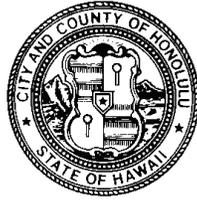


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: January 7, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Katy Chen, Esq., Commissioner
Stephen Silva, Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 464th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:30 a.m. by Chair Gall.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSIONS OF THE OCTOBER 1 AND 31, 2012 MEETINGS

Approval of the Minutes of the Open Sessions of the October 1 and October 31, 2012 meetings was deferred to the next meeting.

III. OLD BUSINESS

A. Setting the Date and Time for the Meeting During the Week of February 4, 2013

The meeting was set for Wednesday, February 13, 2013 at 12:00 p.m.

B. Setting the Date and Time for the Meeting During the Week of March 4, 2013

The meeting was set for Monday, March 11, 2013 at 11:30 a.m.

An additional meeting date in March may be needed, depending on how many tardy Financial Disclosures there are at that point, and the Commission will be informed as the Financial Disclosures come in.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Complaints and requests for advice statistics:

The EDLC referred to his memo regarding agenda items for the January 7, 2013 meeting, open session dated January 4, 2013 which reported the FY 2013 total to date 219 requests for advice and complaints, 184 of which the staff has provided responses, referral, withdrawn, or no action taken; and 35 under review. The EDLC commented that there were no outstanding complaints from FY 2011. No discussion was had.

2. Website Statistics:

The EDLC reported in his memo that there were 568 hits for the month of November 2012, and there were 2,682 total hits for FY 2013. No discussion was had.

3. Education Training and Statistics:

The EDLC reported that 1,200 supervisors completed their initial training and/or re-training to date. The EDLC is looking forward to producing a DVD for training all line employees. These employees will watch the DVD for 20 minutes, and then complete the training with a test. This would be the initial training for employees, and thereafter retraining will be required every 2 years. The EDLC stated that staff has trained about 1,750 total City officers and employees and about 1,200 of those were trained in the last few months.

4. Report Regarding Fiscal Year 2013 and 2014 Budget Issues:

The EDLC reported that per a Motion from the last meeting, Chair Gall signed a memo to the Mayor regarding funding for the Ethics Commission for FY 2013-2014. The Mayor responded to the memo by basically leaving the issue to the Caldwell Administration. Staff is

looking forward to working with the new administration. The EDLC reported that he has drafted a Memorandum regarding the budget to the new Managing Director, Ember Shinn, and through the new Budget Director, Nelson Koyanagi. The Commission has reviewed the majority of the information in the memo. The memo is basically an advocacy piece to show our workload, that the demand for our services continues to be outstripped, and we've got a large growth of new cases and demand for our services. The memo also compares the allocation of resources to the Ethics Commission with the allocation of resources to HPD administrative misconduct cases and the allocation of resources to the State Ethics Commission. The comparison shows that we have a much higher workload.

The EDLC reported that on January 4, 2013, he met with Councilmember Ann Kobayashi, City Council's Budget Committee Chair, who reviewed the memo and was very positive. She basically said to let her know the difference between what we need and what the administration gives us when they submit their budget in mid-March. The EDLC stated that he hopes she will add more to our budget at that point. The EDLC reported that he also spoke with the City Auditor, because the Auditor has to go through a similar situation in requesting funds for his office. Although the City Auditor is in the Legislative Branch, he said Councilmember Kobayashi was very positive of their work and she has always been one that supported open accountable ethical government. Outside of any political twists and turns, the EDLC stated that he thinks that she'll generally be very supportive of the Commission's budget requests.

Discussion: Recent Cases, Follow-Up on Prior Case Outcomes

The EDLC reported that the ALC concluded a very intricate review of a city permit center. The reason that the center is of such interest is that there is a high demand for its services. Staff received a number of relatively serious complaints, but were not able to find any direct misconduct. In the course of investigation, the ALC provided recommendations to help the department change its procedures and policies to correct various systemic problems that in turn allow for ethical misconduct.

Chair Gall asked what kind of complaints there were. The EDLC responded that there were complaints about either gifts or bribes to some counter employees in order to get permits approved. The EDLC explained that normally staff only reviews allegations of an individual's misconduct, but in this case the system was susceptible to abuse. To reduce the chances for ethical misconduct, staff decided to provide recommendations to the department. Staff hopes to continue working with administration in that department.

The EDLC reported that the City Auditor reported on the Council's Annual Contingency Allowance (ACA) policy that had been an issue in both of the Rod Tam cases before the Commission. The Auditor followed Advisory Opinion 2010-2, where the EC had suggested that the Council clarify the limits of the ACA policy and close loopholes. The Council did that to some degree, and the Auditor supports another round of changes. The Council Chair's response to the Auditor was unclear as to exactly what, if any, further changes the Chair intends to make. But the issue should come before Council and staff will monitor the changes. The major issue with the ACA policy is determining who on the Council staff will have the authority to deny reimbursement.

The EDLC stated that he thought the ACA problem was a good example how the bureaucracy can correct problems. Obviously, the ACA policy was too broad and it was abused by Rod Tam. The Commission took care of Rod Tam's abuse of the ACA, but noted the systemic problem. The Auditor, with the help of the Council, began corrections to the ACA policy. Vice Chair Wong asked whether the EDLC has used this as an anecdotal example in training. The EDLC replied that he should. Chair Gall stated that it is really for the Council's own protection to inform them of what they can and can't do.

5. Report on Lobbyist and Financial Disclosure Annual Filings

The EDLC reported that the office is receiving the Lobbyists' Annual Report and Registration filings which are due by January 10, 2013. The Commission's Financial Disclosures need to be filed by January 31. Commissioner Burroughs asked if the Financial Disclosure form is online. The EDLC informed the Commission that the Financial Disclosure forms are online, but cannot be submitted online, and that staff would like to receive the original signed document, if at all possible. Vice Chair Wong asked if it is acceptable to fax the disclosure. The EDLC stated that the Commissioners may fax a copy of the disclosure to the office, and then bring the original to the next meeting.

6. Passage of Council Resolution 12-54 Allowing Gifts to City to be Used to Pay the Travel Expenses to China and Japan for Mayor Carlisle's Wife

Chair Gall commented that it was interesting that the Council approved the Mayor's travel. The EDLC reported that the City Council approved the Mayor's travel in one meeting, when Breene Harimoto was named the Executive Matters and Legal Affairs Chair. The Council passed the resolution in December, so it's precedent now, and we don't know what's going to happen, whether it will be used infrequently or frequently. Chair Gall stated that at least there's a check and balance in the system and a procedure to follow. The EDLC confirmed.

B. Election of Chairperson and Vice-Chairperson

The EDLC stated that he puts this item on the agenda at this time of year annually. He stated that the Commission could vote now or hold off until those who are absent could be present. The EDLC also stated that those who are absent can also be nominated. Chair Gall asked if the positions could remain the same as the prior year. The EDLC replied that in the affirmative as long as commissioners have a chance to vote every year.

Vice-Chair nominated Charles W. Gall, as Chairperson. Chair Gall stated that he would be happy to stay on as Chair. Commissioner Lilly nominated Rachael Wong as Vice-Chair. Commissioner Burroughs seconded all their nominations. The Commission unanimously agreed that Chair Gall and Vice Chair Wong would remain in their current positions on the Commission.

Chair Gall asked for a motion to enter Executive Session. Vice Chair Wong made a motion to that effect. Commissioner Burroughs seconded the motion. The motion was carried unanimously.

V. EXECUTIVE SESSION

After some preliminary discussion, the EDLC suggested that the Commission address agenda item V.D.

D. For Discussion: Concerning a Letter From a City Officer Regarding the Commission's Policy and Procedures (HRS Secs. 92-5(a)(4) and (a)(8))

The EDLC reported that he tried to find a response to this issue by asking a top City official for clarification. Chair Gall suggested that the Commission request that their Deputy Corporation Counsel (Geoffrey Kam) respond to the letter. Commissioner Lilly stated that the issue had to be straightened out within a department.

Chair Gall asked about the underlying cases referenced in the letter. The EDLC responded that there were two cases referenced in the letter. The main case referenced is the investigation of a City officer regarding the use of his/her position to give special treatment to a certain company. The other case is regarding the investigation of another City officer regarding inconsistencies in management.

Chair Gall asked for a motion requesting Deputy Kam to respond to the letter. Commissioner Burroughs made a motion to that effect. Vice Chair Wong seconded the motion. The motion was passed unanimously.

A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the October 1 and October 31, 2012 Meetings

The minutes of the executive sessions of the October 1 and October 31 meetings will be

presented at the next meeting.

B. For Action: Request for a Motion to Approve the Staff's Recommendations on Various Complaints Against a City Officer for Violations of RCH Sec. 11-104 (Misuse of City Resources)

The EDLC referred to item V.B. in his memo to the Commission regarding agenda items for the January 7, 2013 executive session meeting that consisted of a description and a recommendation to dismiss complaints against a City officer for allegedly misusing his/her City position and City funds.

The EDLC stated that he would let the Commission decide how they want to discuss the cases. Commissioner Lilly stated that he reviewed all the cases and he is in agreement with the EDLC in that the complaints are unsubstantiated and it is a waste of the Commission's and staff's time to have to review these complaints. The EDLC responded that it is staff's job to conduct a preliminary review. Chair Gall agreed and stated that a complaint could be used as a weapon.

The EDLC asked if the Commission wanted to provide more guidance on the use of City resources for sending out legitimate government information in email blasts, or on a City website before a primary or general election. For example, the State House has a policy that prohibits using State resources for mass mailings 30 days before an election.

The EDLC stated that for the most part, the complaints were unsubstantiated.

Vice Chair Wong asked how many sources filed complaints? The EDLC replied that there were 6 or 7 sources. Vice Chair Wong asked what is the check and balance for the Commission and staff regarding amount of due diligence required to review complaints as she agreed with Commissioner Lilly's prior comment that a review of these cases was a waste of staff's time. The EDLC replied that staff looks at various criteria including the seriousness of the violation, the evidence available, and the subject of the complaint.

The EDLC reminded the Commissioners that the referenced cases accumulated over the course of a year and a half. Chair Gall stated that he believed that staff is required to look at every case.

Chair Gall commented that it is better to err on the side of a full review because staff has to protect the Commission and those who are the subject of the complaint. Commissioner Lilly stated there is a litigious litigant statute that prohibits submission of complaints although there is not one that is applicable here. The ALC stated that Ethics Commission Rule of Procedure 5.4 provides the basis for the Commission to refuse to entertain a complaint such as if the request is speculative, purely hypothetical, without jurisdiction, or frivolous. Chair Gall confirmed and also stated that staff must still review every complaint to get to that point.

Chair Gall asked for a motion to adopt staffs recommendations to dismiss the referenced cases without prejudice based on a lack of sufficient evidence at this time. Commissioner Yuen made a motion to that affect. Commissioner Lilly seconded the motion. The motion passed unanimously.

- C. For Action: Request for a Motion to Find Probable Cause that a City Officer Violated RCH Sec. 11-104 (Misuse of City Positions and Other Resources) for the Personal Benefit of Friends, Family and Himself/Herself

The EDLC stated that he has now focused this case on the City officer using his/her City position for only himself/herself and his/her family.

The EDLC explained that the City officer had received ethics training was aware that he/she was not allowed to use his/her government position for special treatment.

Commissioner Yuen asked if the EDLC made recommendations to try to prevent these types of situations from happening. The EDLC responded that this would have been an easy fix for a problem that has now caused so much trouble. The EDLC stated that staff tries to prevent these problems from occurring.

Chair Gall stated that this is a good example of a misuse of City resources and suggested that staff use these cases for ethics training so people will understand the prohibition against misuse of City resources. The EDLC replied that there are simple solutions to a lot of these problems. Staff finds a lot of complexities in obtaining the facts.

Staff recommended that the Commission find probable cause that the City officer violated RCH Sec. 11-104 and that staff send the City officer a Notice of Alleged Violations of the Standards of Conduct, consistent with the allegations made in the referenced memorandum.

Chair Gall asked if there was any further discussion regarding this matter. Hearing none, Chair Gall asked for a motion to adopt staff's recommendations. Commissioner Burroughs made a motion to that effect. Vice Chair Wong seconded the motion. The motion passed unanimously.

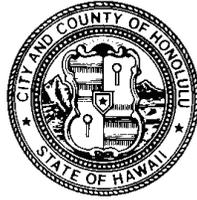
VI. ADJOURNMENT

Having no further business to discuss, Commissioner Gall asked for a motion to exit open session and to adjourn the meeting. Commissioner Yuen made a motion to that affect. Commissioner Burroughs seconded the Motion. The Motion was passed unanimously. Session adjourned at about 12:30 p.m.

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CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 13, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Stephen Silva, Commissioner
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Stanford Yuen, Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Geoffrey Kam, Deputy Corporation Counsel (V.A through E.)
Lyle Hosoda, Attorney for Respondent Tommy Perkins (V.B)

Absent: Jeffrey Burroughs, Ph.D., Commissioner
Laurie A. Wong, Associate Legal Counsel (ALC)

Stenographer: Lisa Parker

I. CALL TO ORDER

The 465th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 12:05 p.m. by Vice Chair Wong. Chair Gall entered the meeting at 12:10 p.m.

The discussion immediately began on whether to move into Executive Session, to discuss and decide Agenda Item V.B. Commissioner Yuen made a motion to move into the Executive Session, which was seconded. All were in favor.

The open meeting resumed at 1:00 p.m.

III. OLD BUSINESS (This item was taken out of order.)

A. Request to Change the Date and Time for the Meeting on March 11, 2013 to Another Date During the Week of March 11

The meeting was rescheduled to Wednesday, March 13, 2013 at 12:00 noon.

B. Setting the Date and Time for the Meeting During the Week of April 8, 2013

The meeting was set for Friday, April 19, 2013 at 11:30 a.m.

Commissioner Lilly left the meeting at 1:09 pm.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE OCTOBER 1 AND 31, 2012, AND JANUARY 7, 2013 MEETINGS (This item was taken out of order.)

Chair Gall asked if there were any questions, and if not, for a motion to approve the open session minutes of the October 1 and 31, 2012 and September 12, 2012 meetings. Chair Gall requested corrections to the roster, and that it be subject to confirmation by the EDLC.

Vice Chair Wong referred to the Open Session Minutes of the January 7, 2013 meeting and requested track changes to pages 3 – 4, “Discussion: Recent cases, Follow-Up on Prior Cases”. The EDLC noted the requested revisions will be provided at the next meeting, scheduled for March 13, 2013.

Commissioner Chen made a motion to approve the Open Session Minutes of the October 1 and 31, 2012 and September 12, 2012 meetings with the appropriate changes, and that the open session minutes of the January 7, 2013 meeting be revised and presented at the next meeting. Commissioner Silva seconded and all were in favor.

The EDLC referred to his Memo dated February 6, 2013 for agenda items IV. A and B.

IV. NEW BUSINESS

A. For Discussion: Administrative News

4. Report on mandatory ethics training for all City employees:

Our Train the Trainer program is in the process of recruiting trainers, per our “Mandatory Ethics Training for All City Employees” Memo, that was sent to all Directors for each City department on February 12, 2013.

Commissioner Chen asked if it is appropriate for the Commission to view the DVD, and the EDLC confirmed it is. Chair Gall asked if there would be any written materials in the training, and the EDLC confirmed that the trainers for each group will offer some additional information, as instructed by the Commission staff and refer questions from attendees to the EC staff. The employees will also be provided with EC contact information and the Ethics Checklist. At the end of the session, they will be tested on the basic concepts stated in the 12-minute DVD and the trainer's information, and sign their tests.

The EDLC informed the Commission that board or commission members will not be trained with the 12-minute DVD.

Chair Gall asked if the DVD video could be uploaded on the website. The EDLC confirmed it should be done and informed the Commission that we were having some problems with our website. Henry Wu, our Po'okela intern, is very knowledgeable with websites and that he is helping us work on the problems. Henry's internship with us will end in May.

5. Update on the Fiscal year 2013 and Fiscal Year 2014 budget issues:

The EDLC informed the Commission that the FY 2014 budget from the administration should enable us to hire an investigator and have funds for hearings officers, as well as transcription and outside investigative and audit services. Chair Gall asked if we would be hiring another attorney, and the EDLC responded that we will not be funded for that. Because the investigators we are using from the Equal Opportunity Office do not have enough time to handle our case work, we should first focus on hiring our own investigator. Chair Gall asked if it will be a full-time position and how much would it pay. Per the EDLC the position would be an Investigator II, with a salary of \$42K, plus benefits.

6. Budget request news release:

This item was moved to the executive session because it related to the job performance evaluation of the EDLC, which is a personnel matter.

7. Report on financial disclosure annual filings:

The Legal Clerk informed the Commission that there were approximately 14 Council staff, 47 administrative staff, and 102 board and commission members that have not filed their Financial Disclosures to date.

8. Report on lobbyist gift advisory:

The EDLC reported that the lobbyists who have registered for 2013 were mailed an advisory letter to help prevent unlawful gifts to city officers and employees, and the administration and councilmembers were copied.

- B. For Discussion: Position of Department of Corporation Counsel Regarding its representation of City Officers and Employees before the Ethics Commission

Deputy Corporation Counsel Kam had nothing to report for Item IV.B.

V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the October 1 and 31, 2012 and January 7, 2013 Meetings

Vice Chair Wong requested that the first page of the January 7, 2013 Minutes, include that Commissioner Chen was also absent that day. Commissioner Yuen mentioned that he was in attendance at the January 7, 2013 meeting, and to include him.

Commissioner Chen requested that the wording, "Since the requester was a nag," should be revised or re-worded. See January 7, 2013 Minutes, Page 5, last paragraph, fifth line.

The EDLC noted the foregoing requested revisions and stated that the changes will be provided at the next meeting, scheduled for March 13, 2013.

Chair Gall asked for a motion to approve the October 1 and 31, 2012 Minutes, and that the January 7, 2013 Minutes be revised and presented at the next meeting. Commissioner Lily made a motion to that effect, Commissioner Chen seconded, and the motion was unanimously adopted.

- B. For Action: In EC No. 12-186, Alleging Misuse of City Position by Former City Officer in Violation of RCH Sec. 11-104. Request for: (1) A Motion to Schedule a Contested Case Hearing, and (2) A Motion Determining Whether the Commission Will Hear the Matter or Designate a Permitted Interaction Group or Hearing Officer

The EDLC noted that the Commission could hear the contested case itself or select a permitted interaction group or a hearing officer as a designee. The EDLC stated that there are sufficient funds in FY2013 to hire a hearings officer based on a 1-day hearing.

Vice Chair Wong moved for the Commission to discuss and decide on whether the EC will hear the matter or designate a permitted interaction group or hearing officer. Commissioner Yuen seconded the motion, and the Commission unanimously resolved to meet with its advisory counsel in this matter, Deputy Corporation Counsel Geoffrey Kam.

The EDLC and Attorney Lyle Hosoda left the room.

Commissioner Lilly mentioned Dale Lee, and Chair Gall noted that Dale Lee worked at U.H. Law School, and that the EC had hired him before, but the case settled. It was noted that Chair Gall, Mr. Lee, and Mr. Hosoda all worked for the same law firm at one time, but that Messrs. Lee and Hosoda had left the firm over seven years ago. Chair Gall mentioned that the parties' attorneys have a right to object to a hearings officer. Deputy Corporation Counsel Kam added that the decision on whether Mr. Lee can be the hearing officer is also based on his availability.

Chair Gall asked for a motion to hire a hearing officer, and that the EC's first choice is Dale Lee. Commissioner Chen made a motion to that effect, it was seconded by Commissioner Silva, and all were in favor.

