



# DEPARTMENT OF THE CORPORATION COUNSEL

**Donna Y.L. Leong**, Corporation Counsel

**Sheryl L. Nicholson**, First Deputy Corporation Counsel (July 2013 – May 2014)

**Paul S. Aoki**, First Deputy Corporation Counsel (June 2014 – present)

## POWERS, DUTIES, AND FUNCTIONS

The Department of the Corporation Counsel (COR) serves as the chief legal adviser and legal representative of all city agencies, the City Council, and all officers and employees of the city in matters relating to their official powers and duties. The department represents the city in all legal proceedings and performs all other legal services required by the Charter or other laws.

The department has two divisions:

1. Counseling and Drafting Division (C&D), including Real Property Tax; and
2. Litigation Division (LIT), including Special Projects Litigation.

Under the Charter, the Ethics Commission is attached to the Department of the Corporation Counsel for administrative purposes only.

## MISSION

The mission of the department is to meet the diverse legal needs of its clients by providing proactive advice and effectively representing and litigating, while maintaining the highest standards of professionalism and ethics.

## COUNSELING AND DRAFTING DIVISION, INCLUDING REAL PROPERTY TAX

The Counseling and Drafting Division comprises five sections: 1) Finance; 2) Infrastructure/Community Service; 3) Land Use; 4) Personnel/Public Safety; and 5) Transportation/Parks.

C&D provides legal advice to the Mayor, the city departments and agencies, the City Council and its committees, and the city boards and commissions. In this advisory capacity, C&D:

- Renders oral and written opinions
- Drafts and reviews bills and resolutions for submission to the City Council or the state legislature, and advances the city's position on legal issues presented in state legislation by drafting and presenting testimony

- Reviews and approves as to form and legality of the legal documents to which the city is a signatory
- Attends meetings of the City Council, the Council committees, and the city boards and commissions
- Provides legal representation on behalf of the city in city and state administrative proceedings and in selected court proceedings, such as real property tax appeals, eminent domain proceedings, quiet title proceedings, partitions of land court property, administrative appeals, foreclosures, bankruptcy actions, interpleader actions for the return of seized property, and other matters as may be assigned

## Statistics

The requests addressed by C&D are categorized in Chart A below by the nature of the requests and assignments, namely: opinion requests, drafting requests, requests for review and approval of legal documents, pre-lawsuit cases, and certain cases filed in the state and federal courts in the State of Hawaii.

In resolving appeals before the State Tax Appeal Court in FY 2014, the Finance Section (Real Property Tax) retained approximately \$31.2 million in total taxes and approximately \$21.5 million above the tax amounts claimed by the appellant taxpayers.

## LITIGATION DIVISION

The Litigation Division provides legal representation of the city in state and federal courts in the State of Hawaii, including the trial and appellate courts. LIT processes and, if necessary, litigates claims by or against the city, including tort, contract, civil rights, employment, and collection claims. LIT prosecutes liquor law violations before the Liquor Commission and advises and represents the Honolulu Police Department with regard to subpoenas duces tecum.

## Statistics

For FY 2014, the number of pre-lawsuit claims, lawsuits, and subpoena duces tecum requests handled by LIT are set forth in Chart B.

CHART A	Outstanding C&D Requests as of 7/1/2013	New Requests Received	Total Opinion Requests Workload	Requests Completed and Closed	Outstanding C&D Requests as of 6/30/2014
Opinion Requests	3,330	1,302	4,632	926	3,706
Drafting Requests <sup>1</sup>	107	203	310	207	103
Requests for review and approval of legal documents	1,084	7,144	8,228	6,998	1,230
Pre-lawsuit cases <sup>2</sup>	243	44	287	64	223
State and Federal Court Cases	1,002	429	1,431	324	1,107

CHART B	Outstanding LIT Requests as of 7/1/2013	New Requests Received	Total Requests Workload	Requests Completed and Closed	Outstanding LIT Requests as of 6/30/2014
Pre-lawsuit Cases <sup>3</sup>	2,041	836	2,877	928	1,949
State and Federal Court Cases	230	124	354	91	263
Subpoena Duces Tecum Requests	146	245	391	245	146

<sup>1</sup>Drafting Requests are requests to drafts bills, resolutions, leases, easements, contracts, affidavits, etc. <sup>2</sup>Adversarial proceedings before administrative bodies.

