and his wife were scared and he would need police protection since the project involved billions of dollars.

Vice Chair Lilly and Commissioners Silva and Suemori asked Dr. Dudley if he had a copy of a page of the Campaign Spending Commission report showing a super PAC contribution, with the councilmember's name that benefited from that contribution, or was listed as the person who benefited from that contribution.

Dr. Dudley couldn't recall at the moment, but when the matters were being discussed about four to six years ago, at that time there were no requirements. Someone stumbled on Carol Fukunaga's contribution and brought it before the Campaign Spending Commission. Kimberly Pine's contributions were well known because Tom Berg received her mailings. Tom Berg was her competitor, and the campaign spending records were unclear during that time.

Chair Marks asked if there were any other questions. Since there were none, she thanked Dr. Dudley for his testimony.

Chair Marks addressed the Commission and referred them to draft Advisory Opinion 2017-01 and asked if there were any questions for the ALC.

Vice Chair Lilly asked the Commission to go into executive session, and Chair Marks agreed; however, before going into executive session, she asked Mr. Timothy Garry if he had planned to testify. Mr. Garry responded that he was there to support Dr. Dudley and reiterated some of Dr. Dudley's points.

Mr. Garry then asked the Commission if his complaint of last May could be placed on the agenda for the next EC meeting. He was now complaining about the staff's ineptitude of

investigating his complaint. Chair Marks agreed that his matter would be on the next agenda.

Commissioner Silva commented that best standards were needed politically and within the Commission to improve what is going on in government today. Commissioner Silva further stated that one side is for preserving agricultural land and making the islands more self-sufficient, and then there are the developers that come in and take away the best land because of location, especially those lands along the rail. However, the rail would not be completed until 2025 or 2026 and that those dates would probably change. Commissioner Silva concluded that in the meantime, many houses were being built, which would become an eternal traffic jam.

**Chair Marks thanked the testifiers and requested a motion to go into executive session for Items II.D., E., F., and G. It was moved by Vice Chair Lilly, seconded by Commissioner Suemori, and unanimously carried to go into executive session for Items II.D., E., F. and G.**

### **RETURNED TO OPEN SESSION AT 2:00 P.M.**

Chair Marks requested that the record reflect that Commissioner Suemori exited the meeting.

Chair Marks stated that there was a discussion regarding agenda items II.D. through G. and that a request was made for the ALC to obtain information filed with the Campaign Spending Commission by super PACs. The Commission deferred action on those items, pending receipt of additional information.

### III. Executive Session

- A. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Chair Marks stated that the Commission met with counsel and his consultant regarding the pending litigation.

- B. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No discussion.

#### IV. For Discussion: Strategic Planning

Commissioner Adler informed the Commission that strategic planning would be deferred until all Commissioners could be present.

Commissioner Adler asked what superior performance by the Commission would look like in five to eight years from now. The answer to that question would take the Commission to what position they want to occupy in the future, which is different from the Commission's position today. Commissioner Adler further stated that it was a pivotal question and **asked that the Commissioners send it to him in writing for the next meeting.**

Chair Marks summarized Commissioner Adler's request, stating that it would be up for discussion at the next meeting, and reiterated that his request was, "what would superior performance look like going forward, especially five years to eight years out." Commissioner Adler also asked that the Commissioners come to the next meeting with key points.

#### V. ADJOURNMENT

**Chair Marks requested a motion to adjourn the meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Amano, and unanimously carried to approve the motion to adjourn the meeting.**

The meeting concluded at 2:30 p.m.