The EDLC and Attorney Lyle Hosoda came back into the room at 12:20 pm. Chair Gall informed them that the EC decided to hire a hearing officer, and that their first choice would be Mr. Lee. The hearing date will be scheduled in May, pursuant to the hearing officer's availability. Attorneys for the parties agreed to the selection of Mr. Lee.

The EDLC will contact Mr. Lee and check his availability for a hearing around May 6, 2013. The EDLC asked for a motion whereby (1) the scope of hearing will be based on the issues relevant to the Notice of Alleged Violation and Response thereto, and (2) the scope of authority will be as stated in Rules of Procedure, Rule 1-21 and HRS, §92-2.5 (b)(1).

Vice Chair Wong made a motion as stated by the EDLC and to schedule the hearing. Commissioner Lilly seconded, and the motion was passed unanimously.

- C. For Discussion: Request for Advice Regarding Use of City Resources or Private Funds for Purposes of Government Transition Between City Administrations
- D. For Discussion: Request for Advice Regarding Whether Use of Private Funds is a Gift for the Benefit of a City Officer

Items V.C and D were discussed together.

The EDLC informed the Commission that there were news reports regarding a non-profit social welfare entity under IRC Section 501(c)(4) that was formed to pay for certain expenses.

The EDLC informed the Commission that the ALC would be more knowledgeable, since she was doing the research.

Chair Gall asked if there were any other discussions, and since there were no further discussions, he moved on to Item E.

E. For Discussion: Annual Job Performance Review of the Executive Director and Legal Counsel

Chair Gall informed the Commission that their Annual Job Performance Reviews for the EDLC needed to be submitted by the end of the month. He also asked Vice Chair Wong to follow-up with the commission members for their input.

Chair Gall led a discussion of various personnel-related issues.

Having no further executive session business to discuss, Commissioner Gall asked for a motion to exit executive session. Commissioner Silva made a motion to that affect. Commissioner Yuen seconded the Motion. The Motion was passed unanimously. Executive session adjourned.

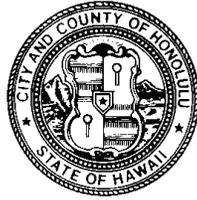
VI. ADJOURNMENT

Having no further business to discuss, Vice Chair Wong moved to adjourn the meeting, Commissioner Silva seconded and the Motion was passed unanimously. Session adjourned at about 1:28 p.m.

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Date and Place: March 13, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Geoffrey Kam, Deputy Corporation Counsel (IV.B)

Absent: Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 466th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 12:06 p.m. by Chair Gall.

Each member of the EC had been provided with a copy of the EDLC’s EC Meeting Open Agenda Items Memo dated March 6, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSIONS OF THE JANUARY 7 AND THE FEBRUARY 13, 2013
MEETINGS

The EDLC informed the EC that a correction needed to be made on Page 2, III.A, of the February 13, 2013 Open Session Minutes, and that “Tuesday,” March 13, 2013 should be

changed to “Wednesday” March 13, 2013. Vice Chair Wong added that a correction on Page 2, II., paragraph 3, last sentence, the word, “was” should be changed to “were,” “...all were in favor.” The Vice Chair also asked that a correction on Page 6, last paragraph, right above VI. ADJOURNMENT, the word “lead” should be changed to “led,” “Chair Gall ‘led’ a discussion of various personnel-related issues”.

Vice Chair Wong commented that she thinks she and Commissioner Chen may have sounded alike on the recording, since on the other minutes their actions were transposed. She’s been trying not to make any motions. She also mentioned that she didn’t know how to distinguish herself in the record of the meeting. The EDLC responded she could say, “this is Vice Chair Wong.” He also said staff will try to make sure who is talking. Chair Gall offered that listening to the recording may be augmented by the stenographer’s notes.

Chair Gall asked if there were any other discussion on the Minutes. The EDLC acknowledged that all changes would be made. Chair Gall asked for a motion to adopt the minutes with the changes discussed. Commissioner Yuen made a motion to that effect, Commission Silva seconded, and all were in favor.

III. OLD BUSINESS

A. Confirming the Date and Time of the April 19, 2013 Meeting

The meeting was confirmed for Friday, April 19, 2013 at 11:30 a.m.

B. Setting the Date and Time for the Meeting During the Week of May 13, 2013

The meeting was confirmed for Monday, May 13, 2013 at 11:30 a.m.

The EDLC reminded the EC of the training on April 10, 2013, and would send out a reminder again. The Campaign Spending Commission staff and members of their Commission, as well as the State Ethics Commission will also attend.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Complaints and requests for advice statistics:
2. Website statistics:

The EDLC moved ahead of the Complaints and requests for advice, as well as the Website statistics, unless anyone had questions.

3. Education and training statistics:

The EDLC reported that staff will have trained over 2,000 officers and employees by the

end of the fiscal year. He further reported that he would be training the Cabinet on the weekend. Vice Chair Wong asked if the class was full, and the EDLC responded that it was just about full because there were a lot of “acting” cabinet members. The EDLC announced that Donna Leong was the new Corporation Counsel, and per Deputy Corporation Counsel Kam, she is supposed to start on April 1.

4. Report on mandatory ethics training for all City employees:

The DVDs had been ordered. A list of trainers from most of the City departments were obtained, so the process of training them will begin soon.

5. Update on the Fiscal Year 2014 budget issues:

The EDLC reported that the EC is getting about \$80K more than before, which is about a twenty-eight percent (28%) increase. It will be enough to hire a full-time investigator and to also have sufficient funds, should we need transcription, hearings officer, etc. The question is will we have enough funds to at least keep at the pace we’re going now for fiscal year 2014 and it’s still a guess, because we have anticipated an increase in work by 50% and just don’t know how realistic that is until we get into the training for all the different City employees. The EDLC informed the budget committee that he would be knocking on their door again in fiscal year 2015.

The EDLC also reported that the staff should have their pay reductions removed under the FY14 budget.

6. Report on financial disclosure annual filings:

The Legal Clerk noted that about 30 board and commission members had not yet filed. The EDLC asked to put the Notices of Violation on for the April 19th meeting. , and that hopefully, when that is done, the outstanding Financial Disclosures will get filed,

Chair Gall set the return date on the Order to Show Cause for April 19. The EDLC had no other administrative news to discuss and asked if the EC had any questions.

Chair Gall asked about Item B, with the Corporation Counsel.

B. For Discussion: Position of Department of Corporation Counsel Regarding its Representation of City Officers and Employees Before the Ethics Commission.

Deputy Corporation Counsel Geoffrey Kam responded that he hadn’t seen the response letter yet. Chair Gall asked if there was any anticipated time on receipt, and Deputy Kam responded that it was with the Acting Corporation Counsel, Diane Kawauchi, who is very busy doing COR’s budget and running the office, so the response is pending. Deputy Kam said he didn’t know if the EC wanted a general or specific response.

The EDLC responded that both responses are needed. The EC would like to understand the position of COR regarding Duane Pang’s October 30, 2012 letter. In addition, the EC would

like to know whether COR gives ethics advice or represents officers or employees who have been identified in an ethics complaint.

Chair Gall commented that his recollection of the question given COR was to basically put it back on the COR and ask them to respond, in full. Deputy Kam responded that he will pull the EDLC's emails, and would respond to the emails, but again if the decision is to wait for COR's response, then all he can report is that they haven't responded as yet.

Chair Gall noted that there needs to be some guidance as to the role of Corporation Counsel, both in general and in terms of representing city officers and employees, and even with respect to its representation of the Commission. The EDLC responded that he'll work with Deputy Kam on the issue.

Chair Gall asked the EDLC and Deputy Kam to discuss the matter offline, and see if progress can be made in resolving the matter.

V. SUMMARY OF EXECUTIVE SESSION MINUTES

Prior to the hearing, a copy of the memorandum dated March 6, 2013 regarding the Executive Session Agenda Items for the March 13, 2013 Meeting had been transmitted to each Commission member.

A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the January 7 and February 13, 2013 Meetings

Chair Gall asked for any discussion and approval of the Minutes for the January 7 and February 13, 2013 meetings. Vice Chair Wong and the EDLC responded that they had the same comments for the February 13, 2013 meeting in the Open Session.

Chair Gall then asked if anybody else had any other discussion, and since there was no further discussion, he asked for a motion to approve the Minutes of the January 7 and February 13, 2013 meetings, subject to the earlier changes. Commissioner Yuen made a motion to that effect, Commissioner Silva seconded, and all were in favor.

B. For Action: Request for a Motion to Approve and Adopt a Proposed Settlement Between Ethics Commission Staff and Attorney for a Former City Officer for Alleged Misuse of City Resources for Personal Benefit in Violation of RCH Sec. 11-104.

And

C. For Action: Request for a Motion to Approve and Adopt Ethics Commission Staff's Proposed Formal Advisory Opinion Regarding Violations of RCH Sec. 11-104 (Misuse of City Positions and Other Resources) by a Former City Officer for Personal benefit.

The EDLC requested that matters V.B. and V.C. be heard together. He referred to his description of the matter, as stated in the March 6, 2013 Exec Session Memo, and represented that the Respondent's attorney had waived his right to attend the meeting. The EDLC further stated that the attorney had signed the settlement. The draft Advisory Opinion, attached as EXEC-2, lays out more of the facts. The EDLC asked if the EC wanted him to go through the facts, and if they needed any further justification, other than what was stated.

Chair Gall asked if there were any inconsistencies between the stipulated settlement and the opinion. The EDLC responded that there was none.

Chair Gall asked if anyone had any questions or discussion. Vice Chair Wong commented that it was a good resolution.

Chair Gall asked for a motion to adopt the recommendation of staff with respect to both the entry of the proposed settlement and also approving and adopting the proposed formal advisory opinion. Commissioner Burroughs so moved, Commissioner Yuen seconded, all were in favor, and the motion was unanimously carried.

Deputy Corporation Counsel Kam exited the meeting at 12:28 p.m.

Miscellaneous, non-agenda matter re contested case hearing involving a former City officer.

Chair Gall had a follow-up question regarding the last time the EC discussed hiring Dale Lee as a hearing officer, and wanted an update on the situation.

The EDLC responded that he still needed to set a contract with Mr. Lee for a \$4,000, not to exceed contract, which should be within the Commission's FY13 budget. The EDLC also stated that staff is on track for the early May hearing, and that he and the ALC would make a settlement offer to the Respondent. The EDLC also noted that Respondent had also hired an investigator.

D. For Discussion: Request for Advice Regarding Gifts to a City Officer.

The EDLC stated that EXEC-3 is a proposed response to the email request. Chair Gall had requested that the matter be put on the Agenda for discussion because he thought it highlights the practical implications of some of the duties of the EC, and also thought the questions raised issues about the gift laws. Chair Gall hoped that the Commission could give more specific guidance, as well as streamline the process, which would make it easier for the City Officer to deal with similar invitations.

Vice Chair Wong asked, for the record, if Chair Gall might want to state his relationship connection to the requester. Because the requester was acting as a conduit for the City officer, there was no conflict of interest. Chair Gall further stated that it is no different if it was

somebody else, like if the managing director had presented the question. On that basis, it was decided that there was no conflict and he didn't have to recuse himself.

The EDLC responded that the gift laws are complicated, and it's unfortunate, because everybody's life would be easier if there was a "bright line" standard, limited to say, \$50. But that is not the current law. Staff earlier had offered simplified guidance to the City officer. The difficulty with gifts is that the factual circumstances of the gift below \$200. The factual analysis is required because the question is whether a reasonable person knowing all the facts would conclude that the gift is offered to influence or reward the City officer in conducting his City duties.

The EDLC mentioned that the City has \$50 rule of thumb regarding gifts. Chair Gall asked where the \$50 rule of thumb came from, and the EDLC responded that when the Gift Guidelines were reviewed in mid-2006. In order to describe a "token of Aloha," and invariably people asked how much the token could be worth. So it was decided that a "token of Aloha" is valued at a \$50 level in the Gift Guidelines. The State uses \$25. The EDLC continued to say that if a Lobbyist is giving a gift to a Councilmember, and the definition of a Lobbyist is someone who wants to influence policy making of the City, you've got to be really careful that you're not accepting anything over the "token of Aloha" amount.

The EDLC stated that the EC has carved-out a couple of exceptions, which relaxes the limits on City officers and employees. The value of a fundraiser ticket is the value of the food, not the cost of the \$250 fundraiser ticket that was given to the City official. Also, if the donor has no matters before the City that the City officer could influence, there could be no offer to influence

The EDLC stated that the problem is in balancing clarity and ease of understanding the restrictions in the law against having a law that can be applied to all the different types of factual circumstances asked of the Commission or staff.

Another approach is, if the City officer is attending on behalf of government, he/she may accept the gift of the dinner through the Council Gift Policy. If it is not a government function, the officer could pay with personal funds.

Chair Gall further asked if there are ways we can give some clear guidance or describe exceptions to the gift laws. The EDLC mentioned that some mainland jurisdictions have found that, if the official attending as a function of the office, it may be looked at as part of his/her government duties. The EDLC informed the Commission that he would look into it.

Commissioner Burroughs asked if there were other jurisdictions that have a higher "token of Aloha" amount. The EDLC responded that they range, and when he last did a thorough review, it looked like it was about \$50 to \$500, and that was back in 2002. The trend has been to lower those dollar caps.

Commissioner Yuen noted that in the federal system the dollar value of the gift of meals to flag officers were covered specific guidelines and depended on who was sponsoring and attending the event. Commissioner Yuen further stated that there's no hard and fast rule, so we have our legal people address it case-by-case. If the sponsor is a contract or engineering firm, that would be a red flag, but maybe not in the case of the Boy Scouts.

The EDLC will check with the State, since they've tried to find ways of simplifying the process

Chair Gall stated that he understood that the gift laws don't apply if there is no matter in which the officer could be involved. He would like that point emphasized in the informal advisory opinion. The EDLC agreed.

Commissioner Yuen stated that a separate issue is, what if staff becomes inundated with a lot of gift questions. The EDLC responded that requests for advice regarding gifts come in spurts, usually during the transition between administrations or from new Councilmembers.

The EDLC informed the Commission that he would review prior advice to the City officer since he had tried to basically focus on most of the important factual questions.

Chair Gall asked if anybody else had any discussion, and since there was none, he asked for a motion that staff revise the opinion consistent with the discussions that had been held, and the issue with the proviso that the Commission will do additional analysis of the question to see if we could give more bright line guidelines in the future. Vice Chair Wong asked if the further review was to be focused on the City officer or to all officers and employees, and Chair Gall responded that it would be focused on the City officer. Vice Chair Wong so moved and Commissioner Yuen seconded. All were in favor and the motion was passed.

E. For Discussion: Sunshine Law Requirements, Limits on Executive Session Meetings.

The Commission discussed with its counsel the legal requirements the Sunshine Law and the legal limits of executive sessions.

Vice Chair asked if this should be in an executive session discussion. The EDLC responded that he is giving the Commission legal advice, since he interpreted the law, and is reporting back on his legal research and policy. So it should be executive session. Also, the EDLC said that the Commission could determine whether to waive the attorney-client privilege and have the discussion in open session. Generally, the EDLC assumes if it's going to call for legal analysis, we would take issue in executive session. Chair Gall responded that it was appropriate for executive session.

The EDLC referred to the next agenda item (V.F), where he reviewed the history of how Corporation Counsel has worked with the Commission.

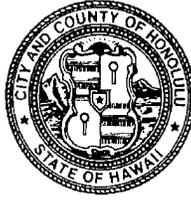
Chair Gall informed the Commission that since the item was just a discussion, no motion is needed.

VI. ADJOURNMENT

Chair Gall asked if there were any other issues for the Open Session, and having no further business to discuss, Chair Gall asked for a motion to go into Executive Session. Commissioner Silva moved to adjourn the meeting, and all were in favor. Session adjourned at about 12:25 p.m.

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KIRK CALDWELL
MAYOR

CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: April 19, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Rachael S. Wong, Dr.PH, Vice Chairperson

Stenographer: Lisa Parker

I. CALL TO ORDER

The 467th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:40 a.m. by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the April 19, 2013 Meeting, Open Session submitted on April 12, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSION OF THE MARCH 13, 2013 MEETING

Chair Gall asked for a motion to approve the Minutes of the Open Session of the March 13, 2013 meeting.

The motion was made and seconded. Chair Gall asked if there was any discussion of the motion, and all were in favor.

III. OLD BUSINESS

A. Confirming the Date and Time of the May 13, 2013 Meeting

The meeting was scheduled for **Wednesday, May 15, 2013 at 11:30 a.m.**

B. Setting the Date and Time for the Meeting During the Week of June 10, 2013

The meeting was set for **Wednesday, June 19, 2013 at 11:30 a.m.**

The Chair asked the EDLC to run through the Administrative News.

IV. NEW BUSINESS

A. For Discussion: Administrative News

3. Education and training statistics:

The EDLC reported that staff did the training for the Cabinet and the Mayor's office staff and all but two staff members were in attendance, which was a high turn-out . The training was an hour and a half on a Saturday morning and the people had good questions. There were a lot of people who had not been in government before, and who were especially concerned about accepting gifts. There has been quite a "jump" in requests for advice, simply because people don't want to take a wrong turn.

4. Report on mandatory ethics training for all City employees:

The EDLC reported that the new "all employee training program" has started . Right now half of the departments are in the training mode, and the remaining departments will be added in the next couple of months. The EDLC further stated that in order to get a good idea as to what the training will do regarding requests for advice and complaint workload, he has asked that this first half of the departments finish their training by the end of July, 2013. There should be enough data at that point to anticipate the workload and needed resources for fiscal year 2015.

Commissioner Silva remembered that the EDLC had already informed the administration that staff had already seen a "jump," during the first meeting that the EDLC's had with the administration. The EDLC further stated that he annualized the requests for advice, and they are up about 10% and the complaints are up about 25% from last year. Commissioner Silva responded that there will be more, and the EDLC continued that were investigated 76 and/or in the process of investigating, and by the end of the fiscal year, we would probably have about 100.

5. Community outreach:

The EDLC informed the Commission that he and the ALC meet with the senior staff of the Campaign Spending Commission, the Office of Information and Practice and the Hawaii

State Ethics Commission on a monthly basis. The meetings are informal, but they talk about issues that are similar for our office. He's learned a lot during these meetings.

The EDLC informed the Commission that a former City employee, who works for HECO now, is the Ethics and Compliance officer there, and asked if staff would join with them to put together an "ethics and compliance chapter" in town. The EDLC added that staff had joined and had only one meeting, and that HMSA is also part of the group. There is a lot of training information in the private corporate world about ethics, because of the greater resources and the very serious criminal consequences, if they do not have an ethics program and are found in violation of federal law. Some of these programs will be too expensive for staff to adopt, but these group meetings is a great way to track what's happening in government and to keep us informed with what's happening in the corporate world.

6. Contested case hearing training:

The ALC reported that last week Wednesday, April 10, 2013, she and the EDLC, as well as Commissioner Yuen and Vice Chair Wong, along with Deputy Corporation Counsel, Geoff Kam, attended the Contested Case Hearing Training. This was put on by Dave Karlen, who is the Senior Hearings Office at the Office of Administrative Hearings, Department of Commerce and Consumer Affairs. It was a joint effort between Executive Directors from our Commission, the Hawaii State Ethics Commission and the Campaign Spending Commission, and that they all worked together over the last several months to put this training together. Dave Karlen met with each of the offices and put a lot of thought into what to his presentation. Basically, he went through a very practical approach describing what happens during a contested case hearing and the rationale for the process. He noted the importance of having "citizen judges," the efficiency of using administrative proceedings as opposed to civil courts, and emphasized ethical considerations. He also said it was odd because he was talking about ethics to staff and commissioners from two ethics commissions, but nonetheless he discussed the importance of avoiding even the appearance of impropriety. There may be more workshops or training sessions in the future.