<sup>3</sup>Claims filed with and handled by the claims investigators.

**ACCOMPLISHMENTS**

Given the supportive role of this department within the city’s organizational structure, many of the department’s accomplishments are reflected in the accomplishments of the Mayor, the City Council, and the various city agencies. This department’s key accomplishments for FY 2014 reflect the diversity of its legal practice.

- **HonoluluTraffic.com, et al. v. Federal Transit Administration, et al.** Plaintiffs sought to stop the Honolulu Rail Transit Project by alleging that the Federal Transit Administration (FTA) and the city violated federal law in approving the project. After almost three years of litigation, the U.S. District Court for the District of Hawaii (the “U.S. District Court”) and the U.S. Ninth Circuit Court of Appeals ruled in favor of the Defendants.
- **Procurement Protests.** The department defends against many bid protests filed under the State of Hawaii Procurement Code. Notably, the department obtained a favorable ruling from the Hawaii Intermediate Court of Appeals in a challenge to the city’s solicitation for paratransit vehicles, thus allowing the city to proceed with the solicitation and award of the contract for new Handi-Van vehicles. The Department also obtained a favorable ruling from the Hawaii Supreme Court, which declined to consider a bid protest to the city’s solicitation for a white goods recycling contract.
- **Wastewater Consent Decree.** COR supports the Department of Environmental Services (ENV) and the Department of Design and Construction (DDC) in their ongoing compliance with the terms of the 2010 Global Wastewater Consent Decree that was entered into by the U.S. District Court, the U.S. Environmental Protection Agency, the State of Hawaii Department of Health, and various non-governmental organizations. Among other things, the city is obligated to improve its wastewater collection and treatment systems.
- **Waimanalo Gulch Sanitary Landfill.** COR continues to support ENV’s previous expansion of the Waimanalo Gulch Sanitary Landfill by successfully defending against a challenge to the adequacy of the Environmental Impact Statement (EIS) for the project. The Hawaii Circuit Court’s decision that the EIS appropriately addressed the entire 200-acre property was affirmed by the Hawaii Intermediate Court of Appeals.
- **Transit-oriented Development.** In connection with the city administration’s Transit-oriented Development (TOD) priority, this department has assisted in the nego-

tiation and drafting by the Department of Planning and Permitting (DPP) of a development agreement for the Live, Work, Play Aiea project. The project is located within walking distance to the Pearlridge rail station and is designed to be an integrated mixed-use community that combines residential, retail, commercial, and public spaces in a compact and walkable urban village. The development agreement allows the developer to acquire certain vested rights to develop the property under existing land use regulations. In exchange, the developer will provide certain public improvements and benefits.

**HONOLULU ETHICS COMMISSION<sup>4</sup>  
POWERS, DUTIES, AND FUNCTIONS**

The purpose of the Ethics Commission (Commission) is to ensure that city officers and employees understand and follow the standards of conduct governing their work for the public. The Commission’s main focus is to deter conflicts of interest and the misuse of government resources or positions by city personnel. The Commission implements its objectives through a balance of training programs, advisory opinions, enforcement actions and legislation.

The seven Commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms.

**ACCOMPLISHMENTS**

**Ethics Training**

The Commission staff continued the mandatory ethics training program for all elected officials, managers, supervisors, and board and commission members. Honolulu’s mandatory ethics training and retraining program is one of the most ambitious in the United States. More than 9,000 public servants have been trained since the law was enacted in 2001. In FY 2014, the Commission completed ethics training for all 8,500 city officers and employees.

**Advice and Enforcement**

For FY 2014, the Commission handled the requests for advice and complaint investigations as reflected in Chart C.

The Commission rendered seven formal advisory opinions, recommending suspensions in two cases, reimbursement to the city in one, a civil fine against a councilmember, and found no violations in two cases. In addition, the Commission examined and restricted the contributions for inaugurations and other political events for the Mayor’s position.

<b>CHART C</b>	Outstanding Matters as of 7/1/2013	New Matters Received	Total Workload	Completed and Closed Matters	Outstanding Matters as of 6/30/2014
Requests for Ethics Advice	22	386	408	389	19
Investigations into Misconduct Complaints	35	105	140	101	39

<sup>4</sup>The Commission is attached to the Department of Corporation Counsel for administrative purposes only.