The ALC asked Commissioner Yuen if there was anything he wanted to share, and Commissioner Yuen responded that it was very interesting and new to him.

The EDLC commented that the training was focused for lay people and attorneys who don't work in agency proceedings. The EDLC further commented that he thought the training was practical, well done and that it was a good refresher for him. Dave Karlen is very adept at explaining why things are done a certain way, as well as the practical considerations. Dave Karlen also brought two other hearings officers with him, who each have a lot of experience. The Chair asked who the other hearings officers were, and the EDLC responded that they were Craig Uehara and Cheryl Nagata.

The EDLC asked if the Commission had any topics that they would like the group to discuss to inform the EDLC.

The ALC commented that for her it was nice to see their counterparts with the State Ethics Commission and their staff, and some of them she had met at COGEL last year or so.

Chair Gall asked about the ongoing contested case hearing and asked for an update, or if that needed to be discussed in executive session. The EDLC responded that it was proper to discuss the matter generally, and informed the Commission that the parties had asked the Hearing Officer if they could reset the schedule. The schedule is not working out for either party. The Hearing Officer still hasn't received contract approval. The Hearing Officer will not be able to bill for anything until he has the contract.

Chair Gall asked if there were any other matters for the Open Session.

The EDLC responded by informing the Commission that it was up to them if they wanted to view the training DVD, which is 12 minutes long, in Open Session or at the end of the meeting. He further informed the Commission that the items that go with the "all employees' training," was attached as Open-2, which are the various handouts. Chair Gall responded that he preferred to move through the meeting, and then see how much time they would have at the end, as it would make sense to watch it at that point. The EDLC responded that they were ready go into Executive Session.

Chair Gall asked for a motion to go into Executive Session, Commissioner Silva so moved, the second could not be heard, but all were in favor.

V. SUMMARY OF EXECUTIVE SESSION MINUTES

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of the March 13, 2013 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The Minutes were approved.

- B. For Action: Hearing to Show Cause Why City Officers Should not be Fined for Failure to File a Financial Disclosure Under ROH Sec. 3-8.4(f). (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The ALC reported that the officers who were served with notices of their failure to file and of the hearing had each submitted their respective financial disclosures. Therefore, staff withdrew its request because the matter was moot.

- C. For Action: Request for Advice from a City Officer Regarding Whether Under RCH Sec. 11-104 City Funds Used for Legitimate City Purposes May Also Benefit Political Campaign Activities. (HRS Secs. 92-5(a)(2) and 92-5(a)(4))

The Commission determined that where travel is reasonable and necessary to support a legitimate government purpose, the cost of travel for a city officer or employee should be paid with city funds. The Commission also clarified that city funds may not be used to pay for any costs arising from the officer's or employee's personal activities that occur during the travel

The Commission will render a formal advisory opinion with recommendations for the Council and administration regarding travel expenditures.

D. For Action: Request for a Motion to Submit a Bill to the Council Regarding Financial Disclosure. (HRS Sec. 92-5(a)(4))

The Commission determined to submit a proposed draft of changes to Bill 39 (2012), which modifies Revised Ordinances of Honolulu Section 3-8.4 regarding financial disclosure filings by city officers and exempt employees. The major changes include the following:

- Broadening the people whose financial information must be reported to include the filer's "domestic partner" and "household members" and their dependent children. The current law requires only the filer's information and that of the spouse and dependent children. These changes are requested to recognize the contemporary living arrangements where committed adults may not be married and multiple generations may live in the same home.
- Removing the proposed requirement in Bill 39 that filer's must report the identity and revenues from business clients that constitute 10% or more of a filer's outside business revenue. Chair Gall and Commissioners Lilly, Chen, Yuen and Burroughs were concerned that the 10% level is arbitrary, may be unduly burdensome for some filers and is unlikely to protect the public by disclosing conflicts of interest. The Commission recommends maintaining the current language of the law.
- Ensuring that the bill clarifies that filers are also responsible to submit a conflict of interest disclosure whenever a conflict of interest arises and to remove themselves from participating in the conflicted matter, except for councilmembers, as required under Revised Charter of Honolulu Section 11-103. Chair Gall noted it is important that filers understand that financial disclosures are only one of the safeguards against acting on a matter where the filer has a conflict of interest. The other key protection is that the filer, as well as any other city officer or employee, must disclose a conflict of interest and remove him/herself from participating in the conflicted matter.
- Giving the Commission authority to make rules to implement this law.

The Commission determined not to suggest decriminalizing the law because a criminal penalty may be necessary under especially egregious circumstances, as noted by Chair Gall and Commissioner Silva.

Commissioner Silva moved to adopt the positions described above, Commissioner Lilly seconded, and the motion was passed unanimously.

E. For Action: Request for a Motion to Submit a Bill to the Council Prohibiting Retaliation for Involvement in Ethics Commission Matters. (HRS Sec. 92-5(a)(4))

The Commission reviewed and approved proposing a bill to Council that would protect ethics whistleblowers. The purpose of the bill is to alleviate the concerns of those who file complaints, request advice or cooperate in ethics investigations by the Commission or any public body. The bill would make it an ethics violation for a city officer or employee to deter or to retaliate against any person filing an ethics complaint, requesting ethics advice or cooperating in an investigation. The standard for a violation would be whether the conduct was such that reasonable person could conclude that the conduct was intended to deter or in reprisal or retaliation for filing a complaint, requesting advice or cooperating in an investigation. The new law would not protect those who gave malicious and false information.

Commissioner Silva moved to submit the bill to Council, Commissioner Burroughs seconded and the motion passed unanimously.

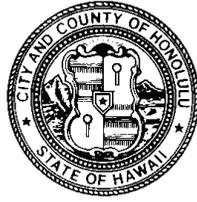
VI. ADJOURNMENT

Chair Gall asked if there were any other issues for the Open Session, and having no further business to discuss, Chair Gall asked for a motion to go into Open Session.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: May 15, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Henry Wu, Po'okela Intern for Item IV.A only

Absent: Rachael S. Wong, Dr.PH, Vice Chairperson

Stenographer: Lisa Parker

I. CALL TO ORDER

The 468th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:48 a.m. by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the May 15, 2013 Meeting, Open Session submitted on May 9, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSION OF THE APRIL 19, 2013 MEETING

Chair Gall asked for a motion to approve the Minutes of the Open Session of the April 19, 2013 meeting.

Commissioner Lilly made a motion for approval of the Minutes, Commissioner Chen seconded, and all were in favor.

III. OLD BUSINESS

A. Confirming the Date and Time of the June 19, 2013 Meeting

The meeting was confirmed for **Wednesday, June 19, 2013 at 11:30 a.m.**

B. Setting the Date and Time for the Meeting During the Week of July 5, 2013

The meeting was scheduled, instead, for **Monday, July 15, 2013 at 12:00 p.m.**

The Chair asked the EDLC to run through the Administrative News.

IV. NEW BUSINESS

The ALC introduced Po'okela Student Intern, Henry Wu, to the commissioners. Chair Gall stated that the Commission appreciated his help. Staff is very sad to see him leave, because he's been a tremendous help. The EDLC noted some of the key things he's done for the EC: creating the work load surveys of other Ethics Commissions, which helped to get our budget increased; masterfully updating our Inquiries Log; reorganizing the website; helping Lisa track the 600 Financial Disclosure forms; and assisting the ALC with her case law factual research.

Commissioner Silva asked if there was someone else in the wings. The EDLC and ALC responded, "not right now, and not that we know of, but hopefully there's somebody out there."

A. For Discussion: Administrative News

4. Various budget issues:

The most compelling issue is hiring the investigator. The EDLC reported that there are a fair number of retirees with law enforcement background that may be interested.

The Chair asked if it was a full-time position and the nature of the position. The EDLC responded that it will be a full-time position and according to Human Resources, it will be an exempt position but at a pay scale that is identical to an SR-22, which is on the City pay scale at \$45,500. This is a mid-level position, sufficient to handle medium to somewhat complex cases independently. In our office, regardless of the level of experience of the investigators, the attorneys will supervise the investigator's work. The EC will also have funds to bring in other investigators if needed. The EDLC said he has sought applicants both at the State and City levels, HPD and a private investigator association.

The Chair asked if it's required that we post the position, and the EDLC responded that because it's an exempt position, the City doesn't need to post the position.

The Chair asked the anticipated hire date. The EDLC responded, as close to July 1 as

possible. We cannot make an offer until the City Council and Mayor have approved the budget, and that will not occur until June 15 at the earliest. The EDLC talked with Human Resources and they have said that we can interview people, etc., but until the budget is clear, we can't make any commitments. The EDLC informed the Commissioners that he will have Jan Kemp, the Compliance and Ethics Officer for Hawaiian Electric Company, Inc., on the panel to review people, along with the ALC and EDLC. Ms. Kemp recently went through hiring someone in a similar type of position for Hawaiian Electric, so she'll be very helpful with that and has a lot of human resources background.

The Chair asked what the status of the hearing, where we had looked at hiring Dale Lee, and if that was going forward. The EDLC responded that, because the contract amount is over \$2,500, it will require a separate electronic contract application. The EDLC made the application and now it's with either the Corporation Counsel or Budget & Fiscal Services. As soon as that contract is approved, then we can get everything started. As far as the EDLC knows at this point, Dale got everything taken care of on his end, so it's just a matter of waiting for the bureaucratic wheels to turn.

B. For Discussion: Request Made to Corporation Counsel for its Policy Regarding The Scope of COR Representation of Officers and Employees in Ethics Matters

As you recall, the Commission had wanted the Corporation Counsel (COR) to state what its role was going to be, dealing with ethics matters, such as whether they're giving advice to City officers and employees or not. The EDLC had formally requested that of the new Corporation Counsel, Donna Leong, and asked for a response by May 13, but hasn't heard back. The EDLC further reported that he tried to get a hold of Donna this morning but she was unavailable. The EDLC referred to Open-1, which lays out the questions to COR. The EDLC doesn't know about COR's role, but his understanding is that they didn't get involved with representation of officers or employees who had an ethics complaint filed against them. The reason we're not getting a response may be that COR hasn't made a policy decision yet.

Chair Gall responded that the other issue which he would like them address, would be "what is their role in advising the Commission." The EDLC responded that he would ensure that the question is asked regarding when the COR deputy is acting as the advising counsel to the Commission.

Chair Gall asked if there was any further discussion on the April 26 memo to Corporation Counsel from the EDLC and whether there were any other items for the Open session, and since there were none, asked for a motion to go into Executive session. Commissioner Chen so moved, Commissioner Burroughs seconded, and all were in favor.

[Note: Po'okela Student Intern, Henry Wu, exited the meeting.]

V. SUMMARY OF EXECUTIVE SESSION MINUTES

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of the April 19, 2013 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The Minutes were approved.

- B. For Action: Request for a Motion to Approve and Adopt a Formal Advisory Opinion Regarding the Use of City Travel Funds. (HRS Secs. 92-5(a)(4) and (a)(8))

The Commission approved a public formal Advisory Opinion, No. 2013-2, describing its recommendations to the Administration and Council to ensure that city funds are not used to pay for personal expenses of city officers or employees.

- C. For Action: Request for a Motion to Find Probable Cause that a City Officer Failed to File a Conflict of Interest Disclosure in Violation of RCH Sec. 11-103. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

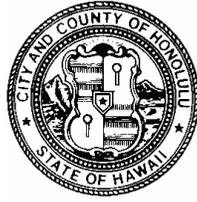
The Commission deferred this matter for further information at the next meeting.

VI. ADJOURNMENT

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: June 19, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Charles W. Gall, Esq., Chairperson
Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 469th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 11:48 a.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the June 19, 2013 Meeting, Open Session, dated June 12, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSION OF THE MAY 15, 2013 MEETING

Vice Chair Wong asked for a motion to approve the Minutes of the Open Session of the May 15, 2013 meeting. **[Vice Chair Wong mentioned “May 8 meeting”, however, the meeting took place on May 15. The confusion arose from a typo on Open Agenda Memo.]**

Vice Chair Wong informed the EC that she was not at the May 15 meeting and asked whether the Minutes could be adopted with just three Commissioners.

[Commissioner Chen arrived after the meeting began, and Chair Gall, Commissioner Lilly and Commissioner Silva were absent.]

The EDLC responded that any action by the Commission requires a minimum of 4 votes. However, if a member who was absent from the May 15 meeting reads and understands the Minutes, he/she may vote to adopt. He further advised that it was up to Vice Chair, but if she didn't feel comfortable voting, she could recuse herself since she was absent.

Vice Chair Wong recused herself and deferred the approval of the May 15, 2013 Minutes until the next meeting.

III. OLD BUSINESS

A. Confirming the Date and Time of the July 15, 2013 Meeting

The meeting was confirmed for **Monday, July 15, 2013 at Noon.**

B. Setting the Date and Time for the Meeting During the Week of August 12, 2013

The meeting was confirmed for **Monday, August 12, 2013 at 11:30 p.m.**

The Vice Chair asked the EDLC to run through the Administrative News.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Complaints and requests for advice

The EDLC informed the Commission that it looks like the workload will have gone up about 12 or 13 percent this year over last year. Also, staff will probably reach about 3,000 employees and officers in one form of training or another by the end of this fiscal year.

4. Hiring the full time Staff Investigator

The EDLC also informed the Commission that he interviewed the best candidate for the staff investigator position, and had not made an offer yet, but was hopeful that she would accept the position, since she would be a great addition to the EC staff. He further stated that he will inform the Commission of her identify once she has accepted the position. Since this is a newly-created position, her start date cannot be confirmed, but was hopeful that it would be the end of July. He will keep the Commission posted.

The Vice Chair asked if this person would sit in the office or what would be the physical logistics. The EDLC responded that she would be physically in the office. Vice Chair Wong then asked if we had enough room, and the EDLC responded, “barely.” The EDLC further stated that if we buy a “state-of-the-art,” or at least an updated copier, as well as make room for another Po’okela intern, we would definitely have to make some “space changes,” and to also obtain another computer line hook-up for another computer in the office.

5. Status of hearing officer for a contested case:

The EDLC informed the EC that he requested that funds be released to pay for the hearings officer through a contract back in February. We do not have a hearings officer on contract yet, we do not have a hearing date yet, but we hope to get those as soon as possible.

6. Miscellaneous:

Vice Chair Wong asked if there was anything that the Commission could do to help. The EDLC responded that he didn’t think there was anything the Commission could do at this point, since this is just one of the many little bureaucratic bumps he had to go through, but appreciated the offer.

Commissioner Chen asked the EDLC if there was any chance of going into a larger office space. The EDLC responded that the office space issue will be addressed in the upcoming fiscal year 2015 planning, which will start in a couple of months. He also stated that he had submitted the office space issue, along with the need for additional employees to the administration for FY14 and will continue to advocate for increased resources in FY15.

The next critical position to add is either a part-time or full-time legal clerk, working under the Legal Clerk III, because she has not only the old responsibilities of the lobbying and financial disclosure form filings, we now have the all-employee ethics training as well as the supervisors’ ethics training. Keeping these programs organized and moving takes two people. Plus, she has all the other duties that she does for the ALC, the EDLC and the Commission. The next level of priority is another attorney or investigator.

There are still many issues the Commission has not had the chance to take on because of a lack of resources, like something as simple as auditing the financial disclosure statements. We don’t know whether the people are telling us the truth or not. To just do a random audit of 50 or 100 statements takes a lot of time, and may not be the best use of resources compared to other priorities. There are areas that we might want to take a much more proactive approach in investigations. With our own investigator, we should be able to be more creative in some of the investigative work we do, rather than just responding to complaints.

B. Informational: Office of Information Practices' Decision Regarding the Confidentiality of Commission Investigative Materials

The EDLC asked if anybody was interested in looking at the actual Opinion, we could send them a copy. It's a little dense, unless you're a lawyer. It is a culmination of several years work by staff and details how our work is protected from disclosure and under what circumstances. The opinion maintains the integrity of the Commission process and confidentiality regarding the people we deal with.

Vice Chair Wong asked if this was the first time that it came up. The EDLC responded that it's the first time that someone who wanted our investigative records took the issue to OIP.

Vice Chair Wong stated that the opinion shows that the public and OIP recognize that the Commission is an integral part of government.

C. For Discussion: Review of Staff's Proposed Ethics Commission Operating Plan for Fiscal Year 2014 through Fiscal Year 2016

The EDLC informed the Commission that he would be happy to go through the matter with them or just to leave it up to the Commission to discuss topics they are interested in.

In the past, it has always been a flexible plan. These are things we would like to do, if we have the resources and the opportunity to follow through.

The EDLC made a change on Page 5, Action Item #6, a. and b., "c" was included: "*c. Try to determine probable cause within 6 months of complaint filing.*" **[The EDLC handed-out copies of the revised Page 5.]**

The EDLC further stated that goals in the Summary for completing advice and complaints are coming closer to completion. We do have cases, for instance, where probable cause is decided within six months. Since Laurie's come on board, we rapidly reduced the number of complaint cases that are two or three years old.

The EDLC said that managing resources is a balance between funding and priorities. To the degree we get more resources, we can do more, and to the degree we don't, we have to just prioritize. The EDLC will be pushing ahead with our resource plan for FY15. He mentioned that we have a good relationship with the Budget & Fiscal people and also with the Managing Director's office. Despite the beginnings with Ember Shin, we have worked with her on other things without a glitch. Vice Chair Wong commented that it was good.

Vice Chair Wong stated that she liked the idea about ethics officers in each department. She asked if the action items were based on best practices from other agencies. The EDLC

responded that the best practices are based on best practices in jurisdictions, private corporation that develop compliance programs as a result of the federal sentencing guidelines against corporate fraud and our own ideas for successful ethics program management. Vice Chair Wong commented that she wondered whether it might strengthen the action items and positions in the Plan if the source were noted. The EDLC will try to do that.

Commissioner Chen asked how the action items are selected for implementation. The EDLC said he tends to be “ruthlessly opportunistic.” Some items, such as legislation, take significant time, resources and allies to accomplish. Some of these can just grow on its own, such as the use of departmental ethics officers. If one would like to be called an Ethics Officer, that’s great, and if not but they are going to take on the duties, that’s fine too. “Opportunism” comes into play when someone offers a good ethics policy idea. Bill 32 (to apply the ethical standards of conduct to the bus transit provider) is a good example. We received three complaints alleging serious misconduct at the same time that Councilmember Manahan was interested in proposing legislation to have the ethics laws apply to the bus service provider.

Commissioner Burroughs stated that it would be helpful if the action items were prioritized. The EDLC stated he would try to do that.

Vice Chair Wong suggested a “dashboard presentation,” since it’s easy for folks to see. Vice Chair Wong explained that a dashboard presentation is like a dashboard on your car where you get to see everything at one time, so maybe you can prioritize them and show which ones are in progress, which ones are completed in green, which ones have been stopped or whatever. One can see the progress on maybe quarter by quarter. This could also be used as executive summary. The EDLC agreed.

Commissioner Burroughs and Vice Chair Wong agreed. Commissioner Yuen also suggested that you could explain that the Plan is flexible. The EDLC will see what he can come up with for the next meeting, and if the Commission has any ideas regarding other areas, to send him an email.

Vice Chair Wong asked for a motion to move into executive session. Commissioner Burroughs so moved, Commissioner Chen seconded and all were in favor.

V. SUMMARY OF EXECUTIVE SESSION MINUTES

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of the May 15, 2013 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The approval of the minutes was deferred until the next meeting.

- B. For Action: Request for a Motion to Adopt Commission Staff’s Proposed Position Regarding Bill 32 (2013) to Apply the Ethics Laws to the Management Services Contractor for Bus Transportation. (HRS Secs. 92-5(a)(4))

The Commission voted to support the intent of the bill and recommend clarifying ROH Sec. 18.3 to require that the bus transit provider's officers and employees be covered by the city ethics laws.

- C. For Action: Request for a Motion to Find Probable Cause that a City Officer Failed to File a Conflict of Interest Disclosure in Violation of RCH Sec. 11-103. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

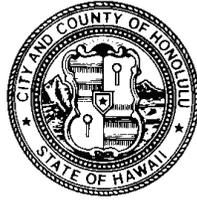
The Commission found probable cause of a violation and instructed staff to transmit a Notice of Alleged Violation to the Respondent.

VI. ADJOURNMENT

ETHICS COMMISSION
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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: July 15, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Charles W. Gall, Esq., Chairperson
Stanford Yuen, P.E., Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 470th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 12:06 p.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the July 15, 2013 Meeting, Open Session, dated July 9, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSIONS OF THE MAY 15, 2013 MEETINGS

Vice Chair Wong asked for a motion to approve the Minutes of the Open Session of the May 15, 2013 meeting.

Commissioner Chen made a motion for approval of the Minutes, Commissioner Silva seconded, and all were in favor, with the Vice Chair abstaining.

III. OLD BUSINESS

A. Confirming the Date and Time of the August 12, 2013 Meeting

The meeting was moved to and confirmed for **Monday, August 19, 2013 at 11:30 a.m.**

B. Setting the Date and Time for the Meeting During the Week of September 16, 2013

The meeting was set for **Monday, September 16, 2013 at 11:30 a.m.**

The Vice Chair asked the EDLC to go through the Administrative News.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Complaints and requests for advice statistics:

The EDLC informed the Commission that the FY13 statistics were attached as OPEN-1. The most important issue is the level of increase overall. All requests for advice and complaints were up 14%; complaints investigated up 23 percent; ethics training total increased by 165 percent; formal advisory opinions were down to 6, so that was a 45 percent drop; and the website hits were up 13 percent. The EDLC further stated that it was a busy year, and the FY 14 will probably be busier as we continue doing the training and accepting a lot of requests for advice and complaints as employees receive ethics training.

4. Hiring the full time Staff Investigator:

The EDLC informed the Commissioners that we have an outstanding offer to Letha DeCaires, a retired police captain. She had about 27 years at HPD, up through the ranks, and she's very well qualified, as well as very interested in ethics issues and community issues. The HPD Deputy Chief gave her good reviews. The EDLC further stated that he was hoping that her start date will be August 1.

Vice Chair Wong asked if coming from HPD brings strengths in the EDLC's opinion. The EDLC responded that one strength is that the candidates worked on internal affairs issues, which is similar to the work we do and she brings with her knowledge of people in government, how city government works and a broad background.

The EDLC informed the Commission that we were also able to get another UH Po'okela Intern. The ALC has been kind enough to volunteer to have the Po'okela Intern share her office.

5. Status of hearing officer for a contested case:

The EDLC informed the Commission that we finally obtained the contract for the hearings officer at \$4,000, \$2,400 of which will come from the fiscal year that just ended (FY13), so we can at least get things started.

6. Council on Governmental Ethics Laws (COGEL) Conference:

The 2013 Annual COGEL Conference will be held in Quebec City, Quebec, Canada, December 8 through 11, 2013. The EDLC recommended that the Commissioners attend this conference, and that it would be helpful to them to understand our issues and procedures relative to other jurisdictions. Vice Chair Wong asked if there was any interest in going to Canada in December, and 3 Commissioners informed the EDLC that they would be interested (Vice Chair Wong, Commissioners Chen and Lilly).

B. For Information: Status of Bill 32 (2013)

This Bill raises the question whether the employees of the Oahu Transit Service (OTS), should be brought under the Ethics Commission's jurisdiction. The City Council is more likely to require in an ordinance that the transit service provider develop standards of conduct substantially similar to the City's and implement them internally.

The Department of Transportation (DTS) has the ability to audit OTS, but those tend to be very general reviews and are not focused on particular problems. The EDLC noted one question would be whether OTS simply adopts the laws from the City as OTS policy or will it also adopt the process used to enforce the laws.

Vice Chair Wong stated that she thinks it's great to say that we support and applaud this voluntary effort, but our concern is this—will there be organization within OTS to which employees can anonymously register complaints and that can and will conduct audits or investigations. Such an enforcement unit will lend that much more power to the ethics standards. The EDLC has no problem with that approach, which is a very valid approach.

The EDLC stated he spoke with Jan Kemp, the Compliance and Ethics Officer for HECO, and asked what HECO would do if there's a complaint about somebody in the highest level. Ms. Kemp responded that there's an audit committee that will handle the case, which provides for review at the highest level.

Commissioner Silva commented that OTS officers and employees are in positions to affect the use of taxpayer funds and should be held accountable.

Commissioner Burroughs asked if the strong inclination of the Council is to adopt a volunteer approach. The EDLC responded that he was not sure, but Corporation Counsel is recommending that the ordinance require ethical standards of conduct be adopted by OTS that are substantially similar to the City's. But he doesn't know whether the ordinance language will cover the method of implementation.

Commissioner Burroughs asked if there is another model, and the EDLC responded that there are other models for enforcing a municipality's standards of conduct through vendors to the government. Also, in theory, the City's anti-sexual harassment code requires any contractor to the City to follow City law. A vendor who violates the law could lose a contract or an individual could be disciplined, but the City has not tested the law. The EDLC responded that there is no requirement in City contracts requiring vendors to follow ethics policies. The EDLC further stated that a number of jurisdictions have such language in their form contracts.

Commissioner Burroughs stated he felt it is important to make the Council very aware that the Commission believes the transit provider personnel should be within the jurisdiction of the ethics laws. Commissioner Silva agreed because of the taxpayer funds used to support OTS.

Vice Chair Wong stated that it sounds like the Commissioners are comfortable with the EDLC stating that the Commission believes that the best approach is to have the transit personnel come within the Commission's jurisdiction. If the Council decides to require OTS to follow its own policies, the Commission will also offer guidance to OTS.

The EDLC has informed the Managing Director that he presents the position of the Commission, not of the Administration.

Vice Chair Wong asked for a motion to move into executive session. Commissioner Silva so moved, Commissioner Chen seconded and all were in favor.

V. SUMMARY OF EXECUTIVE SESSION MINUTES

- A. For Decision: Request for a Motion to Approve the Minutes of the Executive Session of the May 15, 2013 Meeting.

The executive session meeting minutes for May 15, 2013 were unanimously adopted, with the Vice Chair abstaining.

- B. For Discussion: Whether the Use of Private Funds is a Gift for the Benefit of a City Officer.

The Commission requested that staff draft a proposed advisory opinion consistent with the staff's report and the Commission's comments to the report.

VI. ADJOURNMENT

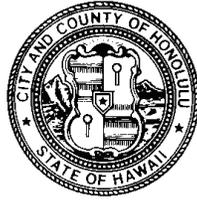
A motion to conclude the executive session was made by Commissioner Lilly and seconded by Commissioner Silva. All were in favor

Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: August 19, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha DeCaires, Commission Investigator
Tierra Bickford, Commission Po'okela Intern

Stenographer: Lisa Parker

I. CALL TO ORDER

The 471st meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:39 a.m. by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the August 19, 2013 Meeting, Open Session, dated August 12, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE JUNE 19, 2013 AND JULY 15, 2013 MEETINGS

The EDLC informed the Commission that only the June 19, 2013 Minutes were given to them for approval. Chair Gall asked if anybody had any comments on the June 19, 2013 Minutes. Vice Chair Wong stated that in Section 5, "...working under Lisa" was colloquial. The EDLC responded that he would revise Section 5, and that after the second paragraph he will include a miscellaneous paragraph, based on the EC comments.

The Chair asked if there were any other comments, and since there were none, asked for a motion to adopt the Minutes with the changes discussed. Commissioner Yuen so moved, Commissioner Silva seconded and all were in favor.

III. OLD BUSINESS

A. Confirming the Date and Time of the September 16, 2013 Meeting

The meeting was moved to and confirmed for Monday, September 30, 2013 at 11:30 a.m.

B. Setting the Date and Time for the Meeting During the Week of October 14 – 18, 2013

Pursuant to the Commissioners' conflicting meeting dates, the October meeting will be held-over to November 6, 2013 at 11:30 a.m.

The Vice Chair asked the EDLC to go through the Administrative News.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Introduction of Investigator Letha DeCaires and Po'okela Intern Tierra Bickford:

The EDLC introduce Letha DeCaires, the full-time Investigator. Ms. DeCaires introduced herself, and informed the Commission that she retired after working for the Honolulu Police Department for 27 ½ years, and that she was a former school teacher. She spent 14 years in her career as a detective and loved detective work, and that working as the Investigator for Ethics is an adventure and that it is good for her community, and very proud to be with the Ethics Commission, and thanked the Commission. The EDLC informed the Commission that she retired as a Captain.

The EDLC also introduced Tierra Bickford, the Po'okela student intern. Tierra Bickford introduced herself and informed the Commission that she is studying human resources at U.H., and that she graduates in December 2013.

2. Complaints and requests for advice statistics:
3. Website statistics:
4. Education and training statistics:

The EDLC informed the Commission that the requests for advice and complaints and the education and training statistics were clearly stated, moved on to the next item on the agenda.

5. Creation of and budgeting for an Assistant Executive Director and Legal Counsel Position and a Clerk Position for FY 2015:

The EDLC informed the Commission of the budget issues. Last year a plan was laid-out before the Department of Budget and Fiscal Services, as well as the Managing Director, as to what resources the EC needed, and we were allocated the Investigator position. The EDLC further informed the Commission that we still need support for the Legal Clerk, who does a lot with not only servicing the attorneys, but also need to take care of all the administrator issues, such as the 600 financial disclosures, the 100 lobbyists, and all the training. So she will need a lot of help. The EC needs either a part-time or a full-time lower level clerk for support. We tried to obtain the position last year, and will try again this year.

The EDLC also informed the Commission that the other position is the Assistant EDLC. The Associate Legal Counsel pay, regardless of who is in the position, essentially ends at \$82,000. The problem is the pay level at Corporation Counsel for someone with 10 years relevant experience is \$95,000. The Department of Human Resources (DHR) has given preliminary approval to adding a new position. We would still have the ALC position. The Assistant EDLC will handle more complicated cases and a portion of the administrative matters. The position will be in the excluded manager 3 series, which will allow for pay comparable to similarly experienced deputies at Corporation Counsel.

Chair Gall asked the EDLC why the executive director and the legal counsel were bundled into one job. The EDLC responded that the positions are separated in some larger commissions, where the executive director is the administrative head of the commission but does not get involved in legal matters. At the State, Les Kondo is the Executive Director and General Counsel.

Vice Chair Wong asked if the EDLC thought of a strategy as far as adding the other position and creating a budget for next year. The EDLC responded that it would be to create and fill the Legal Clerk I and Assistant EDLC positions in fiscal year 2015. The EDLC clarified that he wants to have the positions created and funded. Whether or not we need to have all three positions filled, is a separate question, but we would be more flexible considering the workload.

The EDLC will be contacting the Commission and the Chair regarding a letter that he will draft around the middle of September for their approval.

The EDLC further informed the Commission that the pay raises for our staff should be paid by City, and not by EC funds. Chair Gall asked what were the salary issues, and the EDLC explained that the Legal Clerk's pay is based on HGEA Unit 3, but the pay hike is delayed for the Legal Clerk. Our ASO is working on it. The ALC's pay is based on HGEA Unit 13, which the city's offered pay increase. Until we find out Unit 13's increase, we will not know what ALC's pay hike will be. The EDLC's pay is required to be on the EM-7, excluded manager 7 range, but the Commission sets his pay. For the Investigator, her salary is also based on HGEA Unit 13, and the Po'okela intern is paid by DHR.

The EDLC stated that in the past the Mayor had five major focal points for his budget. The fifth was good government, but that is not specifically listed this year. The EDLC further informed the Commission that he appreciated their support and the potential letter.

One added topic – additional office space for added personnel. Right now the Po'okela intern is sharing an office with the ALC.

6. Status of hiring a hearing officer for a contested case and setting the date for the contested case hearing:

The ALC informed the Commission that the contested case hearing dates have preliminarily been set, and a Stipulated Scheduling Order was sent over to Respondent's Counsel to confirm the dates, which are October 22 and 23 for the Hearing, at the Mission Memorial Annex conference room.

7. Council on Government Ethics Laws (COGEL) Conference:

The Legal Clerk distributed copies of the hand-out and flyer for the 2013 Annual COGEL Conference to the Commissioners. The deadline for registration is October 31, for the lower registration fee. The EDLC will keep the Commission posted as soon as he sees who is actually going to be giving the discussions.

Vice Chair Wong asked if our Commission is a member, and the EDLC confirmed. The EDLC further stated that he thinks there will be more Canadian speakers than COGEL would normally have.

8. For Information: Status of Bill 32 (2013)

The EDLC noted the Council proposal to require Oahu Transit Service (OTS) to develop its own ethics policy. The EC staff has been trying to get to the table. The Executive Matters and Legal Affairs (EMLA) Committee Chair Ron Menor has been trying to have all parties meet to discuss the issues – COR, OTS and the Department of Transportation Services (DTS), which oversees the OTS contract and OTS. The EDLC further stated that he has not been contacted by any of the other stakeholders. Chair Menor informed the EDLC that if they do not include the EC, he will make sure the EC is presented with all information before the hearings.

Chair Gall asked for a motion to conclude the open session and enter into the executive session. Commissioner Chen so moved, Commissioner Burroughs seconded and all were in favor.

V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the June 19 and July 15, 2013 Meetings.

The minutes of the executive session of June 15, 2013 were unanimously adopted.

- B. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion Regarding the Contributions of Funds by the Mayoral Transition Committee for Transition , Official Inauguration and Mayoral Luau Expense.

The matter was continued to the next meeting.

- C. For Action: Request for a Motion to Approve and Adopt a Stipulation to Settle the Alleged Violation of the Standards of Conduct by Councilmember Ann Kobayashi.

The stipulated settlement was unanimously adopted, no recommendation for additional discipline would be made to Council, and the proposed advisory opinion was unanimously adopted.

VI. ADJOURNMENT

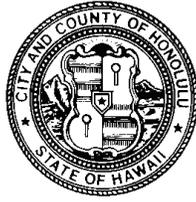
A motion to conclude the executive session was made by Commissioner Lilly and seconded by Commissioner Silva. All were in favor.

Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: September 30, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [**recused from V.D.**]
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner [**IV.B., V.B. only**]
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner [**all items except for IV.D.**]
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Donna Y. L. Leong, Corporation Counsel (Corp Counsel)-COR [**IV.B., V.B. only**]
Sheryl L. Nicholson, First Deputy-COR [**IV.B., V.B. only**]
Catherine R. Maki, Administrative Services Officer-COR [**IV.B., V.B. only**]
Letha A. S. DeCaires, EC Investigator
Tierra L. Bickford, EC Po`okela Fellows Intern

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 472nd meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:40 a.m. by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the September 30, 2013 Meeting, Open Session and Executive Session, dated September 24, 2013.

Chair Gall asked the EDLC to introduce the guests in the Open Session.

The EDLC introduced Donna Leong, the Corporation Counsel, Department of the Corporation Counsel (COR) Sheryl Nicholson, First Deputy, COR, and Cathy Maki, the Administrative Services Officer (ASO), COR. The EDLC requested that the agenda items be taken out of order to accommodate the guests. Chair Gall agreed.

IV. NEW BUSINESS

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget

Chair Gall confirmed that the EC would take Open Session item IV.B. on the agenda first, and asked Ms. Leong to address the Commission.

Ms. Leong introduced herself and thanked the Commission for the opportunity to address FY 2015 budget-related items IV.B and V.B. on the agenda. Ms. Leong described her professional background spanning from her graduation from University of Washington law school, to her first job as a Deputy Corporation Counsel over 30 years ago; private practice at Cades Schutte, and then Outrigger Enterprises. She indicated that she was on the recruiting committee at Cades Schutte, and hired an Associate General Counsel and interviewed other attorneys while at Outrigger Enterprises.

Ms. Leong returned "home" to COR in April 2013 and since then has hired eight deputies including the First Deputy, who started working at COR three weeks ago. Ms. Leong stated that the deputies have between 0 and 30 years of relevant legal experience. She overhauled the disparate salary structure to make it fair regardless of the economic condition when they were hired as some deputies had very low salaries since they were hired between 2008-2010 during the recession. Ms. Leong explained that she wanted to show the Commission that based on her background she has a lot of experience with hiring and setting salaries for both in-house counsel and private lawyers in a law firm.

Despite her professional background, she admitted that she's unfamiliar with COR's budget responsibility which is completely different than her prior budgeting experience in the private sector. As such, she's still learning about COR's budget responsibility.

Ms. Leong stated that the city is faced with budgetary challenges for fiscal year (FY) 2014 and even more so for 2015. She stated that this Administration needs to work together as a team in order to provide core city services within the budgetary constraints. She stated that she wanted to provide the budgetary context so the EC could make an informed decision on the two agenda items.

Ms. Leong explained that consistency, fairness, and equity are very important considerations to establish salaries in a law firm. When she made the salary adjustments to her 42 deputies, she looked at their relevant legal experience, which was an established COR

standard. For example, someone who does procurement in a private law firm, may get one-on-one credit for their years working in that area if they are the deputy assigned in that section. She further stated that it was important for her to treat deputies who operate at the same level equitably, based on her observations of their work product, how many employees they supervise, how many clients they serve, and client relationships and confidence. She stated that she treated her three division heads equitably.

Ms. Leong stated that salary is not based on “numbers” such as billable hours and how many assignments are completed. She admitted that generally the deputies don’t keep billable hours. As a member of the management committee and as a person who has reviewed many invoices for outside counsel, she stated that numbers can be deceiving and you have to use your judgment in looking at the quality of the work to determine whether the compensation that the lawyer is seeking is fair and a good value for the work product.

Ms. Leong explained that in hiring the eight new deputies, she gathered a lot of information about present market conditions and salary expectations. As a result, she’s very appreciative of the deputies who serve at COR, because their salaries quite frankly, “suck, they just suck.” That’s the nature of public service; you have a commitment to serve the public, and you know that you’re not doing it for money, so without question they’re not being compensated, truly, for the value of their work, and having been in the private sector for 20 years, seven years as General Counsel, she reiterated that their salaries are below desirable. She further stated that the deputies still work at COR, and all she can do is thank them for their commitment to public service.

She requested that the Commission use salary expectations, years of relevant experience, and market conditions to determine the salaries of the EC staff. She acknowledged that the EC establishes the Executive Director’s salary, and all staff positions are set by the position classifications plan per the Charter.

She acknowledged that the Managing Director (MD) submitted a letter to the EC that summarily describes the city’s FY 2015 budgetary challenges caused by collective bargaining arbitration decisions and cited a \$150 plus million deficit in 2015.

Ms. Leong then referred the EC to the letter sent that morning by Nelson Koyanagi, Director, Department of Budget and Fiscal Services (BFS) in which he asked the Commission to establish and document standard performance criteria to award merit-based pay increases or award pay increases based on excluded managerial employees as applied to the executive director’s position.

Ms. Leong explained that the agenda items seems to indicate that the EC accepted the EDLC’s and the ALC’s salaries for FY 2014. Ms. Leong admitted again that she was new to the city’s budget process. She asked the EC if they set the salaries for FY 2014.

Chair Gall and Commissioner Silva responded, in the negative. The EDLC clarified that the FY 2014 salary for himself and the ALC had already been set based on the FY 2013 budget process which occurred in the fall of 2012 and early 2013. The EDLC also stated that on Friday, staff received notification that they were supposed to receive 4 percent pay increases. Ms. Leong stated that it was her understanding that although the 4 percent increase was part of the COR budget, it should not be used to set the EDLC and ALC salary. The EDLC responded that he didn't request a salary increase, and his salary would have been set based on the EC budget.

Chair Gall didn't recall having any kind of motion or procedure where the EC would review and approve the EDLC's salary.

Ms. Leong stated that if the salaries had not been set for FY 2014, that the EC needs to set the EDLC's salary. She further stated that just because the 4 percent has been allocated to the EC, that the 4% pay increase was not automatic as some of her deputies did not receive the 4% increase and that the increase was based on merit. The EDLC responded that if there's going to be an increase to his salary, then it needs to be set by the EC.

Commission Lilly confirmed that the Commission approves the budget and that the budget allocates funds that reflect the staff salaries. The EDLC concurred. Commissioner Lilly continued, but the EC hasn't made the decision of what the salaries would be for 2014. The EDLC responded, "Not technically." Commissioner Lilly further commented that Ms. Leong's dilemma appears to be how do you do you set the budget for 2015, when you haven't set the EDLC salary for 2014.

Ms. Leong stated that the EC should use her approach to setting salaries by using the amount set for FY 2014 for the 2015 budget. Her reasoning was that the EC needed to use FY 2014 salaries for the FY 2015 budget because the EC can't authorize the salary for FY 2015, which starts July 1, 2014, until they've evaluated the EDLC with the performance metrics or they award an Excluded Manager (EM) increase, which is the 4 percent increase that the BFS director proposed in his letter.

She further stated that procedurally she looked at the agenda item for V.B., which is also related to IV.B, and stated that the action requested on the agenda item cannot be authorized and approved by the Commission since the performance hasn't happened yet.

Chair Gall asked Ms. Leong if the options set forth in BFS letter are the only options the Commission has in order to set the salaries for the EDLC and ALC. Ms. Leong responded that she had to set her deputies salaries as of July 1, 2013 for fiscal year 2014. When she set the budget for FY 2015, she basically used the salary increase as a budgeted item, which wasn't to say that they were going to get that salary.

Commissioner Chen asked Ms. Leong for confirmation that she checked her July 2013 numbers and budgeted that already for July 2014? Ms. Leong corrected Commissioner Chen,

and stated 2015. Ms. Leong further explained that in July 2013, she had to set the salaries for the deputies for fiscal year 2014, and that fiscal year 2014 is from July 1, 2013 to June 30, 2014. Commissioner Chen acknowledged the explanation, and asked Ms. Leong to confirm that she set the budget for the following fiscal year 2015, based on the fiscal year 2014 numbers, so that means the budget for FYs 2014 and 2015 are the same. Ms. Leong confirmed. Ms. Leong stated that she hadn't determined the COR deputies' salaries as of July 1, 2014, therefore, she just budgeted salaries based on no increase. Commissioner Chen asked for confirmation that Ms. Leong based the FY 2015 salaries on no increase. Ms. Leong confirmed.

Commissioner Chen asked Ms. Leong if she wanted to make salary decisions based on merit, wouldn't the deputies have to work a full year, for her to make the decision on their salary starting on July 1, 2014? Ms. Leong agreed. Commissioner Chen asked Ms. Leong when will she make that salary decision. Ms. Leong responded that this year she made the decision late because she was new and didn't understand the budget process. She stated that next year she would probably try to start the process at the end of May or beginning of June.

Commissioner Chen asked Ms. Leong that since she budgeted for the salaries to be the same, and if salary increases are merit-based, could the salaries increase in theory? Ms. Leong responded that it could. Commissioner Chen asked if the budget could allow for that. Ms. Leong explained that the MD said that everybody "tows the line" on budget, or some people actually take a cut. Ms. Leong explained that COR took a cut in 2014 because COR had vacant positions, City Council cut half of COR's provisional account. City Council said COR would have to go through several steps to get the money back. Unfortunately, COR had not hired any new deputies since October 2012, so that's why there were eight vacant positions. Ms. Leong stated that she had a big deficit that she had to fill with other funds from the COR budget.

Commissioner Chen asked Ms. Leong that when she conducted her merit-based analysis this past summer, if any salaries decreased. Ms. Leong said, "No." Commissioner Chen repeated for confirmation that nobody's salary decreased, even though Ms. Leong considered merit, the economics, equity; all those things she just discussed. Ms. Leong confirmed that no salaries were decreased. She added that some deputies may not get an increase, some may receive a 2 percent increase, and some a 4 percent increase. She stated that there was a salary adjustment because the salaries were "out of whack."

Ms. Leong asked how the EC would set the budget for FY 2015 when they had not determined the EDLC's salary for FY 2014?

The EDLC explained that one of the problems is that Ms. Leong is talking about a budget-setting process that he's never been informed of. He further stated that Ms. Maki, COR's ASO can recall many times all the COR deputies received a 4 percent increase that was allotted to them from a provisional account, but, the EC attorneys were excluded from the allotment. The EDLC was told that if the EC wants to ensure that any budget matter such as inclusion of the provisional account allotment for the upcoming fiscal year was included in the budget, the EC

had to ensure that it was included in the budget-setting process. The budget setting process for a fiscal year occurs essentially 9 months ahead of time, and that is why this matter is on the agenda today.

The EDLC followed, that for FY 2014, as in all prior years, there's a salary item for the EDLC and the ALC, estimating what our salaries would be in the next fiscal year. Certainly the EC could have decreased it. The EDLC doesn't know if it could be increased during the fiscal year because there wouldn't have been any funds.

The EDLC only heard on Friday that this time the provisional account is actually going to include the ALC and the EDLC. He understands COR and BFS, and appreciates their letter although he believes performance metrics have been used in the past evaluations.

The EDLC stated that he has no problem entertaining a motion to set the EDLC and ALC salaries for FY14. He doesn't want the Commission thinking that he's trying to do an "end-run" on city government by prematurely setting a budget for FY 2015. But the EC has repeatedly been excluded from any increases to budget or salary items in the past when others received increases. The EDLC stated that although the ALC's position might get an automatic increase because she's on the SR classification plan, but the EDLC's would not.

Ms. Leong responded that the Charter requires that the EC set the salaries, and she doesn't believe automatic increases are appropriate, just because the money is budgeted. The EDLC responded that he's not suggesting that.

Ms. Leong stated that the EC had a procedural dilemma that was difficult to address because of the way the agenda split the items between open and executive session. She informed the EDLC that she wasn't being confrontational, but wanted clarification on whether he thought he should automatically get the 4 percent raise for FY 2014. The EDLC disagreed and explained that his pay is always set at the level determined by the EC that is why he assumed fiscal year 2014 salaries would be according to what was in the budget. The EDLC explained that the ALC's salary is a different situation because she is in the classification plan, and he believes that her salary would follow the SR26, award to the Unit 13 Employees after arbitration. He understands that currently, Unit 13 rejected a 4 percent increase this year and a 4 percent increase next year. The EDLC explained that when Ms. Maki called and said there were funds in the provisional account, he told the ALC that although she may be able to get an increase from the provisional account, she's not going to get another raise based on Unit 13 award. She would be limited to the larger of two sums. The EDLC asked Ms. Leong whether he answered her question, and she responded that she didn't know.

Chair Gall asked when the EC would have to provide the budget for FY 2015, and the EDLC responded that it had already been submitted in September. Ms. Leong agreed and further stated that the budget is being reviewed by BFS and the Managing Director. Chair Gall asked for clarification - was Ms. Leong was saying that one of the problems that arose during the vetting

process was that there was never a 2014 salary that was formally established and approved, and therefore there's an issue with our budget numbers. Ms. Leong agreed.

Ms. Leong continued stating that had she known of the budget situation, she would have asked the Commission to formally set the salaries so that she would have a better basis for the FY 2015 budget request. She further stated that she thinks there might be time by the next commission meeting, to put this on the agenda, setting or authorizing the salary for 2014, and then approving the budget for 2015, based on that. Ms. Leong stated that she was grateful to the MD for providing the context of the budget on the macro level as well as the BFS Director for providing the guidance and a more rational basis to set the EDLC's salary based on merit, performance criteria, or to do a step increase. Ms. Leong stated that she will be happy to review and provide input on the EDLC's salary because she set the salaries of 42 deputies.

Chair Gall asked Ms. Leong if she had a matrix or some type of chart or other tabulation of how she set the deputies' salaries. She responded that she did not, but explained that it's based on years of relevant legal experience. Chair Gall responded that he understood the mechanism. Ms. Leong repeated that she fairly and equitably equalized the salaries, and if the deputies have an issue when the Civil Beat article comes out disclosing everyone's salary, she'd be happy to talk to them about it. Ms. Leong repeated that salary was based on years of relevant legal experience, merit, and work product. Chair Gall asked if Ms. Leong had any standards that would indicate a certain salary range for an attorney with 10 years or 20 years of relevant legal experience, and what is the salary range at the division level? Ms. Leong responded in the negative. The EDLC referred the EC to the meeting materials that includes Ms. Leong's email from a month and a half ago which identifies her criteria and its application to the ALC and EDLC's salaries. Ms. Leong requested that the EC go into executive session to address agenda item V.B.

12:10 p.m. - Chair Gall asked for a motion to go into executive session. Vice Chair Wong so moved, Commissioner Silva seconded and all were in favor. Chair Gall announced the commencement of executive session.

V. EXECUTIVE SESSION SUMMARY

- B. For Action: Request for a Motion to Authorize a Salary Increase for the Executive Director and Legal Counsel and to Support the Salary Increase for the Associate Legal Counsel for Fiscal Year 2015.

After discussion, Commissioner Lilly moved that the matter be set on the agenda for the next meeting. Commissioner Silva seconded and all were in favor. The Chair asked that the 2014 salaries be put on the agenda for the next meeting as well.

[12:46 p.m. – Commissioner Chen exited the meeting; at 12:50 p.m. Corp Counsel and her staff exited the meeting; and at 12:51 p.m. the meeting commenced again.]

- D. For Action: Request for a Motion to Approve Staff's Draft Advisory Opinion Regarding Whether the Use of Private Funds is a Gift for the Benefit of a City Officer.

The EC decided to take this matter out of order. Chair Gall recused himself on this matter.

After discussion, Vice Chair Wong asked for a motion to accept the draft advisory opinion with corrections. Commissioner Lilly so moved, Commissioner Silva seconded, and all were in favor.

Vice Chair Wong asked for a motion to offer the ten-day embargo on the advisory opinion. Commissioner Yuen so moved, Commissioner Lilly seconded, and all were in favor.

[1:03 p.m – Chair Gall re-entered the meeting.]

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the July 15 and August 19, 2013 Meetings.

Chair Gall asked for approval of only the July 15, 2013 Minutes and if there was any discussion. Commissioner Lilly so moved, Commissioner Silva seconded, and all were in favor.

- C. For Information: Investigation of Alleged Preferential Treatment by Certain City Officers and Employees for the Benefit of a Company.

After discussion, Commissioner Lilly moved to exit and conclude the executive session. Commissioner Burroughs seconded, and all were in favor.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE JULY 15 AND AUGUST 19, 2013 MEETINGS

Chair Gall asked for a motion to approve the July 15, 2013 Minutes. Commissioner Yuen so moved, Commissioner Silva seconded and all were in favor.

III. OLD BUSINESS

- A. Confirming the Date and Time of the November 6, 2013 Meeting

After discussion, the EC decided to move the November 6, 2013 meeting to November 4, 2013 at 11:30 am.

B. Setting the Date and Time for the Meeting During the Week of December 2 - 6, 2013

The meeting was tentatively confirmed for Wednesday, December 4, 2013 at 11:30 a.m.

IV. NEW BUSINESS

A. For Discussion: Administrative News

The EC referred to the EDLC's Open Session memorandum that provided information on items IV.A.1 through 3 (advice, website, education, training statistics).

4. Council on Governmental Ethics Laws (COGEL) Conference:

The EDLC reminded the EC of the COGEL Conference which would be held in Quebec, Canada from December 8 through 11, 2013. Chair Gall asked about the cost of the conference and if it would make sense to attend. The EDLC responded that it's probably \$2,000 per person and normally there is no money allotted for conferences, but in the past we've been able to write a memorandum to the MD for approval to spend \$2,000 to \$4,000 to attend the COGEL conference. Vice Chair Wong asked the EDLC to check and confirm the allotment, and the EDLC responded that the city is looking at deep deficits for the coming year, and cannot promise an allotment, but will check with the MD. The EDLC further informed the Commission that it's most important for the Commissioners to attend since both he and the ALC have attended the conference in the past. The EDLC asked which Commissioners were interested. After hearing no response, the EDLC recalled that Chair Gall might have mentioned that he wanted to attend, however, it's subject to the MD's approval.

Vice Chair Wong stated that she would not attend since her commission expires at the end of this year. The EDLC further mentioned that he is trying to find out the status on her reappointment but has not heard anything in response.

The EDLC informed the Commission that if there are at least two Commissioners that want to attend the COGEL conference, he'll begin the process for them to attend. Chair Gall stated that they should verify the cost and later see whether it can be justified, considering the budget constraints. Vice Chair informed the EDLC that in the July minutes, Commissioner Chen indicated that she wanted to attend the conference.

[Item IV.B. was addressed again as follows:]

IV. NEW BUSINESS

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget

The EDLC informed the Commission that this item will be addressed at the November 4, 2013 meeting. EDLC will confirm more items with COR. EDLC asked the Commission whether there were any particular issues on the non-salary budget items or any particular questions for the COR. The EDLC directed the Commission to page 3 of the open session memo.

Vice Chair Wong asked the EDLC if COR still supports the costs of the legal clerk, the extra \$15,000 for outside professional services and office extension. The EDLC replied that he believed they did, but it was subject to COR's approval and so far, COR only addressed the salaries. The EDLC explained that he didn't feel comfortable representing that COR agreed to everything but will double-check, and the Chair agreed.

The EDLC further stated that he'll still try to advocate for a new position as opposed to reallocating the ALC position, because it would be better to keep the unfunded position to obtain funding at a later date.

C. For Discussion: Ways to Help Respondents Better Understand the Ethics Commission Process in a Settled Case

The EDLC prefaced the discussion by stating that this item was placed in the open session because EC staff had already talked to Councilmember Ann Kobayashi about each of these issues, and all the records were public.

The EDLC recommended that to avoid future alleged due process issues, the EC should have respondents attend the hearing, where the Commission is going to approve the settlement agreement.

Chair Gall agreed and stated that their attendance would allow the Commission an opportunity to ask any questions of the Respondent or if the Respondent wanted to address the Commission. Commissioner Burroughs asked if attendance would be required. Chair Gall responded that the EC should require it. The EDLC asked if the Commission would want to require attendance for everyone or just those who aren't represented by attorneys. Chair Gall stated that attendance should be required for everybody. Chair Gall further stated that he felt that attendance at the hearing on approval of the settlement agreement should be part of the settlement process. He stated that the respondent would have the opportunity to address the Commission, and the Commission would ensure that the respondent understood the terms of the settlement and that the Commission's opinion will be made public. Chair Gall further stated that mandatory attendance would avoid Respondent's alleging that they weren't given an opportunity to be heard or that they were not treated fairly.

Vice Chair Wong suggested that the EC may want to allow respondents to waive their opportunity to attend the hearing to approve the settlement agreement because some people may not want to attend. Chair Gall disagreed and explained that attendance at the hearing should be mandatory as part of the settlement process, because if the Respondent waives their opportunity

to attend the hearing, that leaves the Commission open for criticism that they failed to give respondent due process.

Ms. DeCaires, EC Investigator II, asked Chair Gall if the Respondent refused to attend the meeting would it stop the Commission from approving the settlement agreement. Chair Gall responded that attendance should be a condition of the settlement. The Chair further stated that if there's no settlement than they would proceed as an adversarial proceeding.

Vice Chair Wong stated that she could see someone prolonging the case by failing to attend the hearing. Vice Chair Wong further stated that the requirement for attendance should have time parameters. Chair Gall explained that if the Respondent doesn't appear then there's no settlement and they just move the case forward as a contested case.

The EDLC suggested that if the Respondent fails to appear, the Commission will draft an advisory opinion based on the information available to it. This is an option that is available under the ordinance if a respondent does not respond to a notice of alleged violation. The EDLC stated that he thinks the Commission would be well-covered in that situation. Of course staff would have to give respondent notice by certified mail.

Chair Gall stated that from the very beginning EC staff must make it clear that attendance at the hearing to approve the settlement agreement is a condition to the settlement. If the respondent decides not to comply, the Commission will basically take a default against them. Commissioner Silva commented that the Respondent should still be required to pay the fine even if they default on showing up at the hearing. The Chair agreed and responded that enforcement of the civil fine is a separate issue.

Chair Gall moved for a motion to adopt the aforementioned discussion, Commissioner Yuen seconded and all were in favor.

The EDLC informed the Commission that a motion on the item was unnecessary. From hereon the EC staff will include language in the settlement agreement that if there is a material modification by the Commission when they review the settlement agreement, the parties (staff and respondent) are not bound by the settlement. Chair Gall responded that the Settlement Agreement is only effective when approved by the Commission, and the EDLC confirmed.

Chair Gall further commented that there should be reports about the case prior to the Settlement Agreement going into final form. The EDLC's only concern about providing reports was that the Commission may prematurely determine that amount of the civil fine is improper without knowing the facts of the case. The EDLC further informed the Commission that he will certainly let them know when the parties come to a general agreement. Chair Gall confirmed that the EDLC will let the Commission know if he has an agreement in principle on key terms, and it will raise a red flag for anyone in the Commission in case it might be problematic.

The EDLC asked if there was anything else on Item C, Chair Gall responded in the negative.

[1:30 p.m. – Commissioner Yuen exited the meeting and the EDLC asked the Commission if they still had quorum, since Commissioner Yuen left. Commissioner Silva responded that they still had quorum.]

D. For Information: Complaint Cases that have been Transferred to the Departments for Corrective Action

The EDLC stated that the EC will be reviewing more serious cases due to the implementation of the mandatory ethics training for all employees and due to Ms. DeCaires, Investigator II joining the EC staff. As such, EC staff will be trying to move the less serious cases to the departments again for further action.

With Ms. DeCaires on staff, the departments now have a preliminary investigative report that she provides that they can rely on. The EDLC continued that when he and the ALC investigate cases, they see related problems including work place violence, moral issues, or minor ethics violations. The EDLC stated that staff has come across systemic problems in the departments which are aggravated by mismanagement and complacency with the status quo.

The EDLC asked Ms. DeCaires to comment on her experiences based on her 27 years with HPD and over the last five weeks with the EC.

Ms. DeCaires voiced concern that she has encountered ongoing systemic problems that the EC had previously identified and addressed, but the departments fail to make any changes. As a result the same types of cases are recurring.

She reiterated the EDLC's concerns with mismanagement due to incompetency, lack of basic supervisory training, lack of policies, or unenforced policies. Mismanagement sometimes appears as preferential treatment. She explained that the EDLC gave her 30 cases when she started and she has closed 8 cases so far. She has spoken to at least 20 different people during her investigations. She also conducted surveillance and observed employees who were not working when they were scheduled to work overtime. She stated that this type of misuse of city resources is happening in practically every department.

Ms. DeCaires stated that she has began informing department directors that she is not singling out their department, it is just that she sends a lot of emails and memos. Each case she investigates opens another Pandora's Box of problems. She stated that as a result of one of her investigations, she was able to make a positive policy change in a department within three days.

Ms. DeCaires voiced her concern that investigations must occur quickly because the case load will continue to increase even more quickly. The EDLC commented that if the case load continues at the current pace, our case load will increase 25 percent over last year.

Ms. DeCaires stated that the stronger the EC, the stronger the city and the community. There are a lot of complainants and witnesses who become very emotional since they are very

tired of the continuing problems that occur throughout the years.

Chair Gall asked Ms. DeCaires if the problems were management issues or ethical problems, and Ms. DeCaires confirmed they were both. She dealt with ethical, supervisory, morale and work-place violence problems. She stated that some individuals will stand-the-line against unethical behavior, but then they succumb and suffer with peer pressure. The peer pressure and stress literally limits their ability to be healthy. These employees end up calling-in sick sometimes because of stress. In one particular case, the person died as a result of all the stress.

[1:48 p.m. – Legal Clerk exited the meeting to prepare materials for an upcoming hearing.]

Ms. DeCaires stated on a positive note, that she has received many positive comments from people when they see something that's being done. Chair Gall asked her for some specifics. The EDLC reminded Ms. DeCaires not to use any names in her descriptions.

Ms. DeCaires described a case where high level supervisors sent out political emails to their subordinates who did not share the same beliefs. The subordinates wanted the supervisors to be held accountable for the misuse of city resources because the supervisors had held them accountable for the same thing. She also described a case where employees from two different departments fought over office supplies because the supplies provided box tops (money) for their child's school. Commissioner Silva commented that they wanted the glory.

Ms. DeCaires described another case in which she conducted surveillance on a particular unit, and expected to find one person misusing city resources, but instead witnessed four employees misusing city resources in one day. Commissioner Lilly asked what they were doing. Ms. DeCaires responded that 4 employees were stealing overtime (misuse of city resources) from the city. In addition, one of the individuals had 19 arrests, and three convictions for violent offenses and drugs. When he came in for an interview, he was volatile with her, and accused her of lying. She has already this case back to the department.

Ms. DeCaires informed the Commission that when cases are sent back to their department for action, she gives them 30 days to inform her of the status. If the departments aren't doing anything, the EDLC and ALC will be informed to follow up, so that people will be held accountable.

The EDLC commented that the EC doesn't have the resources to take on all these cases. Commissioner Lilly responded that staff already investigated the alleged violation and obtained the evidence, and the EDLC confirmed. Commissioner Silva asked if the case can be turned over to the Prosecutor's Office. The EDLC responded that only some cases could be turned over if appropriate. The EDLC explained that he believed that giving the cases to the department would be better because they know the EC is holding them accountable. If EC staff increased we could take on more of these types of cases.

Commissioner Lilly asked if the departments are receptive to these cases. Ms. DeCaires responded that in one case the director wrote back an amazing positive response which was included in the EC's meeting materials. Ms. DeCaires further stated that most of the people she's dealing with are supervisors and that she will update the Commission in a couple of months on the status. The EDLC added that they encountered great reactions from some directors and dodging from other directors and everything in between. Chair Gall asked which department had the overtime abuse, and the EDLC responded "Parks."

The EDLC thanked the Commission for their support, and that it takes all of the different roles as commissioners and staff in order to have a good ethics program. He pointed out that one of the really tough issues is dealing with high level managers who won't deal with ethic issues, because they feel that it is an unnecessary distraction from their substantive work. He stated that it's going to be hard to work with them to convince them that the more you deal with ethics issues, the fewer distractions you'll have in the long-run.

Finally, the EDLC informed the Commission that the resolution of an ethics violation at the administrative level may deter that person from committing a criminal violation.

In addressing the protocol of using email for written communication to city officers, the EDLC informed the Commission that usually staff responds to requests for advice the same way the request comes in. Staff relies on emails to conduct discovery and get information from witnesses and requests for advice. So far, there has only been one respondent that wanted to use the fax machine instead of email to transmit written communications. Chair Gall mentioned if they should adopt email as being a written communication in the context of the EDLC's advisory opinion to a city officer when the EDLC advised that the officer could only make a solicitation by written communication. Chair Gall believed that the EC should clarify whether an "email qualifies as a written communication." The EDLC favored qualifying email as a written communication, and Chair Gall agreed. The EDLC will include it in a stipulation. Chair Gall stated that there may be a bigger issue regarding communication, but the EC could always inquire if the requester "would like to communicate in email, or in writing," if there are privacy concerns.

VI. ADJOURNMENT

Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.

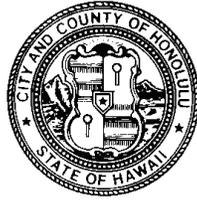
October 17, 2013

MEETING
CANCELLED

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: November 4, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Geoffrey Kam, Deputy Corporation Counsel, COR
Letha A. S. DeCaires, EC Investigator
Tierra L. Bickford, EC Po`okela Fellows Intern
Donna Y. L. Leong, Corporation Counsel (Corp Counsel), COR
Sheryl L. Nicholson, First Deputy, COR
Diane Kawauchi, Deputy, COR
Catherine R. Maki, Administrative Services Officer, COR
Nick Grube, Civil Beat

Absent: Stanford Yuen, P.E., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 473rd meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:36 a.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the November 4, 2013 Meeting, Open Session and Executive Session, dated October 29, 2013.

III. OLD BUSINESS

The EC confirmed the date and time of the December 4, 2013 and January 6, 2014 meetings at 11:30 a.m.

IV. NEW BUSINESS

A. For Discussion: Administrative News

4. Council on Governmental Ethics Laws Conference.

The EDLC decided not to send anyone to the conference since it is cost prohibitive at this time, considering the cases pending and the associated costs either for expert witnesses, outside investigators or transcription services.

The EDLC informed the Commission that the Corp Counsel requested Executive Session Item V.C. and V.D. be heard in Open Session. The EDLC had no objection to the request.

11:55 – Chair Gall arrived and greeted everyone.

Vice Chair Wong briefed Chair Gall on the agenda items discussed.

Chair Gall asked for a motion to hear Executive Session V.C. in Open Session. Commissioner Silva made a motion to that effect. Commissioner Lilly seconded the Motion. The Motion passed unanimously.

Chair Gall asked for a motion to hear Executive Session Agenda Item V.D. in Open Session. Commissioner Lilly made a motion to that effect. Commissioner Burroughs seconded the Motion. The Motion passed unanimously.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE AUGUST 19 AND SEPTEMBER 30, 2013 MEETINGS (Taken Out of Order, by request of Vice Chair Wong pending the arrival of Chair Gall)

Chair Gall asked if there was any discussion regarding the August 19 Minutes of the Open Session. Chair Gall asked for a motion to adopt the August 19 Open Session Minutes. Commissioner Burroughs so moved, Commissioner Silva seconded, and all were in favor.

Chair Gall asked for any discussion on the Minutes for the September 30, Open Session. The EDLC informed the Commission that there was a slight correction on page 7, and that it should read “V. Executive Session ‘Summary.’” Chair Gall noted on page 10, 2nd paragraph:

“Chair Gall asked about and was provided the status of Bill 32.” The Chair asked staff to add a short summary regarding the status. The EDLC acknowledged and that a summary would be added. The EDLC acknowledged that the last sentence in paragraph 1 of Page 14 would be deleted. The EDLC noted that p. 14, 3rd para. will be changed to read, “that person from committing a criminal violation.”

Chair Gall asked if there was any other discussion on the September 30 Open Session Minutes, and since there was no discussion, asked for a motion to adopt, consistent with the comments that were made and suggested revisions. Commissioner Burroughs so moved, Commissioner Chen seconded, and all were in favor.

IV. NEW BUSINESS (continued)

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission’s Fiscal Year 2015 Budget

The EDLC stated that independence is the cornerstone of the credibility of any ethics agency. The value of ethics agency independence is imbedded in the Hawaii Constitution, which requires the commissioners to be independent from and impartial to the pressures placed on the Commission. The Commission’s actions affect the reputation and employment of all levels of city government. In 1982, the Charter Commission emphasized the EC’s independence when attaching it to COR for administrative purpose:

So the Corporation Counsel has no control over this Commission but for administrative purposes, the Commission would be part of the department. The amendment has a legal affect of making the Commission independent of Corporation Counsel, and yet providing it with the vehicle, whereby the Commission, through Corporation Counsel’s budget goes to Council to seek any funds it wishes to request of the Council...whatever monies the Council allocates..., but then it’s up to the Commission to expend and how to expend them.

The Department of Corporation Counsel (COR) must provide the EC with access to present its budget to the Council. Now, COR appears to mistakenly believe it can manage and approve the Commission’s budget. Each budget or personnel decision by the Commission is and should be subject to the objective standards of approval by the budget and personnel department. COR, on the other hand, has no authority to manage the Commission’s budget and personnel.

In the last two months, COR has intervened to substitute its judgment for the Commission’s – first, by attempting to limit the expansion of Commission resources; second, by

trying to influence the Commission as to how its lawyers should be evaluated and paid; third, by starting an audit of the Commission's investigator contract; and, fourth, by threatening to withhold budget approval unless COR is given all budget communications between staff and the Commission regardless of whether they're privileged.

The Commission knows what programs foster public trust and it knows the budget it needs to implement those programs. The EC should not let others substitute their budget judgment. Controlling the Commission's budget is an indirect but effective way to control the Commission. To maintain our independence, it is important for the EC to set the budget.

The Chair asked for a motion to go into executive session to discuss the salaries of the ALC and EDLC. Commissioner Burroughs so moved, Commissioner Silva seconded and all were in favor. The EC entered into Executive Session.

[EXECUTIVE SESSION]

[OPEN MEETING RECOMMENCED]

The Chair noted that while in Executive Session, the Commission decided it would be appropriate to allow Corp Counsel, Donna Leong, to respond to the earlier comments of the EDLC regarding the budget discussion and salaries. The Chair asked the Corp Counsel to proceed.

Ms. Leong stated that COR is administratively responsible for the EC. She took exception to the EDLC's comments about COR intervening to substitute its judgment regarding the budget as COR is only following rules and regulations within the Administration about personal services contracts, which is how the investigator is currently working for the Commission. COR wants to ensure the budget constraints set by the Managing Director (MD) are followed by scrutinizing all personal services contracts.

She doesn't seek to substitute the EC's judgment or the EDLC's request for FY 2015 budget. She regards COR as the liaison between the administration and EC which includes advising the EDLC about the budget ceiling and the MD's policies with regard to personal services contracts.

Ms. Leong denied threatening to withhold budget approval if documents were not provided to her. She stated that one can't always get what you want due to budgetary constraints, rules and policies.

Commissioner Lilly asked Ms. Leong to define what "administratively attached" means. Ms. Leong said it includes approval of the budget and personal services contracts. Commissioner Lilly stated that he interprets "administratively attached" to mean that COR is the

vehicle by which the budget is submitted for approval to the MD and the Council. He stated he is not sure that “administratively attached” implies budget approval. Ms. Leong agreed with Commissioner Lilly, stating that the budget that COR provided to the Commission was her best judgment of the budget for the EC, with which the EDLC disagrees. The EDLC has requested time with the MD directly, which she believes is unusual because none of her other divisions interface with the MD to talk about budget issues. She believes her budget review was like an interim approval.

Commissioner Chen asked Ms. Leong if it was her position that she could approve how the EC money is spent at the line-item level, which would ultimately effect the EC’s operations. Ms. Leong confirmed that as her position.

Commissioner Lilly asked if Ms. Leong’s position was that she has the purview to submit a budget for a salary that is less than the one the Commission has determined. Ms. Leong responded that she was not taking that position. Commissioner Burroughs interjected that this is the logical consequence of her position that she can approve how the money is spent at the line-item level. Ms. Leong stated that Commissioner Lilly’s question was specific to salaries, and she understands that under the Charter, the EC is empowered to set the EDLC’s salary and that the EC delegated the authority to set staff’s salaries to the EDLC. Ms. Leong cautioned that the EC could be acting contrary to the Charter and the MD’s policies by exceeding the budget ceiling if salaries that are too high.

Commissioner Chen asked if Ms. Leong recommended reducing specific items in the EC’s budget. Ms. Leong responded that it will be up to the MD to adjust the other line items to accommodate the salary increases. She already submitted a suggestion and the EDLC will have an opportunity to speak with the MD directly. The EDLC will basically offer the larger budget for the Commission.

Vice Chair Wong asked whether the other divisions in COR were administratively attached to COR like the EC, to which Ms. Leong stated they have their budget desires, also.

Commissioner Silva asked what the budget ceiling was for FY15 and whether the EC was over it. ASO Maki stated the budget is \$370,478 and the budget recommended by COR is \$10,589 more, or \$381,067. ASO Maki said the City-wide budget instructions gave the cap based on the current year’s budget with the exception of any approved collective bargaining increases.

Chair Gall asked for the amount that the EDLC had requested before COR modified it. ASO Maki said she would provide the information. Ms. Leong estimated the difference to be approximately \$100,000.

Commissioner Lilly asked whether Corp Counsel has the authority to change the Commission’s proposed budget and whether the Commission’s budget, as originally written,

should have been submitted to the MD with whatever comments the Corp Counsel might have had. Commissioner Lilly emphasized that the Commission is distinguishable from other city agencies because of its independence.

Commissioner Silva noted that the Commission has to fight with COR over the budget to even get to the budget negotiations with the MD.

Ms. Leong stated that she considered the budget and information provided by the EDLC and that she thought the EDLC accepted COR's revised budget, except for the salaries. Commissioner Chen explained that her question is, since Ms. Leong made a recommendation to reduce the budget by \$100,000, did she ask the EDLC first to come up with a reduced budget making line-item decisions on the total? Ms. Leong explained that her discussions with the EDLC did not go in that manner. ASO Maki interjected that the EDLC was given an opportunity to give them more information on some areas.

The EDLC informed the Chair that he sent an email on August 23, 2013 to ASO Maki and to Jill Narimatsu, the EC's budget analyst. The email described six necessary budget items based on statistics showing the lack of resources to support the increasing work load which is directly correlated to mandatory ethics training. The EDLC stated that he explained to Ms. Leong and ASO Maki that the EC is perennially underfunded, especially compared to the administrative misconduct resources used by HPD in their Internal Affairs Division. The EDLC stated that Ms. Leong would not approve the addition of an Assistant Executive Director/Legal Counsel (AEDLC) position. Instead, she stated that the ALC's position can be reallocated.

Ms. Leong informed the EC that she told the EDLC that it would be highly unlikely for the MD to approve a third attorney position, and that adding the AEDLC position was only intended to increase the ALC's salary. The EDLC denied that the purpose of creating the Assistant EDLC position was to increase the ALC's salary.

Chair Gall interjected that he thought that one goal in creating the AEDLC position was to correct the ALC's pay inequity and that the EC added the third lawyer position because the Commission staff could not meet the tasks they had with the current resources. Ms. Leong said that the EDLC did not communicate the request for a third attorney position to her or to Ms. Maki. Chair Gall responded that the third attorney request was clear from the budget request in the EDLC's August 23 email to Ms. Maki. Commissioner Lilly agreed with the Chair, pointing out that there is a discussion of the workload as the justification for requesting a third lawyer position.

Chair Gall asked for a motion to resume executive session, which was made by Commissioner Burroughs and seconded by Vice Chair Wong. All were in favor.

**[1:35 PM – EXECUTIVE SESSION CONCLUDED AND OPEN MEETING
RECOMMENCED]**

Chair Gall announced that during the Executive Session the Commission reviewed the salary considerations for the ALC position as well as the EDLC for both fiscal years 2014 and 2015. For fiscal year 2014 they set the salary for the ALC position at \$75,960 and set the salary for the EDLC position at \$102,368. For fiscal year 2015 they set the salary for the ALC position at \$79,000 and for the EDLC position at \$108,000. The FY15 salary amounts did not include any merit increase that the employees may be entitled to in FY15.

The Chair noted the Commission will not have enough members for quorum as two Commissioners had left the meeting after the Executive Session, and Commissioner Yuen was absent. Therefore, the remaining matters on the Agenda were deferred to the next meeting.

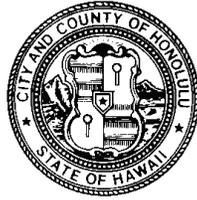
VI. ADJOURNMENT

Commissioner Burroughs moved to adjourn the meeting, Commissioner Chen seconded and all were in favor.

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: November 18, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Geoffrey Kam, Deputy Corporation Counsel-COR
Sheryl L. Nicholson, First Deputy-COR
Diane Kawauchi, Deputy-COR
Catherine R. Maki, Administrative Services Officer-COR
Natalie Iwasa, CPA and Member of the Public
Nick Grube, Civil Beat
Gordon Y. L. Pang, Reporter-Star Advertiser
Ember Y. L. Shinn, Managing Director

Absent: Letha A. S. DeCaires, EC Investigator
Tierra L. Bickford, EC Po`okela Fellows Intern

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 474th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 12:05 p.m. by Chair Gall, and since there were several guests in attendance, he asked them to introduce themselves.

The Commission had before it the EDLC's memorandum regarding the agenda items for the November 18, 2013 Meeting, Open Session, dated November 14, 2013.

The EDLC informed the Commission that EC Investigator, Letha DeCaires was not present because her contract was not renewed in time. After a delay of several weeks, Corporation Counsel approved it, and it is now being routed through the other departments. There is no return date at this point.

II. NEW BUSINESS

A. For Decision: Request for a Motion to Send a Letter from the EC to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget.

The EDLC reported that he emailed a Request and Justification for Additional Ethics Commission Resources for Fiscal Year 2015 to the Department of Budget and Fiscal Services (BFS) and COR. He is now presenting a "bare bones" budget which focuses on: (1) reallocating the Investigator II position to Investigator IV with a cost of \$10,000; (2) creating and filling an Associate Executive Director Legal Counsel Position with no additional cost; (3) filling the Associate Legal Counsel position with a junior attorney with a cost of approximately \$65,000 plus benefits.

Justification for the increased budget is based on statistics that show a 400% increase in complaints investigated from 2002 to the present. [The EDLC visually demonstrated the following statistics with a graph on a dry erase board.] In sum, the EC has had a 50% increase in staff to handle a 400% increase in complaints investigated. These statistics do not include requests for advice, legislation or advisory opinions. The EDLC stated that without more resources, the EC will have to scale back its work which will result in monetary and other intangible losses to the city.

Chair Gall asked how the EC could reallocate the Investigator II to a IV when it appears that a IV must supervise another investigator. EDLC responded that we could justify the increase based on the complexity of the cases which is how the Prosecuting Attorney's office and Attorney General's office justify Investigator IV positions even though they do not supervise others. The pay range increases by \$10,000 for each level.

Commissioner Chen asked if we are reallocating the Investigator position to a Level IV because our current Investigator II is investigating the most complex cases. The EDLC confirmed and added that staff is developing criteria that will measure the complexity of cases such as: seriousness of the allegations, number of subjects, number of witnesses, and ease of obtaining information.

Commissioner Lilly commended Ms. DeCaires on her efficiency and effectiveness in brief time with the EC. The EDLC stated that the EC is very fortunate that Ms. DeCaires accepted this position. He stated that in the three months she has been here, she has closed 19 cases, in several of which violations were found. Most of the cases were returned to the departments for their review and to take corrective action. If staff finds that the department fails to take corrective action, then staff will bring the cases back to the Commission.

The EDLC stated that Ms. DeCaires has the ability to reach out to people and gain their trust even though they may be afraid of retaliation by others. For example, after speaking to a witness who was initially too afraid to come forward, Ms. DeCaires received information that allowed her to conduct a half day of surveillance and gathered sufficient evidence to save the city \$31,000 a year for overtime pay when no work was conducted. She observed employees working only one hour, but being paid overtime for six. These employees have been doing this every week for some time. Currently the office is working with the department to determine appropriate corrective action. The EDLC stated that in just six cases the EC has saved the city \$200,000 a year. Enforcement causes a ripple effect which prevents others from misusing city resources.

Commissioner Lilly commented that the Administration should endorse our ability to rule out fraud, waste and abuse to save the government money. Vice Chair Wong stated that in addition to the tangible financial return to the city, the city also receives an intangible benefit when the level of integrity increases within the city. She asked the EDLC to explain more of the differences Ms. DeCaires has made on the office.

The EDLC replied that Ms. DeCaires is expedient and efficient on contacting complainants and witnesses. She's pragmatic about the merit of a case and has an ability to interview and interrogate which is different than the way lawyers take depositions. She also has the ability to put people at ease which is important because 80% of the people who come to us are distressed.

Commissioner Lilly asked how long Ms. DeCaires will be off contract. Ms. Maki stated that she will check on the status, and that it was her understanding that the EC requested Ms. DeCaires to restart her contract tomorrow after taking the necessary break in service on Friday. The EDLC stated that he has asked COR to expedite Ms. DeCaires' contract. He is concerned about losing the continuity of her investigations, if her contract is not renewed in a timely fashion.

**[12:17 pm - Gordon Pang of Star Advertiser and
Ember Shinn, Managing Director entered the meeting]**

The EDLC stated that he appreciated Ms. Shinn being at the meeting as she was the one who helped to clear the "log jam" in dispute matters between the EC staff and other agencies.

The EDLC introduced Ms. Shinn.

Vice Chair Wong commented that having Ms. DeCaires on staff also increases the efficiency of the legal team because the attorneys can focus on legal work. The EDLC agreed and also stated that because the cases are more serious, complex, and sensitive, upsetting the working equilibrium is dangerous.

Commissioner Lilly asked if it is fair to say that because of the EC's work and its efficacy in policing violations, people are more comfortable to bring complaints because it will be handled fairly, expeditiously, and effectively. The EDLC agreed that Ms. DeCaires alleviated the legal team's concerns about the expediency of investigations and that this office wants to ensure there is a fair and expeditious administrative response with a bare bones budget. The EDLC stated that the bare bones budget is insufficient to accomplish many other delayed projects.

Chair Gall directed the discussion to focus on the reallocation of the Investigatory II to IV position. He asked if any of the guests wanted to comment on this issue.

Ms. Sheryl Nicholson, First Deputy, COR introduced herself and explained that Ms. Leong was unable to attend the meeting due to a prescheduled trip. She read a memo from Corporation Counsel Leong and relayed that Ms. Leong believes that the administration has provided the EC with the resources to work effectively, and the issue is to ensure that the city allocates resources to the EC with fiscal prudence.

Ms. Nicholson continued reading the memo from Ms. Leong and relayed that EDLC had not discussed the matter of reallocating the Investigator II to a IV position with COR, therefore COR could not provide a position to the EC regarding this matter. Ms. Leong found out about this reallocation through the open session memo dated November 14th. The EDLC failed to provide COR with justification for the reallocation. Implementation of the upgrade will cause the EC budget to exceed its budget ceiling to a greater extent than it already does.

Commissioner Lilly asked Ms. Nicholson if Corporation Counsel finalized a position on whether it views itself as an approving authority for a budget request that the EC submits or as the entity through which the EC submits its budget. Ms. Nicholson replied that she will defer that discussion for Ms. Leong.

Commissioner Silva asked how far the proposed budget is over the ceiling. Ms. Nicholson responded that for fiscal year 2015, the ceiling is \$370,478. The budget that was submitted by Corporation Counsel which included some of the items Mr. Tutto requested was \$381,067.

Commissioner Silva commented that Ms. DeCaires is correcting a lot of violations and has been saving the city a lot of money so why are we arguing about \$10,000?

Commissioner Chen asked how the budget ceiling is determined and whether the every agency has the same cap.

Chair Gall responded that the cap is based on the prior year's expenditures plus a small increase. Ms. Maki stated that the fiscal year 2015 ceiling is based on the current year appropriation. It was adjusted for collective bargaining increases that had been approved. The EC's budget does include the 4% merit increase.

Commissioner Chen asked what is COR's position if the EC's work has increased far beyond the percentage of the increased budget ceiling?

Ms. Ember Shinn, Managing Director, asked to respond in a global context. She stated that in January 2013, the Caldwell administration had to plan the FY 2014 budget which was due to the Council by March 1, 2013. She met with the EDLC and was sympathetic to the EC's needs. The administration agreed to increase the EC budget by \$50,000 for investigative services. She noted that this was the first time the EC had a budget increase in several years. The mayor really believed in the mission of training, investigations and advice.

Ms. Shinn further explained that all departments were asked to submit their proposed FY 2015 budget based upon last FY 2014 budget plus the 4% salary increase or collective bargaining increases which is the budget ceiling. Only the salary component was increased, the operating expense component stayed at the same level. Most of the departments excluding Ethics and COR were affected after the budget was adopted by Council in June 2013 with a \$28 million shortfall. Twenty million (\$20M) were cut including \$4.5 million from HPD and \$1.5 million from HFD.

Ms. Shinn explained that every department is being asked to start at its prior year's budget as a ceiling, and this week, the administration established a process for departments that request for amounts above the ceiling. Departments need to submit a memo identifying the expenses with justifications. Whatever increases are made will depend on: (1) revenue enhancements that Council may approve and (2) Mayor's priorities to fund core city services.

Commissioner Lilly requested that she remember the EC's success stories and its value to the city when reviewing the EC's budget proposal. Ms. Shinn replied that she is only aware of the outcomes of two investigations because of the EC confidentiality laws and it's hard to give the EC credit that it deserves. The administration acknowledges the EC as an important function and wants to support the EC because it's the right thing to do, but there are financial consequences for findings of ethics violations such as those employees who abused overtime. She was certain that those employees will file grievances against the city or sue the city.

Commissioner Lilly replied that he would welcome those six grievances on the overtime violations because they were clear cases of overtime abuse. Ms. Shinn stated that every

department is passionate about what they do and feels that they are not funded appropriately at the right level like the EDLC.

Chair Gall asked when the budget needs to be submitted. Ms. Maki stated that the initial budgets were already inputted into the system in September 2013. The initial proposed budgets are being reviewed by BFS, and will then be routed to Ms. Shinn.

Chair Gall confirmed that the administration is directing the EC to submit a budget within the cap, and then to the extent the EC believes it needs funds in excess of the cap to properly do its job, the EC must submit a request for that separately in a memo which contains the descriptions of the reasons why this increase is justified. Chair Gall and Commissioner Chen asked for clarification on what needs to be submitted after the initial proposal.

Ms. Maki replied that what was inputted into the system was COR's recommendation on the EDLC's request. She stated that amounts in attachment number 6 which was provided by COR at the last meeting, were included in the online computer system. Anything in excess of the budget ceiling needs to be justified including funding for the new clerk position, the \$10,000 amount that exceeds the ceiling, and any other changes as a result of today's meeting.

Ms. Shinn commented that she would consider a Charter amendment to move the EC to another department for administrative purposes. Commissioner Lilly stated that the issue is the way the EC is being administered.

Ms. Shinn responded that the EC does not fit within the typical mold of city government although there is a similarity to the Liquor Commission and the Ethics Board of Appeals, which are administratively attached to BFS.

Ms. Natalie Iwasa, member of the public, requested an opportunity to address the Commission. She stated she met Ms. DeCaires and found her to be very skilled and professional. If the EC does not get that kind of person with those skills and experience required by the Investigator IV position, the EC is sacrificing its investigations. The EC must be independent and asked if it is possible to make the EC completely separate through a Charter amendment. She stated that tax payers have already paid for an ORI investigation conducted by COR so that information should be released to the EC. Withholding information from the EC raises a lot of transparency questions from the public. She stated that EDLC has done a good job of comparing the cost of investigating within the EC's budget as opposed to COR's budget and emphasized that COR spends millions of dollars a year on outside attorneys. She asked that the administration support an increase in the Ethics Commission budget and the Auditor's budget because they both work toward benefitting of the public.

Ms. Iwasa stated that the EC needs more money to regulate lobbying activities and updating the website to make meeting minutes and agenda items easily accessible to the public. She stated that she expected the EC's budget to increase since there were no increases in the past

to keep up with inflation. She requested that the administration examine this issue because the EC is different from other commissions and agencies and it is unclear how much costs the city will incur, if the EC cannot function adequately.

Vice Chair Wong thanked Ms. Iwasa and asked if she followed the EC. Ms. Iwasa responded that she testifies at City Council and has been following local government closely for three or four years consistently. She followed the resolutions that the EC initiated and even checked into some of the EC appointees. Although she knows the EC budget issues well, she didn't know the background details explained today.

Commissioner Silva commented that the time and money involved just to revise the EC budget did not make sense from a business standpoint.

Chair Gall asked if there was any further discussion regarding the reallocation of the Investigator II to IV position. Hearing none, he proceeded to ask the EDLC to discuss the justifications for the Associate Executive Director Legal Counsel position (AEDLC).

The EDLC stated that the EC needs to start looking at EC transition and continuity in terms of history and standard operating procedures. The State Ethics Commission began their offices over 30 years ago with an EDLC, an Assistant EDLC (AEDLC) position and a secretary. They realized that they needed to have someone who is likely to stay for a longer period than an Executive Director to retain the institutional knowledge, policy, advocacy and standard operating procedures. Also, there is an inequity in the ALC salary because the Charter requires all EC staff except for the EDLC to be within the city's pay classification. Although the ALC is an exempt employee like the COR deputies, the ALC salary is capped at the top of the SR26 range at \$88,000 whereas COR deputies are not restricted by the same salary range. The EC will not be able to retain an experienced attorney with that cap. The Council Chair has advised us to work with DHR to increase the classification with a new position instead of proposing a Charter amendment.

If DHR will allow the AEDLC to be in the EM-3 classification, it will provide a pay range comparable to that of the COR deputies. There will not be an increase in the budget by creating this position because whoever takes that position should be qualified to earn at least what the current ALC is earning, but the EC will still have to budget for a junior level attorney.

Even with our investigator's work, staff is still clearing the complaint backlog. If the EC could hire a junior level attorney with 2-3 years of experience it could help clear the backlog, among other things. The salary would be approximately \$65,000, based on the current pay for a COR deputy who has two or three years of experience.

Chair Gall asked if the EDLC was converting the current ALC position to AEDLC. The EDLC clarified that the EC is not reallocating the ALC position; it is creating a new AEDLC

position and keeping the ALC position. Commissioner Chen confirmed that the EC will be hiring a junior attorney to fill the ALC position.

Commissioner Silva asked if the AEDLC position was in the current budget proposal. The EDLC responded no. He referred to his three-page memo that recommended justifications for filling the ALC position assuming the EC is able to create and fill the AEDLC position, and reallocate the Investigator II to a IV position. He stated that the cost for the AEDLC, the ALC and the Investigator IV is approximately \$75,000 plus benefits. Chair Gall asked if the 60% cost of benefits was included in the budget. Ms. Maki clarified that it is in the provisional budget, but the decision makers are made aware of the cost.

Chair Gall asked if Ms. Nicholson had any comments on this item. Ms. Nicholson read from Ms. Leong's memo stating that in August 2013, the EDLC requested the AEDLC position as a means to pay the current ALC a higher salary. He did not say at the time that he wanted to create a third position and have it filled. Ms. Nicholson continued to read from the memo stating that Ms. Leong did not support the new AEDLC position because of the city's fiscal constraints and suggested increasing the ALC salary by re-allocating it to a different classification. The EDLC's request to create the AEDLC position, and to fill the ALC position at a cost of \$65,000 excluding benefits, exceeds the budget ceiling. If the EC supports the EDLC's proposal, the EC should provide direction to the EDLC and COR as to what adjustments it authorizes in the event the administration rejects the EC's budget.

Vice Chair Wong asked for clarification as to when Ms. Leong became aware that the EC was discussing the AEDLC position. The EDLC referred to his August 23, 2013 email sent to Cathy Maki and Jill Narimatsu, the EC's BFS analyst. When the EDLC met with Ms. Leong, he gave copies of his August 23 email to Ms. Leong and Ms. Maki, as well as updated statistics showing the EC's increase in workload to date. In the email, the first item asked for was a new position, a full time AEDLC. Ms. Leong's response was to deny the new AEDLC position, although COR would allow the ALC position to be reallocated to the AEDLC position. Vice Chair Wong asked Ms. Nicholson to pass the information to Ms. Leong.

Chair Gall instructed the EC to take the two budget issues separately. Chair Gall asked if someone would make a motion to adopt the EDLC's recommendation in regard to reallocating the Investigator II position to an Investigator IV position.

Commissioner Yuen made a motion to that effect. Commissioner Silva seconded the Motion. The Motion passed unanimously.

Chair Gall asked if someone would make a motion to adopt the EDLC's recommendation in regard to creating and filling the AEDLC position and then filling and keeping the ALC position so the EC has a total of three attorneys in the office.

Commissioner Lilly made a motion to that effect. Commissioner Silva seconded the Motion. The Motion passed unanimously.

The EDLC stated that he will submit the EC's recommendations to COR and the Managing Director for review. Chair Gall added that the EDLC will have to address the justification for the additional \$10,000 taking into consideration any changes in salary that were approved at the last meeting.

Vice Chair Wong suggested that the EDLC include our successes to frame our budget as a compromise between the EC and the administration.

Chair Gall stated that there has been a request that Agenda Items B and D be deferred to the next meeting so that Ms. Leong can address those items at that time. Chair Gall asked for a motion that Items B and D be deferred.

Commissioner Lilly made a motion to that effect. Vice Chair Wong seconded the Motion. The Motion passed unanimously.

- B. For Discussion: Corporation Counsel's Lack of Response to certain Commission Staff Requests. (DEFERRED)
- D. For Information: Corporation Counsel's Response to the Commission's Amended Request Re Scope of Representation of COR in Ethics Matters, dated September 6, 2013. (TAKEN OUT OF ORDER AND DEFERRED)
- C. For Discussion: Request by the Star Advertiser to have a Question and Answer Interview with the Executive Director/Legal Counsel.

The EDLC relayed that Vicki Viotti from the Star Advertiser had requested to interview him for a two page Q&A article that features people. He has also received requests from Midweek for interviews. He has declined in the past simply because he wanted to keep a low profile. On the other hand, it is a chance for the EDLC to describe some of the issues on behalf of the Commission.

Commissioner Lilly stated that he didn't believe the EDLC needed the EC's guidance regarding this issue. The EDLC explained this item was on the agenda due to the sensitive issues. Commissioner Chen asked the EDLC if he was concerned about timing. Vice Chair Wong stated that the EDLC should be mindful of timeliness, as stories are published because of current related events. Commissioner Yuen stated that he believed it was a good idea for the EDLC to participate in the Q&A to increase public awareness and appreciation of the EC.

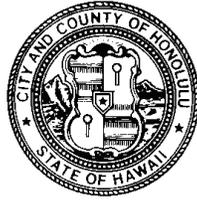
VI. ADJOURNMENT

Chair Gall asked if there were any further discussion on this matter. Being none, he asked for a motion to adjourn. **Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.**

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: December 4, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Carolee C. Kubo, Director, Department of Human Resources-DHR
Mark D. Wong, Director, Department of Information Technology-DIT
Kevin Mulligan, Hawaii Government Employees Association-HGEA
Natalie Iwasa, CPA and Interested Member of the Public
Gordon Y. L. Pang, Reporter-Star Advertiser
Nick Grube, Honolulu Civil Beat
P. F. Bentley, Photographer, Honolulu Civil Beat

Absent: Rachael S. Wong, Dr.PH, Vice Chairperson
Letha A. S. DeCaires, EC Investigator
Tierra L. Bickford, EC Po`okela Fellows Intern

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 475th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 11:36 a.m. by Chair Gall.

The Commission had before it the EDLC’s memorandum regarding the Agenda Items for the December 4, 2013 Meeting, Open Session, dated November 27, 2013.

II. OLD BUSINESS

- A. For Action: Request for a Motion to Approve the Minutes of the Open Sessions of the November 4 and 18, 2013 Meetings.

Chair Gall informed the Commission that the Minutes of the November 4 and November 18, 2013 meetings will be deferred for approval until the next meeting.

- B. Confirming the Date and Time of the January 6, 2014 Meeting at 11:30 a.m.

The January 6, 2014 meeting at 11:30 a.m. was confirmed by the Commission.

- C. Setting the Date and Time of the Meeting During the Month of February 2014.

The meeting was set and confirmed for February 19, 2013 at 11:30 a.m.

III. NEW BUSINESS

- A. For Action: Request for a Motion to Nominate and Elect Ethics Commission's Chair and Vice Chair for Calendar Year 2014.

Chair Gall asked the staff to advise the Commission of the nomination process.

The ALC informed the Commission that since the election is by ballot, according to the Robert's Rules, it's not necessary to make nominations as each member may vote for any eligible person whether or not nominated or not.

Commissioner Lilly asked about the remaining appointment of Vice Chair Wong. Chair Gall and Commissioner Yuen responded that her term would conclude at the end of the year. The EDLC stated that she could be a hold-over member until someone else is selected, or until she is re-appointed. The EDLC also stated that she asked to be reappointed a couple of weeks ago, but hasn't heard anything.

Commissioner Lilly nominated Chair Gall, as Chair of the Ethics Commission for calendar year 2014, Commissioner Yuen seconded the nomination and all were in favor.

Commissioner Lilly nominated Vice Chair Wong, as Vice Chair of the Ethics Commission for calendar year 2014. Commissioner Silva seconded the nomination and all were in favor.

- B. For Discussion: Disclosure of 25 Donors as Referenced in Ethics Commission Advisory Opinion No. 2013-3, Pursuant to a Media Request. (Moved to the end of the agenda.)

Chair Gall informed the Commission he would recuse himself in the discussion regarding this matter, and further asked that this agenda item be moved to the end of the agenda.

C. For Discussion: Status of Fiscal Year 2015 Budget Request.

The EDLC informed the Commission that the date to meet with the Department of Budget and Fiscal Services (BFS) and the Managing Director (MD) has been rescheduled to the last week in December. He directed the Commission's attention to the information packet he had submitted to BFS and the MD that was provided in his memo. He explained that there are about 3,500 employees left to complete the mandatory ethics training by June 30, 2014. Assuming that there is a consistent pace in requests for advice based on the first half of the fiscal year, we will have a 40 percent increase in requests for advice and a 20 percent increase in complaints investigated in fiscal year 2014, and up to 500 requests for advice and almost 100 complaints investigated. The EDLC will keep the Commission apprised of the budget after he meets with the MD.

D. For Discussion: Corporation Counsel's and other Departments' Denials or Lack of Response to Certain Commission Staff Requests.

Chair Gall informed the Commission that this morning, Director Mike Formby, Department of Transportation Services, requested in writing that this item be deferred.

Chair Gall made a motion that with regard to DTS's portion of the matter, that it be deferred until the next meeting so that Director Formby can appear in person and discuss the issue with the Commission. Commissioner Yuen seconded. The EDLC asked to be heard on the motion.

The EDLC informed the Commission that he takes issue with the deferral request because this is the third time it's been on the Agenda. He stated that to date, DTS has not commented, submitted testimony, or sent anyone on his behalf to the Commission. EDLC was concerned about the ongoing delay to address these issues given that Bill 32, the bill related to ethics and DTS oversight of the Oahu Transit Services (aka "OTS" or "The Bus"), is pending before the Executive Matters and Legal Affairs Committee (EMLA).

The EDLC further stated that he requested some very basic information from the DTS Director that has gone unanswered including: 1) What is DTS' role in Oahu Transit Services (OTS) review of ethics complaints; 2) How does DTS ensure that the complaints of ethical misconduct are properly investigated and acted on by the management of OTS; 3) How many complaints has OTS investigated from 2010 to date regarding violations of their standards of conduct; 4) What disciplinary or corrective action has OTS or DTS taken as a result of the investigations.

Commissioner Silva asked the EDLC if Mr. Formby's non-responsiveness to the EDLC was because the EC did not have jurisdiction over OTS, and was seeking counsel. The EDLC agreed but

also stated the information will be helpful for everybody to conduct an educated discussion regarding Bill 32 which would determine if the Ethics Commission should have jurisdiction over the OTS employees.

Chair Gall asked if this issue is related to an ongoing investigation, and the EDLC responded in the negative. The EDLC further stated that currently the EC has no jurisdiction to investigate ethical misconduct of OTS employees although within the last few months the EC has received seven complaints of unethical conduct. The EC can only forward those complaints to DTS for further action. The EDLC wants to know, "how does DTS monitor the situation when OTS does their investigative review?" The EDLC stated that he thinks it's important for the public and Council to know this information.

[Commissioner Chen entered the meeting @ 11:51 am]

Chair Gall responded that he would like Director Formby to respond to the EDLC's questions before the Commission. Commissioner Lilly agreed and added that he found it troubling that Mr. Formby gave the last minute excuse that he couldn't attend the meeting

Chair Gall amended the pending motion such that the item will be deferred to the January 6 meeting, and asked for a second. Commissioner Yuen seconded. Commissioners Lilly and Silva were not in favor. Commissioner Chen abstained as she had just arrived and needed to be briefed on the agenda item.

Chair Gall briefed Commissioner Chen on the matter. Chair Gall asked EDLC what type of relief he is seeking today if the item is not deferred. The EDLC responded that the Commission could take whatever action it thought appropriate such as instruct staff that it is determining a particular action. Chair Gall responded that he was struggling to understand the EDLC's recommendation resolution. The EDLC suggested that the EC order the DTS Director to show cause as to: 1) Why he hasn't responded to the EDLC's questions; and 2) Why he has not responded to the EDLC's requests to meet with Bill 32 stakeholders.

Commissioner Lilly asked if the EDLC could report to the City Council Chair, since it's a matter with regard to their Bill, and if the Chair does not respond, then the EDLC could copy the Mayor.

The EDLC informed the Commission that they may want to consider whether Mr. Formby's refusal to respond or fully respond without justification is a misuse of a City position, and a potential case to be investigated. The EDLC further stated that Mr. Formby could be subpoenaed to come before the Commission. Commissioner Lilly asked that if this item is moved to January 6, he would recommend that the EDLC provide the EC with recommendations on what to do in the event it happens again, and the EDLC agreed.

Deputy Corporation Counsel Kam suggested that the EC take testimony today, and continue this same agenda item for January 6 for additional testimony and to decide on a resolution they want to make at that time.

Chair Gall asked for a motion to take testimony and discuss the issue today, with further testimony from the DTS Director on January 6, 2014, should he choose to attend. If he does not attend, the EDLC will advise of available remedies and recommend a course of action.

Commissioner Chen asked if they could subpoena Mr. Formby to attend the January 6 meeting. Chair Gall asked if they needed a contested case hearing in order to issue a subpoena. After a short recess, the EDLC cited that under ROH Sec. 3-6.3(h), there does not need to be an ongoing investigation to subpoena Director Formby to attend the January 6th meeting.

Chair Gall asked for further comment on the matter.

Natalie Iwasa, CPA and interested member of the public, testified that it's been very frustrating, knowing that there have been 7 new complaints regarding ethics issues at OTS recently, and not knowing if anyone is investigating these complaints in a timely manner. She further stated that delaying the investigation of these complaints hinders the ability to investigate thoroughly. She added that serving a subpoena on Director Formby seemed to be overbearing.

Commissioner Lilly stated that he did not think that the EC should issue the subpoena unless Mr. Formby does not attend the January 6, 2014 meeting. The EDLC stated that the EC has the power to make a recommendation to the Mayor or City Council on issues that foster the ethical culture within the city and that determining the ethical climate or concerns of DTS' oversight of OTS is fairly a matter before the Commission which would support a subpoena.

Commissioner Chen asked how many times the EDLC has formally requested Mr. Formby to attend. The EDLC replied he had not specifically asked for attendance but the Director has most likely been informed that the EC has been discussing this matter for the last two meetings. Commissioner Lilly commented that in his communication, Mr. Formby indicated that he had intended on being at the meeting today, but couldn't attend.

Chair Gall reiterated the pending Motion. Commissioner Lilly seconded the motion. The motion passed unanimously.

EDLC asked to comment on Bill 32. Bill 32 contemplates that OTS would administer and enforce its own internal standards of conduct with DTS' oversight as opposed to the EC having jurisdiction over OTS officers and employees. EDLC has never been aware of a situation where a stakeholder has not been allowed to comment on pending legislation like how the EC has been excluded as to Bill 32 by DTS. Chair Gall directed further discussion be deferred to the January 6, 2014 meeting.

Ms. Carolee Kubo, Director of Human Resources, was invited to speak. She provided a memo to the EC stating her position on the EC's requests for obtaining electronic files for an EC investigation. She stated that she has been in labor relations for 23 years with the union. She has seen many grievances filed for harassment, and intimidation when employees are compelled to speak or to provide information for investigations. Therefore, she is reluctant to release information unless she is provided a narrow scope of time and type of information. She stated that she is protecting the contractual, state and federal rights of the employees. She stated that she has witnessed arbitrations where employers have been sued for releasing personnel information.

Chair Gall asked her about the requirement that the EC provide her with sufficient factual information to establish probable cause that the employee violated the ethics laws as provided in her memo. He stated that this standard is problematic for the EC because the EC's preliminary investigation is to determine whether probable cause exists. Therefore, using a probable cause standard in a preliminary investigation is not practical. Therefore, he recommended that she use a different standard.

Ms. Kubo replied that some of the requests that she received and signed were for witnesses who have contractual rights. Chair Gall reiterated that he is just addressing the standard. Ms. Kubo stated that she would review every request that would come in to determine if we need further information and would discuss the requests with Mr. Totto.

Chair Gall asked her if she had any legal basis or done any legal research supporting her probable cause standard.

She replied that the standard was based on her experience in labor relations that she has seen go to arbitration on this same issue. She stated that perhaps her predecessors were not that experienced in that field and so they were not cognizant of the ramifications of disclosure.

Commissioner Lilly asked her if the arbitrations were in regard to ethics complaints or investigations. She replied that she believed some of them were. He further asked if the arbitration reached a decision as to the release of information and what kinds of limits.

Ms. Kubo stated that they put limits on the type of information that can be released like personnel information and the type of disciplinary action taken. Commissioner Lilly asked how many arbitrations involved investigations by the Ethics Commission.

Ms. Kubo replied that she did not know about the Honolulu Ethics Commission, but she represented people in the state and counties of all the other jurisdictions in Hawaii.

Commissioner Lilly asked for confirmation that she was asserting that there were arbitrations involving other ethics investigations in the state that ruled against disclosure of information.

She stated that she could not provide any specifics at this time. Commissioner Lilly asked if the arbitration decisions were public. Ms. Kubo responded that they were. He asked for copies for those cases. She stated that she could look for them. He asked if the primary concern is the privacy of the information. She replied that she needs to balance the public's right to know and the employee's privacy. Commissioner Lilly responded that when the EC deals with personnel issues the investigations and discussions are private, therefore he is not sure where her privacy issue arises.

She replied that she saw a recent case where a decision was rendered and it was emailed to a lot of people, so the employee could be stigmatized. She also stated that there was a recent case in her office of an investigation of an employee and she took appropriate disciplinary action. The EC wanted to know exactly what she did, but she believed that the information was confidential. So she would not release personnel information.

Commissioner Chen asked Ms. Kubo to cite the exact cases that show the applicable standard for obtaining information for investigations to the city's Ethics Commission as opposed to citing a standard based on her general experience because Ms. Kubo's probable cause standard runs counter to how the EC has historically obtained information.

Commissioner Lilly reiterated that the EC does not make private information public and that he is concerned about her standard because it hampers the EC's investigations. Ms. Kubo reiterated that she wanted a narrowed time period and also information showing that the person did in fact violate the ethics code before releasing information.

The EDLC stated that the US Supreme Court stated that the standards to release information in response to an administrative subpoena, is that the information be "reasonably relevant."

The EDLC provided a recent example of a request. The EC received a complaint that someone is using their email for political purposes and the EC staff was already provided with a political email sent by this employee. The EC staff requested DHR to obtain the emails from that employee's account. Staff has credible information that this person had misused this email and needed to check if there was further misuse. Staff kept the request confidential, and cited the laws that show that the EC has the authority to make this request for information that is reasonably relevant to the investigation.

The EDLC stated that he appreciates the need to narrow the time period for documents that the EC is requesting but, it is impractical to provide her with an itemized list of the specific documents the EC is seeking as she is requesting in her memo. The EDLC asked from a practical standpoint, would a DHR or DIT employee review all of the documents and pull out only the political emails? The EDLC stated that the EC staff wants to work with DHR, but Ms. Kubo's approach is not acceptable.

The EDLC stated that he believed that his holds on the systematic deletion of stored emails had been released, and the EC has lost emails needed for its investigation which is a destruction of evidence. The EDLC stated that he has never encountered a delay of six weeks to respond to a request for information or this type of demand of proof for a request in his 14 years as the EDLC.

Commissioner Lilly commented that the standard for discovery in civil litigation is relatively low. Parties are entitled to anything that is reasonably likely to lead to the discovery of admissible evidence. He asked Ms. Kubo if EC staff has been provided with the emails requested related to the political misuse. Ms. Kubo stated that DIT is responsible to provide the email. EDLC confirmed that staff has not received the emails.

Commissioner Lilly stated that perhaps the EC should issue subpoenas. Chair Gall asked if there were further comments.

Ms. Kubo stated when the EDLC requested the political email she could see reasonable cause to provide him the other political emails. Commissioner Chen asked if she meant probable cause. Ms. Kubo corrected herself. She felt that Mr. Tutto had “probable cause” because he had that one email. She did not think it was proper to grant EC staff access to everything in the employee’s email box because it is not what the EC is investigating. She believes the request should be tailored to the subject of the investigation.

Commissioner Silva stated that if you are going to go in you have to see if there is other misuse of resources because you can’t just pinpoint one thing on the request.

Chair Gall asked if there were any other questions for Ms. Kubo, and upon hearing none, he asked if anyone else wanted to testify.

Mark Wong, DIT Director introduced himself and stated that for the record, today was the first day he has ever heard about the EC requesting political emails. He stated that he was aware of an email from EDLC that was sent directly to a DIT employee and that this email was forwarded to several employees. He stated that upon learning of this, he referred the employee who received the EDLC’s email to the DIT security policy which he (Wong) alleged that he had learned about during his Ethics Training class. He referred to the policy and stated that holding of email requires the approval of the DIT, DHR and Managing Directors in writing, which he had not received.

He stated that he received an email from the EDLC dated November 20th asking why DIT had not held these requested emails. After receiving EDLC’s email, he found that DIT was allegedly not complying with the EC’s request, according to a Civil Beat article. Director Wong reiterated that he did not receive any request to hold emails. He reiterated the policy that no DIT employees will hold any files without written authorization because that process could be abused and he did not have any record of the requests. Director Wong believed that the request needed to come from the Department Director - Corporation Counsel.

Commissioner Lilly clarified that the EC is an independent Commission from the Department of Corporation Counsel, and the EC would be issuing the request. Director Wong consented to this. He stated that a communication to a DIT employee in the ranks is insufficient. He further stated that this policy had been in effect since February 3, 2003.

Director Wong stated that he responded to ethics issues in the past in a timely matter. Director Wong stated that he was resentful that he read about his noncompliance to an ethics request in the media.

Chair Gall asked the EDLC to state the issues before the EC. EDLC stated that the issue was whether the DIT director had knowledge that the EC had requested that a DIT employee hold specific emails for the subjects of the EC's four investigations; and whether the DIT director then removed the hold on the emails which may have resulted in the destruction of evidence. The EDLC stated that he asked the information to be held pending formal written authorization. He added that staff did not ask the employee to provide the EC with the files.

Chair Gall asked if the information was being held. Director Wong responded that he did not know. Director Wong stated he did not release the hold.

Commissioner Lilly asked if emails are "scrubbed" after 90 days? Director Wong responded that the issue is how long after an email is *deleted* can DIT recover it. Director Wong stated that every email an employee keeps in their inbox will stay there until the employee deletes it. If an employee deletes an email today, there is a back up every day of the file system, not of the mail boxes. Let's say DIT keeps the back up for 30 days. If the email is deleted after that time, DIT cannot retrieve it. But, if it is within the 30 days, DIT will have to look through the entire Exchange Server (backup) which is like looking for a needle in a haystack and could take up to 2 weeks. Also, DIT does not make any judgment on whether EC needs the data or not. If EC obtains authorization, EC will get the information.

Director Wong stated that he will treat the request and approval for electronic records as highly confidential such that his deputy, secretary, and even the DIT head of security would not be aware of it. Director Wong stated that he would take the request with the original signatures and go directly to the employee who is responsible to retrieve the emails. Director Wong stated that he was aware that the EC's investigation could be jeopardized if the wrong person finds out about the investigation.

He advised that if there is a time constraint associated with the request, EDLC should call him directly and let him know that there is a formal written request pending approval. Director Wong would then speak with the DHR Director and the Managing Director to assess if they would likely be approving the requests. If so, he would instruct the DIT employee in charge of retrieving the emails to hold the emails. He stated that he was here to cooperate with the EC but he needs the

proper authorization and that, upon receiving proper approval, he would sign the authorization within 5 minutes of receipt.

Chair Gall asked for clarification if all four requests for approvals had been signed by DIT, to which the Legal Clerk confirmed. Chair Gall asked if there was any concern that the evidence requested may have been deleted. Director Wong stated that the employees are working on our requests now. He confirmed that DIT only has the ability to retrieve deleted emails a certain amount of time after deletion.

Chair Gall reconfirmed the process for approval. Director Wong stated that the EC needs to contact him directly or walk the request over, and to not email him with the request.

Chair Gall asked if there were any further comments or questions, for Director Wong, hearing none, he thanked Director Wong and invited the next speaker to address the EC.

Kevin Mulligan, HGEA introduced himself. He was concerned about a comment made during the meeting that he found disturbing. He stated that HGEA employees have bargaining rights and protections. He felt that one of the Commissioners made an inappropriate side comment that insinuated a presumption of guilt of employees. He was concerned whether the EC would be treating the employees fairly and reminded that employees have Weingarten rights.

Chair Gall assured Mr. Mulligan that the EC treats everyone fairly and objectively. He asked if there were any further comments or questions on the issue, hearing none, he proceeded to the next item on the agenda.

EDLC thanked Directors Wong and Kubo for attending the meeting.

E. For Information: Corporation Counsel's Response to the Commission's Amended Request Scope of Representation of City Personnel by Corporation Counsel in Ethics Matters, Dated September 6, 2013.

Chair Gall stated that there was a request from Corporation Counsel Donna Leong to defer Item III.E to the next meeting. He asked for a motion to that affect. The EDLC stated that he would like to address the EC now about Ms. Leong's recent memo as it was an immediate subject of concern.

Commissioner Lilly made a motion to defer Item III.E as to COR's presentation, but would hear staff and the testimony of the people present before the EC today. Commissioner Chen seconded the Motion. The Motion was approved unanimously.

EDLC explained that Ms. Leong sent a memo to all Department Directors informing them that COR provides ethics advice. EDLC stated that he was not initially aware of the memo because he was not provided with a copy. The EDLC believed that the memo undermines the

EC's authority as it causes confusion over the proper source of advice, inconsistent advice, forum shopping, perception of administrative pressures on COR deputies, and unnecessary duplicative work. He provided several examples of these problems and further stated that this same procedure was implemented during the Harris administration but was abandoned because it was so problematic. The EDLC confirmed that although COR has the right to provide ethics advice, it is poor policy to do so.

The EDLC confirmed that he is planning to send an advisory to city personnel that the EC does not recommend obtaining ethics advice from COR because ultimately the EC is the only agency that can determine ethics violations and enforce ethics laws.

Commissioner Lilly confirmed that one of the problematic scenarios that could occur is that an employee could get ethics advice from a COR deputy, and then come before the EC and the EC could find a violation. Therefore, it puts the employee at risk.

The EDLC added that an employee could use obtaining advice from COR deputies as a mitigating factor in the ethics violation, also, the employee may decide not to waive their attorney-client privilege and withhold the advice.

The EDLC confirmed to Chair Gall that he intended to issue the memo before the next meeting under his own authority in order to mitigate the confusion caused by Ms. Leong's memo.

Natalie Iwasa reintroduced herself and stated that COR providing ethics advice was inefficient, and there is a public perception that COR has an inherent conflict of interest. She stated that there have been recurring issues that have put pressures on the EC and asked the EC to consider proposing a Charter amendment for more independence.

Commissioner Lilly commented that the State Ethics Commission is under the State Auditor for administrative purposes, and the Auditor is under the Legislature, whereas the EC is under the Administration.

The EDLC added that in 2006 EC staff went before the Charter Commission asking to: (1) define "administratively attached," and (2) requested that the EC have a guaranteed percentage of the city's budget that would not decrease. Both were opposed by COR and did not pass out of the Charter Commission.

Chair Gall asked if there were any other discussion or comments regarding this issue. EDLC distributed Ms. Leong's memo to the EC for their records.

Chair Gall recused himself as to the next agenda item. He designated Commissioner Lilly as Chair Pro Tem.

- B. For Discussion: Disclosure of 25 Donors as Referenced in Ethics Commission Advisory Opinion No. 2013-3, Pursuant to a Media Request. (Taken out of order.)

The ALC stated that the EC staff received a media request to disclose the 25 Donors referenced in Advisory Opinion No. 2013-3 who donated \$127,000 to the Mayoral Transition Committee, \$45,000 of which was used for the Inaugural Luau - a prohibited gift to the Mayor. The ALC stated that staff had contacted the OIP attorneys to get their advice on this matter and the OIP attorneys stated that there were arguments for disclosure and withholding the information which is why the issue is now before the EC. The ALC asked if the EC wanted additional legal advice in addition to the memo provided, so that the EC could enter into Executive Session.

Commissioner Burroughs moved that the EC enter Executive Session, Commissioner Yuen seconded the Motion. All were in favor.

During Executive Session the EC obtained counsel from the ALC and EDLC.

Commissioner Yuen made a motion to exit Executive Session. Commissioner Silva seconded the Motion. All were in favor.

Pro Tem Chair Lilly announced that during the Executive Session, the Commission moved to disclose the 25 Donors to the public in response to the request under HRS Chapter 92F.

VI. ADJOURNMENT

Commissioner Burroughs moved to adjourn the meeting and Commissioner Chen seconded. All were in favor.